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LAW/RWH

SENATE, No. 2944

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JUNE 18, 2009

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex)

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblyman PETER J. BIONDI

District 16 (Morris and Somerset)

Assemblywoman JOAN M. QUIGLEY

District 32 (Bergen and Hudson)

Assemblywoman CARIDAD RODRIGUEZ

District 33 (Hudson)

Co-Sponsored by:

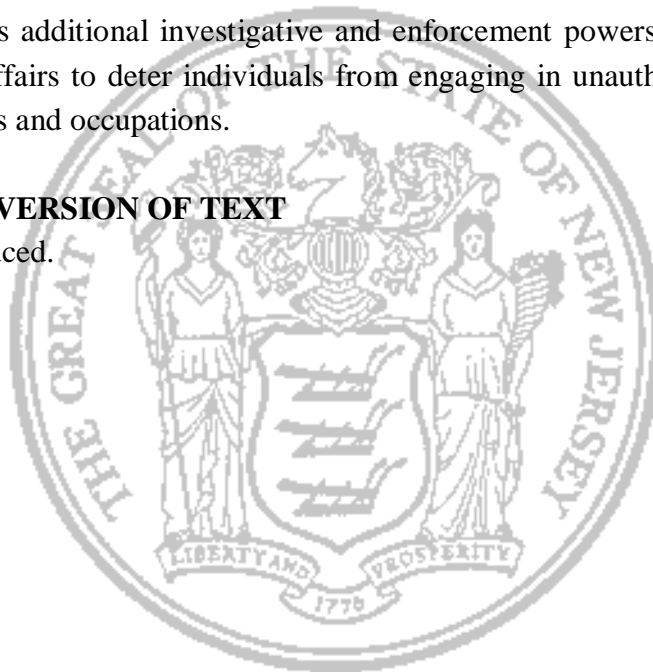
Assemblymen Ramos, Rudder and Assemblywoman Addiego

SYNOPSIS

Establishes additional investigative and enforcement powers in Division of Consumer Affairs to deter individuals from engaging in unauthorized practice of professions and occupations.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/26/2010)

1 AN ACT concerning the unauthorized practice of certain professions
2 and occupations and supplementing P.L.1978, c.73 (C.45:1-14 et
3 seq.).

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

7
8 1. The Legislature finds and declares that:

9 a. The regulation of certain professions or occupations through
10 the Director of the Division of Consumer Affairs or the boards or
11 committees within the Division of Consumer Affairs in the
12 Department of Law and Public Safety is necessary to protect the
13 health, safety and welfare of the residents of this State;

14 b. The unauthorized practice of a regulated profession or
15 occupation inures to the detriment of the public;

16 c. The professional and occupational licensing boards and
17 committees within the Division of Consumer Affairs in the
18 Department of Law and Public Safety are unable to consistently and
19 effectively prevent and sanction the unauthorized practice of
20 regulated professions and occupations due, in part, to limitations in
21 the investigative and enforcement powers currently afforded to the
22 boards and commissions, and to the applicable procedures available
23 to address these issues; and

24 d. It is therefore necessary and appropriate to protect the
25 health, safety and welfare of the residents of this State to provide
26 the Director of the Division of Consumer Affairs and the boards and
27 committees within the Division of Consumer Affairs with additional
28 investigative and enforcement powers and enhanced procedures to
29 more effectively deter individuals from engaging in the
30 unauthorized practice of a regulated profession or occupation.

31
32 2. a. The Director of the Division of Consumer Affairs or any
33 board or committee within the division may exercise its
34 investigative power pursuant to section 5 of P.L.1978, c.73 (C.45:1-
35 18) whenever there is reason to believe that there has been a
36 violation of any applicable law or regulation by a person who:

37 (1) is not licensed, certified, or otherwise permitted by law or
38 regulation to practice a profession or occupation and who represents
39 to the public by any means, that he is able to practice a profession
40 or occupation regulated under Title 45 of the Revised Statutes; or

41 (2) has engaged or is engaging in the unauthorized practice of a
42 profession or occupation regulated under Title 45 of the Revised
43 Statutes in violation of any law or regulation administered by the
44 director or a board or committee within the Division of Consumer
45 Affairs.

46 b. Any person who, following notice and a hearing, has been
47 found to have engaged in the conduct specified in paragraph (1) or
48 (2) of subsection a. of this section shall:

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1 (1) immediately cease and desist from practicing that profession
2 or occupation, as ordered by the director or a board or committee;
3 and

4 (2) be liable to a penalty of not more than \$10,000 for the first
5 offense, and not more than \$20,000 for each subsequent offense, to
6 be recovered by the director or the board or committee within the
7 Division of Consumer Affairs.

8 c. Any proceeding instituted pursuant to this section shall be in
9 addition to any other proceeding authorized by section 10 of
10 P.L.1978, c.73 (C.45:1-23), or by any other law.

11

12 3. The Director of the Division of Consumer Affairs in the
13 Department of Law and Public Safety may promulgate regulations
14 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
15 (C.52:14B-1 et seq.), to effectuate the provisions of this act.

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17 4. This act shall take effect immediately.

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STATEMENT

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22 Under current law, to prevent an individual from engaging in the
23 unauthorized practice of a profession or occupation regulated by a
24 board or committee within the Division of Consumer Affairs, the
25 Attorney General must apply to the Superior Court for an injunction
26 prohibiting such act or practice. This has proven to be a
27 cumbersome, ineffective process under which it is difficult to
28 effectively and consistently prevent or sanction the unauthorized
29 practice of regulated professions and occupations. Untimely,
30 sporadic or ineffective enforcement of the laws prohibiting
31 unauthorized practice of a regulated profession or occupation may
32 place the public at risk from the actions of unqualified, unregulated
33 individuals who hold themselves out as able to perform services for
34 which a license or other qualification is statutorily required. Such
35 ineffective enforcement often operates to the substantial detriment
36 of the regulated community by harming the general reputation of
37 the profession and prejudicing the legitimate business interests of
38 those duly licensed practitioners who have developed the expertise
39 and expended the resources necessary to be properly educated,
40 trained and qualified.

41 This bill enhances the ability of the professional boards and
42 committees in the Division of Consumer Affairs to more effectively
43 and expeditiously address instances involving or concerning the
44 unauthorized practice of a regulated profession or occupation.
45 Under the bill, the director, and the professional boards and
46 committees under Title 45 of the Revised Statutes, are authorized to
47 utilize their investigative authority to determine whether a violation
48 of the applicable law or regulations has taken place, and to hold

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1 hearings to determine whether an unauthorized individual has
2 violated the law by holding himself out to the public as able to
3 practice a particular profession or occupation or to have engaged in
4 the practice of that regulated profession or occupation. The director
5 or the boards and committees would also be authorized to order
6 violators to cease and desist from such practices and penalize them
7 not more than \$10,000 for the first offense and not more than
8 \$20,000 for each subsequent offense.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2944

STATE OF NEW JERSEY

DATED: DECEMBER 14, 2009

The Senate Commerce Committee reports favorably Senate Bill No. 2944.

This bill enhances the ability of the professional boards and committees in the Division of Consumer Affairs to more effectively and expeditiously address instances involving or concerning the unauthorized practice of a regulated profession or occupation. Under the bill, the Director of the Division of Consumer Affairs, and the professional boards and committees under Title 45 of the Revised Statutes, are authorized to utilize their investigative authority to determine whether a violation of the applicable law or regulations has taken place, and to hold hearings to determine whether an unauthorized individual has violated the law by holding himself out to the public as able to practice a particular profession or occupation or to have engaged in the practice of that regulated profession or occupation. The director or the boards and committees would also be authorized to order violators to cease and desist from such practices and penalize them not more than \$10,000 for the first offense and not more than \$20,000 for each subsequent offense.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2944
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JANUARY 15, 2010

SUMMARY

Synopsis: Establishes additional investigative and enforcement powers in Division of Consumer Affairs to deter individuals from engaging in unauthorized practice of professions and occupations.

Type of Impact: Indeterminate.

Agencies Affected: Department of Law and Public Safety; Division of Consumer Affairs.

Office of Legislative Services Estimate

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

- The Office of Legislative Services (OLS) finds the costs associated with this bill are indeterminate. Currently, when an entity is practicing a profession without a license the Division of Consumer Affairs must file for action with the Superior Court, which is an administratively intense process. This bill allows the division to take immediate steps regarding illegal operations, including monetary penalties. It is the understanding of OLS that no additional staffing will be required to carry out the provisions of this bill. The OLS is uncertain of the potential revenue from penalties as there is no readily available data noting the number of past violators.
- Enhances the ability of the Division of Consumer Affairs to address unauthorized practices of a regulated profession or occupation.
- Authorizes penalties of not more than \$10,000 for the first offense and not more than \$20,000 for each subsequent offense

BILL DESCRIPTION

Senate Bill No. 2944 of 2009 enhances the ability of the professional boards and committees in the Division of Consumer Affairs to more expeditiously address instances of an unauthorized practice of a regulated profession or occupation.

Under the bill, the Director of the Division of Consumer Affairs, and the professional boards and committees under Title 45 of the Revised Statutes, are authorized to utilize their investigative authority to determine whether a violation of the applicable law or regulations has taken place and to hold hearings to determine whether an unauthorized individual has violated the law by holding himself out to the public as able to practice a particular profession or occupation.

The director or the boards and committees would also be authorized to order violators to cease and desist from such practices and penalize them not more than \$10,000 for the first offense and not more than \$20,000 for each subsequent offense.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

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Section: Law and Public Safety
Analyst: Kristin A. Brunner
Senior Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

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

ASSEMBLY, No. 4026

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JUNE 4, 2009

Sponsored by:

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblyman PETER J. BIONDI

District 16 (Morris and Somerset)

Assemblywoman JOAN M. QUIGLEY

District 32 (Bergen and Hudson)

Assemblywoman CARIDAD RODRIGUEZ

District 33 (Hudson)

Co-Sponsored by:

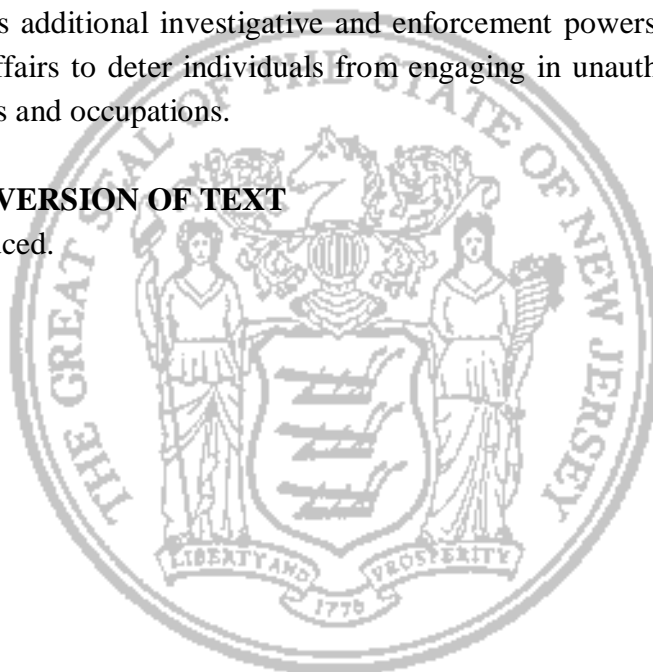
Assemblyman Ramos

SYNOPSIS

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6 *of New Jersey:*

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11 committees within the Division of Consumer Affairs in the
12 Department of Law and Public Safety is necessary to protect the
13 health, safety and welfare of the residents of this State;

14 b. The unauthorized practice of a regulated profession or
15 occupation inures to the detriment of the public;

16 c. The professional and occupational licensing boards and
17 committees within the Division of Consumer Affairs in the
18 Department of Law and Public Safety are unable to consistently and
19 effectively prevent and sanction the unauthorized practice of
20 regulated professions and occupations due, in part, to limitations in
21 the investigative and enforcement powers currently afforded to the
22 boards and commissions, and to the applicable procedures available
23 to address these issues; and

24 d. It is therefore necessary and appropriate to protect the
25 health, safety and welfare of the residents of this State to provide
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36 violation of any applicable law or regulation by a person who:

37 (1) is not licensed, certified, or otherwise permitted to practice a
38 profession or occupation and who represents to the public by any
39 means, that he is able to practice a profession or occupation
40 regulated under Title 45 of the Revised Statutes; or

41 (2) has engaged in the unauthorized practice of a profession or
42 occupation regulated under Title 45 of the Revised Statutes in
43 violation of any law or regulation administered by the director or a
44 board or committee within the Division of Consumer Affairs.

45 b. Any person who, following notice and a hearing, has been
46 found to have violated subsection a. of this section shall:

1 (1) immediately cease and desist from practicing that profession
2 or occupation, as ordered by the director or a board or committee;
3 and

4 (2) be liable to a penalty of not more than \$10,000 for the first
5 offense, and not more than \$20,000 for each subsequent offense, to
6 be recovered by the director or the board or committee within the
7 Division of Consumer Affairs.

8 c. Any proceeding instituted pursuant to this section shall be in
9 addition to any other proceeding authorized by section 10 of
10 P.L.1978, c.73 (C.45:1-23), or by any other law.

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30 sporadic or ineffective enforcement of the laws prohibiting
31 unauthorized practice of a regulated profession or occupation may
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33 individuals who hold themselves out as able to perform services for
34 which a license or other qualification is statutorily required. Such
35 ineffective enforcement often operates to the substantial detriment
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37 the profession and prejudicing the legitimate business interests of
38 those duly licensed practitioners who have developed the expertise
39 and expended the resources necessary to be properly educated,
40 trained and qualified.

41 This bill enhances the ability of the professional boards and
42 committees in the Division of Consumer Affairs to more effectively
43 and expeditiously address instances involving or concerning the
44 unauthorized practice of a regulated profession or occupation.
45 Under the bill, the director, and the professional boards and
46 committees under Title 45 of the Revised Statutes, are authorized to
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48 of the applicable law or regulations has taken place, and to hold

A4026 PRIETO, BIONDI

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2 violated the law by holding himself out to the public as able to
3 practice a particular profession or occupation or to have engaged in
4 the practice of that regulated profession or occupation. The director
5 or the boards and committees would also be authorized to order
6 violators to cease and desist from such practices and penalize them
7 not more than \$10,000 for the first offense and not more than
8 \$20,000 for each subsequent offense.

ASSEMBLY REGULATED PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4026

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 4, 2009

The Assembly Regulated Professions Committee reports favorably and with committee amendments, Assembly Bill No. 4026.

Under current law, to prevent an individual from engaging in the unauthorized practice of a profession or occupation regulated by a board or committee within the Division of Consumer Affairs, the Attorney General must apply to the Superior Court for an injunction prohibiting such act or practice. This has proven to be a cumbersome, ineffective process under which it is difficult to effectively and consistently prevent or sanction the unauthorized practice of regulated professions and occupations. Untimely, sporadic or ineffective enforcement of the laws prohibiting unauthorized practice of a regulated profession or occupation may place the public at risk from the actions of unqualified, unregulated individuals who hold themselves out as able to perform services for which a license or other qualification is statutorily required. Such ineffective enforcement often operates to the substantial detriment of the regulated community by harming the general reputation of the profession and prejudicing the legitimate business interests of those duly licensed practitioners who have developed the expertise and expended the resources necessary to be properly educated, trained and qualified.

As amended, this bill enhances the ability of the professional boards and committees in the Division of Consumer Affairs to more effectively and expeditiously address instances involving or concerning the unauthorized practice of a regulated profession or occupation. Under the bill, the director, and the professional boards and committees under Title 45 of the Revised Statutes, are authorized to utilize their investigative authority to determine whether a violation of the applicable law or regulations has taken place, and to hold hearings to determine whether an unauthorized individual has violated the law by holding himself out to the public as able to practice a particular profession or occupation or to have engaged in the practice of that regulated profession or occupation. The director or the boards and committees would also be authorized to order violators to cease and desist from such practices and penalize them not more than

\$10,000 for the first offense and not more than \$20,000 for each subsequent offense.

COMMITTEE AMENDMENTS

The committee amended the bill to clarify that the Director of the Division of Consumer Affairs or a board or committee within the division may investigate any person who is engaging in the unauthorized practice of a profession or occupation. The bill, as introduced, only included those individuals who had engaged in the unauthorized practice of a profession or occupation.