
THIRD READING

Bill No: SB 670
Author: Caballero (D)
Amended: 1/26/22
Vote: 21

SENATE JUDICIARY COMMITTEE: 7-0, 4/27/21
AYES: Umberg, Borgeas, Caballero, Hertzberg, Jones, Laird, Wieckowski
NO VOTE RECORDED: Durazo, Gonzalez, Stern, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/20/21
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

SUBJECT: Form preparers: immigration

SOURCE: Author

DIGEST: This bill revises the Immigration Consultant Act.

Senate Floor Amendments of 1/26/22 add to the list of prohibited forms; institute fee caps; and grandfather in form preparers, as specified.

Senate Floor Amendments of 5/28/21 (1) add to the list of prohibited forms; (2) provide that a consumer has 10 days from the termination of a contract to be provided a full refund by a form preparer; (3) require the Secretary of State to publish a customer bill of rights form with specified information, require the form preparer to provide the consumer with this information and require the form preparer and client to initial and sign the bill of rights prior to entering into a contract for services; (4) provide that county counsel may bring specified actions against form preparers; (5) specify that each person operating as a form preparer must submit fingerprints to the Department of Justice; and (6) add clarifying and conforming language.

ANALYSIS:

Existing law:

- 1) Provides that no person shall practice law in California unless the person is an active member of the State Bar. (Bus. & Prof. Code § 6125.)
- 2) Provides that anyone engaged in the unauthorized practice of law is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to \$1,000, or by both. Existing law provides for increased penalties for second or subsequent convictions. (Bus. & Prof. Code § 6126.)
- 3) Provides that it is unlawful for any person, for compensation, other than persons authorized to practice law or authorized by federal law, to represent persons before the Board of Immigration Appeals (BIA) or the United States Citizenship and Immigration Services (USCIS), to engage in the business or act in the capacity of an immigration consultant within this state except as provided under the Immigration Consultants Chapter. (Bus. & Prof. Code § 22440.)
- 4) Establishes that a person engages in the business or acts in the capacity of an immigration consultant when that person gives nonlegal 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 USCIS. (Bus. & Prof. Code Sec. 22441(a).)
- 5) Defines "immigration matter" as any proceeding, filing, or action affecting the immigration or citizenship status of any person which arises under immigration and naturalization law, executive order or presidential proclamation, or action of the USCIS, the United States Department of State, or the United States Department of Labor. (Bus. & Prof. Code § 22441(b).)
- 6) Provides that a person engaged in the business or acting in the capacity of an immigration consultant shall only offer nonlegal assistance or advice in an immigration matter and must pass a background check by the Secretary of State, as specified. (Bus. & Prof. Code § 22441 (a) & (d).)
- 7) Provides that 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, as specified, and specifies that an immigration consultant's written contract must include specified information. (Bus. & Prof. Code § 22442 (a), (b) & (f).)

- 8) Prohibits an immigration consultant from making specified statements to a client orally or including specified provisions in the written contract. (Bus. & Prof. Code § 22442(c).)
- 9) Provides that the written contract must be in English and the client's native language, and is void if not in both languages. (Bus. & Prof. Code § 22442(d) & (e).) Provides that the contract requirements do 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 nominal fee, as specified. (Bus. & Prof. Code § 22442(h).)
- 10) Provides that immigration consultants shall provide receipts and statements of accounting, as specified. (Bus. & Prof. Code § 22442.1 (a) & (b).)
- 11) Provides that an immigration consultant shall conspicuously display in their office a notice that shall be at least 12 by 20 inches with boldface type or print, as specified, in English and in the native language of the immigration consultant's clientele, that contains specified information, including a statement that the immigration consultant is not an attorney, evidence of compliance with a bonding requirement, the particular services provided, and the current and total fee for each service. (Bus. & Prof. Code § 22442.2(a).)
- 12) Establishes certain requirements on immigration consultants when they advertise services, including that they are not an attorney, as specified. Attorneys licensed in other states shall include in any advertisement for immigration services a clear and conspicuous statement that they are not a California licensed attorney but are licensed in another state or territory of the United States and are authorized by federal law to represent persons before the USCIS or BIA. If the advertisement is in a language other than English, the required statements must also be in the other language. (Bus. & Prof. Code § 22442.2(c).)
- 13) Provides for the licensure and regulation of attorneys by the State Bar of California. Existing law provides it is a violation of specified provisions of law relating to the unauthorized practice of law for any person who is not an attorney to literally translate from English into another language the phrases "notary public," "notary," "licensed," "attorney," "lawyer," or any other terms

that imply that the person is an attorney. Existing law requires that a civil action brought under those provisions be commenced within 4 years after the cause of action accrues. (Bus & Prof. Code Secs. 6000 et. seq. & 6126.7.)

- 14) Provides for enforcement mechanisms including the ability of “any other party” who claims a violation of the Immigration Consultants Act to bring a civil action for injunctive relief on behalf of the general public, as specified. (Bus. & Prof. Code § 22446.5.)
- 15) Requires a person seeking to engage in the business or act in the capacity of an immigration consultant in this state to file a bond for \$100,000, and other related forms, with the Secretary of State. (Bus. & Prof. Code § 22443.1(a), (c), (f), (g) & (h).)
- 16) Requires the Secretary of State to conduct a background check of any person who files a bond of that nature, and requires the Secretary of State to post on its website information on any person who has complied with the requirement to file a bond and passed the requisite background check. (Bus. & Prof. Code § 22441.1 & 22443.1(e).)
- 17) Specifies, through regulations that the Department of Homeland Security (DHS) has adopted, who can provide representation before the USCIS. (8 C.F.R. §§ 1.1, 1.2, 292.1.) Under these regulations, “representation” is defined as including both “practice” and “preparation.” (8 C.F.R. § 1.2). “Practice” means appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS. (8 C.F.R. § 1.2)
- 18) Defines “preparation” as “the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers...” (8 C.F.R. § 1.2) Preparation does not include “service consisting solely of assistance in the completion of blank spaces on printed DHS forms, by one whose remuneration, if any, is nominal and who does not hold themselves out as qualified in legal matters or in immigration and naturalization procedure.” (8 C.F.R. § 1.2)
- 19) Defines “Case” as “any proceeding arising under any immigration or naturalization law, Executive Order, or Presidential proclamation, or preparation for or incident to such proceeding, including preliminary steps by any private person or corporation preliminary to the filing of the application or petition by which any proceeding under the jurisdiction of the Service or the Board is initiated.” (8 C.F.R. § 1.2)

- 20) Provides that representation does not include solely assisting by completing blank spaces on DHS forms as long as the assistance is only for a nominal fee; and by one who does not hold themselves out to be qualified in legal matters or in the immigration and naturalization procedure. (8 C.F.R. § 1.2.)
- 21) Authorizes the following five classes of people to provide “representation” as federally authorized persons: attorneys in good standing; accredited representatives, who have been authorized by the Executive Office for Immigration Review; unpaid law students supervised by an attorney; reputable individuals, who are of good moral character, provided they have a preexisting relationship with the client and do not receive compensation; and accredited officials of the client’s foreign government. (8 C.F.R. §§ 1.2 & 292.1.)

This bill:

- 1) Changes the name “immigration consultant” to “form preparer.”
- 2) Clarifies that an advertisement prohibition in translating words including “notary public” applies to the internet and broadcast media.
- 3) Specifies that form preparers shall not use the title immigration consultant or immigration specialist, or any other title that implies 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 broadcast media, describing the form preparer. Provides that a violation is punishable pursuant to the unauthorized practice of law enforcement mechanism and subject to a civil penalty in an action brought by the injured person, the Attorney General, District Attorneys, or City Attorneys.
- 4) Provides that notaries public that hold themselves out as being form preparers shall not use the title immigration consultant or immigration specialist, or any title or description reflecting an expertise in immigration matters.
- 5) Provides that beginning on July 1, 2023, and every two years thereafter, a form preparer shall complete a course on the limits of authorized services and prohibited activities of form preparers.
- 6) Provides that a form preparer shall not provide 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; waivers of inadmissibility or deportability; applications to register permanent residency or adjust status; and motions,

applications, or forms related to a proceeding before the Executive Office for Immigration Review of the United States Department of Justice or before any state or federal court relating to an immigration matter.

- 7) Sets maximum fees form preparers may charge. Sets a maximum of \$500 for all services related to an immigration application process and all ancillary services, excluding government filing fees.
- 8) Provides that a consumer has 10 days from the termination of a contract to be provided a full refund by a form preparer.
- 9) Requires the Secretary of State to publish a customer bill of rights form with specified information. Requires the form preparer to provide the consumer with this information and requires the form preparer and client to initial and sign the bill or rights prior to entering into a contract for services.
- 10) Provides that county counsel may bring specified actions against form preparers.
- 11) Specifies that each person operating as a form preparer must submit fingerprints to the Department of Justice.
- 12) Provides that the Secretary of State shall not file a bond, disclosure form, or photograph from any individual seeking to engage in the business or act in the capacity of a form preparer on or after January 1, 2023, unless the individual meets one of the following criteria: (a) was in compliance with this chapter as of December 31, 2022; or (b) is accredited by the United States Department of Justice to represent persons, or is a paralegal acting under the direction and supervision of an attorney.
- 13) Allows a transferee of the business of a form preparer in compliance with these provision, as of December 31, 2022, to have three years to become authorized by the United States Department of Justice to represent persons, or to become a paralegal, as specified, acting under the direction and supervision of an attorney, if that transferee meets specified conditions, including, among others, the filing a bond, disclosure form, and photograph with the Secretary of State within 90 days of the closure of the form preparer's business; and, filing, with the Secretary of State, proof of compliance with the authorization requirements specified above within three years of filing their bond, disclosure form, and photograph. The Secretary of State is required to accept only one filing related to the transfer of the business of a form preparer in compliance with this chapter as of December 31, 2022.

14) Adds clarifying and conforming language.

Background

Some immigrants consult with attorneys or Board of Immigration Appeals (BIA) accredited representatives for immigration advice. An attorney trained in immigration law and a BIA accredited representative can hear an immigrant's story and ask the correct questions to figure out which forms of relief, if any, an immigrant may be eligible for. The attorney or BIA accredited representative can then fill out the necessary applications and guide the process, including the gathering of documents.

In California, there is another group of individuals who are authorized by statute to complete immigration forms. Their title is "immigration consultant." Immigration consultants can only give nonlegal assistance or advice on immigration matters. Assistance or advice includes the following: (1) completing forms provided by a federal or state agency but not advising a person as to their answers on those forms; (2) translating a person's answers to questions posed in those forms; (3) securing for a person supporting documents, such as birth certificates, which may be necessary to complete those forms; and (4) submitting completed forms on a person's behalf and at their request to the United States Citizenship and Immigration Services.

A person can become an "immigration consultant" in California by passing a background check and submitting the following items to the Secretary of State: 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; copy of a valid and current photo identification; a passport photo; and a \$30 filing fee.¹

When an immigrant is deported due to an error by an immigration consultant, the immigrant is not meaningfully able to seek justice because the consequence of the error is removal of the immigrant from this country.² Federal regulations provide that only five classes of people may fill out immigration forms for more than a

¹ See Secretary of State website's *Immigration Consultant Checklist* available at <https://www.sos.ca.gov/business-programs/special-filings/immigration-consultant-checklist> [as of Jan. 28, 2022].

² For detailed examples of immigration consultants harming immigrants, please see Senate Judiciary Committee analysis of AB 638 (Caballero, 2017) available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB638 [as of Jan. 28, 2022] and the analysis of AB 1753 (Carrillo, 2019) available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB1753 [as of Jan. 28, 2022].

nominal fee.³ However, an entire industry that charges more than a nominal fee to fill out immigration forms, currently exists in California. This bill revises the California Immigration Consultant law with the goal of further regulating immigration consultants. This bill is supported by the Coalition for Humane Immigrant Rights, Public Counsel, the Central American Resource Center, and others. It is opposed by the National Notary Association.

Comments

The author writes, “SB 670 is an important consumer protection bill. It would [...] ensure that individuals that help immigrants fill out their documents are appropriately regulated. It would place important safeguards to protect immigrants while preserving access to important community resources. Due to a new federal administration and momentum behind immigration reform, it is critical that we strengthen current law to protect immigrants from fraud and unscrupulous behavior that makes false promises, raises false expectations, and could endanger a person’s immigration status permanently. SB 670 strikes a balance between consumer protection and community access to services and resources.”

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- *Secretary of State:* 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 and project management, unknown costs but likely in the millions of dollars. (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)

³ The following five classes of people are authorized to provide “representation” as federally authorized persons: (1) attorneys in good standing; (2) accredited representatives, who have been authorized by the EOIR; (3) unpaid law students supervised by an attorney; (4) reputable individuals, who are of good moral character, provided they have a preexisting relationship with the client and do not receive compensation; and (5) accredited officials of the client’s foreign government. (8 C.F.R. §§ 1.2 & 292.1.)

- *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**)

SUPPORT: (Verified 1/28/22)

California Farmworker Foundation
California Rural Legal Assistance Foundation
Central American Resource Center
Central Valley Leadership Round Table
Coalition for Humane Immigrant Rights
Heavy Metal Steel Company, Inc.
Hispanic Community Services
Immigration Secretarial Services
IPC, Inc.
La Cooperativa Campesina de California
Los Angeles City Councilmember Gilbert Cedillo
Los Angeles City Councilmember Kevin de Leon
Los Angeles County Board of Supervisors
Mehran Professional Services
Nelly Reyes-Rosenberg Immigration Services
Pinedo Services
Public Counsel
San & San Consultant
Santa Ana Professional Services
Sofia Immigration & Fingerprints Services
Tapia & Tapia
VCS Professional Services
10+ individuals

OPPOSITION: (Verified 1/28/22)

National Notary Association

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****** END ******