
A BILL FOR AN ACT

RELATING TO ATTORNEYS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 605, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . UNAUTHORIZED PRACTICE OF LAW PROHIBITED**

5 **§605- Purpose.** It is recognized that individuals have a
6 right to represent themselves in legal matters. However, the
7 privilege of representing others is granted and supervised by
8 the Hawaii supreme court for the protection of the public from
9 harm by persons engaged in the unauthorized practice of law in
10 this State. Such persons generally lack the legal education,
11 training, and experience of a licensed lawyer in this State and
12 are not subject to Hawaii's rules of professional conduct or
13 disciplinary system established in this State for licensed
14 lawyers. Nevertheless, several groups of licensed professionals
15 provide the public with necessary and important services in the
16 fields of insurance, accounting, real estate, automobile
17 dealers, and others. It is not the intent of this part to draw

1 such licensed professionals into the scope of this part inasmuch
2 as they are subject to their own licensing laws and rules.

3 **§605- Prohibition.** No person shall practice law in this
4 State or in any manner hold themselves out as a lawyer, or being
5 authorized or competent to practice law in this state unless the
6 person is an active member of the Hawaii State Bar Association
7 in good standing, except as otherwise permitted by this part or
8 any supreme court rule.

9 **§605- Definitions.** As used in this part:

10 "In-house counsel" means a lawyer who is not licensed in
11 this State, but who is currently a member in good standing of
12 the bar of another state or the District of Columbia, or
13 eligible to practice before the highest court in any state,
14 territory, or insular possession of the United States, and who
15 resides and is employed in this State by a qualifying
16 institution, the business of which is lawful and is other than
17 the practice of law or the provision of legal services.

18 "Person" means individuals and entities.

19 "Practice of law" means the giving of legal advice,
20 counsel, assistance, or service where there is a client
21 relationship of trust or reliance between the party giving such

1 advice, counsel, assistance, or service and the party to whom it
2 is given, including but not limited to:

3 (1) Giving advice or counsel to another person or entity
4 about the person's or entity's legal rights and
5 obligations or the legal rights and obligations of
6 others where a relationship of trust or reliance
7 exists between the party giving such advice or counsel
8 and the party to whom it is given;

9 (2) Holding oneself out in any manner as a lawyer,
10 attorney, legal counselor or advisor entitled and able
11 to engage in the practice of law in this State;

12 (3) Selecting, drafting, or completing documents that
13 affect the legal rights of another person or entity;

14 (4) Representing another person in a court, an
15 administrative proceeding, an arbitration proceeding,
16 a hearing, a deposition, or any other formal or
17 informal dispute resolution process in which legal
18 documents are submitted or a record is established;

19 (5) Negotiating legal rights or obligations with others on
20 behalf of another person or entity; and

21 (6) Providing oral or written legal opinions.

1 "Qualifying institution" means a corporation, a
2 partnership, an association, or other legal entity that is
3 authorized and registered to do business in this State as
4 provided by law, including its subsidiaries and organizational
5 affiliates.

6 **§605- Exceptions and exclusions.** The following
7 activities by a non-lawyer, who is not otherwise claiming to be
8 a lawyer, or a lawyer not licensed in this State is permitted:

9 (1) Appearing pro se;

10 (2) Acting as a representative when authorized by law or
11 by a governmental agency, including the representation
12 of a person in small claims court without compensation
13 and upon express approval of the court or representing
14 a legal entity as an employee representative in small
15 claims court;

16 (3) Serving as a neutral mediator, arbitrator, conciliator
17 or facilitator when such service does not include
18 rendering advice or counsel as set forth under the
19 definition of practice of law;

20 (4) Serving as in-house counsel for a single qualifying
21 institution; provided that in-house counsel:

- 1 (A) Registers and maintains registration with the
- 2 Hawaii State Bar Association in accordance with
- 3 the requirements of the rules of the Hawaii State
- 4 Bar Association under a classification that does
- 5 not require the registrant to take the Hawaii bar
- 6 examination;
- 7 (B) Provides no personal representation to
- 8 individuals, including customers, shareholders,
- 9 owners, partners, officers, employees, servants,
- 10 or agents of the qualifying institution;
- 11 (C) Makes no state court appearances on behalf of any
- 12 person or entity other than pro se appearances;
- 13 and
- 14 (D) Agrees to submit to the disciplinary jurisdiction
- 15 of the supreme court of Hawaii and its
- 16 disciplinary board;
- 17 (5) Acting as a legislative lobbyist;
- 18 (6) Making legal forms available to the general public,
- 19 whether by sale or otherwise, or publishing legal
- 20 self-help information by print or electronic media;

- 1 (7) Participating in labor negotiations, arbitrations or
- 2 conciliations arising under collective bargaining
- 3 rights or agreements, or as otherwise allowed by law;
- 4 (8) Performing services as a law clerk to a judge,
- 5 justice, or member of the Hawaii State Bar
- 6 Association;
- 7 (9) Performing services as a paralegal under the
- 8 supervision of a judge, justice, or member of the
- 9 Hawaii State Bar Association;
- 10 (10) Preparing tax returns and performing any other
- 11 statutorily or legally authorized services as a
- 12 certified public accountant, enrolled Internal Revenue
- 13 Service agent, public accountant, public bookkeeper,
- 14 or tax preparer, including, but not limited to
- 15 financial planning or accompanying or representing a
- 16 taxpayer client in a hearing before a state board of
- 17 taxation review;
- 18 (11) Performing or providing services authorized by statute
- 19 or rule in this State by an entity or organization in
- 20 the business of insurance or a self-insured entity or
- 21 organization licensed in this State, and their
- 22 licensed agents, affiliated licensees, and employees

- 1 of such entities, including claims representatives,
2 adjustors or handlers;
- 3 (12) Recommending insurance coverage, informing customers
4 with respect to their options with respect to
5 insurance or annuity contract purchase and ownership,
6 naming of beneficiaries, and adjustment or handling of
7 insurance claims by insurance companies and their
8 claims representatives or insurance agents;
- 9 (13) Performing or providing services authorized by statute
10 or rule in this State by real estate licensees who are
11 licensed real estate brokers or salespersons pursuant
12 to chapter 467, including but not limited to:
- 13 (A) Preparation of real estate sales or purchase
14 agreements and contracts of sale;
- 15 (B) Preparation of real estate sale or rental
16 agreements;
- 17 (C) Providing or completing forms related to the
18 sale, lease, rental, or purchase of real estate,
19 improvements, and personal property for
20 customers;

1 (D) Providing information or advice relating to the
2 sale, lease, rental, or purchase of real estate
3 and improvements; and

4 (E) Negotiating for or on behalf of clients or
5 customers relative to the sale, lease, rental, or
6 purchase of real estate and improvements;

7 (14) Providing information or education about law,
8 regulations, legal procedures, and compliance issues
9 by a person, entity or organization for the purpose of
10 teaching, training or educating others;

11 (15) Performing activities that are preempted by federal
12 law; and

13 (16) Performing other activities as the courts of Hawaii
14 have determined do not constitute the unauthorized
15 practice of law.

16 §605- **Governmental agencies.** Nothing in this part shall
17 affect the ability of a governmental agency to carry out its
18 responsibilities as provided by law.

19 §605- **General information.** Nothing in this part affects
20 the ability of a person or entity to provide information of a
21 general nature about the law and legal procedures to members of
22 the public.

1 **§605- No private cause of action created.** Nothing in
2 this part creates or may be the basis of a private cause of
3 action or claim cognizable in any court, administrative agency
4 or alternative dispute forum."

5 SECTION 2. Section 605-14, Hawaii Revised Statutes, is
6 repealed.

7 ~~["§605-14 Unauthorized practice of law prohibited. It~~
8 ~~shall be unlawful for any person, firm, association, or~~
9 ~~corporation to engage in or attempt to engage in or to offer to~~
10 ~~engage in the practice of law, or to do or attempt to do or~~
11 ~~offer to do any act constituting the practice of law, except and~~
12 ~~to the extent that the person, firm, or association is licensed~~
13 ~~or authorized so to do by an appropriate court, agency, or~~
14 ~~office or by a statute of the State or of the United States.~~
15 ~~Nothing in sections 605-14 to 605-17 contained shall be~~
16 ~~construed to prohibit the preparation or use by any party to a~~
17 ~~transaction of any legal or business form or document used in~~
18 ~~the transaction."]~~

19 SECTION 3. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.

1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect July 1, 2009.

Report Title:

Unauthorized Practice of Law; Professional License

Description:

Allows licensed professionals to provide services within the scope of their license without violating the prohibition on the unauthorized practice of law. (SD1)