

# HOUSE BILL ANALYSIS

## HB 1451

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**Title:** An act relating to making the unauthorized practice of law, as determined by the supreme court, a violation of the consumer protection act.

**Brief Description:** Making the unauthorized practice of law a violation of the consumer protection act.

**Sponsors:** Representatives Sheahan, Costa, Constantine, Lantz, Sterk, Skinner, Appelwick, Sullivan, Mason and Kenney.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Staff:** Trudes Hutcheson (786-7384).

**Background:** A person must meet certain requirements before he or she is admitted to the Washington State Bar and allowed to practice law. A person engaging in the unauthorized practice of law is guilty of a gross misdemeanor and, in some circumstances, a class C felony. In addition, the Attorney General may bring an action to enjoin, restrain, or prevent a person from engaging in the unauthorized practice of law. The statute making the unauthorized practice of law a crime does not specifically define the term practice of law.–

Instead, the term is defined in case law. The state supreme court determined that the practice of law includes not only the doing or performing of services in a court of justice, but also includes giving legal advice and preparing instruments and documents that affect a person's legal rights and obligations. Persons representing themselves in legal proceedings are acting pro se and are not engaging in the unauthorized practice of law.

The state supreme court has held that Article 4, Section 1 of the state constitution gives the court the exclusive power to regulate the practice of law. According to the court, the statutory attempt to authorize the practice of law is an unconstitutional exercise of legislative power in violation of the separation of powers doctrine. Courts have declared that the unauthorized practice of law is prohibited to protect the public.

Washington's Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in trade or commerce. The Attorney General may bring an action under the CPA on behalf of the state to enjoin the unfair act or practice and to recover an injured person's money or property.

Individuals who have been harmed by unfair business acts or practices may also bring a private action under the CPA. The individual may recover three times the actual damages up to \$10,000, and reasonable attorney's fees.

A plaintiff alleging a violation of the CPA must show: (1) an unfair or deceptive act or practice; (2) in trade or commerce; (3) that affects the public interest; (4) an injury to the person's business or property; and (5) the injury was caused by the unfair or deceptive act or practice.

In some cases, the first three elements may be established automatically if the defendant has violated a statute which has been declared by the Legislature to constitute an unfair or deceptive act in trade or commerce. The plaintiff then need only establish that the act or practice caused injury.

**Summary of Bill:** The Legislature finds that the unauthorized practice of law, as determined by the state supreme court, affects the public interest, is an unfair or deceptive act in trade or commerce, an unfair method of competition, and therefore, violates the CPA. It is the intent of the Legislature that actions brought under the CPA alleging the unauthorized practice of law be brought primarily by private individuals. However, the Attorney General is not precluded from initiating or intervening in such actions. A person bringing an action under the CPA is not precluded from any other remedy available.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect January 1, 1998.