

Testimony on: Georgia Senate Bill 365

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Testimony Before the
**Georgia House Judiciary
Committee**

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Consumers for a Responsive Legal System (“Responsive Law”) thanks the Committee for the opportunity to present its testimony on Senate Bill 365. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to the people.

We urge the Committee to vote against this bill, or at least to strike or amend Section 2 of the bill. Section 2 of the bill introduces a new Georgia Code Section 15-19-59, creating a private cause of action for “any person damaged by a person, firm, or corporation” engaging in unauthorized practice of law (UPL). This provision limits consumer choice while providing no real protection to consumers. Instead, it will encourage new civil litigation concerning UPL that will benefit lawyers far more than consumers.

The bill does not explain what constitutes damage from UPL. However, we can identify only two types of harm that can come from UPL. First, a person may be the victim of someone fraudulently holding himself out as an attorney. In such cases, the victim already has a common law cause of action for fraudulent misrepresentation, making the provisions of this bill redundant. Second, a licensed lawyer may be damaged economically by competition from a non-lawyer providing similar services. In these cases, the appropriate remedy is for the lawyer to compete with the non-lawyer by providing skills that rely upon her unique expertise as a lawyer. Suing your competition is inappropriate in a market economy and does not benefit consumers.

If the Committee feels that consumers need additional protection from fraudulent lawyers, we suggest that the bill be amended to make this purpose clear. In that case, we would suggest amending the language of Section 15-19-59 by inserting “using the services of” after the phrase “any person damaged by.”

The inappropriateness of a private cause of action for UPL is compounded by allowing for the awarding of attorneys’ fees in such cases. By subjecting those accused of UPL to the possibility of large judgments for attorneys’ fees, this law would put a drastic chilling

effect on people's ability to get help with legal situations from their friends, neighbors, coworkers, or fellow parishioners. For example, a person going through a divorce might receive useful assistance in filling out court forms from a friend who had been through a divorce before. If this bill becomes law, the friend could be sued not only for damages for the "harm" caused to an attorney who claims this assistance denied him business, but also for thousands of dollars in attorneys' fees for the attorney filing the case. The attorney fees provision would also encourage litigation by parties with no complaint about services they were provided. People who were satisfied with the legal information they received from a nonlawyer or from an out-of-state lawyer would be sought out by lawyers hoping to represent them in UPL cases, as the lawyer representing them could receive attorney fees for winning a case on their behalf, regardless of the plaintiff's satisfaction with the services she received from the defendant.

In an economic climate where four out of five people cannot afford a lawyer, it is unjust to erect additional barriers between people and the legal system that is intended to adjudicate their disputes. Providing a lawyer to all who have legal problems may be beyond our means, but we can at least avoid preventing those who cannot afford a lawyer from seeking help where they can. **We urge you, on behalf of the users of the legal system, to vote against this legislation or, in the alternative, to amend it to eliminate its fee shifting provisions and to require a showing of individual consumer harm.**