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SENATE BILL 877

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

H. Diane Snyder

AN ACT

RELATING TO THE PRACTICE OF LAW; PROHIBITING THE UNAUTHORIZED PRACTICE OF LAW; PROVIDING CIVIL AND CRIMINAL PENALTIES; PROVIDING A PRIVATE RIGHT OF ACTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 36-2-27 NMSA 1978 (being Laws 1909, Chapter 53, Section 26, as amended) is repealed and a new Section 36-2-27 NMSA 1978 is enacted to read:

"36-2-27. [NEW MATERIAL] PRACTICE OF LAW DEFINED-- UNAUTHORIZED PRACTICE OF LAW PROHIBITED--PENALTY.--

A. The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another person that require the skill of a person trained in the law. The practice of law includes:

- (1) giving advice or counsel to another person

1 as to that person's legal rights or responsibilities;

2 (2) selecting, drafting or preparing any
3 document in any medium intended to affect or secure legal
4 rights or incur legal obligations for another person;

5 (3) representing a party in a judicial
6 proceeding, including arbitration or court-ordered mediation;
7 or

8 (4) negotiating legal rights or
9 responsibilities on behalf of another person.

10 B. Except as provided in Subsection C of this
11 section, the unauthorized practice of law occurs when a person,
12 without a certificate of admission to the bar pursuant to the
13 provisions of Chapter 36, Article 2 NMSA 1978 and the rules of
14 the supreme court of New Mexico:

15 (1) engages in the practice of law;

16 (2) makes any representation as being an
17 attorney or counselor at law; or

18 (3) advertises or displays any matter or
19 medium designed to give the impression that the person is an
20 attorney or counselor at law.

21 C. The unauthorized practice of law does not
22 include:

23 (1) the practice of law by a public employee
24 or law professor holding a limited license issued pursuant to
25 rules promulgated by the supreme court;

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1 (2) the provision of services by a paralegal
2 pursuant to rules promulgated by the supreme court;

3 (3) the provision of services as a mediator,
4 conciliator or facilitator whether in a neutral,
5 non-adjudicative capacity or in an adjudicative capacity;

6 (4) the participation in a labor negotiation,
7 administrative hearing, arbitration or conciliation arising
8 under collective bargaining rights or agreements, the School
9 Personnel Act, the Personnel Act or other statutes, rules or
10 policies governing labor and employment;

11 (5) the participation in an administrative
12 hearing, arbitration or mediation arising under the Workers'
13 Compensation Act and in accordance with the rules and policies
14 of the workers' compensation administration;

15 (6) the provision of services related to
16 intellectual property transactions by a registered patent agent
17 who is generally under the supervision of an attorney and who
18 is reasonably familiar with similar transactions;

19 (7) the provision of services by an advocate
20 working in a nonprofit capacity, in a pro se clinic or
21 otherwise working for no monetary gain and in the public
22 interest, provided that the advocate is supervised by an
23 attorney licensed in New Mexico;

24 (8) the provision of a professional service,
25 or preparation of a document, by a certified public accountant

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1 or firm of certified public accountants, customarily provided
2 or prepared by a certified public accountant in connection with
3 the certified public accountant's professional work;

4 (9) the completion by a person holding a valid
5 real estate license pursuant to Chapter 61, Article 29 NMSA
6 1978 of a legal form prepared by, prepared under the
7 supervision of or reviewed by an attorney licensed in New
8 Mexico;

9 (10) the participation in an arbitration or
10 mediation arising under the bylaws of a board or association of
11 persons holding valid real estate licenses pursuant to Chapter
12 61, Article 29 NMSA 1978;

13 (11) the provision of services by a person
14 holding a valid real estate license pursuant to Chapter 61,
15 Article 29 NMSA 1978 if the services are within the scope of
16 the person's license;

17 (12) the provision of services performed
18 pursuant to Chapter 59A, Article 13 NMSA 1978 by persons
19 licensed pursuant to that article;

20 (13) the negotiation and sale of a motor
21 vehicle by a licensed motor vehicle dealer pursuant to Chapter
22 66, Article 4 NMSA 1978 and the sale of products and services
23 in connection with the negotiation and sale of a motor vehicle
24 by a licensed motor vehicle dealer and its authorized
25 employees;

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1 (14) the preparation of trust instruments or
2 documents for, or the closing of, a loan transaction by a party
3 thereto, or its agent, if the preparation or closing is
4 ordinarily incidental to the loan transaction, notwithstanding
5 any fee charged for document preparation by the party or its
6 agent;

7 (15) the completion of a legal form prepared
8 by, prepared under the supervision of or reviewed by an
9 attorney licensed in New Mexico;

10 (16) lobbying activities conducted by a
11 lobbyist registered pursuant to the Lobbyist Regulation Act;

12 (17) the practice of law before a court or
13 administrative body pursuant to pro hac vice rules of the
14 supreme court; or

15 (18) the provision of any other service
16 expressly allowed by a law, court rule or federal or state
17 administrative rule or policy.

18 D. Any person who willfully engages in the
19 unauthorized practice of law is guilty of a misdemeanor and
20 shall be fined an amount not to exceed five hundred dollars
21 (\$500) or imprisoned for a period not to exceed six months, or
22 both."

23 Section 2. A new section of Chapter 36, Article 2 NMSA
24 1978 is enacted to read:

25 "[NEW MATERIAL] UNAUTHORIZED PRACTICE OF LAW--PRIVATE

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1 REMEDIES.--

2 A. A person likely to be damaged by an unauthorized
3 practice of law in violation of Section 36-2-27 NMSA 1978 may
4 bring an action for an injunction against the alleged violator.
5 An injunction granted shall be pursuant to the principles of
6 equity and on terms that the court considers reasonable. Proof
7 of monetary damage or loss of profit is not required for an
8 injunction to be granted pursuant to this subsection.

9 B. A person who suffers a loss of money or other
10 property as a result of an unauthorized practice of law in
11 violation of Section 36-2-27 NMSA 1978 may bring an action for
12 the greater of actual damages or one thousand dollars (\$1,000)
13 and the restitution of any money or property received by the
14 alleged violator; provided that, if the court finds that the
15 alleged violator willfully engaged in the unauthorized practice
16 of law, the court may award up to three times the actual
17 damages or three thousand dollars (\$3,000), whichever is
18 greater.

19 C. A person bringing an action pursuant to
20 Subsection A or B of this section shall, if the person
21 prevails, also be awarded attorney fees and costs.

22 D. The relief provided by this section is in
23 addition to other remedies available at law or equity."

24 Section 3. A new section of Chapter 36, Article 2 NMSA
25 1978 is enacted to read:

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1 "[NEW MATERIAL] UNAUTHORIZED PRACTICE OF LAW--ACTION BY
2 ATTORNEY GENERAL.--

3 A. Whenever the attorney general has reason to
4 believe that a person has engaged in the unauthorized practice
5 of law in violation of Section 36-2-27 NMSA 1978 or has aided
6 or abetted another person in the unauthorized practice of law
7 and that proceedings would be in the public interest, the
8 attorney general may bring an action in the name of the state
9 against the alleged violator. The action may be brought in the
10 district court for the county in which the alleged violator
11 resides or has a principal place of business or in the district
12 court for a county in which the alleged violation took place.
13 In an action brought pursuant to this section, in addition to
14 civil penalties, the attorney general may petition the court
15 for a temporary or permanent injunction and restitution, and,
16 if seeking a temporary or permanent injunction, the attorney
17 general shall not be required to post bond.

18 B. In lieu of filing or continuing an action
19 pursuant to this section, the attorney general may accept a
20 written assurance of discontinuance of the unauthorized
21 practice of law from the alleged violator. The assurance may
22 contain an agreement by the alleged violator that restitution
23 will be made to all persons of money or property received from
24 them in any transaction related to the unauthorized practice,
25 provided that a person harmed by the unauthorized practice is

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1 not required to accept restitution but, if the restitution is
2 accepted, the person accepting the restitution is barred from
3 recovering damages from the alleged violator in an action based
4 upon the same unauthorized practice.

5 C. In an action brought by the attorney general
6 pursuant to this section, if the court finds that the alleged
7 violator engaged in the unauthorized practice of law, the court
8 may impose a civil penalty not to exceed five thousand dollars
9 (\$5,000) per violation. In addition, if the court finds that a
10 person has aided or abetted another to engage in the
11 unauthorized practice of law, the court may impose a civil
12 penalty not to exceed one thousand dollars (\$1,000) for the
13 first violation and a civil penalty not to exceed five thousand
14 dollars (\$5,000) for each subsequent violation."

15 Section 4. REPEAL.--Section 36-2-28 NMSA 1978 (being Laws
16 1925, Chapter 100, Section 12) is repealed.

17 Section 5. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2007.