



Dennis M. Papp

Bill Analysis
Legislative Service Commission

Sub. H.B. 38

125th General Assembly
(As Passed by the House)

Reps. Willamowski, Hagan, McGregor, Seitz, Setzer, Schaffer, Buehrer, Widener, Latta, Book, Harwood, Mason, Core, Beatty, Callender, Blasdel, Cirelli, Daniels, DeBose, DeGeeter, Domenick, C. Evans, D. Evans, Faber, Flowers, Gilb, Hughes, Key, T. Patton, Schmidt, Skindell, G. Smith, S. Smith, J. Stewart

BILL SUMMARY

- Specifically prohibits any person who is not licensed to practice law in Ohio from committing any act that is prohibited by the Supreme Court as being the unauthorized practice of law and provides that only the Supreme Court may make a determination that any person has committed the unauthorized practice of law in violation of that prohibition.
- If necessary to serve the public interest and consistent with the rules of the Supreme Court, authorizes any person who is authorized to bring a claim before the Supreme Court that alleges the unauthorized practice of law in violation of the prohibition described in the preceding dot point to make a motion to the Supreme Court to seek interim relief prior to the final resolution of the person's claim.
- Permits any person who is damaged by another person who commits a violation of the prohibition described in the second preceding dot point to commence a civil action to recover actual damages from the person who commits the violation, upon a finding by the Supreme Court that the other person has committed an act that is prohibited by the Supreme Court as being the unauthorized practice of law, and provides that the court is bound by the determination of the Supreme Court regarding the unauthorized practice of law.
- Requires a court in which the action for damages is brought to consider specified factors in awarding damages.

CONTENT AND OPERATION

Existing law

Current law prohibits any person who is not licensed to practice law in Ohio from holding himself or herself out in any manner as an attorney at law or representing himself or herself orally or in writing, directly or indirectly, as being authorized to practice law (see **COMMENT 1**) (R.C. 4705.07(A)(1) and (2)). A person who violates either prohibition is guilty of a misdemeanor of the first degree (R.C. 4705.99).

Operation of the bill

New prohibition against committing an act prohibited by the Supreme Court as being the unauthorized practice of law

The bill expands the existing provision to specifically prohibit any person who is not licensed to practice law in Ohio from committing any act that is prohibited by the Supreme Court as being the unauthorized practice of law. The bill provides that only the Supreme Court may make a determination that any person has committed the unauthorized practice of law in violation of the new prohibition. (R.C. 4705.07(A)(3) and (B)(2).) (See **COMMENT 2**.) Under the bill, a violation of the new prohibition is not subject to the criminal penalty for a violation of either of the existing prohibitions described above in "Existing law" (R.C. 4705.99).

Remedies

The bill provides that, if necessary to serve the public interest and consistent with the rules of the Supreme Court, any person who is authorized to bring a claim before the Supreme Court that alleges the unauthorized practice of law in violation of the new prohibition against committing any act that is prohibited by the Supreme Court as being the unauthorized practice of law may make a motion to the Supreme Court to seek interim relief prior to the final resolution of the person's claim (R.C. 4705.07(C)(1)).

The bill also authorizes any person who is damaged by another person who commits a violation of the new prohibition to commence a civil action to recover actual damages from the person who commits the violation, upon a finding by the Supreme Court that the "other person" has committed an act that is prohibited by the Supreme Court as being the unauthorized practice of law in violation of the prohibition. The court in which that action for damages is commenced is bound by the determination of the Supreme Court regarding the unauthorized practice of law and cannot make any additional determinations regarding the unauthorized

practice of law. The court in which the action for damages is commenced must consider all of the following in awarding damages to a person under this provision (R.C. 4705.07(C)(2)):

(1) The extent to which the fee paid for the services that constitute the unauthorized practice of law in violation of the new prohibition exceeds the reasonable fees charged by licensed attorneys in the area in which the violation occurred;

(2) The costs incurred in paying for legal advice to correct any inadequacies in the services that constitute the unauthorized practice of law in violation of the new prohibition;

(3) Any other damages proximately caused by the failure of the person performing the services that constitute the unauthorized practice of law to have the license to practice law in Ohio that is required to perform the services;

(4) Any reasonable fees that are incurred in bringing the civil action under the first and second paragraphs, above.

COMMENT

1. Existing law specifies that, regarding these existing prohibitions, the use of "lawyer," "attorney at law," "counselor at law," "law," "law office," or other equivalent words by any person who is not licensed to practice law, in connection with that person's own name, or any sign, advertisement, card, letterhead, circular, or other writing, document, or design, the evident purpose of which is to induce others to believe that person to be an attorney, constitutes holding out within the meaning of the prohibitions (R.C. 4705.07(B), unchanged by the bill except to specify that the provision applies only to the existing prohibition that relates to a person "holding himself or herself out" as an attorney).

2. Rule VII of the Supreme Court Rules for the Government of the Bar of Ohio governs the proceedings arising out of complaints of the *unauthorized practice of law*, which is defined as the rendering of legal services for another by any person not admitted to practice in Ohio under Rule I and not granted active status under Rule VI, or certified under Rule II, Rule IX, or Rule XI of the Supreme Court Rules for the Government of the Bar of Ohio. The Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court receives evidence, preserves the record, makes findings, and submits recommendations concerning complaints of unauthorized practice of law. The Board may refer to the unauthorized practice of law committee of the appropriate bar association or to the Disciplinary Counsel any matters coming to its attention for investigation under Rule VII. The Board must file with the Clerk of the

Supreme Court its final report that finds a respondent's unauthorized practice of law. The Board may recommend and the Court may impose civil penalties in an amount up to \$10,000 per offense. Any such penalty must be based on specified factors. The Supreme Court conducts proceedings to review the Board's report and enters an order that the Court finds proper. (Rule VII, Sections 2(A) and (B), 3, 8(B) and (D), and 19.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-03-03	p. 86
Reported, H. Civil and Commercial Law	01-07-04	p. 1387
Passed House (93-2)	01-20-04	pp. 1497-1498

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