

2C:21-22a & 2C:21-31.1 et. al.

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2011 **CHAPTER:** 209

NJSA: 2C:21-22a & 2C:21-31.1 et. al. (Upgrades offenses of engaging in unauthorized practice of law)

BILL NO: A1050 (Substituted for S184)

SPONSOR(S) Quijano and others

DATE INTRODUCED: January 12, 2010

COMMITTEE: **ASSEMBLY:** Judiciary

SENATE: Judiciary
 Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** May 20, 2010

SENATE: January 9, 2012

DATE OF APPROVAL: January 17, 2012

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second reprint enacted)

A1050

SPONSOR'S STATEMENT: (Begins on page 2 of introduced bill)	Yes	
COMMITTEE STATEMENT:	ASSEMBLY:	Yes
	SENATE:	Yes Judiciary Budget

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, **may possibly** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT:	Yes	3-15-10 3-22-10
LEGISLATIVE FISCAL NOTE:	Yes	5-21-10 11-28-11

S184

SPONSOR'S STATEMENT: (Begins on page 2 of introduced bill)	Yes	
COMMITTEE STATEMENT:	ASSEMBLY:	No
	SENATE:	Yes
FLOOR AMENDMENT STATEMENT:		No

(continued)

LEGISLATIVE FISCAL NOTE:

Yes 8-13-10
11-28-11

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

FOLLOWING WERE PRINTED:

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No

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No

NEWSPAPER ARTICLES:

No

LAW/KR

P.L.2011, CHAPTER 209, *approved January 17, 2012*
Assembly, No. 1050 (*Second Reprint*)

1 AN ACT concerning the unauthorized practice of law and
2 ¹[amending P.L.1994, c.47] amending various parts of the
3 statutory law and supplementing Title 2C of the New Jersey
4 Statutes¹.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. Section 1 of P.L.1994, c.47 (C.2C:21-22) is amended to read
10 as follows:

11 1. a. A person is guilty of a **[disorderly persons offense]** crime
12 of the fourth degree if the person knowingly engages in the
13 unauthorized practice of law.

14 b. A person is guilty of a crime of the **[fourth]** third degree if
15 the person knowingly engages in the unauthorized practice of law
16 and:

17 (1) Creates or reinforces a false impression that the person is
18 licensed to engage in the practice of law; or

19 (2) Derives a benefit; or

20 (3) In fact causes injury to another.

21 c. For the purposes of this section, the phrase "in fact"
22 indicates strict liability.

23 (cf: P.L.1994,c.47,s.1)
24

25 ¹2. (New section) a. Any person who suffers any ascertainable
26 loss of moneys or property, real or personal, as a result of any
27 action or inaction by a person who knowingly engaged in the
28 unauthorized practice of law in violation of section 1 of P.L.1994,
29 c.47 (C.2C:21-22) may bring a civil action in any court of
30 competent jurisdiction.

31 b. In any civil action under this section the court shall, in
32 addition to any other appropriate legal or equitable relief, award
33 damages in an amount that constitutes the greater of:

34 (1) \$1,000, or

35 (2) Three times the value of all costs incurred by the victim as a
36 result of the defendant's criminal activity, including any fees paid
37 to the defendant for services, costs incurred for attorneys' fees,
38 court costs and any out-of-pocket losses.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted March 15, 2010.

²Assembly floor amendments adopted March 22, 2010.

1 c. The standard of proof in civil actions brought under this
 2 section is a preponderance of the evidence, and the fact that a
 3 prosecution for a violation of section 1 of P.L.1994, c.47 (C.2C:21-
 4 22) is not instituted or, where instituted, terminates without a
 5 conviction shall not preclude a civil action pursuant to this section.
 6 A final judgment rendered in favor of the State in any criminal
 7 proceeding shall estop the defendant from denying the same
 8 conduct in any civil action brought pursuant to this section.

9 d. A civil action under this section shall not preclude the
 10 application of any other civil, administrative, or criminal remedy
 11 under any other provision of law.¹

12
 13 ¹3. Section 1 of P.L.1997, c.1 (C.2C:21-31) is amended to read
 14 as follows:

15 1. a. As used in this section:

16 (1) "Immigration consultant" means any person rendering
 17 services for a fee, including the completion of forms and
 18 applications, to another person in furtherance of that person's desire
 19 to determine or modify his status in an immigration or
 20 naturalization matter under federal law.

21 (2) "Immigration or naturalization matter" means any matter
 22 which involves any law, action, filing or proceeding related to a
 23 person's immigration or citizenship status in the United States.

24 (3) "Immigration-related document" means any birth certificate
 25 or marriage certificate; any document issued by the government of
 26 the United States, any foreign country, any state, or any other public
 27 entity relating to a person's immigration or naturalization status.

28 b. ²(1)² Any immigration consultant not licensed as an attorney
 29 or counselor at law who²【:

30 (1) Engages】 engages² in this State in the practice of law²【; or】
 31 is guilty of a crime of the fourth degree.²

32 (2) ²【Holds】 Any immigration consultant not licensed as an
 33 attorney or counselor at law who holds² himself out to the public,
 34 either alone or together with, by or through another person, whether
 35 such other person is licensed as an attorney or counselor at law or
 36 not, as engaging in or entitled to engage in the practice of law, or as
 37 rendering legal service or advice, or as furnishing attorneys or
 38 counsel, in any immigration or naturalization matter ²【; or】 is
 39 guilty of a crime of the third degree.²

40 (3) ²【Assumes,】 Any immigration consultant not licensed as an
 41 attorney or counselor at law who assumes,² uses or advertises the
 42 title of lawyer or attorney at law, or equivalent terms, in the English
 43 language or any other language, is guilty of a crime of the 【fourth】
 44 third degree.

45 c. Any person who knowingly retains possession of another
 46 person's immigration-related document for more than a reasonable

1 time after the person who owns the document has submitted a
2 written request for the document's return is guilty of a crime of the
3 fourth degree.

4 d. Nothing in this section shall be construed to prohibit a
5 person accredited as a representative by federal law pursuant to 8
6 CFR 292.2 from providing immigration services.¹
7 (cf: P.L.1997, c.1, s.1)

8
9 ¹4. (New section) a. Any person who suffers any ascertainable
10 loss of moneys or property, real or personal, as a result of any
11 action or inaction by a person who knowingly engaged in the
12 unauthorized practice of law in violation of section 1 of P.L.1997,
13 c.1 (C.2C:21-31) may bring a civil action in any court of competent
14 jurisdiction.

15 b. In any civil action under this section the court shall, in
16 addition to any other appropriate legal or equitable relief, award
17 damages in an amount that constitutes the greater of:

18 (1) \$1,000, or

19 (2) Three times the value of all costs incurred by the victim as a
20 result of the defendant's criminal activity, including any fees paid
21 to the defendant for services, costs incurred for attorneys' fees,
22 court costs and any out-of-pocket losses.

23 c. The standard of proof in civil actions brought under this
24 section is a preponderance of the evidence, and the fact that a
25 prosecution for a violation of section 1 of P.L.1997, c.1 (C.2C:21-
26 31) is not instituted or, where instituted, terminates without a
27 conviction shall not preclude a civil action pursuant to this section.
28 A final judgment rendered in favor of the State in any criminal
29 proceeding shall estop the defendant from denying the same
30 conduct in any civil action brought pursuant to this section.

31 d. A civil action under this section shall not preclude the
32 application of any other civil, administrative, or criminal remedy
33 under any other provision of law.¹

34
35 ¹5. Section 1 of P.L.1981, c.487 (C.52:7-20) is amended to read
36 as follows:

37 1. No person shall be appointed or reappointed a notary public
38 if he has been convicted under the laws of this State of an offense
39 involving dishonesty, including but not limited to a violation of
40 section 1 of P.L.1997, c.1 (C.2C:21-31) or section 1 of P.L.1994,
41 c.47 (C.2C:21-22), or of a crime of the second degree or above, but
42 nothing in this section shall be deemed to supersede P.L.1968, c.
43 282 (C. 2A:168A-1 et seq.).¹

44 (cf: P.L.1981, c.487, s.1)

45
46 ¹[2.] 6.¹ This act shall take effect immediately.

A1050 [2R]

4

1

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5

Upgrades offenses of engaging in unauthorized practice of law;
creates civil action; provides that persons convicted of the offenses
are barred from appointment as a notary public.

ASSEMBLY, No. 1050

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

Co-Sponsored by:

Assemblyman Gusciora

SYNOPSIS

Upgrades offense of knowingly engaging in unauthorized practice of law.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



A1050 QUIJANO, WISNIEWSKI

2

1 AN ACT concerning the unauthorized practice of law and amending
2 P.L.1994, c.47.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1994, c.47 (C.2C:21-22) is amended to read
8 as follows:

9 1. a. A person is guilty of a **[disorderly persons offense]** crime
10 of the fourth degree if the person knowingly engages in the
11 unauthorized practice of law.

12 b. A person is guilty of a crime of the **[fourth]** third degree if
13 the person knowingly engages in the unauthorized practice of law
14 and:

15 (1) Creates or reinforces a false impression that the person is
16 licensed to engage in the practice of law; or

17 (2) Derives a benefit; or

18 (3) In fact causes injury to another.

19 c. For the purposes of this section, the phrase "in fact"
20 indicates strict liability.

21 (cf: P.L.1994,c.47,s.1)

22

23 2. This act shall take effect immediately.

24

25

26

STATEMENT

27

28 This bill upgrades the offense of knowingly engaging in the
29 unauthorized practice of law.

30 Currently this is a disorderly persons offense but it is increased
31 to a crime of the fourth degree if the person knowingly engages in
32 the unauthorized practice of law and: (1) creates or reinforces a
33 false impression that the person is licensed to engage in the practice
34 of law; or (2) derives a benefit; or (3) in fact causes injury to
35 another.

36 This bill upgrades the offense generally to a crime of the fourth
37 degree in subsection a. of N.J.S.A.2C:21-22. If one of the
38 additional circumstances is present then the crime would be
39 upgraded from the present category of a crime of the fourth degree
40 to a crime of the third degree in subsection b. of N.J.S.A.2C:21-22.

41 A disorderly persons offense is punishable by a term of
42 imprisonment not to exceed six months or a fine not to exceed
43 \$1,000 or both. A crime of the fourth degree ordinarily is
44 punishable by a term of imprisonment not to exceed 18 months or a

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

A1050 QUIJANO, WISNIEWSKI

3

- 1 fine not to exceed \$10,000 or both. A crime of the third degree
- 2 ordinarily is punishable by a term of imprisonment between three to
- 3 five years or a fine not to exceed \$15,000 or both.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1050

STATE OF NEW JERSEY

DATED: MARCH 8, 2010

The Assembly Judiciary Committee reports favorably Assembly Bill No. 1050.

This bill upgrades the offense of knowingly engaging in the unauthorized practice of law.

Currently this is graded as a disorderly persons offense. However, if the person knowingly engages in the unauthorized practice of law and: (1) creates or reinforces a false impression that the person is licensed to engage in the practice of law; or (2) derives a benefit; or (3) in fact causes injury to another, it is a crime of the fourth degree.

This bill provides that knowingly engaging in the unauthorized practice of law would be upgraded from a disorderly persons offense to a crime of the fourth degree. If one of the additional circumstances is present the crime would be upgraded from a crime of the fourth degree to a crime of the third degree.

A disorderly persons offense is punishable by a term of imprisonment not to exceed six months or a fine not to exceed \$1,000 or both; a crime of the fourth degree, by a term of imprisonment not to exceed 18 months or a fine not to exceed \$10,000 or both; and a crime of the third degree, by a term of imprisonment between three to five years or a fine not to exceed \$15,000 or both.

This bill was pre-filed for introduction in the 2010-2011 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO
ASSEMBLY, No. 1050

with Assembly Floor Amendments
(Proposed by Assemblywoman QUIJANO)

ADOPTED: MARCH 15, 2010

Under N.J.S.A. 2C:21-22, a person who practices law without a license is guilty of a crime of the fourth degree if he creates or reinforces a false impression that he is licensed. This bill would upgrade the act to a crime of the third degree.

Another statute, N.J.S.A. 2C:21-31, also concerns the unauthorized practice of law. This statute currently provides that it is a crime of the fourth degree for any immigration consultant not licensed as an attorney to engage in the practice of law or hold himself out to the public as entitled to engage in the practice of law in any immigration or naturalization matter. These floor amendments would upgrade the crime of practicing immigration law without a license to a crime of the third degree in order to be consistent with the bill.

The floor amendments also create a civil action for persons who suffer damages. Under the amendments, a person who suffers any ascertainable loss of moneys or property, real or personal, as a result of any action or inaction by a person who was in violation of either statute concerning the unauthorized practice of law may bring a civil action in any court of competent jurisdiction. In addition to any other appropriate legal or equitable relief, the court would award damages in an amount that constitutes the greater of: (1) \$1,000, or (2) three times the value of all costs incurred by the victim as a result of the defendant's criminal activity, including any fees paid to the defendant for services, costs incurred for attorneys' fees, court costs and any out-of-pocket losses.

The standard of proof in the civil action would be a preponderance of the evidence. The amendments provide that the fact that a criminal prosecution is not instituted or, where instituted, terminates without a conviction would not preclude the civil action. Under the amendments, a final judgment rendered in favor of the State in any criminal proceeding would estop the defendant from denying the same conduct in the civil action.

The amendments also provide that the civil action would not preclude the application of any other civil, administrative, or criminal remedy under any other provision of law.

In addition, the amendments provide that a person convicted of a violation of either statute would be barred from appointment or reappointment as a notary public. According to the New Jersey Supreme Court's Committee on the Unauthorized Practice of Law, some notaries public in immigrant communities take advantage of

language differences to facilitate the unauthorized practice of law. For example, the words “notario” and “notario publico” may mean “attorney” in certain countries, and dishonest notaries public exploit this language confusion. (Opinion 41 of the Committee on the Unauthorized Practice of Law, November 1, 2004.)

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 1050

with Assembly Floor Amendments
(Proposed by Assemblywoman QUIJANO)

ADOPTED: MARCH 22, 2010

These floor amendments provide that any immigration consultant not licensed as an attorney or counselor at law who engages in the practice of law would be guilty of a crime of the fourth degree, as set out in N.J.S.A.2C:21-31. The amendments also clarify that any such person who holds himself out as an attorney in any immigration matter would be guilty of a crime of the third degree.

As amended by the floor amendments, the bill would provide the following penalties:

- Any immigration consultant not licensed as an attorney or counselor at law who engages in the practice of law would be guilty of a crime of the fourth degree.
- Any immigration consultant not licensed as an attorney or counselor at law who holds himself out to the public as engaging in or entitled to engage in the practice of law, or as rendering legal service or advice, or as furnishing attorneys or counsel in any immigration or naturalization matter would be guilty of a crime of the third degree.
- Any immigration consultant not licensed as an attorney or counselor at law who assumes, uses or advertises the title of lawyer or attorney at law, or equivalent terms would be guilty of a crime of the third degree.

Current law also provides that it is a crime of the fourth degree to knowingly retain possession of another person's immigration-related document for more than a reasonable time after the person who owns the document has submitted a written request for the document's return. These amendments would not change this provision.

These amendments would make the bill's changes to N.J.S.A.2C:21-31, concerning the unauthorized practice of immigration law, consistent with the bill's changes to N.J.S.A.2C:21-22, concerning the unauthorized practice of law.

FISCAL NOTE
[First Reprint]
ASSEMBLY, No. 1050
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: MAY 21, 2010

SUMMARY

- Synopsis:** Upgrades offenses of engaging in unauthorized practice of law; creates civil action; provides that persons convicted of the offenses are barred from appointment as a notary public.
- Type of Impact:** Minimal General Fund expenditure.
- Agencies Affected:** Judiciary.

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Minimal - See comments below		

- The Office of Legislative Services **concurs** with the Executive estimate and adds that convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders, and as a result, implementation of the bill would generate no additional costs for the Department of Corrections.
- The bill would upgrade the act of practicing law without a license from a crime of the fourth degree to a crime of the third degree. The bill also upgrades the crime of practicing immigration law without a license from a crime of the fourth degree to a crime of the third degree. The bill creates a civil action for persons who suffer damages.
- The Administrative Office of the Courts (AOC) states that bill would have a minimal impact on judicial resources.

BILL DESCRIPTION

Assembly Bill No. 1050 (1R) of 2010 would upgrade the act of practicing law without a license from a crime of the fourth degree to a crime of the third degree if the offender creates or reinforces a false impression that he is licensed.

The bill also upgrades the crime of practicing immigration law without a license from a crime of the fourth degree to a crime of the third degree.

The bill creates a civil action for persons who suffer damages. Under the bill a person who suffers any ascertainable loss of moneys or property, real or personal, as a result of any action or inaction by a person who was in violation of either statute concerning the unauthorized practice of law may bring a civil action in any court of competent jurisdiction. In addition to any other appropriate legal or equitable relief, the court would award damages in an amount that constitutes the greater of: (1) \$1,000, or (2) three times the value of all costs incurred by the victim as a result of the defendant's criminal activity, including any fees paid to the defendant for services, costs incurred for attorneys' fees, court costs and any out-of-pocket losses.

The standard of proof in the civil action would be a preponderance of the evidence. The amendments provide that the fact that a criminal prosecution is not instituted or, where instituted, terminates without a conviction would not preclude the civil action. Under the bill, a final judgment rendered in favor of the State in any criminal proceeding would estop the defendant from denying the same conduct in the civil action.

The bill also provides that the civil action would not preclude the application of any other civil, administrative, or criminal remedy under any other provision of law.

In addition, the bill provides that a person convicted of a violation of either statute would be barred from appointment or reappointment as a notary public.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The AOC states according to data from PROMIS Gavel, during 2009, only six people were convicted of the fourth degree offense, engaging in the unauthorized practice of law. All six of those convictions were the result of guilty pleas. The AOC notes that it seems logical that the increased penalties associated with this bill could reduce the defendant's incentive to plead guilty to these offenses. As a result, the trial rate could increase, and there could be an impact on judicial resources. According to PROMIS, however, during 2007-2009 only .58 percent of convictions for third degree crimes and .64 percent of convictions for fourth degree crimes were the result of jury trials. Therefore, the fact that so few convictions for third and fourth degree crimes result from jury trials suggests that this bill would have a minimal impact on judicial resources.

The AOC also states that it does not have the data with which to determine the number of cases that would result in civil actions. However, it is anticipated that these cases would be assumed within the AOC's general caseloads.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services concurs with the Executive estimate and adds that the penalty for a third degree crime is a fine of up to \$15,000 and a term of imprisonment of up to 3-5 years, or both; and the penalty for a fourth degree crime is a fine of up to \$10,000 and a term or imprisonment of up to 18 months or both. However, convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders, and as a result, implementation of the bill would generate no additional costs for the Department of Corrections.

Section: Judiciary

*Analyst: Anne Raughley
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[Second Reprint]
ASSEMBLY, No. 1050

STATE OF NEW JERSEY

DATED: MARCH 10, 2011

The Senate Judiciary Committee reports favorably Assembly Bill No. 1050 (2R).

This bill upgrades offenses concerning the unauthorized practice of law.

Currently, subsection a. of N.J.S.A.2C:21-22 provides that a person who knowingly engages in the unauthorized practice of law is guilty of a disorderly persons offense. Subsection b. of the statute provides that a person who knowingly engages in the unauthorized practice of law and either (1) creates or reinforces a false impression that he is licensed; (2) derives a benefit; or (3) in fact causes injury to another, is guilty of a crime of the fourth degree. This bill would upgrade both subsections of N.J.S.A.2C:21-22, so that a person who engages in the unauthorized practice of law would be guilty of a crime of the fourth degree, and a person who engages in the unauthorized practice of law and commits any of the three enumerated acts would be guilty of a crime of the third degree.

A related statute, N.J.S.A.2C:21-31, provides that it is also a crime of the fourth degree for any “immigration consultant” to (1) engage in the unauthorized practice of law; (2) hold himself out to the public as engaging in or entitled to engage in the practice of law, rendering legal service or advice, or furnishing attorneys or counsel, in any immigration or naturalization matter; or (3) assume, use or advertise the title of lawyer or attorney at law, or equivalent terms, in the English language or any other language. The statute defines “immigration consultant” as “any person rendering services for a fee, including the completion of forms and applications, to another person in furtherance of that person’s desire to determine or modify his status in an immigration or naturalization matter under federal law.”

The bill changes the structure of N.J.S.A.2C:21-31 to more closely resemble that of N.J.S.A.2C:21-22, which makes it a lesser degree of crime to engage in the unauthorized practice of law and a higher degree of crime to engage in the unauthorized practice of law and also commit any of the enumerated acts. Under the bill, it would remain a crime of the fourth degree for an immigration consultant to engage in the unauthorized practice of law. However, it would be a crime of the

third degree for an immigration consultant to (1) hold himself out to the public as engaging in or entitled to engage in the practice of law, rendering legal service or advice, or furnishing attorneys or counsel, in any immigration or naturalization matter; or (2) assume, use or advertise the title of lawyer or attorney at law.

Currently, N.J.S.A.2C:21-31 also provides that it is a crime of the fourth degree to knowingly retain possession of another person's immigration-related document for more than a reasonable time after the person who owns the document has submitted a written request for the document's return. The bill would not change this provision.

The bill also creates a civil action for persons who suffer damages. Under the bill, a person who suffers any ascertainable loss of moneys or property, real or personal, as a result of any action or inaction by a person who was in violation of either N.J.S.A.2C:21-22 or N.J.S.A.2C:21-31 concerning the unauthorized practice of law may bring a civil action in any court of competent jurisdiction. In addition to any other appropriate legal or equitable relief, the court would award damages in an amount that constitutes the greater of: (1) \$1,000, or (2) three times the value of all costs incurred by the victim as a result of the defendant's criminal activity, including any fees paid to the defendant for services, costs incurred for attorneys' fees, court costs and any out-of-pocket losses.

The standard of proof in the civil action would be a preponderance of the evidence. The bill provides that the fact that a criminal prosecution is not instituted or, where instituted, terminates without a conviction would not preclude the civil action. Under the bill, a final judgment rendered in favor of the State in any criminal proceeding would estop the defendant from denying the same conduct in the civil action. The bill also provides that the civil action would not preclude the application of any other civil, administrative, or criminal remedy under any other provision of law.

In addition, the bill amends N.J.S.A.52:7-20 to provide that a person convicted of a violation of either N.J.S.A.2C:21-22 or N.J.S.A.2C:21-31 would be barred from appointment or reappointment as a notary public. N.J.S.A.52:7-20 currently bars appointment as a notary public of a person convicted of an offense involving dishonesty or a crime of the second degree or above.

A disorderly persons offense is punishable by a term of imprisonment not to exceed six months or a fine not to exceed \$1,000 or both; a crime of the fourth degree, by a term of imprisonment not to exceed 18 months or a fine not to exceed \$10,000 or both; and a crime of the third degree, by a term of imprisonment of three to five years or a fine not to exceed \$15,000 or both.

This bill is identical to Senate No. 184 (1R).

FISCAL NOTE
[Second Reprint]
ASSEMBLY, No. 1050
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: NOVEMBER 28, 2011

SUMMARY

Synopsis: Upgrades offenses of engaging in unauthorized practice of law; creates civil action; provides that persons convicted of the offenses are barred from appointment as a notary public.

Type of Impact: Minimal General Fund expenditure.

Agencies Affected: Judiciary, Corrections

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Minimal – See comments below		

- The Office of Legislative Services **concurs** with the Executive estimate and adds that convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders, and as a result, implementation of the bill would generate no additional costs for the Department of Corrections.
- The bill would upgrade the acts of engaging in the unauthorized practice of law and creates a civil action for persons who suffer damage. It also provides that persons convicted of the offenses are barred from appointment as a notary public.
- The Administrative Office of the Courts (AOC) states that bill would have a minimal impact on judicial resources.

BILL DESCRIPTION

Assembly Bill No. 1050 (2R) of 2010 would upgrade offenses concerning the unauthorized practice of law.

Currently, subsection a. of N.J.S.A.2C:21-22 provides that a person who knowingly engages in the unauthorized practice of law is guilty of a disorderly persons offense. Subsection b. of the

statute provides that a person who knowingly engages in the unauthorized practice of law and either (1) creates or reinforces a false impression that he is licensed; (2) derives a benefit; or (3) in fact causes injury to another, is guilty of a crime of the fourth degree. This bill would upgrade both subsections of N.J.S.A.2C:21-22, so that a person who engages in the unauthorized practice of law would be guilty of a crime of the fourth degree, and a person who engages in the unauthorized practice of law and commits any of the three enumerated acts would be guilty of a crime of the third degree.

The bill also provides that a violation of a related statute, N.J.S.A.2C:21-31, would also be upgraded. Under the statute, it is currently a crime of the fourth degree for any “immigration consultant” to (1) engage in the unauthorized practice of law; (2) hold himself out to the public as engaging in or entitled to engage in the practice of law, rendering legal service or advice, or furnishing attorneys or counsel, in any immigration or naturalization matter; or (3) assume, use or advertise the title of lawyer or attorney at law, or equivalent terms, in the English language or any other language. The statute defines “immigration consultant” as “any person rendering services for a fee, including the completion of forms and applications, to another person in furtherance of that person’s desire to determine or modify his status in an immigration or naturalization matter under federal law.”

The bill changes the structure of N.J.S.A.2C:21-31 to more closely resemble that of N.J.S.A.2C:21-22, which makes it a lesser degree of crime to engage in the unauthorized practice of law and a higher degree of crime to engage in the unauthorized practice of law and also commit any of the enumerated acts. Under the bill, it would remain a crime of the fourth degree for an immigration consultant to engage in the unauthorized practice of law. However, it would be a crime of the third degree for an immigration consultant to (1) hold himself out to the public as engaging in or entitled to engage in the practice of law, rendering legal service or advice, or furnishing attorneys or counsel, in any immigration or naturalization matter; or (2) assume, use or advertise the title of lawyer or attorney at law.

The bill also creates a civil action for persons who suffer damages. Under the bill, a person who suffers any ascertainable loss of moneys or property, real or personal, as a result of any action or inaction by a person who was in violation of either N.J.S.A.2C:21-22 or N.J.S.A.2C:21-31 concerning the unauthorized practice of law may bring a civil action in any court of competent jurisdiction. In addition to any other appropriate legal or equitable relief, the court would award damages in an amount that constitutes the greater of: (1) \$1,000, or (2) three times the value of all costs incurred by the victim as a result of the defendant's criminal activity, including any fees paid to the defendant for services, costs incurred for attorneys’ fees, court costs and any out-of-pocket losses.

The standard of proof in the civil action would be a preponderance of the evidence. The amendments provide that the fact that a criminal prosecution is not instituted or, where instituted, terminates without a conviction would not preclude the civil action. A final judgment rendered in favor of the State in any criminal proceeding would estop the defendant from denying the same conduct in the civil action. The civil action would not preclude the application of any other civil, administrative, or criminal remedy under any other provision of law.

In addition, bill provides that a person convicted of a violation of either N.J.S.A.2C:21-22 or N.J.S.A.2C:21-31 would be barred from appointment or reappointment as a notary public. N.J.S.A.52:7-20 currently bars appointment as a notary public of a person convicted of an offense involving dishonesty or a crime of the second degree or above.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The AOC states according to data from PROMIS Gavel, during 2009, only six people were convicted of the fourth degree offense, engaging in the unauthorized practice of law. All six of those convictions were the result of guilty pleas. The AOC notes that it seems logical that the increased penalties associated with this bill could reduce the defendant's incentive to plead guilty to these offenses. As a result, the trial rate could increase, and there could be an impact on judicial resources. According to PROMIS, however, during 2007-2009 only .58 percent of convictions for third degree crimes and .64 percent of convictions for fourth degree crimes were the result of jury trials. Therefore, the fact that so few convictions for third and fourth degree crimes result from jury trials suggests that this bill would have a minimal impact on judicial resources.

The AOC also states that it does not have the data with which to determine the number of cases that would result in civil actions. However, it is anticipated that these cases would be assumed within the AOC's general caseloads.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services concurs with the Executive estimate and adds that a disorderly persons offense is punishable by a term of imprisonment not to exceed six months or a fine not to exceed \$1,000 or both; a crime of the fourth degree, by a term of imprisonment not to exceed 18 months or a fine not to exceed \$10,000 or both; and a crime of the third degree, by a term of imprisonment of three to five years or a fine not to exceed \$15,000 or both. However, convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders, and as a result, implementation of the bill would generate no additional costs for the Department of Corrections.

Section: Judiciary

Analyst: Anne Raughley
Principal Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]
ASSEMBLY, No. 1050

STATE OF NEW JERSEY

DATED: DECEMBER 15, 2011

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1050 (2R).

This bill upgrades offenses concerning the unauthorized practice of law and also creates a civil cause of action for persons who suffer damages as victims of such crimes.

The bill upgrades the disorderly persons offense found in N.J.S.A.2C:21-22 of knowingly engaging in the unauthorized practice of law to a crime of the fourth degree. The bill upgrades from a fourth degree crime to a third degree crime knowingly engaging in the unauthorized practice of law and either (1) creating or reinforcing a false impression that the person is licensed; (2) deriving a benefit; or (3) in fact causing injury to another.

The bill also upgrades the violation of a related statute, N.J.S.A.2C:21-31. Under that statute, it is a crime of the fourth degree for any “immigration consultant” to (1) engage in the unauthorized practice of law; (2) hold himself out to the public as engaging in or entitled to engage in the practice of law, rendering legal service or advice, or furnishing attorneys or counsel, in any immigration or naturalization matter; or (3) assume, use or advertise the title of lawyer or attorney at law, or equivalent terms, in the English language or any other language.

The bill amends N.J.S.A.2C:21-31 to more closely resemble N.J.S.A.2C:21-22, which makes it a lesser degree of crime to engage in the unauthorized practice of law and a higher degree of crime to engage in the unauthorized practice of law and also commit any of the enumerated acts. Under the bill, it remains a crime of the fourth degree for an immigration consultant to engage in the unauthorized practice of law. However, the bill makes it a crime of the third degree for an immigration consultant to (1) hold himself out to the public as engaging in or entitled to engage in the practice of law, rendering legal service or advice, or furnishing attorneys or counsel, in any immigration or naturalization matter; or (2) assume, use or advertise the title of lawyer or attorney at law.

The provision in N.J.S.A.2C:21-31 that makes it a crime of the fourth degree to knowingly retain possession of another person’s immigration-related document for more than a reasonable time after

the person who owns the document has submitted a written request for the document's return is not changed.

The bill also creates a civil action for persons who suffer damages. Under the bill, a person who suffers any ascertainable loss of moneys or property, real or personal, as a result of any action or inaction by a person who violates either N.J.S.A.2C:21-22 or N.J.S.A.2C:21-31 concerning the unauthorized practice of law may bring a civil action in any court of competent jurisdiction. In addition to any other appropriate legal or equitable relief, the court is authorized to award damages in an amount that constitutes the greater of: (1) \$1,000, or (2) three times the value of all costs incurred by the victim as a result of the defendant's criminal activity, including any fees paid to the defendant for services, costs incurred for attorneys' fees, court costs and any out-of-pocket losses.

The standard of proof in the civil action would be a preponderance of the evidence. The bill provides that the fact that a criminal prosecution is not instituted or, where instituted, terminates without a conviction does not preclude the civil action. A final judgment rendered in favor of the State in any criminal proceeding will estop the defendant from denying the same conduct in the civil action. The civil action will not preclude the application of any other civil, administrative, or criminal remedy under any other provision of law.

In addition, the bill amends N.J.S.A.52:7-20 to provide that a person convicted of a violation of either N.J.S.A.2C:21-22 or N.J.S.A.2C:21-31 is barred from appointment or reappointment as a notary public. N.J.S.A.52:7-20 currently bars appointment as a notary public of a person convicted of an offense involving dishonesty or a crime of the second degree or above.

A disorderly persons offense is punishable by a term of imprisonment not to exceed six months or a fine not to exceed \$1,000 or both; a crime of the fourth degree, by a term of imprisonment not to exceed 18 months or a fine not to exceed \$10,000 or both; and a crime of the third degree, by a term of imprisonment of three to five years or a fine not to exceed \$15,000 or both.

As reported, this bill is identical to Senate No. 184 (1R), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services concurs with the Executive estimate in the Fiscal Note for this bill that the bill will not generate additional costs for the Department of Corrections given that convictions for third and fourth degree offenses carry with them a presumption of non-incarceration for first time offenders.

The Administrative Office of the Courts (AOC) notes that less than 1% of all convictions for third and fourth degree crimes result from jury trials, and assumes that the provisions of this bill will have a minimal impact on judicial resources. The AOC also states that it does not have the data with which to determine the number of cases that

would result in civil actions. However, it is anticipated that any new civil cases will be assumed within the AOC's general caseloads.

SENATE, No. 184

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Upgrades offense of knowingly engaging in unauthorized practice of law.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



S184 SCUTARI

2

1 AN ACT concerning the unauthorized practice of law and amending
2 P.L.1994, c.47.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1994, c.47 (C.2C:21-22) is amended to read
8 as follows:

9 1. a. A person is guilty of a **[disorderly persons offense]** crime
10 of the fourth degree if the person knowingly engages in the
11 unauthorized practice of law.

12 b. A person is guilty of a crime of the **[fourth]** third degree if
13 the person knowingly engages in the unauthorized practice of law
14 and:

15 (1) Creates or reinforces a false impression that the person is
16 licensed to engage in the practice of law; or

17 (2) Derives a benefit; or

18 (3) In fact causes injury to another.

19 c. For the purposes of this section, the phrase "in fact" indicates
20 strict liability.

21 (cf: P.L.1994,c.47,s.1)

22

23 2. This act shall take effect immediately.

24

25

26

STATEMENT

27

28 This bill upgrades the offense of knowingly engaging in the
29 unauthorized practice of law.

30 Currently this is a disorderly persons offense but it is increased
31 to a crime of the fourth degree if the person knowingly engages in
32 the unauthorized practice of law and: (1) creates or reinforces a
33 false impression that the person is licensed to engage in the practice
34 of law; or (2) derives a benefit; or (3) in fact causes injury to
35 another.

36 This bill upgrades the offense generally to a crime of the fourth
37 degree in subsection a. of N.J.S.A.2C:21-22. If one of the
38 additional circumstances is present then the crime would be
39 upgraded from the present category of a crime of the fourth degree
40 to a crime of the third degree in subsection b. of N.J.S.A.2C:21-22.

41 A disorderly persons offense is punishable by a term of
42 imprisonment not to exceed six months or a fine not to exceed
43 \$1,000 or both. A crime of the fourth degree ordinarily is
44 punishable by a term of imprisonment not to exceed 18 months or a
45 fine not to exceed \$10,000 or both. A crime of the third degree

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

S184 SCUTARI

3

- 1 ordinarily is punishable by a term of imprisonment between three to
- 2 five years or a fine not to exceed \$15,000 or both.

FISCAL NOTE
SENATE, No. 184
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: AUGUST 13, 2010

SUMMARY

Synopsis: Upgrades offense of knowingly engaging in unauthorized practice of law.

Type of Impact: Minimal General Fund expenditure.

Agencies Affected: Judiciary, Department of Corrections

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Minimal - See comments below		

- The Office of Legislative Services **concurs** with the Executive estimate and adds that convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders, and as a result, implementation of the bill would generate no additional costs for the Department of Corrections (DOC).
- The bill would upgrade the act of practicing law without a license from a crime of the fourth degree to a crime of the third degree.
- The DOC states that no data is available with which to determine the fiscal impact of this bill.
- The Administrative Office of the Courts (AOC) states that bill would have a minimal impact on judicial resources.

BILL DESCRIPTION

Senate Bill No. 184 of 2010 upgrades the offense of knowingly engaging in the unauthorized practice of law.

Currently this is a disorderly persons offense but it is increased to a crime of the fourth degree if the person knowingly engages in the unauthorized practice of law and: (1) creates or

reinforces a false impression that the person is licensed to engage in the practice of law; or (2) derives a benefit; or (3) in fact causes injury to another.

This bill upgrades the offense generally to a crime of the fourth degree in subsection a. of N.J.S.A.2C:21-22. If one of the additional circumstances is present then the crime would be upgraded from the present category of a crime of the fourth degree to a crime of the third degree in subsection b. of N.J.S.A.2C:21-22.

A disorderly persons offense is punishable by a term of imprisonment not to exceed six months or a fine not to exceed \$1,000 or both. A crime of the fourth degree ordinarily is punishable by a term of imprisonment not to exceed 18 months or a fine not to exceed \$10,000 or both. A crime of the third degree ordinarily is punishable by a term of imprisonment between three to five years or a fine not to exceed \$15,000 or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Department of Corrections

The DOC states that no data is available with which to determine the fiscal impact of this bill.

Administrative Office of the Courts

In a fiscal note to a similar bill introduced during this session (A1050-1R), the AOC stated that according to data from PROMIS Gavel, during 2009, only six people were convicted of the fourth degree offense, engaging in the unauthorized practice of law. All six of those convictions were the result of guilty pleas. The AOC noted that it seems logical that the increased penalties associated with this bill could reduce the defendant's incentive to plead guilty to these offenses. As a result, the trial rate could increase, and there could be an impact on judicial resources. According to PROMIS, however, during 2007-2009 only .58 percent of convictions for third degree crimes and .64 percent of convictions for fourth degree crimes were the result of jury trials. Therefore, the fact that so few convictions for third and fourth degree crimes result from jury trials suggests that this bill would have a minimal impact on judicial resources

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services concurs with the Executive estimate and adds that the penalty for a third degree crime is a fine of up to \$15,000 and a term of imprisonment of up to 3-5 years, or both; and the penalty for a fourth degree crime is a fine of up to \$10,000 and a term or imprisonment of up to 18 months or both. However, convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders, and as a result, implementation of the bill would generate no additional costs for the DOC.

Section: *Judiciary*

Analyst: *Anne Raughley*
 Principal Fiscal Analyst

Approved: *David J. Rosen*
 Legislative Budget and Finance Officer

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 184

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 10, 2011

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 184.

This bill upgrades offenses concerning the unauthorized practice of law.

Currently, subsection a. of N.J.S.A.2C:21-22 provides that a person who knowingly engages in the unauthorized practice of law is guilty of a disorderly persons offense. Subsection b. of the statute provides that a person who knowingly engages in the unauthorized practice of law and either (1) creates or reinforces a false impression that he is licensed; (2) derives a benefit; or (3) in fact causes injury to another, is guilty of a crime of the fourth degree. This bill would upgrade both subsections of N.J.S.A.2C:21-22, so that a person who engages in the unauthorized practice of law would be guilty of a crime of the fourth degree, and a person who engages in the unauthorized practice of law and commits any of the three enumerated acts would be guilty of a crime of the third degree.

The committee amended the bill to provide that a violation of a related statute, N.J.S.A.2C:21-31, would also be upgraded. Under the statute, it is currently a crime of the fourth degree for any “immigration consultant” to (1) engage in the unauthorized practice of law; (2) hold himself out to the public as engaging in or entitled to engage in the practice of law, rendering legal service or advice, or furnishing attorneys or counsel, in any immigration or naturalization matter; or (3) assume, use or advertise the title of lawyer or attorney at law, or equivalent terms, in the English language or any other language. The statute defines “immigration consultant” as “any person rendering services for a fee, including the completion of forms and applications, to another person in furtherance of that person’s desire to determine or modify his status in an immigration or naturalization matter under federal law.”

The amendments change the structure of N.J.S.A.2C:21-31 to more closely resemble that of N.J.S.A.2C:21-22, which makes it a lesser degree of crime to engage in the unauthorized practice of law and a higher degree of crime to engage in the unauthorized practice of law and also commit any of the enumerated acts. Under the amendments,

it would remain a crime of the fourth degree for an immigration consultant to engage in the unauthorized practice of law. However, it would be a crime of the third degree for an immigration consultant to (1) hold himself out to the public as engaging in or entitled to engage in the practice of law, rendering legal service or advice, or furnishing attorneys or counsel, in any immigration or naturalization matter; or (2) assume, use or advertise the title of lawyer or attorney at law.

Currently, N.J.S.A.2C:21-31 also provides that it is a crime of the fourth degree to knowingly retain possession of another person's immigration-related document for more than a reasonable time after the person who owns the document has submitted a written request for the document's return. The bill would not change this provision.

The amendments also create a civil action for persons who suffer damages. Under the amendments, a person who suffers any ascertainable loss of moneys or property, real or personal, as a result of any action or inaction by a person who was in violation of either N.J.S.A.2C:21-22 or N.J.S.A.2C:21-31 concerning the unauthorized practice of law may bring a civil action in any court of competent jurisdiction. In addition to any other appropriate legal or equitable relief, the court would award damages in an amount that constitutes the greater of: (1) \$1,000, or (2) three times the value of all costs incurred by the victim as a result of the defendant's criminal activity, including any fees paid to the defendant for services, costs incurred for attorneys' fees, court costs and any out-of-pocket losses.

The standard of proof in the civil action would be a preponderance of the evidence. The amendments provide that the fact that a criminal prosecution is not instituted or, where instituted, terminates without a conviction would not preclude the civil action. A final judgment rendered in favor of the State in any criminal proceeding would estop the defendant from denying the same conduct in the civil action. The civil action would not preclude the application of any other civil, administrative, or criminal remedy under any other provision of law.

In addition, the committee amended N.J.S.A.52:7-20 to provide that a person convicted of a violation of either N.J.S.A.2C:21-22 or N.J.S.A.2C:21-31 would be barred from appointment or reappointment as a notary public. N.J.S.A.52:7-20 currently bars appointment as a notary public of a person convicted of an offense involving dishonesty or a crime of the second degree or above.

A disorderly persons offense is punishable by a term of imprisonment not to exceed six months or a fine not to exceed \$1,000 or both; a crime of the fourth degree, by a term of imprisonment not to exceed 18 months or a fine not to exceed \$10,000 or both; and a crime of the third degree, by a term of imprisonment of three to five years or a fine not to exceed \$15,000 or both.

This bill was pre-filed for introduction in the 2010-2011 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

As amended, this bill is identical to Assembly No. 1050 (2R).

FISCAL NOTE
[First Reprint]
SENATE, No. 184
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: NOVEMBER 28, 2011

SUMMARY

- Synopsis:** Upgrades offenses of engaging in unauthorized practice of law; creates civil action; provides that persons convicted of the offenses are barred from appointment as a notary public.
- Type of Impact:** Minimal General Fund expenditure.
- Agencies Affected:** Judiciary, Corrections

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Minimal – See comments below		

- The Office of Legislative Services **concurs** with the Executive estimate and adds that convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders, and as a result, implementation of the bill would generate no additional costs for the Department of Corrections.
- The bill would upgrade the acts of engaging in the unauthorized practice of law and creates a civil action for persons who suffer damage. It also provides that persons convicted of the offenses are barred from appointment as a notary public.
- The Administrative Office of the Courts (AOC) states that bill would have a minimal impact on judicial resources.

BILL DESCRIPTION

Senate Bill No. 184 (1R) of 2010 would upgrade offenses concerning the unauthorized practice of law.

Currently, subsection a. of N.J.S.A.2C:21-22 provides that a person who knowingly engages in the unauthorized practice of law is guilty of a disorderly persons offense. Subsection b. of the

statute provides that a person who knowingly engages in the unauthorized practice of law and either (1) creates or reinforces a false impression that he is licensed; (2) derives a benefit; or (3) in fact causes injury to another, is guilty of a crime of the fourth degree. This bill would upgrade both subsections of N.J.S.A.2C:21-22, so that a person who engages in the unauthorized practice of law would be guilty of a crime of the fourth degree, and a person who engages in the unauthorized practice of law and commits any of the three enumerated acts would be guilty of a crime of the third degree.

The bill also provides that a violation of a related statute, N.J.S.A.2C:21-31, would also be upgraded. Under the statute, it is currently a crime of the fourth degree for any “immigration consultant” to (1) engage in the unauthorized practice of law; (2) hold himself out to the public as engaging in or entitled to engage in the practice of law, rendering legal service or advice, or furnishing attorneys or counsel, in any immigration or naturalization matter; or (3) assume, use or advertise the title of lawyer or attorney at law, or equivalent terms, in the English language or any other language. The statute defines “immigration consultant” as “any person rendering services for a fee, including the completion of forms and applications, to another person in furtherance of that person’s desire to determine or modify his status in an immigration or naturalization matter under federal law.”

The bill changes the structure of N.J.S.A.2C:21-31 to more closely resemble that of N.J.S.A.2C:21-22, which makes it a lesser degree of crime to engage in the unauthorized practice of law and a higher degree of crime to engage in the unauthorized practice of law and also commit any of the enumerated acts. Under the bill, it would remain a crime of the fourth degree for an immigration consultant to engage in the unauthorized practice of law. However, it would be a crime of the third degree for an immigration consultant to (1) hold himself out to the public as engaging in or entitled to engage in the practice of law, rendering legal service or advice, or furnishing attorneys or counsel, in any immigration or naturalization matter; or (2) assume, use or advertise the title of lawyer or attorney at law.

The bill also creates a civil action for persons who suffer damages. Under the bill, a person who suffers any ascertainable loss of moneys or property, real or personal, as a result of any action or inaction by a person who was in violation of either N.J.S.A.2C:21-22 or N.J.S.A.2C:21-31 concerning the unauthorized practice of law may bring a civil action in any court of competent jurisdiction. In addition to any other appropriate legal or equitable relief, the court would award damages in an amount that constitutes the greater of: (1) \$1,000, or (2) three times the value of all costs incurred by the victim as a result of the defendant's criminal activity, including any fees paid to the defendant for services, costs incurred for attorneys’ fees, court costs and any out-of-pocket losses.

The standard of proof in the civil action would be a preponderance of the evidence. The amendments provide that the fact that a criminal prosecution is not instituted or, where instituted, terminates without a conviction would not preclude the civil action. A final judgment rendered in favor of the State in any criminal proceeding would estop the defendant from denying the same conduct in the civil action. The civil action would not preclude the application of any other civil, administrative, or criminal remedy under any other provision of law.

In addition, bill provides that a person convicted of a violation of either N.J.S.A.2C:21-22 or N.J.S.A.2C:21-31 would be barred from appointment or reappointment as a notary public. N.J.S.A.52:7-20 currently bars appointment as a notary public of a person convicted of an offense involving dishonesty or a crime of the second degree or above.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The AOC states according to data from PROMIS Gavel, during 2009, only six people were convicted of the fourth degree offense, engaging in the unauthorized practice of law. All six of those convictions were the result of guilty pleas. The AOC notes that it seems logical that the increased penalties associated with this bill could reduce the defendant's incentive to plead guilty to these offenses. As a result, the trial rate could increase, and there could be an impact on judicial resources. According to PROMIS, however, during 2007-2009 only .58 percent of convictions for third degree crimes and .64 percent of convictions for fourth degree crimes were the result of jury trials. Therefore, the fact that so few convictions for third and fourth degree crimes result from jury trials suggests that this bill would have a minimal impact on judicial resources.

The AOC also states that it does not have the data with which to determine the number of cases that would result in civil actions. However, it is anticipated that these cases would be assumed within the AOC's general caseloads.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services concurs with the Executive estimate and adds that a disorderly persons offense is punishable by a term of imprisonment not to exceed six months or a fine not to exceed \$1,000 or both; a crime of the fourth degree, by a term of imprisonment not to exceed 18 months or a fine not to exceed \$10,000 or both; and a crime of the third degree, by a term of imprisonment of three to five years or a fine not to exceed \$15,000 or both. However, convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders, and as a result, implementation of the bill would generate no additional costs for the Department of Corrections.

Section: Judiciary

*Analyst: Anne Raughley
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 184

STATE OF NEW JERSEY

DATED: DECEMBER 15, 2011

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 184 (1R).

This bill upgrades offenses concerning the unauthorized practice of law and also creates a civil cause of action for persons who suffer damages as victims of such crimes.

The bill upgrades the disorderly persons offense found in N.J.S.A.2C:21-22 of knowingly engaging in the unauthorized practice of law to a crime of the fourth degree. The bill upgrades from a fourth degree crime to a third degree crime knowingly engaging in the unauthorized practice of law and either (1) creating or reinforcing a false impression that the person is licensed; (2) deriving a benefit; or (3) in fact causing injury to another.

The bill also upgrades the violation of a related statute, N.J.S.A.2C:21-31. Under that statute, it is a crime of the fourth degree for any “immigration consultant” to (1) engage in the unauthorized practice of law; (2) hold himself out to the public as engaging in or entitled to engage in the practice of law, rendering legal service or advice, or furnishing attorneys or counsel, in any immigration or naturalization matter; or (3) assume, use or advertise the title of lawyer or attorney at law, or equivalent terms, in the English language or any other language.

The bill amends N.J.S.A.2C:21-31 to more closely resemble N.J.S.A.2C:21-22, which makes it a lesser degree of crime to engage in the unauthorized practice of law and a higher degree of crime to engage in the unauthorized practice of law and also commit any of the enumerated acts. Under the bill, it remains a crime of the fourth degree for an immigration consultant to engage in the unauthorized practice of law. However, the bill makes it a crime of the third degree for an immigration consultant to (1) hold himself out to the public as engaging in or entitled to engage in the practice of law, rendering legal service or advice, or furnishing attorneys or counsel, in any immigration or naturalization matter; or (2) assume, use or advertise the title of lawyer or attorney at law.

The provision in N.J.S.A.2C:21-31 that makes it a crime of the fourth degree to knowingly retain possession of another person’s

immigration-related document for more than a reasonable time after the person who owns the document has submitted a written request for the document's return is not changed.

The bill also creates a civil action for persons who suffer damages. Under the bill, a person who suffers any ascertainable loss of moneys or property, real or personal, as a result of any action or inaction by a person who violates either N.J.S.A.2C:21-22 or N.J.S.A.2C:21-31 concerning the unauthorized practice of law may bring a civil action in any court of competent jurisdiction. In addition to any other appropriate legal or equitable relief, the court is authorized to award damages in an amount that constitutes the greater of: (1) \$1,000, or (2) three times the value of all costs incurred by the victim as a result of the defendant's criminal activity, including any fees paid to the defendant for services, costs incurred for attorneys' fees, court costs and any out-of-pocket losses.

The standard of proof in the civil action would be a preponderance of the evidence. The bill provides that the fact that a criminal prosecution is not instituted or, where instituted, terminates without a conviction does not preclude the civil action. A final judgment rendered in favor of the State in any criminal proceeding will estop the defendant from denying the same conduct in the civil action. The civil action will not preclude the application of any other civil, administrative, or criminal remedy under any other provision of law.

In addition, the bill amends N.J.S.A.52:7-20 to provide that a person convicted of a violation of either N.J.S.A.2C:21-22 or N.J.S.A.2C:21-31 is barred from appointment or reappointment as a notary public. N.J.S.A.52:7-20 currently bars appointment as a notary public of a person convicted of an offense involving dishonesty or a crime of the second degree or above.

A disorderly persons offense is punishable by a term of imprisonment not to exceed six months or a fine not to exceed \$1,000 or both; a crime of the fourth degree, by a term of imprisonment not to exceed 18 months or a fine not to exceed \$10,000 or both; and a crime of the third degree, by a term of imprisonment of three to five years or a fine not to exceed \$15,000 or both.

As reported, this bill is identical to Assembly No. 1050 (2R), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services concurs with the Executive estimate in the Fiscal Note for this bill that the bill will not generate additional costs for the Department of Corrections given that convictions for third and fourth degree offenses carry with them a presumption of non-incarceration for first time offenders.

The Administrative Office of the Courts (AOC) notes that less than 1% of all convictions for third and fourth degree crimes result from jury trials, and assumes that the provisions of this bill will have a

minimal impact on judicial resources. The AOC also states that it does not have the data with which to determine the number of cases that would result in civil actions. However, it is anticipated that any new civil cases will be assumed within the AOC's general caseloads.