

Testimony in Support of HB 2573
Helen Hierschbiel, Oregon State Bar
Before the House Judiciary Committee

February 20, 2013

I am appearing on behalf of the Oregon State Bar Board of Governors in support of HB 2573, a bill that provides a remedy under the Unlawful Trade Practices Act (UTPA) for unauthorized practice of law.

The bar is charged with enforcing the prohibition against the unlawful practice of law, but has limited resources to do so and limited sanction authority even in those cases it does pursue. The unlawful practice of law often causes significant harm to victims. Non-lawyers may charge thousands of dollars to provide substandard services; victims may lose cases or waive important claims because of poor work by non-lawyers.

The bill as introduced explicitly provides that the unauthorized practice of law is a violation of the Unlawful Trade Practices Act (ORS 646.608). Advocates for collection agents and others objected that the bill reaches too far because the unlawful practice of law is undefined in statute and defined only by caselaw. Rather than engage in a difficult and likely fruitless exercise in attempting to draft a statutory definition, we propose to amend the bill to reference only the unauthorized practice in immigration cases.

Immigration law is an area in which unlicensed individuals frequently provide ill-advised legal services to clients, often with far-reaching negative results. ORS 9.280 currently prohibits a person from acting as an immigration consultant for compensation unless the person is an active member of the bar or is otherwise authorized by federal law to do so.

The proposed amended bill would amend the Unlawful Trade Practices Act explicitly to make the unlawful practice of law as an immigration consultant an unlawful trade practice. As noted by the Department of Justice, at present, victims of notarios seeking to recover under the UTPA must prove additional elements to prevail. The amended bill will increase the likelihood vulnerable victims are able to recover damages caused by notarios. The remedy for private enforcement action includes recovery of attorney fees and the right to seek punitive damages. This bill would also enable the Department of Justice to prosecute additional individuals who engage in the unlawful practice of law in the immigration context. Remedies available to the Department of Justice that are not available to the bar include the assessment of significant civil penalties. Moreover, the Department of Justice has greater resources for the investigation and prosecution of these cases.

I urge you to adopt the -2 amendments and send HB 2573 to the floor.

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: HB 2573 – AMEND THE UNLAWFUL TRADE PRACTICES ACT (“UTPA”), ORS 646.608 et seq. TO EXPLICITLY INCLUDE UNLAWFUL PRACTICE OF LAW AS AN UNLAWFUL TRADE PRACTICE

Bar Group: Unauthorized Practice of Law Task Force

Task force members include Marcia Buckley, Frederic Cann, David Elkanich, Hon. Ted E. Grove, Shea Gumusoglu, Hon. Terry Ann Leggert, Joan-Marie Michelsen, Bruce Rubin, John Sorlie, Simon Whang, and Theresa Wright. The Task Force was staffed by Helen Hierschbiel.

Submitted by: Amber Hollister

Date: March 28, 2012

Executive Committee Approval? Yes Date: August 18, 2011 No

See Task Force Report.

This is a BOG Approved recommendation.

Legislative Contact(s): Susan Grabe

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1. Does this amend current law or program?

a. Yes **Amends Unlawful Trade Practices Act, ORS 646.608 et seq., to provide that a violation of ORS 9.160 is an unlawful trade practice.**

b. No

2. PROBLEM PRESENTED (including level of severity):

The OSB is charged with prosecuting the unlawful practice of law, but has limited resources to pursue actions against individuals who engage in the unlawful practice of law. The unlawful practice of law often causes significant harm to victims. Nonlawyers may charge thousands of dollars to provide substandard services; victims may lose cases or waive important claims because of poor work by nonlawyers. It is not unusual for a victim of the unlawful practice of law to have to hire an attorney to clean up the mess created by a nonlawyer.

The OSB does not allocate any funds specifically for enforcement of the UPL statute, ORS 9.160. Instead, the OSB relies on volunteer bar counsel for representation on these cases. While the statute provides for attorney fees to the prevailing party, the reality is that many of these non-lawyer practitioners have few resources from which to collect any fees awarded. With limited resources to devote to UPL prosecutions, many cases are left without remedy.

ORS 9.990 also makes the violation of ORS 9.160 a crime subjecting violators to fines up to \$500 or imprisonment up to six months, or both. Criminal prosecutions for the unlawful practice

of law, however, have been extremely rare. District attorneys have not as a general rule made enforcement of this law a priority.

For all of these reasons, the unlawful practice of law is infrequently prosecuted, and prosecution is limited to the most egregious cases. The bar, at most, brings a few cases a year for the unlawful practice of law.

3. SOLUTION:

Amend the UTPA, ORS 646.608 et seq., to explicitly include the unlawful practice of law as an unlawful trade practice.

Amending the UTPA would provide a private right of action and therefore a remedy to a large group of consumers who currently have none. Under the UTPA, moreover, the prevailing party can be entitled to recover attorney fees and could seek punitive damages.

OREGON STATE BAR
Legislative Proposal
Legislative Summary

RE: HB 2573 with the -2 amendments amends the Unlawful Trade Practices Act (“UTPA”) to provide that unlawful practice of immigration law is an unlawful trade practice.

Bar Group: Unauthorized Practice of Law Task Force

Legislative Contact(s): Susan Grabe

Phone: (503) 431-6380

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1. Does this amend current law or program?

a. Yes **Amends Unlawful Trade Practices Act, ORS 646.608 et seq., to provide that a violation of ORS 9.280 is an unlawful trade practice.**

b. No

2. PROBLEM PRESENTED (including level of severity):

The OSB is charged with prosecuting the unlawful practice of law, but has limited resources to do so. The unlawful practice of law often causes significant harm to victims. Nonlawyers may charge thousands of dollars to provide substandard services; victims may lose cases or waive important claims because of poor work by nonlawyers.

Immigration law is an area in which unlicensed individuals frequently provide incorrect legal services to clients, often with far-reaching negative results. ORS 9.280 prohibits a person from acting as an immigration consultant for compensation, unless the person is an active member of the bar or is otherwise authorized by federal law to do so.

The bill as introduced would have created a UTPA remedy for any unauthorized practice of law. Advocates for collection agents and others objected that the bill would create a broad remedy for unauthorized practice, when that term is undefined in the statute. Rather than engage in a difficult and likely fruitless exercise in attempting to define “unauthorized practice”, therefore we have decided to amend the bill to apply only to unauthorized practice in immigration cases which an area of growing concern.

3. SOLUTION:

The bill with the -2 amendment would amend the UTPA, ORS 646.608 et seq., to explicitly include the unlawful practice of law as an immigration consultant as an unlawful trade practice.

Amending the UTPA would provide a private right of action and therefore a remedy to a large group of consumers who currently have none. Under the UTPA, moreover, one can recover attorney fees and could seek punitive damages.