

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE BILL 1317

Short Title: Bd. of Law Examiners/Fees/Atty. Solicitation.

(Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

May 25, 2004

A BILL TO BE ENTITLED

1 AN ACT TO DELAY THE EFFECTIVE DATE OF THE IMPOSITION OF A FEE
2 PAYABLE TO THE STATE BUREAU OF INVESTIGATION BY THE NORTH
3 CAROLINA BOARD OF LAW EXAMINERS FOR CRIMINAL HISTORY
4 RECORDS CHECKS, TO AUTHORIZE THE BOARD OF LAW EXAMINERS
5 TO COLLECT FEES ASSOCIATED WITH CRIMINAL HISTORY RECORDS
6 CHECKS, AND TO STRENGTHEN THE RULES REGARDING WHEN AND
7 UNDER WHAT CIRCUMSTANCES A LAWYER MAY SOLICIT BUSINESS
8 FROM A PROSPECTIVE CLIENT.
9

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** Section 29A.12(b) of S.L. 2002-126 reads as rewritten:

12 "**SECTION 29A.12.(b)** This section becomes effective ~~October 1, 2002~~ July 1,
13 2004."

14 **SECTION 2.** G.S. 84-24 reads as rewritten:

15 "**§ 84-24. Admission to practice.**

16 For the purpose of examining applicants and providing rules and regulations for
17 admission to the Bar including the issuance of license therefor, there is hereby created
18 the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by
19 the Council, who need not be members of the Council. No teacher in any law school,
20 however, shall be eligible. The members of the Board of Law Examiners elected from
21 the Bar shall each hold office for a term of three years.

22 The Board of Law Examiners shall elect a member of the Board as chair thereof, and
23 the Board may employ an executive secretary and provide such assistance as may be
24 required to enable the Board to perform its duties promptly and properly. The chair and
25 any employees shall serve for a period of time determined by the Board.

26 The examination shall be held in the manner and at the times as the Board of Law
27 Examiners may determine.

28 The Board of Law Examiners shall have full power and authority to make or cause
29 to be made such examinations and investigations as may be deemed by it necessary to

1 satisfy it that the applicants for admission to the Bar possess the qualifications of
2 character and general fitness requisite for an attorney and counselor-at-law and to this
3 end the Board of Law Examiners shall have the power of subpoena and to summons and
4 examine witnesses under oath and to compel their attendance and the production of
5 books, papers and other documents and writings deemed by it to be necessary or
6 material to the inquiry and shall also have authority to employ and provide assistance as
7 may be required to enable it to perform its duties promptly and properly. Records,
8 papers, and other documents containing information collected and compiled by the
9 Board or its members or employees as a result of investigations, inquiries, or interviews
10 conducted in connection with examinations or licensing matters, are not public records
11 within the meaning of Chapter 132 of the General Statutes.

12 All applicants for admission to the Bar shall be fingerprinted to determine whether
13 the applicant has a record of criminal conviction in this State or in any other state or
14 jurisdiction. The information obtained as a result of the fingerprinting of an applicant
15 shall be limited to the official use of the Board of Law Examiners in determining the
16 character and general fitness of the applicant.

17 The Department of Justice may provide a criminal record check to the Board of Law
18 Examiners for a person who has applied for a license through the Board. The Board
19 shall provide to the Department of Justice, along with the request, the fingerprints of the
20 applicant, any additional information required by the Department of Justice, and a form
21 signed by the applicant consenting to the check of the criminal record and to the use of
22 the fingerprints and other identifying information required by the State or national
23 repositories. The applicant's fingerprints shall be forwarded to the State Bureau of
24 Investigation for a search of the State's criminal history record file, and the State Bureau
25 of Investigation shall forward a set of the fingerprints to the Federal Bureau of
26 Investigation for a national criminal history check. The Board shall keep all information
27 pursuant to this subsection privileged, in accordance with applicable State law and
28 federal guidelines, and the information shall be confidential and shall not be a public
29 record under Chapter 132 of the General Statutes.

30 ~~The Department of Justice may charge each applicant a fee for conducting the~~
31 ~~checks of criminal history records authorized by this section. The Board of Law~~
32 ~~Examiners shall collect any fees required by the Department of Justice and shall remit~~
33 ~~the fees to the Department of Justice for expenses associated with conducting the~~
34 ~~criminal history record check.~~

35 The Board of Law Examiners, subject to the approval of the Council, shall by
36 majority vote, from time to time, make, alter, and amend such rules and regulations for
37 admission to the Bar as in their judgment shall promote the welfare of the State and the
38 profession: Provided, that any change in the educational requirements for admission to
39 the Bar shall not become effective within two years from the date of the adoption of the
40 change.

41 All rules and regulations, and modifications, alterations and amendments thereof,
42 shall be recorded and promulgated as provided in G.S. 84-21 in relation to the certificate
43 of organization and the rules and regulations of the Council.

1 Whenever the Council shall order the restoration of license to any person as
2 authorized by G.S. 84-32, it shall be the duty of the Board of Law Examiners to issue a
3 written license to the person, noting thereon that the license is issued in compliance with
4 an order of the Council, whether the license to practice law was issued by the Board of
5 Law Examiners or the Supreme Court in the first instance.

6 Appeals from the Board shall be had in accordance with rules or procedures as may
7 be approved by the Supreme Court as may be submitted under G.S. 84-21 or as may be
8 promulgated by the Supreme Court."

9 **SECTION 3.** Chapter 84 of the General Statutes is amended by adding a
10 new section to read:

11 "**§ 84-23.2. Attorney solicitations.**

12 (a) In addition to any rules of professional ethics or conduct adopted by the
13 Council under G.S. 84-23, a lawyer shall not send, or knowingly permit to be sent, on
14 behalf of the lawyer, the lawyer's firm, or any lawyer affiliated with that lawyer or that
15 lawyer's firm, a written communication to a prospective client for the purpose of
16 obtaining professional employment if the lawyer knows or reasonably should know that
17 the physical, emotional, or mental state of the person receiving the written
18 communication makes it unlikely that the person would exercise reasonable judgment in
19 employing a lawyer. A written communication sent and received within 90 days after an
20 incident giving rise to personal injury or death is presumed to be written at a time or
21 made at a time when the lawyer knows or reasonably should know that the physical,
22 emotional, or mental state of the prospective client makes it unlikely that the person
23 would exercise reasonable judgment when employing a lawyer.

24 (b) A lawyer must file quarterly with the Council or the Council's designee all
25 written communications soliciting professional employment from a prospective client. If
26 a written communication identical in content is sent to two or more prospective clients,
27 the lawyer may comply with this requirement by forwarding to the Council a single
28 copy of the communication together with a list of the names and addresses of the
29 persons to whom the written communication was sent and the date the communication
30 was sent.

31 (c) A lawyer shall retain for two years a copy of all written communications
32 soliciting professional employment from a prospective client.

33 (d) Pursuant to G.S. 84-28, the Council shall have disciplinary jurisdiction for
34 any violation of this section."

35 **SECTION 4.** Section 3 of this act becomes effective October 1, 2004, and
36 applies to written communications made on or after that date. The remainder of this act
37 is effective when it becomes law.