



Aida S. Montano

*Bill Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 38**

125th General Assembly  
(As Reported by H. Civil and Commercial Law)

**Reps. Willamowski, Hagan, McGregor, Seitz, Setzer, Schaffer, Buehrer, Widener, Latta, Book, Harwood, Mason, Core, Beatty, Callender**

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### **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 that 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, 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.

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## CONTENT AND OPERATION

### Existing law

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

### Operation of the bill

The bill 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. It 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. (R.C. 4705.07(A)(3) and (B)(2).) (See **COMMENT.**) Under the bill, that 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 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 that 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 may not 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 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 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.

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## COMMENT

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.)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-03-03	p. 86
Reported, H. Civil and Commercial Law h0038-rh-125.doc/kl	01-07-04	p. 1387

