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FISCAL IMPACT REPORT

ORIGINAL DATE 03/03/11

SPONSOR Park LAST UPDATED _____ HB 413

SHORT TITLE Unauthorized Practice of Law SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 413 provides both private and public remedies for the unauthorized practice of law.

A private action for injunctive relief may be brought by a person likely to be damaged by such unauthorized practice. Proof of monetary damage or loss of profit is not required. Additionally, if a person suffers an actual loss of money or property from an unauthorized practice of law, that person may bring an action for actual damages or one thousand dollars, whichever is greater, and for restitution. Treble damages, or up to three thousand dollars, would be recoverable in the event of a willful violation. A person who prevails is entitled to attorney fees and costs, and the relief provided by the bill is in addition to other remedies that may be otherwise available.

HB 413 also authorizes the Attorney General, the state bar or a local bar authorized by the state bar to prosecute actions for the unauthorized practice of law, or for aiding and abetting such an unauthorized practice, if such action would be in the public interest. The prosecuting entity can seek both a civil penalty and injunctive relief. The civil penalty may not exceed \$5,000. For aiding and abetting, the penalty may not exceed \$1,000 for the first violation and up to \$5,000

for any subsequent violation. The bill also authorizes resolution of such an action through a written assurance of discontinuance. That agreement may include restitution, although a person who has been harmed is not required to accept that restitution.

Finally, the bill also repeals existing law providing for a fine and imprisonment up to six months for conviction of engaging in the unauthorized practice of law.

The effective date of this bill is July 1, 2011.

FISCAL IMPLICATIONS

While it is difficult to anticipate the impact of this bill, the specific grants of authority to private persons to seek both monetary and injunctive relief and to the state bar association (or an authorized local bar) to seek injunctive relief and civil penalties in instances of unauthorized practice of law may supplant or at least substantially lessen the need for the AGO to bring actions of this nature.

SIGNIFICANT ISSUES

This bill replaces existing law that imposes a fine and imprisonment upon conviction of engaging in the unauthorized practice of law with public and private causes of action to recover damages and provide injunctive relief barring activities that constitute unauthorized practice of law.

The AGO calls attention to the role of the Supreme Court as to the practice of law:

Historically and traditionally the regulation of the practice of law has been reserved to the Supreme Court. This proposed legislation significantly intrudes into that role. The role of the Supreme Court in this area is codified at NMSA 1978, § 36-2-1, in which the Supreme Court and remedies it may provide appear to be the exclusive method of addressing the issue of the unauthorized practice of law in New Mexico.

This bill will have to be reconciled with section 36-2-1, or it will supplant existing law regulating the unauthorized practice of law. If this law is to supplant existing law, it significantly intrudes into the historical and traditional domain of the Supreme Court. If this law is to supplement existing law, it creates the real problem of multiplicity of suits.

In addition to section 36-2-1, HB 413 leaves intact existing law that recognizes the power of the courts to hold in contempt a person who engages in an unauthorized practice.

The AOC notes that, at least to the proof necessary for injunctive relief in a private cause of action, the bill provides a lower standard (“likely to be damaged”) than the immediate and irreparable damage standard required by existing court rules which otherwise govern actions for injunctions.

PERFORMANCE IMPLICATIONS

This bill grants authority to the Attorney General in this area.

TECHNICAL ISSUES

The AGO notes that the phrase “aiding and abetting” is not defined in the bill which could lead to confusion in application.

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