

Assembly Bill No. 630

CHAPTER 605

An act to amend Sections 22442, 22443.1, 22443.3, and 22445 of, and to add Sections 6126.4, 22441.1, 22442.4, and 22443.2 to, the Business and Professions Code, relating to immigration consultants.

[Approved by Governor September 29, 2006. Filed with Secretary of State September 29, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 630, Chu. Immigration consultants.

Existing law provides for the regulation of a person engaged in the business or acting in the capacity of an immigration consultant. Existing law requires an immigration consultant to file a bond with, and submit a disclosure form and a copy of a photograph identification to, the Secretary of State. Existing law requires the Secretary of State to post on its Internet Web site information demonstrating that an immigration consultant is in compliance with the bond requirement.

This bill would also require a person engaged in the business or acting in the capacity of an immigration consultant to submit to the Department of Justice (DOJ) fingerprint images and other information required by DOJ to obtain the person's criminal history information, as specified. The bill would require DOJ to forward the person's fingerprint images and other information to the Federal Bureau of Investigation to obtain federal criminal history information and would require DOJ to report the criminal history information to the Secretary of State. The bill would require an immigration consultant to pass a background check, and would require his or her disqualification for specified reasons. The bill would require the Secretary of State to post on its Internet Web site information, other than criminal history information received from DOJ, demonstrating that an immigration consultant has passed the background check and a copy of his or her photograph, and would only allow posting of this information and the information regarding bond compliance if he or she has met those requirements. The bill would require the Secretary of State to issue a cease and desist order to a person who has failed to maintain a valid bond or to pass the background check, after giving the person notice and an opportunity to demonstrate that grounds do not exist for the order, and to give notice of the failure to the Attorney General.

Existing law requires an immigration consultant to provide a client with a written contract prior to providing services. Existing law makes it unlawful for a person to disseminate any statement that the person acts or proposes to act as an immigration consultant without having a bond on file with the Secretary of State.

This bill would require an immigration consultant to include information in the written contract regarding reporting complaints to the California Department of Justice and the State Bar of California. The bill would also make it unlawful for a person to disseminate a statement that the person acts or proposes to act as an immigration consultant without having a disclosure statement on file with the Secretary of State.

Existing law makes a violation of the provisions regulating immigration consultants a misdemeanor, subject to specified fines.

This bill would specify that an action for a violation of those provisions must be commenced within 4 years after discovery of the commission of the offense.

Because this bill would create a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 6126.4 is added to the Business and Professions Code, to read:

6126.4. Section 6126.3 shall apply to a person acting in the capacity of an immigration consultant pursuant to Chapter 19.5 (commencing with Section 22440) who advertises or holds himself or herself out as practicing or entitled to practice law, or otherwise practices law.

SEC. 2. Section 22441.1 is added to the Business and Professions Code, to read:

22441.1. (a) A person engaged in the business or acting in the capacity of an immigration consultant shall satisfactorily pass a background check conducted by the Secretary of State.

(b) The Secretary of State shall disqualify an individual from acting as an immigration consultant for any of the following reasons:

(1) Conviction of a felony.

(2) Conviction of a disqualifying misdemeanor where not more than 10 years have passed since the completion of probation. A conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this paragraph. The list of disqualifying misdemeanors shall be the same as the disqualifying misdemeanors applicable to notaries public appointed and commissioned pursuant to Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of the Government Code.

(3) Failure to disclose any arrest or conviction in the disclosure form required pursuant to subdivision (c) of Section 22443.1.

(c) The Secretary of State shall complete a background check on every person engaged in the business or acting in the capacity of an immigration

consultant who was bonded and qualified pursuant to this chapter on or before December 31, 2006.

(d) The Secretary of State shall not file a bond, disclosure form, or photograph from a person who has failed to pass the background check required by this section.

SEC. 3. Section 22442 of the Business and Professions Code is amended to read:

22442. (a) Every person engaged in the business or acting in the capacity of an immigration consultant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, the contents of which shall be prescribed by the Department of Consumer Affairs in regulations.

(b) The written contract shall include all provisions relating to the following:

(1) The services to be performed.

(2) The costs of the services to be performed.

(3) There shall be printed on the face of the contract in 10-point boldface type a statement that the immigration consultant is not an attorney and may not perform the legal services that an attorney performs.

(4) The written contract shall list the documents to be prepared by the immigration consultant, and shall explain the purpose and process of each document.

(5) The written contract shall state the purpose for which the immigration consultant has been hired and the actions to be taken by the immigration consultant regarding each document, including the agency and office where each document will be filed and the approximate processing times according to current published agency guidelines.

(6) The written contract shall include a provision that informs the client that he or she may report complaints relating to immigration consultants to the Office of Immigrant Assistance of the Department of Justice. The written contract shall also include a provision stating that complaints concerning the unauthorized practice of law may be reported to the State Bar of California. These required provisions shall include the toll-free telephone numbers and Internet Web sites of those entities.

(c) An immigration consultant may not include provisions in the written contract relating to the following:

(1) Any guarantee or promise, unless the immigration consultant has some basis in fact for making the guarantee or promise.

(2) Any statement that the immigration consultant can or will obtain special favors from or has special influence with the United States Citizenship and Immigration Services, or any other governmental agency, employee, or official, that may have a bearing on a client's immigration matter.

(d) The provisions of the written contract shall be stated both in English and in the client's native language.

(e) A written contract is void if it is not written pursuant to subdivision (d).

(f) The client shall have the right to rescind the contract within 72 hours of signing the contract. The contents of this subdivision shall be conspicuously set forth in the written contract in both English and the client's native language.

(g) An immigration consultant may not make the statements described in subdivision (c) orally to a client.

(h) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in an immigration matter free of charge or for a fee, including reasonable costs, consistent with that authorized by the Board of Immigration Appeals under Section 292.2 of Title 8 of the Code of Federal Regulations.

SEC. 4. Section 22442.4 is added to the Business and Professions Code, to read:

22442.4. (a) A person engaged in the business or acting in the capacity of an immigration consultant shall submit to the Department of Justice, fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state and federal convictions and arrests and information as to the existence and content of a record of state and federal arrests for which the Department of Justice establishes that the person is free on bail, or on his or her recognizance, pending trial or appeal. An immigration consultant who has been issued a bond as described in Section 22443.1 on or before December 31, 2006, shall submit the fingerprint images and related information to the Department of Justice on or before July 1, 2007.

(b) The Department of Justice shall forward the fingerprint images and related information received pursuant to subdivision (a) to the Federal Bureau of Investigation and request a federal summary of criminal information.

(c) The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the Secretary of State pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(d) The Secretary of State shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to subdivision (a).

(e) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

(f) The Secretary of State shall not post on its Internet Web site information received from the Department of Justice.

SEC. 5. Section 22443.1 of the Business and Professions Code is amended to read:

22443.1. (a) (1) Prior to engaging in the business or acting in the capacity of an immigration consultant, each person shall file with the Secretary of State a bond of fifty thousand dollars (\$50,000) executed by a corporate surety admitted to do business in this state and conditioned upon

compliance with this chapter. The total aggregate liability on the bond shall be limited to fifty thousand dollars (\$50,000).

(2) The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the immigration consultant or the agents, representatives, or employees of the immigration consultant while acting within the scope of that employment or agency.

(c) An immigration consultant who is required to file a surety bond with the Secretary of State shall also file a disclosure form with the Secretary of State that contains all of the following information:

(1) The immigration consultant's name, date of birth, residence address, business address, residence telephone number, and business telephone number.

(2) The name and address of the immigration consultant's agent for service of process if one is required to be or has been appointed.

(3) Whether the immigration consultant has ever been convicted of a violation of this chapter or of Section 6126.

(4) Whether the immigration consultant has ever been arrested or convicted of a crime.

(5) If applicable, the name, business address, business telephone number, and agent for service of process of the corporation or partnership employing the immigration consultant.

(d) An immigration consultant shall notify the Secretary of State's office in writing within 30 days when the surety bond required by this section is renewed, and of any change of name, address, telephone number, or agent for service of process.

(e) The Secretary of State shall post information on its Internet Web site demonstrating that an immigration consultant is in compliance with the bond required by this section and has satisfactorily passed the background check required under Section 22441.1, and shall also post a copy of the immigration consultant's photograph. The Secretary of State shall ensure that the information is current and shall update the information at least every 30 days. The Secretary of State shall only post this information and photograph on its Internet Web site if the person has filed and maintained the bond, filed the disclosure form and photograph required to be filed with the Secretary of State, and passed the background check required by Section 22441.1.

(f) The Secretary of State shall develop the disclosure form required to file a bond under this section and make it available to any immigration consultant filing a bond pursuant to this section.

(g) An immigration consultant shall submit all of the following with the disclosure form:

(1) A copy of valid and current photo identification to determine the immigration consultant's identity, such as a California driver's license or identification card, passport, or other identification acceptable to the Secretary of State.

(2) A photograph of himself or herself with the dimensions and in the style that would be acceptable to the U.S. Department of State for obtaining a United States passport, as instructed by the Secretary of State. An immigration consultant bonded on or before December 31, 2006, shall submit the photograph on or before July 1, 2007.

(h) The Secretary of State shall charge and collect a filing fee to cover the cost of filing the bond.

(i) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds.

(j) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in an immigration matter free of charge or for a fee, including reasonable costs, consistent with that authorized by the Board of Immigration Appeals under Section 292.2 of Title 8 of the Code of Federal Regulations.

SEC. 6. Section 22443.2 is added to the Business and Professions Code, to read:

22443.2. (a) The Secretary of State shall issue a cease and desist order to a person subject to this chapter's provisions who has failed to comply with the provisions governing the filing and maintenance of bonds or who does not satisfactorily pass a background check required by Section 22441.1, and shall give notice of the person's noncompliance or failure to satisfactorily pass the background check to the Attorney General. Prior to issuing a cease and desist order to a person pursuant to this subdivision, the Secretary of State shall provide the person with notice and an opportunity to demonstrate that grounds do not exist for disqualification.

(b) For orders issued for failure to comply with the provisions governing the filing and maintenance of bonds, the order shall include a statement that notice of the person's noncompliance shall be sent to the Attorney General.

SEC. 7. Section 22443.3 of the Business and Professions Code is amended to read:

22443.3. It is unlawful for any person to disseminate by any means any statement indicating directly or by implication that the person engages in the business or acts in the capacity of an immigration consultant, or proposes to engage in the business or act in the capacity of an immigration consultant, unless the person has on file with the Secretary of State a disclosure statement and a bond, in the amount of, and subject to the terms described in, Section 22443.1, that is maintained throughout the period covered by the statement, such as, but not limited to, the period of a Yellow Pages listing.

SEC. 8. Section 22445 of the Business and Professions Code is amended to read:

22445. (a) (1) A person who violates this chapter shall be subject to a civil penalty not to exceed one hundred thousand dollars (\$100,000) for each violation, to be assessed and collected in a civil action brought by any person injured by the violation or in a civil action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney. An action brought in the name of the people of the State of California shall not preclude an action being brought by an injured person.

(2) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court may consider relevant circumstances presented by the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(3) Any action brought pursuant to this section by the Attorney General, a district attorney, or a city attorney shall also seek relief under subdivision (c) of Section 22446.5.

(4) If the Attorney General brings the action, one-half of the civil penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If a district attorney brings the action, the civil penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If a city attorney brings the action, one-half of the civil penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(b) In addition to the provisions of subdivision (a), a violation of this chapter is a misdemeanor punishable by a fine of not less than two thousand dollars (\$2,000) or more than ten thousand dollars (\$10,000), as to each client with respect to whom a violation occurs, or imprisonment in the county jail for not more than one year, or by both fine and imprisonment. However, payment of restitution to a client shall take precedence over payment of a fine.

(c) A second or subsequent violation of Sections 22442.2, 22442.3, and 22442.4 is a misdemeanor subject to the penalties specified in subdivisions (a) and (b). A second or subsequent violation of any other provision of this chapter is a felony punishable by imprisonment in state prison.

(d) An action brought pursuant to this section shall be commenced within four years after discovery of the commission of the offense.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the

definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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