

1 HOUSE BILL 413

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO ATTORNEYS; PROVIDING PRIVATE REMEDIES AND PENALTIES
12 FOR THE UNAUTHORIZED PRACTICE OF LAW.

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

15 SECTION 1. A new section of Chapter 36, Article 2 NMSA
16 1978 is enacted to read:

17 "NEW MATERIAL UNAUTHORIZED PRACTICE OF LAW--PRIVATE
18 REMEDIES.--

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

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

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

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

16 **SECTION 2.** A new section of Chapter 36, Article 2 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] UNAUTHORIZED PRACTICE OF LAW--ACTION BY
19 ATTORNEY GENERAL OR BAR ASSOCIATION.--

20 A. Whenever the attorney general, the state bar of
21 New Mexico or a local bar association authorized by the state
22 bar of New Mexico to prosecute actions related to the
23 unauthorized practice of law has reason to believe that a
24 person has engaged in the unauthorized practice of law in
25 violation of Section 36-2-27 NMSA 1978 or has aided or abetted

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1 another person in the unauthorized practice of law and the
2 initiation of legal proceedings would be in the public
3 interest, the attorney general or bar association may bring an
4 action in the name of the state against the alleged violator.
5 The action may be brought in the district court for the county
6 in which the alleged violator resides or has a principal place
7 of business or in the district court for a county in which the
8 alleged violation took place. In an action brought pursuant to
9 this section, in addition to civil penalties, the attorney
10 general or bar association may petition the court for a
11 temporary or permanent injunction and restitution and, if
12 seeking a temporary or permanent injunction, the attorney
13 general or bar association shall not be required to post bond.

14 B. In lieu of filing or continuing an action
15 pursuant to this section, the attorney general or bar
16 association may accept a written assurance of discontinuance of
17 the unauthorized practice of law from the alleged violator.
18 The assurance may contain an agreement by the alleged violator
19 that restitution of money or property received from them in any
20 transaction related to the unauthorized practice will be made
21 to all persons, provided that a person harmed by the
22 unauthorized practice is not required to accept restitution.
23 If the offer of restitution is accepted, the person accepting
24 the restitution is barred from recovering damages from the
25 alleged violator in an action based upon the same unauthorized

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1 practice.

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

13 SECTION 3. REPEAL.--Section 36-2-28 NMSA 1978 (being Laws
14 1925, Chapter 100, Section 12) is repealed.

15 SECTION 4. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2011.