



HOUSE BILL 436: Unauthorized Practice of Law Change

This Bill Analysis reflects the contents of the bill as it was presented in committee.

2015-2016 General Assembly

Committee:	House Judiciary I	Date:	April 14, 2015
Introduced by:	Reps. Daughtry, Bryan, Davis	Prepared by:	R. Erika Churchill
Analysis of:	PCS to First Edition H436-CSST-20		Committee Counsel

SUMMARY: *The proposed committee substitute for House Bill 436 would exempt certain acts from the definition of the practice of law and would establish a process by which the Attorney General would review most actions to prevent the unauthorized practice of law prior to the North Carolina State Bar bringing an action.*

CURRENT LAW: G.S. 84.4 provides that except for active members of the Bar of the State of North Carolina admitted and licensed to practice as attorneys-at-law, it is unlawful for any person, or association of persons, to engage in certain, specifically listed, behaviors that incorporate the practice of law.

The phrase "practice law" for purposes of licensure of attorneys is defined to be:

performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition.

The phrase "practice law" specifically excludes written memoranda of mediators at community mediation centers or mediators of employment-related matters for The University of North Carolina or a constituent institution, or for an agency, commission, or board of the State of North Carolina.

BILL ANALYSIS: The PCS would do both of the following:

1. Exempt from the definition of "practice law" the production, distribution, or sale of materials, provided certain criteria are met. The criteria include that the production of the production of the materials must have occurred entirely before any contact between the provider and the consumer; during and after initial contact between the provider and the consumer, the provider may not participate in any way in selecting the content of the finished materials; and the provider clearly and conspicuously communicates to the consumer that the materials are not a substitute for the advice or services of an attorney.

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2. Establish a process for the Attorney General's Office to review actions brought by the State Bar to verify the State Bar is acting within its scope of authority to demand cease and desist of actions encompassing the unauthorized, unlicensed or unlawful practice of law.
3. Makes technical and conforming changes.

EFFECTIVE DATE: Effective when it becomes law.