

2016 Regular Session

SENATE BILL NO. 203

BY SENATOR WARD

ATTORNEYS. Provides for certain penalties regarding the unauthorized practice of law.
(8/1/16)

1 AN ACT

2 To enact R.S. 37:213.1, relative to the unauthorized practice of law; to provide certain terms,
3 conditions, requirements, definitions and procedures; and to provide for related
4 matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 37:213.1 is hereby enacted to read as follows:

7 **§213.1. Unauthorized practice of law; civil damages; prescription**

8 **A. In addition to any criminal proceedings and criminal penalties set**
9 **forth in R.S. 37:213, the provisions of this Section shall apply to civil**
10 **proceedings against persons engaged in, or who have engaged in, the**
11 **unauthorized practice of law.**

12 **B. As used in this Section, the following terms shall be defined as follows:**

13 **(1) "Actor" means a natural or juridical person who is engaged in or has**
14 **engaged in the unauthorized practice of law. The term "actor" shall not include**
15 **a Louisiana attorney licensed to practice law or a Louisiana attorney who is**
16 **suspended or disbarred from the practice of law. The term "actor" may include**
17 **a Louisiana attorney who has been permanently disbarred or who has**

1 permanently resigned from the practice of law.

2 (2) "Aggrieved party" means a natural or juridical person who has
3 sustained any damage or harm as a result of an actor engaged in the
4 unauthorized practice of law. The term "aggrieved party" shall not include an
5 attorney or a law firm.

6 (3) "Unauthorized practice of law" means any of the prohibited activities
7 set forth in R.S. 37:213.

8 C. An aggrieved party, the attorney general of the state of Louisiana, the
9 Louisiana State Bar Association, or any district attorney may file a petition to
10 enjoin an actor from engaging in the unauthorized practice of law. If an actor
11 is enjoined from engaging in the unauthorized practice of law as provided in
12 this Section, the court may also award costs and attorney's fees to the petitioner,
13 except that no attorney fees shall be awarded to the attorney general or a
14 district attorney.

15 D. An aggrieved party may sue an actor who is engaging in, or who has
16 engaged in, the unauthorized practice of law for general damages, special
17 damages, and all other damages suffered by the aggrieved party. The court may
18 award the prevailing party all reasonable costs and reasonable attorney fees in
19 connection with this suit. No attorney fees shall be awarded to the attorney
20 general or a district attorney.

21 E. Venue for any action commenced under Subsections C or D of this
22 Section shall be in any parish where any of the following pertain:

23 (1) The actor is engaging or has engaged in the unauthorized practice of
24 law.

25 (2) The offense of the unauthorized practice of law has occurred.

26 (3) Any damages were sustained.

27 (4) The aggrieved party resides.

28 F. An action by an aggrieved party under the provisions of Subsection
29 D of this Section shall be subject to the following:

- 1 **(1) Except as provided below, it must be brought within either one year**
 2 **from the date of the act constituting the alleged unauthorized practice of law,**
 3 **or one year from the date that the act constituting the alleged unauthorized**
 4 **practice of law is discovered or should have been discovered, whichever is later.**
- 5 **(2) If the alleged unauthorized practice of law consists of continuous**
 6 **conduct causing continuous damage, the one year prescriptive period provided**
 7 **above shall not begin to run until the conduct is abated, and recovery may be**
 8 **obtained for all such conduct.**

The original instrument was prepared by Benjamin A. Huxen, II. The following digest, which does not constitute a part of the legislative instrument, was prepared by Mary Dozier O'Brien.

DIGEST

SB 203 Reengrossed 2016 Regular Session Ward

Proposed law allows an aggrieved party, the attorney general of the state of Louisiana, the Louisiana State Bar Association, or any district attorney to file a petition to enjoin an actor from engaging in the unauthorized practice of law. Proposed law further provides that any aggrieved party may sue an actor who is engaging in or has engaged in the unauthorized practice of law for general damages, special damages, and all other damages suffered by the aggrieved party. Proposed law further provides for the award of costs and attorney's fees to the petitioner and a liberative prescriptive period of three years. Prohibits attorney fees being awarded to the attorney general or a district attorney.

Effective August 1, 2016.

(Adds R.S. 37:213.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Adds "an aggrieved party" to the persons eligible to file a petition to enjoin an actor from engaging in the unauthorized practice of law.

Senate Floor Amendments to engrossed bill

1. Provides that no attorney fees shall be awarded to the attorney general or a district attorney when prevailing in a request to enjoin a person from the unauthorized practice of law.
2. Provides that the prevailing party in an action seeking damages for the unauthorized practice of law may be awarded reasonable costs and attorney fees, however no attorney fees shall be awarded to the attorney general or a district attorney in such an action.

3. Adds provisions for prescriptive periods of actions seeking damages as follows:

(1) Any action seeking damages resulting from an act constituting the unauthorized practice of law shall be brought within one year of the act constituting the unauthorized practice, one year of discovery of said act or one year of when the act should have been discovered, whichever is later.

or

(2) For action seeking damages resulting from the unauthorized practice of law that consists of continuous conduct causing continuous damage, the prescriptive period shall not begin until the damaging conduct is halted and damages may be recovered for all the continuous harm.