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FISCAL IMPACT REPORT

SPONSOR Balderas **DATE TYPED** 03/17/05 **HB** cs166a/HJC/aSPAC

SHORT TITLE Prohibit Unauthorized Practice of Law **SB** _____

ANALYST McSherry

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	Indeterminate		Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

- LFC Files
- Corrections Department (CD)
- Attorney General (AFO)
- Energy Minerals and Natural Resources (NMEMRD)
- Administrative Office of District Attorneys (AODA)

SUMMARY

Synopsis of Senate Public Affairs Committee Amendments

The first two amendments make a technical change to correct a mis-wording described below from the House Judiciary Committee.

The second amendment adds an additional exception to the list of activities which would not be considered the “practice of law” under the proposed Unauthorized Practice of Law Act: the negotiation and preparation of oil or gas leases, assignments, reports etc.

Synopsis of House Judiciary Committee Amendments

The first amendment to the substitute bill would substitute the word “another” for the word “previous” to make: “selecting, drafting, or preparing any document in any medium intended to affect or secure legal rights or incur legal obligations for a another person” a component of the bill’s proposed definition of the “practice of law.”

The second amendment to the substitute bill removes language which would have provided that the fact of settlement made in a agreement would be public record, but that the settlement agreement would be confidential in a written assurance of discontinuance from the alleged practice of law violator.

Synopsis of House Judiciary Committee Substitute Bill

This bill elaborates upon and replaces current state law, NMSA Section 36-2-28 1978, regulating and defining the “unauthorized practice of law” which dates back to 1925. It re-defines the practice of law and authorizes civil actions and a misdemeanor penalty for practicing law without being admitted to the State Bar. The bill would allow private actions brought by persons injured as a result of the unauthorized practice of law. It also would allow the Attorney General to bring civil actions against violators. HB 166 would repeal the portion of NMSA 1978, Section 36-2-28, which establishes the district attorney fund.

Exceptions to the regulated “practice of law” are included in the substitute bill:

- services of paralegals,
- services from limited licensees,
- participation in union negotiation, administrative hearings, bargaining agreements, the school personnel act and/or other rules and regulations governing employment or labor.
- lobbying activities
- arbitration and mediation involved in the Worker’s Compensation Act
- services related to intellectual property by a patent agent
- advocate services working for no monetary gain if supervised
- preparation of a document by a certified professional accountant
- completion of a legal form by a real estate licensee under supervision or review
- arbitration and mediation related to real estate licensees subject to board and association bylaws
- negotiation and sale of a vehicle
- preparation of trust documents
- completion of legal documents prepared by/with supervision/ or reviewed by an attorney
- negotiation of oil agreements, reports, etc.

Significant Issues:

The proposed act includes many specific exceptions to the proposed definition of law. It appears that many of the exceptions address very particular concerns of professional interest groups and that there could be many other exceptions equivalent to these which have not been addressed.

According to the Corrections Department, this bill would increase prison populations and probation caseloads as a result of the creation of a new misdemeanor.

CD asserts that the proposed definition of law in this legislation may be broad enough to include activities performed by non-attorney employees for the Corrections Department such as requesting arrest and hold orders, advising probationers that certain actions could result in revocation of parole, making appearances with parolees at parole hearings and negotiating memorandums of understanding with local law enforcement agencies. Under the proposed law the Corrections Department’s professionals performing these duties may be vulnerable to criminal or civil liability.

A population of inmates who assist other inmates with legal matters, “jailhouse lawyers” would also be a likely group cited with unlawful practice of law which could result in additional penalties for these individuals.

The Attorney General's office cites current law which generally defines the "unauthorized practice of law" as practicing or holding oneself out to the public as someone authorized to practice law. HB 166 would repeal the current NMSA 1978, Section 36-2-27. The current statute does not define "practicing law". A separate state law, NMSA Section 36-2-27, 1978 comp, allows for contempt of court should the unauthorized practice of law occur in any court other than Magistrate Court. The office of the AG suggests that HB166 would clarify the practice of law, the unauthorized practice of law, and exceptions to the requirement that those practicing law be admitted to the State Bar and reflects that the Supreme Court has interpreted the unauthorized practice of law by rule and through judicial decisions brought by the State Bar and others in Supreme Court Rule 16-505, *State Bar v. Guardian Abstract & Title Co.*, 91 N.M. 434, 575 P.2d 943 (1978), and *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 85 N.M. 521, 514 P.2d 40 (1973).

PERFORMANCE IMPLICATIONS

Agency cited performance implications are primarily related to increased workload. The possibility of increased court cases, referrals to the district attorneys, inmates for the Corrections Department and actions taken by the Attorney General were all cited in agency analysis. The amount of increased caseload is difficult to predict and has not been estimated by any agency.

A possible outcome would be the numbers of professionals that perform many of the actions cited as practicing law would become more restricted and those with the qualifications considered acceptable to practice law would be demanded for their services to a greater extent.

FISCAL IMPLICATIONS

Actual fiscal implications are indeterminable. Agencies note that as caseloads increase, increased fiscal increases on budgets such as district attorneys and Corrections Department are likely to be requested, even if minimal. If civil penalties are imposed by the courts against violators, the revenue would be accrued to the benefit of the state.

Corrections projects that the new penalties might restrict the number of inmate pro-se cases and reduce the cost of defending against these suits. The Department reports that there already is a Departmental policy against inmates assisting each other in legal matters so the Department projects that the reduction in suits filed by "jailhouse lawyers" is not likely to significantly decrease due to House Bill 166 being enacted.

ADMINISTRATIVE IMPLICATIONS

Administration Office of District Attorneys report this bill could result in more cases referred to district attorneys for prosecution and increase current workloads.

The Corrections Department relates that in both the short term and the long term, this bill will somewhat increase the administrative prison staff and probation staff because of the increasing prison population and probation caseloads.

TECHNICAL ISSUES

The first committee amendment does not seem technically correct; the word "a" should be deleted before the word "another" on page 2 line 4.

The Attorney General's Office recommends consideration be given to repealing NMSA Section 36-2-27, 1978 which prohibits the practice of law in most courts in this state unless one has been admitted to the State Bar, except within a magistrate court. Even though the Judicial Branch presumably would not tolerate the practice of law in magistrate courts, this bill prohibits representing parties in judicial proceedings, and its enactment would create an ambiguity if Section 36-2-27 is not repealed. The analysis submitted by the Attorney General's Office further relates that although the bill defines the unauthorized practice of law as a "misdemeanor", the penalty imposed (not more than six months confinement) would remain a "petty misdemeanor" as defined by NMSA Section 30-1-6C 1978 comp.

OTHER SUBSTANTIVE ISSUES

The Attorney General's Office (AGO) points out that the judicial branch has authority to determine the qualifications of those practicing law in the courts of this state and that the bill seems to take that authority into consideration by allowing the provision of lawful legal services if authorized by court rule.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The current version of NMSA 1978, Section 36-2-27 concerning practice of law would remain in effect should this bill not pass. Currently there are no private statutory causes of action. The AGO will not be able to pursue the injunctive relief, civil penalties or restitution for the unauthorized practice of law. Currently the unauthorized practice of law is considered contempt of court except in magistrate courts. Court rules, administrative rules and tradition also govern the unauthorized practice of law.

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