

JAN 23 2014

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# A BILL FOR AN ACT

RELATING TO ATTORNEYS.

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

1           SECTION 1. The legislature finds that the effective  
2 practice of law in Hawaii requires knowledge of Hawaii's unique  
3 heritage and the commonly used words and legal concepts that  
4 have evolved from it. It is very difficult for attorneys from  
5 other states to practice law effectively in Hawaii without a  
6 knowledge of Hawaii's unique legal and real property systems,  
7 language, and customs. For these reasons, there are many  
8 examples of clients who have been poorly served by unlicensed  
9 out-of-state attorneys trying to practice law in Hawaii. For  
10 example, clients have lost millions of dollars as a result of  
11 work performed by unlicensed out-of-state attorneys; unlicensed  
12 out-of-state attorneys have been sued for millions of dollars as  
13 a result of their lack of understanding of Hawaii's legal  
14 system; and properly licensed Hawaii attorneys have paid  
15 millions of dollars for failing to catch mistakes made by  
16 unlicensed out-of-state attorneys.

17           The purpose of this Act is to protect the public by  
18 prohibiting the increasingly pervasive problem of the



1 unauthorized practice of law in Hawaii by unlicensed out-of-  
2 state attorneys by clarifying the law regarding the unauthorized  
3 practice of law.

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

6 **"§605-14 Unauthorized practice of law prohibited.** (a) It  
7 shall be unlawful for any person[~~, firm, association, or~~  
8 ~~corporation~~] to engage in [~~or~~], attempt to engage in, or [~~to~~]  
9 offer to engage in the practice of law[~~, or to do or attempt to~~  
10 ~~do or offer to do any act constituting the practice of law,~~  
11 ~~except and to the extent that the person, firm, or association]~~  
12 in this State unless that person is licensed or authorized [se]  
13 to do so by an appropriate court[~~, agency, or office or by a~~  
14 ~~statute]~~ of the State or of the United States[~~. Nothing in~~  
15 ~~sections 605-14 to 605-17 contained shall be construed to~~  
16 ~~prohibit the preparation or use by any party to a transaction of~~  
17 ~~any legal or business form or document used in the transaction.]~~  
18 for the district of Hawaii.

19 (b) It shall be unlawful for any person to aid or assist  
20 another person in the unauthorized practice of law in this State  
21 including the participation in any proceedings before a judicial  
22 officer, arbitrator, mediator, court, public agency, referee,



1 magistrate, commissioner, hearing officer, or governmental body  
2 in a dispute resolution process.

3 (c) The unauthorized practice of law includes but is not  
4 limited to the following acts by any person who is not licensed  
5 to practice law or otherwise authorized to do so in this State:

6 (1) Holding oneself out as an attorney authorized to  
7 practice law in this State;

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

14 (A) The rights or obligations of any person or  
15 property in this State; or

16 (B) Any dispute to be resolved wholly or in part  
17 under state law;

18 (3) Preparing any documents on behalf of another person  
19 that are to be submitted to any judicial officer,  
20 arbitrator, mediator, court, public agency, referee,  
21 magistrate, commissioner, hearing officer, or  
22 governmental body in a dispute resolution process in



- 1           this State, or recorded in any form in the state  
2           bureau of conveyances or land court; or  
3       (4) Advising a person or entity located in this State  
4           regarding state law.  
5       (d) This section shall not apply to the following:  
6       (1) Services that otherwise constitute the practice of law  
7           that are specifically authorized by a limited license  
8           to practice law; provided that the person is admitted  
9           to practice law pro hac vice by the circuit court of  
10          the circuit where the attorney is to practice law or  
11          by the United States District Court for the District  
12          of Hawaii;  
13       (2) Services provided by a mediator, arbitrator,  
14          conciliator, or facilitator in this State that are  
15          engaged in a neutral capacity;  
16       (3) Services customarily provided by licensed real estate  
17          brokers and agents for the sale or rental of real  
18          estate in this State;  
19       (4) Services customarily provided by licensed real estate  
20          brokers and agents in the management of rental  
21          properties in this State;



- 1        (5) Services customarily provided by licensed title and  
2                    escrow companies in this State;
- 3        (6) Services customarily provided by accountants in  
4                    preparing federal, state, or county tax returns or  
5                    audits and in interpreting statutes, rules, and  
6                    regulations relating to taxes, audits, and accounting  
7                    services in this State;
- 8        (7) Services customarily provided by registered  
9                    legislative lobbyists in this State;
- 10       (8) Services customarily provided by collection agencies  
11                   in collecting debts in this State;
- 12       (9) Services performed by the directors, officers, and  
13                   employees of a corporation on behalf of the  
14                   corporation that would otherwise be legal services;  
15                   provided that these services are directly related to  
16                   the business of the corporation and do not involve  
17                   appearance before a judicial officer, arbitrator,  
18                   mediator, court, public agency, referee, magistrate,  
19                   commissioner, hearing officer, or governmental body in  
20                   a dispute resolution process;



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

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

7        (B) Non-lawyer assistants and paralegals;

8        (11) Services performed under the direct supervision of an  
9        attorney authorized to practice law in this State and  
10       provided by:

11       (A) An attorney who is licensed in another state; or

12       (B) A graduate of a law school that is accredited by  
13       the American Bar Association who is employed by a  
14       law firm in this State while waiting to be duly  
15       licensed under law;

16       provided that this paragraph shall not apply to  
17       appearances on behalf of any person or entity in any  
18       hearing or proceeding in this State before any  
19       judicial officer, arbitrator, mediator, court, public  
20       agency, referee, magistrate, commissioner, hearing  
21       officer, or governmental body in a dispute resolution  
22       process with respect to any matter involving the



1 rights or obligations of any person or property in  
2 Hawaii, or any dispute to be resolved wholly or in  
3 part under state law; and

4 (12) Services provided exclusively to indigent clients on  
5 an interim basis that shall not exceed a period of two  
6 years and performed under the direct supervision of:

7 (A) An attorney who is authorized to practice in this  
8 State at a qualified legal services provider; or

9 (B) An attorney who is authorized and is in good  
10 standing to practice law in another state on an  
11 active basis; provided that the attorney has not  
12 obtained a license to practice law in this State  
13 that has been denied, revoked, or suspended by  
14 the supreme court.

15 For purposes of this paragraph, "qualified legal  
16 services provider" means a not-for-profit legal  
17 services organization that receives or is eligible to  
18 receive funds from the indigent legal assistance fund.

19 (e) An attorney who is actively licensed to practice in  
20 another state may practice law in the State of Hawaii; provided  
21 that the attorney is licensed to practice law pro hac vice by  
22 the circuit court of the circuit where the attorney is to



1 practice law or by the United States District Court for the  
2 District of Hawaii. An attorney who is licensed to practice law  
3 pro hac vice in this State shall only practice law in the  
4 circuit or federal district of Hawaii where such attorney is  
5 licensed. Prior to granting a license to practice law pro hac  
6 vice, the circuit court or the United States District Court for  
7 the District of Hawaii shall determine whether the legal work to  
8 be performed by the attorney licensed to practice law in another  
9 state cannot be adequately performed by any attorney licensed in  
10 this State."

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

13 "**§605-15.1 Standing.** The attorney general [~~or any bar~~  
14 ~~association in this State~~] may maintain an action for violations  
15 of section 605-14. Any bar association in this State may  
16 recommend a cause of action to the attorney general as it deems  
17 appropriate."

18 SECTION 4. Section 605-17, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§605-17 Penalties.** Any person violating sections 605-14  
21 to 605-16 shall be guilty of criminal contempt of court under  
22 section 710-1077, which is a misdemeanor."



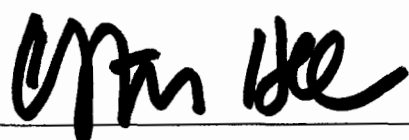


1           SECTION 5. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4           SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

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

7

INTRODUCED BY: 



**Report Title:**

Attorneys; Unauthorized Practice of Law; Penalties

**Description:**

Clarifies services that do and do not constitute the unauthorized practice of law and establishes a criminal penalty for engaging in the unauthorized practice of law.

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

