



The Legislature  
of the  
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER 107

HOUSE BILL 413

Introduced by

REPRESENTATIVE AL PARK

REPRESENTATIVE JOSEPH CERVANTES  
REPRESENTATIVE ELISEO LEE ALCON  
REPRESENTATIVE ZACHARY J. COOK  
REPRESENTATIVE BRIAN F. EGOLF  
REPRESENTATIVE BILL B. O'NEILL



# Chapter 107

AN ACT

1  
2 RELATING TO ATTORNEYS; PROVIDING PRIVATE REMEDIES AND  
3 PENALTIES FOR THE UNAUTHORIZED PRACTICE OF LAW.  
4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 SECTION 1. A new section of Chapter 36, Article 2 NMSA  
7 1978 is enacted to read:

8 "UNAUTHORIZED PRACTICE OF LAW--PRIVATE REMEDIES.--

9 A. A person likely to be damaged by an  
10 unauthorized practice of law in violation of Section 36-2-27  
11 NMSA 1978 may bring an action for an injunction against the  
12 alleged violator. An injunction shall be granted pursuant to  
13 the principles of equity and on terms that the court considers  
14 reasonable. Proof of monetary damage or loss of profit is not  
15 required for an injunction to be granted pursuant to this  
16 subsection.

17 B. A person who suffers a loss of money or other  
18 property as a result of an unauthorized practice of law in  
19 violation of Section 36-2-27 NMSA 1978 may bring an action for  
20 the greater of actual damages or one thousand dollars (\$1,000)  
21 and for the restitution of any money or property received by  
22 the alleged violator, provided that if the court finds that  
23 the alleged violator willfully engaged in the unauthorized  
24 practice of law, the court may award up to three times the  
25 actual damages or three thousand dollars (\$3,000), whichever

1 is greater.

2 C. A person bringing an action pursuant to  
3 Subsection A or B of this section shall, if the person  
4 prevails, also be awarded attorney fees and costs.

5 D. The relief provided by this section is in  
6 addition to other remedies available at law or equity."

7 SECTION 2. A new section of Chapter 36, Article 2 NMSA  
8 1978 is enacted to read:

9 "UNAUTHORIZED PRACTICE OF LAW--ACTION BY ATTORNEY  
10 GENERAL OR BAR ASSOCIATION.--

11 A. Whenever the attorney general, the state bar of  
12 New Mexico or a local bar association authorized by the state  
13 bar of New Mexico to prosecute actions related to the  
14 unauthorized practice of law has reason to believe that a  
15 person has engaged in the unauthorized practice of law in  
16 violation of Section 36-2-27 NMSA 1978 or has aided or abetted  
17 another person in the unauthorized practice of law and the  
18 initiation of legal proceedings would be in the public  
19 interest, the attorney general or bar association may bring an  
20 action in the name of the state against the alleged violator.  
21 The action may be brought in the district court for the county  
22 in which the alleged violator resides or has a principal place  
23 of business or in the district court for a county in which the  
24 alleged violation took place. In an action brought pursuant  
25 to this section, in addition to civil penalties, the attorney

1 general or bar association may petition the court for a  
2 temporary or permanent injunction and restitution and, if  
3 seeking a temporary or permanent injunction, the attorney  
4 general or bar association shall not be required to post bond.

5 B. In lieu of filing or continuing an action  
6 pursuant to this section, the attorney general or bar  
7 association may accept a written assurance of discontinuance  
8 of the unauthorized practice of law from the alleged violator.  
9 The assurance may contain an agreement by the alleged violator  
10 that restitution of money or property received from them in  
11 any transaction related to the unauthorized practice will be  
12 made to all persons, provided that a person harmed by the  
13 unauthorized practice is not required to accept restitution.  
14 If the offer of restitution is accepted, the person accepting  
15 the restitution is barred from recovering damages from the  
16 alleged violator in an action based upon the same unauthorized  
17 practice.

18 C. In an action brought by the attorney general or  
19 bar association pursuant to this section, if the court finds  
20 the alleged violator engaged in the unauthorized practice of  
21 law, the court may impose a civil penalty not to exceed five  
22 thousand dollars (\$5,000) per violation. In addition, if the  
23 court finds that a person has aided or abetted another to  
24 engage in the unauthorized practice of law, the court may  
25 impose a civil penalty not to exceed one thousand dollars

1 (\$1,000) for the first violation and a civil penalty not to  
2 exceed five thousand dollars (\$5,000) for each subsequent  
3 violation."

4 SECTION 3. REPEAL.--Section 36-2-28 NMSA 1978 (being  
5 Laws 1925, Chapter 100, Section 12) is repealed.

6 SECTION 4. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2011. \_\_\_\_\_

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*Ben Lujan*

BEN LUJAN, SPEAKER  
HOUSE OF REPRESENTATIVES

*Stephen R. Arias*

STEPHEN R. ARIAS, CHIEF CLERK  
HOUSE OF REPRESENTATIVES

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JOHN A. SANCHEZ, PRESIDENT  
SENATE

*Lenore M. Naranjo*

LENORE M. NARANJO, CHIEF CLERK  
SENATE

Approved by me this 6<sup>th</sup> day of April, 2011

*Susana Martinez*

SUSANA MARTINEZ, GOVERNOR  
STATE OF NEW MEXICO

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