

By: Keffer of Eastland

H.B. No. 2689

A BILL TO BE ENTITLED

AN ACT

relating to the practice of law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 81.101, Government Code, is amended to read as follows:

Sec. 81.101. DEFINITIONS [~~DEFINITION~~].

SECTION 2. Sections 81.101(a) and (b), Government Code, are amended to read as follows:

(a) In this chapter:

(1) "Acting in a professional capacity" means:

(A) providing advice with the expectation that compensation for the advice will be provided by or on behalf of a person receiving the advice or that the compensation ordinarily expected will be waived for charitable or civic reasons;

(B) acting with the express or implied representation that the individual is an attorney; or

(C) holding oneself out as an advisor having special competence in the interpretation and application of laws, regulations, and other legal standards.

(2) "Legal advice" means acting in a professional capacity as a personal advisor to a person concerning the specific rights or obligations of a person by interpreting and applying laws, regulations, or other legal standards.

(3) "Legal representation" means acting as an advocate

1 in a governmental adjudicative proceeding in a court or
2 administrative agency, including service rendered related to the
3 proceeding, to determine the specific legal rights or obligations
4 of a person.

5 (4) "Practice [the "practice] of law" means:

6 (A) providing legal representation;

7 (B) providing legal advice;

8 (C) preparing or negotiating, in whole or in
9 part, a will, trust, contract, conveyance, pleading, or other
10 instrument to the extent the preparation or negotiation is offered
11 explicitly or implicitly to provide legal advice or legal
12 representation; or

13 (D) engaging in activities described in Section
14 81.102(c) [the preparation of a pleading or other document incident
15 to an action or special proceeding or the management of the action
16 or proceeding on behalf of a client before a judge in court as well
17 as a service rendered out of court, including the giving of advice
18 or the rendering of any service requiring the use of legal skill or
19 knowledge, such as preparing a will, contract, or other instrument,
20 the legal effect of which under the facts and conclusions involved
21 must be carefully determined].

22 (b) The definition of "practice of law" in this section is
23 not exclusive and does not deprive the judicial branch of the power
24 and authority under both this chapter and the adjudicated cases to
25 determine whether other services and acts not enumerated may
26 constitute the practice of law.

27 SECTION 3. Section 81.102, Government Code, is amended by

1 amending Subsection (a) and adding Subsection (c) to read as
2 follows:

3 (a) Except as provided by Subsections [~~Subsection~~] (b) and
4 (c), a person may not practice law in this state unless the person
5 is a member of the state bar.

6 (c) A person who does not hold the person out as an attorney
7 or as a person rendering legal advice may engage in the practice of
8 law to the limited extent specified in this subsection by:

9 (1) acting as a real estate broker as provided by
10 Chapter 1101, Occupations Code, to the extent of completing forms
11 prepared and adopted as provided by that chapter that bind the sale,
12 exchange, option, lease, or rental of an interest in real property;
13 or

14 (2) performing acts related to the lease, sale, or
15 transfer of any mineral or mining interest in real property, which
16 includes oil, gas, coal, sulphur, uranium, and precious metals, to
17 the extent of preparing a legal instrument that affects title to
18 real property in a transaction involving the mineral or mine
19 interest, including:

20 (A) researching public and private records to
21 determine ownership and preparing related ownership or
22 environmental site assessment reports;

23 (B) negotiating and closing the transfer of
24 interests;

25 (C) negotiating business arrangements and
26 agreements for exploration, drilling, production, or the operation
27 of properties;

1 (D) securing access directly related to mineral
2 or mining operations;

3 (E) negotiating arrangements for the locations
4 of production facilities, transfer stations, compressor stations,
5 or similar facilities or stations; and

6 (F) preparing instruments to accomplish any of
7 the activities listed in Paragraphs (A)-(E).

8 SECTION 4. Subchapter G, Chapter 81, Government Code, is
9 amended by adding Section 81.107 to read as follows:

10 Sec. 81.107. RECOVERY. (a) A person who pays compensation
11 to a person engaging in the unauthorized practice of law in
12 violation of Section 81.102 may bring suit for and is entitled to:

13 (1) recovery of the compensation paid; and

14 (2) court costs and reasonable and necessary
15 attorney's fees.

16 (b) If the trier of fact finds a person has knowingly
17 engaged in the unauthorized practice of law in violation of Section
18 81.102, the court shall order the person to pay damages equal to
19 three times the amount of compensation paid.

20 (c) An employer may not recover under this section against a
21 person who has acted as an employee of the employer.

22 (d) This section does not limit or restrict any other remedy
23 available by law.

24 SECTION 5. Section 83.001(b), Government Code, is amended
25 to read as follows:

26 (b) This section does not apply to:

27 (1) an attorney licensed in this state; or

1 (2) a person described by Section 81.102(c) [~~licensed~~
2 ~~real estate broker or salesman performing the acts of a real estate~~
3 ~~broker pursuant to The Real Estate License Act (Article 6573a,~~
4 ~~Vernon's Texas Civil Statutes); or~~

5 [~~(3) a person performing acts relating to a~~
6 ~~transaction for the lease, sale, or transfer of any mineral or~~
7 ~~mining interest in real property].~~

8 SECTION 6. This Act takes effect September 1, 2003.