

Assembly Bill No. 1761

CHAPTER 439

An act to add Chapter 5.6 (commencing with Section 6450) to Division 3 of, and to repeal Section 6450 of, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 13, 2000. Filed
with Secretary of State September 14, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1761, Brewer. Professions and vocations: paralegals.

Existing law defines the qualifications for and regulates the practice of various professions and vocations.

This bill would establish the qualifications for practice as a paralegal and make it unlawful for any person to identify himself or herself as a paralegal unless he or she meets those qualifications and performs all services under the direct supervision of an active member of the State Bar of California. This bill would also make a paralegal subject to the same confidentiality requirements as an attorney.

This bill would in addition make it unlawful for a paralegal to perform any services for a consumer, as defined, except as directed by the attorney or entity employing or contracting with the paralegal. This bill would prohibit a paralegal from performing various acts, including giving legal advice, representing a client in court, and acting as a runner or capper. This bill would make an attorney using a paralegal's services liable for the negligence or misconduct of the paralegal. This bill would provide for the recovery of attorney's fees in a civil action brought in connection with a violation of these provisions.

Because a violation of the bill's provisions would be punishable as an infraction or as a misdemeanor, as specified, this bill would impose a state-mandated local program by creating a new crime.

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. Chapter 5.6 (commencing with Section 6450) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 5.6. PARALEGALS

6450. (a) “Paralegal” means a person who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

(b) Notwithstanding subdivision (a), a paralegal shall not do any of the following:

- (1) Provide legal advice.
- (2) Represent a client in court.
- (3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.
- (4) Act as a runner or capper, as defined in Sections 6151 and 6152.
- (5) Engage in conduct that constitutes the unlawful practice of law.
- (6) Contract with, or be employed by, a natural person other than an attorney to perform paralegal services.
- (7) In connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived.
- (8) Establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegal’s work. This paragraph does not apply to fees charged by a paralegal in a contract to provide paralegal services to an attorney, law firm, corporation, governmental agency, or other entity as provided in subdivision (a).

(c) A paralegal shall possess at least one of the following:

- (1) A certificate of completion of a paralegal program approved by the American Bar Association.
- (2) A certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national or



regional accrediting organization or approved by the Bureau for Private Postsecondary and Vocational Education.

(3) A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.

(4) A high school diploma or general equivalency diploma, a minimum of three years of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks. This experience and training shall be completed no later than December 31, 2003.

(d) All paralegals shall be required to certify completion every three years of four hours of mandatory continuing legal education in legal ethics. All continuing legal education courses shall meet the requirements of Section 6070. Every two years, all paralegals shall be required to certify completion of four hours of mandatory continuing education in either general law or in a specialized area of law. Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal's certifications.

(e) A paralegal does not include a nonlawyer who provides legal services directly to members of the public or a legal document assistant or unlawful detainer assistant as defined in Section 6400.

(f) If a legal document assistant, as defined in subdivision (c) of Section 6400, has registered, on or before January 1, 2001, as required by law, a business name that includes the word "paralegal," that person may continue to use that business name until he or she is required to renew registration.

(g) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date.

6450. (a) "Paralegal" means a person who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering



and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

(b) Notwithstanding subdivision (a), a paralegal shall not do the following:

- (1) Provide legal advice.
- (2) Represent a client in court.
- (3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.
- (4) Act as a runner or capper, as defined in Sections 6151 and 6152.
- (5) Engage in conduct that constitutes the unlawful practice of law.
- (6) Contract with, or be employed by, a natural person other than an attorney to perform paralegal services.
- (7) In connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived.
- (8) Establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegal's work. This paragraph does not apply to fees charged by a paralegal in a contract to provide paralegal services to an attorney, law firm, corporation, governmental agency, or other entity as provided in subdivision (a).

(c) A paralegal shall possess at least one of the following:

- (1) A certificate of completion of a paralegal program approved by the American Bar Association.
- (2) A certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national or regional accrediting organization or approved by the Bureau for Private Postsecondary and Vocational Education.
- (3) A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.
- (4) A high school diploma or general equivalency diploma, a minimum of three years of law-related experience under the supervision of an attorney who has been an active member of the



State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks. This experience and training shall be completed no later than December 31, 2003.

(d) All paralegals shall be required to certify completion every three years of four hours of mandatory continuing legal education in legal ethics. All continuing legal education courses shall meet the requirements of Section 6070. Every two years, all paralegals shall be required to certify completion of four hours of mandatory continuing education in either general law or in a specialized area of law. Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal's certifications.

(e) A paralegal does not include a nonlawyer who provides legal services directly to members of the public, or a legal document assistant or unlawful detainer assistant as defined in Section 6400, unless the person is a person described in subdivisions (a) and (b).

(f) This section shall become operative on January 1, 2004.

6451. It is unlawful for a paralegal to perform any services for a consumer except as performed under the direction and supervision of the attorney, law firm, corporation, government agency, or other entity that employs or contracts with the paralegal. Nothing in this section shall prohibit a paralegal who is employed by an attorney, law firm, governmental agency, or other entity from providing services to a consumer served by one of these entities if those services are specifically allowed by statute, case law, court rule, or federal or state administrative rule or regulation. "Consumer" means a natural person, firm, association, organization, partnership, business trust, corporation, or public entity.

6452. (a) It is unlawful for a person to identify himself or herself as a paralegal on any advertisement, letterhead, business card or sign, or elsewhere unless he or she has met the qualifications of subdivision (c) of Section 6450 and performs all services under the direction and supervision of an attorney who is an active member of the State Bar of California or an attorney practicing law in the federal courts of this state who is responsible for all of the services performed by the paralegal. The business card of a paralegal shall include the name of the law firm where he or she is employed or a statement that he or she is employed by or contracting with a licensed attorney.

(b) An attorney who uses the services of a paralegal is liable for any harm caused as the result of the paralegal's negligence, misconduct, or violation of this chapter.

6453. A paralegal is subject to the same duty as an attorney specified in subdivision (e) of Section 6068 to maintain inviolate the confidentiality, and at every peril to himself or herself to preserve the



attorney-client privilege, of a consumer for whom the paralegal has provided any of the services described in subdivision (a) of Section 6450.

6454. The terms “paralegal,” “legal assistant,” “attorney assistant,” “freelance paralegal,” “independent paralegal,” and “contract paralegal” are synonymous for purposes of this chapter.

6455. (a) Any consumer injured by a violation of this chapter may file a complaint and seek redress in any municipal or superior court for injunctive relief, restitution, and damages. Attorney’s fees shall be awarded in this action to the prevailing plaintiff.

(b) Any person who violates the provisions of Section 6451 or 6452 is guilty of an infraction for the first violation, which is punishable upon conviction by a fine of up to two thousand five hundred dollars (\$2,500) as to each consumer with respect to whom a violation occurs, and is guilty of a misdemeanor for the second and each subsequent violation, which is punishable upon conviction by a fine of two thousand five hundred dollars (\$2,500) as to each consumer with respect to whom a violation occurs, or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. Any person convicted of a violation of this section shall be ordered by the court to pay restitution to the victim pursuant to Section 1202.4 of the Penal Code.

6456. An individual employed by the state as a paralegal, legal assistant, legal analyst, or similar title, is exempt from the provisions of this chapter.

SEC. 2. 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.

