
A BILL FOR AN ACT

RELATING TO THE UNAUTHORIZED PRACTICE OF LAW.

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

1 SECTION 1. The legislature finds that Hawaii has a unique
2 heritage, as it began as a monarchy, became an independent
3 republic, and then was annexed to the United States early in the
4 twentieth century. The Hawaiian language remained the primary
5 language of the State well into the twentieth century. Pursuant
6 to section 1-13, Hawaii Revised Statutes, Hawaiian and English
7 are currently the two official languages of Hawaii.

8 The legislature further finds that the real property system
9 in Hawaii is based upon a nineteenth century Hawaiian property
10 ownership system. Real property legal practices in Hawaii
11 continue to use Hawaiian words to describe unique real property
12 concepts. For example, terms such as "ahupuaa" and "kuleana"
13 and the real property concepts they describe are fundamental to
14 real property law in Hawaii. Native Hawaiians are afforded real
15 property rights that are not shown on title. Water rights are
16 also determined according to a unique public trust doctrine.
17 Hawaii also has a unique dual system of real property
18 recordation and registration with important legal consequences.



1 The legislature further finds that, in addition to
2 Hawaiians and Caucasians, large numbers of people from Asia and
3 the Pacific, including Chinese, Japanese, Koreans, Filipinos,
4 Polynesians, and Micronesians, have immigrated to Hawaii over
5 the last two centuries. Each ethnic group has left its mark on
6 the Hawaii legal system, and the various languages of these
7 ethnic groups have been integrated into the "Pidgin English"
8 commonly spoken in Hawaii.

9 The effective practice of law in this State requires
10 knowledge of Hawaii's unique heritage and the commonly used
11 words and legal concepts that have evolved from that heritage.
12 It is very difficult for attorneys from other states to practice
13 law effectively in Hawaii without a knowledge of Hawaii's unique
14 legal system, real property system, language, and customs. For
15 these reasons, there are many examples of clients who have been
16 poorly served by unlicensed out-of-state attorneys attempting to
17 practice law in Hawaii. In some cases, the clients have lost
18 millions of dollars as a result of work performed by unlicensed
19 out-of-state attorneys. In other cases, out-of-state attorneys
20 who are not licensed to practice law in Hawaii have been sued
21 for millions of dollars as a result of their lack of
22 understanding of the Hawaii legal system. There have also been



1 instances in which properly licensed Hawaii attorneys have had
2 to pay millions of dollars for failing to detect mistakes made
3 by out-of-state attorneys who are not licensed to practice law
4 in Hawaii.

5 The purpose of this Act is to protect the public by
6 specifying the acts that constitute the unauthorized practice of
7 law and addressing the increasingly pervasive problem of the
8 unauthorized practice of law in Hawaii by out-of-state attorneys
9 who are not licensed to practice law in Hawaii.

10 SECTION 2. Section 605-14, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§605-14 Unauthorized practice of law prohibited[-]; out-
13 of-state attorneys; requirements for out-of-state attorneys to
14 practice law. (a) It shall be unlawful for any person, firm,
15 association, or corporation to engage in or attempt to engage in
16 or to offer to engage in the practice of law, or to do or
17 attempt to do or offer to do any act constituting the practice
18 of law, except and to the extent that the person, firm, or
19 association is licensed or authorized so to do by an appropriate
20 court, agency, or office or by a statute of the State or of the
21 United States. Nothing in sections 605-14 to 605-17 contained
22 shall be construed to prohibit the preparation or use by any



1 party to a transaction of any legal or business form or document
2 used in the transaction.

3 (b) The unauthorized practice of law includes the
4 following acts by any person who has not been admitted to
5 practice law in this State or otherwise authorized to do so by
6 the Hawaii supreme court or the United States District Court for
7 the District of Hawaii:

8 (1) Holding oneself out as an attorney authorized to
9 practice law in the State;

10 (2) Appearing on behalf of any person or entity in any
11 hearing or proceeding in the State before any judicial
12 officer, arbitrator, mediator, court, public agency,
13 referee, magistrate, commissioner, hearing officer, or
14 governmental body in a dispute resolution process with
15 respect to any matter involving:

16 (A) The rights or obligations of any person or
17 property in the State; or

18 (B) Any dispute to be resolved wholly or in part
19 under the laws of the State;

20 (3) Preparing any document on behalf of another person
21 that is to be:



- 1 (A) Submitted to any judicial officer, arbitrator,
- 2 mediator, court, public agency, referee,
- 3 magistrate, commissioner, hearing officer, or
- 4 governmental body in a dispute resolution process
- 5 in the State; or
- 6 (B) Recorded in any form in the bureau of conveyances
- 7 or the land court; or
- 8 (4) Advising any person or entity located in the State
- 9 regarding the laws of the State.
- 10 (c) This section shall not apply to the following:
- 11 (1) The practice of law specifically authorized by a
- 12 limited license to practice law pro hac vice granted
- 13 by the circuit court of the circuit in which the
- 14 attorney is to practice law or by the United States
- 15 District Court for the District of Hawaii;
- 16 (2) Service in a neutral capacity as a mediator,
- 17 arbitrator, conciliator, or facilitator in the State;
- 18 (3) Services customarily provided by licensed real estate
- 19 brokers and agents for the sale or rental of real
- 20 estate in the State;



- 1 (4) Services customarily provided by licensed real estate
2 brokers and agents in the management of rental
3 properties in the State;
- 4 (5) Services customarily provided by licensed title and
5 escrow companies in the State;
- 6 (6) Services customarily provided by accountants in
7 preparing federal, state, or county tax returns or
8 audits and in interpreting statutes, rules, and
9 regulations relating to taxes, audits, and accounting
10 services in the State;
- 11 (7) Services customarily provided by lobbyists in the
12 State who are registered pursuant to chapter 97;
- 13 (8) Services customarily provided by collection agencies
14 in collecting debts in the State;
- 15 (9) Services performed for a corporation by the director,
16 officers, or employees of the corporation; provided
17 that the services relate directly to the business of
18 the corporation and do not involve appearance before a
19 judicial officer, arbitrator, mediator, court, public
20 agency, referee, magistrate, commissioner, hearing
21 officer, or governmental body in a dispute resolution
22 process;



1 (10) Services performed by the following persons under the
2 direct supervision of an attorney authorized to
3 practice law in the State:

4 (A) Law students as part of a clinical law program at
5 a law school accredited by the American Bar
6 Association; or

7 (B) Paralegals and other assistants who are not
8 attorneys;

9 (11) Services provided by an attorney licensed in another
10 state or by a graduate of a law school accredited by
11 the American Bar Association who is employed by a
12 Hawaii law firm while awaiting admission to the Hawaii
13 bar, if the services are provided under the direct
14 supervision of an attorney authorized to practice law
15 in the State. This paragraph shall not be construed
16 as authorizing appearances on behalf of any person or
17 entity in any hearing or proceeding in the State
18 before any judicial officer, arbitrator, mediator,
19 court, public agency, referee, magistrate,
20 commissioner, hearing officer, or governmental body in
21 a dispute resolution process with respect to any
22 matter involving:



1 (A) The rights or obligations of any person or
2 property in the State; or

3 (B) Any dispute to be resolved wholly or in part
4 under the laws of the State; and

5 (12) Services provided exclusively to indigent clients at a
6 qualified legal services provider, on an interim basis
7 not exceeding two years, and under the direct
8 supervision of an attorney authorized to practice in
9 the State, by an attorney admitted in good standing
10 and on an active basis in another United States
11 jurisdiction and who has not been denied admission to
12 the Hawaii bar by the Hawaii supreme court. For the
13 purposes of this paragraph, "qualified legal services
14 provider" means a not-for-profit legal services
15 organization that receives or is eligible to receive
16 funds from the indigent legal assistance fund
17 established under section 607-5.7(f).

18 (d) An attorney actively licensed to practice law in
19 another state but who is not authorized to practice law in this
20 State may practice law in this State only:

21 (1) If first admitted pro hac vice by a judge of the
22 circuit court of the circuit in which the attorney



1 intends to practice law or the United States District
2 Court for the District of Hawaii;

3 (2) In the circuit where the attorney is admitted to
4 practice law or in the United States District Court
5 for the District of Hawaii if admitted by the court;
6 and

7 (3) If the circuit court or the United States District
8 Court for the District of Hawaii first finds that the
9 legal work to be performed by the attorney cannot be
10 performed competently by any attorney licensed in the
11 State.

12 (e) It is a violation of this section for any person to
13 aid or assist another person in the unauthorized practice of law
14 in the State, including allowing a person to participate in
15 proceedings before a judicial officer, arbitrator, mediator,
16 court, public agency, referee, magistrate, commissioner, hearing
17 officer, or governmental body in a dispute resolution process."

18 SECTION 3. Section 605-15.1, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§605-15.1 Standing. [The] Only the attorney general [~~or~~
21 ~~any bar association in this State may]~~ may maintain an action
22 for violations of section 605-14."

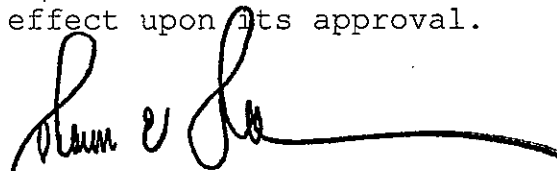
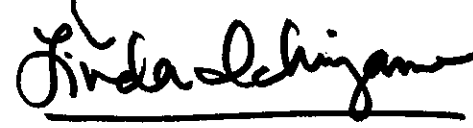

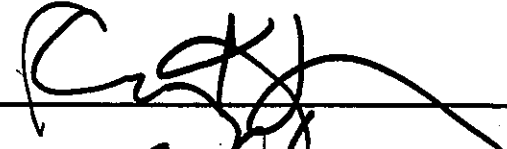



1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect upon its approval.
7

INTRODUCED BY:

JAN 22 2014



H.B. NO. 2494

Report Title:

Unauthorized Practice of Law; Out-of-State Attorneys

Description:

Specifies acts that constitute the unauthorized practice of law, and exempted acts. Establishes requirements for out-of-state attorneys to practice law in Hawaii.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

