
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 670 (Caballero) - Form preparers: immigration

Version: April 29, 2021

Urgency: No

Hearing Date: May 10, 2021

Policy Vote: JUD. 7 - 0

Mandate: Yes

Consultant: Shaun Naidu

Bill Summary: SB 670 would make a number of changes related to the scope and practice of immigration consultants, including changing the name to form preparers.

Fiscal Impact:

- Secretary of State (SOS): The office reports first-year costs of \$513,000 and ongoing annual costs of \$493,000 for 2.0 Associate Governmental Program Analysts, 1.0 Office Technician, and 1.0 Attorney I related to an expanded filing review and new enforcement functions. With respect to information technology (IT) and project management, it additionally estimates first-year costs of \$14.28 million (of which \$11.3 million would be for develop costs) and ongoing annual costs of \$2.184 million (which includes various IT personnel). (Special fund*)
- State Prison: Unknown, potential increase in state costs for new commitments to state prison that otherwise would not have resulted in criminal conduct absent this measure. The proposed FY 2020-2021 per capita cost to detain a person in a state prison is \$112,691 annually, with an annual marginal rate per person of over \$13,000. The contract bed rate averages to about \$35,000 annually. The actual costs would depend on how many defendants are sentenced to prison. (General Fund)
- Courts: Unknown, potentially-significant workload cost pressures to the courts to adjudicate civil complaints and criminal charges brought against defendants who allegedly engage in the business of being a former preparer unlawfully or engage in the unauthorized practice of law. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to provide for additional staff and resources. For example, the Governor's proposed 2021-2022 budget would appropriate \$118.3 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund**)

*Business Fees Fund

**Trial Court Trust Fund

Background: Current law provides that a person, for compensation, engaged in the business or acting in the capacity of an immigration consultant may offer only non-legal assistance or advice in an immigration matter. Current law establishes that a person engages in the business or acts in the capacity of an immigration consultant when that person gives non-legal assistance or advice on an immigration matter. Assistance or advice includes, but is not limited to, the following:

- completing a form provided by a federal or state agency but not advising a person as to their answers on those forms;
- translating a person's answers to questions posed in those forms;
- securing for a person supporting documents, such as birth certificates, which may be necessary to complete those forms; and,
- submitting completed forms on a person's behalf and at their request to the U.S. Citizenship and Immigration Services.

Current law defines immigration matter as any proceeding, filing, or action affecting the immigration or citizenship status of any person that arises under immigration and naturalization law, executive order or presidential proclamation, or action of the U.S. Citizenship and Immigration Services, the U.S. Department of State, or the U.S. Department of Labor.

In order to become an immigration consultant in California, a person must satisfactorily pass a background check and submit the following to the SOS: a copy of a current surety bond in the amount of \$100,000 obtained from a corporate surety admitted to do business in California, a completed immigration consultant disclosure form, a copy of a valid and current photo identification, a passport photo, and a filing fee.

It is unlawful to engage in the business or act in the capacity of an immigration consultant outside of these criteria. A violation is subject to a civil penalty of up to \$100,000 per violation and punishable as a misdemeanor with up to one year of imprisonment in jail, a base fine of between \$2,000 and \$10,000, or both the imprisonment and fine. Subsequent violations of certain provisions are punishable as a felony with imprisonment in state prison for sixteen months, two years, or three years.

Proposed Law: This bill would:

- Change the name "immigration consultant" to "form preparer."
- Prohibit form preparers from using the title immigration consultant, immigration specialist, or any other title that implies that the person has expertise in immigration matters, in any document, including an advertisement, stationary, letterhead, business card, or other comparable written material, on the internet, or by broadcast media, describing the immigration form assistant. It would provide that a violation of this prohibition is punishable as the unauthorized practice of law.
- Prohibit notaries public who hold themselves out as being form preparers from using the title immigration consultant, immigration specialist, or any title or description reflecting an expertise in immigration matters.
- Require a form preparer, before providing any services, to provide the client with a written disclosure in the native language of the client a statement that the form preparer is not an attorney or a notario publico.
- Clarify that an advertisement prohibition in translating words including "notary public" applies to the internet and broadcast media.
- Require, starting on July 1, 2022, and every two years thereafter, a form preparer to complete a course on the limits of authorized services and prohibited activities of form preparers.
- Require the SOS to enforce provisions that govern submitting proof of completion of the course and to charge and collect a filing fee to cover the reasonable cost of submitting proof of the completion of the course.

- Prohibit form preparers from providing nonlegal assistance related to any of the following:
 - Applications for Asylum and for Withholding of Removal.
 - Applications for T Nonimmigrant Status.
 - Petitions for U Nonimmigrant Status.
 - Petitions under the Violence Against Women Act.
 - Petitions for Special Immigrant Juvenile Status.

Related Legislation: SB 1382 (Hueso, 2019-2020 Reg. Sess.) was substantially similar to this bill. SB 1382 was never heard in the Senate Committee on Judiciary.

AB 1753 (Carrillo, 2019-2020 Reg. Sess.) and AB 638 (Caballero, 2017-2018 Reg. Sess.) were substantially similar and would have reformed who, for compensation, could engage in the business or act in the capacity of an immigration consultant. AB 1753 was held on the Suspense File of this Committee, and AB 638 failed passage on the Senate floor.

Staff Comments: The current automated bond tracking system used by SOS to file immigration consultant disclosure notices and surety bonds would need to be modified to track the required reoccurring education requirements submitted every two years by each form preparer. In addition to tracking the additional requirements, the system would need to be modified to notice SOS staff when the additional reoccurring education requirements have not been submitted timely or have expired. The office also indicates that it would need a new case management system in order to track civil actions.

If enacted, the provisions of SB 670 would become operative on January 1, 2022. It is unlikely that the SOS would be able to comply fully with this measure's mandates by that date, particularly given that the normal budget cycle would mean that funding would not be available to implement the measure until July 1, 2022, at the earliest.

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