

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 1317
Judiciary I Committee Substitute Adopted 6/30/04

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

(Public)

Sponsors:

Referred to:

May 25, 2004

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PRIVILEGE TAX ON ATTORNEYS TO SUPPORT THE NORTH CAROLINA PUBLIC CAMPAIGN FINANCING FUND; TO DELAY THE EFFECTIVE DATE OF THE IMPOSITION OF A FEE PAYABLE TO THE STATE BUREAU OF INVESTIGATION BY THE NORTH CAROLINA BOARD OF LAW EXAMINERS FOR CRIMINAL HISTORY RECORD CHECKS, TO AUTHORIZE THE BOARD OF LAW EXAMINERS TO COLLECT FEES ASSOCIATED WITH CRIMINAL HISTORY RECORD CHECKS, AND TO STRENGTHEN THE RULES REGARDING WHEN AND UNDER WHAT CIRCUMSTANCES A LAWYER MAY SOLICIT BUSINESS FROM A PROSPECTIVE CLIENT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 105-41 reads as rewritten:

"§ 105-41. Attorneys-at-law and other professionals.

(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars (\$50.00).

~~(1) An attorney at law. In addition to the tax, whenever an attorney pays the tax, the Department must give that attorney an opportunity to make a contribution of fifty dollars (\$50.00) to support the North Carolina Public Campaign Financing Fund established by G.S. 163-278.63. Payment of the contribution is not required and is not considered part of the tax owed.~~

(2) A physician, a veterinarian, a surgeon, an osteopath, a chiropractor, a chiropodist, a dentist, an ophthalmologist, an optician, an optometrist, or another person who practices a professional art of healing.

(3) A professional engineer, as defined in G.S. 89C-3.

- 1 (4) A registered land surveyor, as defined in G.S. 89C-3.
2 (5) An architect.
3 (6) A landscape architect.
4 (7) A photographer, a canvasser for any photographer, or an agent of a
5 photographer in transmitting photographs to be copied, enlarged, or
6 colored.
7 (8) A real estate broker or a real estate salesman, as defined in G.S. 93A-2.
8 A real estate broker or a real estate salesman who is also a real estate
9 appraiser is required to obtain only one license under this section to
10 cover both activities.
11 (9) A real estate appraiser, as defined in G.S. 93E-1-4. A real estate
12 appraiser who is also a real estate broker or a real estate salesman is
13 required to obtain only one license under this section to cover both
14 activities.
15 (10) A person who solicits or negotiates loans on real estate as agent for
16 another for a commission, brokerage, or other compensation.
17 (11) A mortician or embalmer licensed under G.S. 90-210.25.
18 (a1) Every individual in this State who practices law must obtain from the
19 Secretary a statewide license for the privilege of practicing law. A license required by
20 this section is not transferable to another person. The tax for each license is one hundred
21 dollars (\$100.00). Fifty percent (50%) of the amount collected under this subsection
22 must be transferred to the North Carolina Public Campaign Financing Fund established
23 under G.S. 163-273.63.
24 (b) The following persons are exempt from the tax:
25 (1) A person who is at least 75 years old.
26 (2) A person practicing the professional art of healing for a fee or reward,
27 if the person is an adherent of an established church or religious
28 organization and confines the healing practice to prayer or spiritual
29 means.
30 (3) A blind person engaging in a trade or profession as a sole proprietor. A
31 "blind person" means any person who is totally blind or whose central
32 visual acuity does not exceed 20/200 in the better eye with correcting
33 lenses, or where the widest diameter of visual field subtends an angle
34 no greater than 20 degrees. This exemption shall not extend to any sole
35 proprietor who permits more than one person other than the proprietor
36 to work regularly in connection with the trade or profession for
37 remuneration or recompense of any kind, unless the other person in
38 excess of one so remunerated is a blind person.
39 (c) Every person engaged in the public practice of accounting as a principal, or as
40 a manager of the business of public accountant, shall pay for such license fifty dollars
41 (\$50.00), and in addition shall pay a license of twelve dollars and fifty cents (\$12.50)
42 for each person employed who is engaged in the capacity of supervising or handling the
43 work of auditing, devising or installing systems of accounts.
44 (d) Repealed by Session Laws 1998-95, s. 7, effective July 1, 1999.

1 (e) Licenses issued under this section are issued as personal privilege licenses
2 and shall not be issued in the name of a firm or corporation. A licensed photographer
3 having a located place of business in this State is liable for a license tax on each agent or
4 solicitor employed by the photographer for soliciting business. If any person engages in
5 more than one of the activities for which a privilege tax is levied by this section, the
6 person is liable for a privilege tax with respect to each activity engaged in.

7 (f) Repealed by Session Laws 1981, c. 17.

8 (g) Repealed by Session Laws 1998-95, s. 7, effective July 1, 1999.

9 (h) Counties and cities may not levy any license tax on the business or
10 professions taxed under this section.

11 (i) Obtaining a license required by this Article does not of itself authorize the
12 practice of a profession, business, or trade for which a State qualification license is
13 required."

14 **SECTION 1.(b)** G.S. 163-278.63(b) reads as rewritten:

15 "(b) Sources of Funding. – Money received from all the following sources must be
16 deposited in the Fund:

17 (1) Money from the North Carolina Candidates Financing Fund.

18 (2) Designations made to the Public Campaign Financing Fund by
19 individual taxpayers pursuant to G.S. 105-159.2.

20 (3) ~~Any contributions made~~ Fifty percent (50%) of the privilege tax paid
21 by attorneys in accordance with G.S. 405-41, 105-41(a1).

22 (4) Public Campaign Financing Fund revenues distributed for an election
23 that remain unspent or uncommitted at the time the recipient is no
24 longer a certified candidate in the election.

25 (5) Money ordered returned to the Public Campaign Financing Fund in
26 accordance with G.S. 163-278.70.

27 (6) Voluntary donations made directly to the Public Campaign Financing
28 Fund. Corporations, other business entities, labor unions, and
29 professional associations may make donations to the Fund."

30 **SECTION 1.(c)** This section becomes effective July 1, 2004, and applies to
31 taxes due on or after that date.

32 **SECTION 2.(a)** Section 29A.12(b) of S.L. 2002-126 reads as rewritten:

33 **"SECTION 29A.12.(b)** This section becomes effective ~~October 1, 2002.~~ July 1,
34 2004."

35 **SECTION 2.(b)** G.S. 84-24 reads as rewritten:

36 **"§ 84-24. Admission to practice.**

37 For the purpose of examining applicants and providing rules and regulations for
38 admission to the Bar including the issuance of license therefore, there is hereby created
39 the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by
40 the Council, who need not be members of the Council. No teacher in any law school,
41 however, shall be eligible. The members of the Board of Law Examiners elected from
42 the Bar shall each hold office for a term of three years.

43 The Board of Law Examiners shall elect a member of the Board as chair thereof, and
44 the Board may employ an executive secretary and provide such assistance as may be

1 required to enable the Board to perform its duties promptly and properly. The chair and
2 any employees shall serve for a period of time determined by the Board.

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

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

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

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

36 ~~The Department of Justice may charge each applicant a fee for conducting the~~
37 ~~checks of criminal history records authorized by this section. The Board of Law~~
38 Examiners shall collect any fees required by the Department of Justice for expenses
39 associated with conducting criminal history record checks of applicants for attorney
40 licenses and shall remit the fees to the Department of Justice for expenses associated
41 with conducting the criminal history record check.

42 The Board of Law Examiners, subject to the approval of the Council, shall by
43 majority vote, from time to time, make, alter, and amend such rules and regulations for
44 admission to the Bar as in their judgment shall promote the welfare of the State and the

1 profession: Provided, that any change in the educational requirements for admission to
2 the Bar shall not become effective within two years from the date of the adoption of the
3 change.

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

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

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

15 **SECTION 2.(c)** This section is effective when this act becomes law.

16 **SECTION 3.(a)** Chapter 84 of the General Statutes is amended by adding a
17 new section to read:

18 **"§ 84-23.2. Attorney solicitations.**

19 (a) In addition to any rules of professional ethics or conduct adopted by the
20 Council under G.S. 84-23, a lawyer shall not send, or knowingly permit to be sent, on
21 behalf of the lawyer, the lawyer's firm, or any lawyer affiliated with that lawyer or that
22 lawyer's firm, a written communication to a prospective client for the purpose of
23 obtaining professional employment for representation in a civil action for wrongful
24 death or liability for serious injury within 45 days after an incident giving rise to the
25 death or serious injury that is the subject of the solicitation. For purposes of this section,
26 'serious injury' means injury that is life-threatening.

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

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

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

38 **SECTION 3.(b)** Article 2 of Chapter 1 of the General Statutes is amended
39 by adding a new section to read:

40 **"§ 1-13.1. Certain settlement agreements without counsel voidable for 120 days**
41 **after ban on attorney solicitation.**

42 A person who without representation by an attorney enters into an agreement for
43 final settlement and release of a claim for personal injury or wrongful death may rescind
44 that agreement during or within 120 days after the attorney solicitation ban in

1 G.S. 84-23.2 or after any attorney solicitation ban imposed by the North Carolina State
2 Bar, if the subject of the agreement is the same as the subject of the solicitation ban.

3 An agreement to settle a claim for property damages only is not voidable under this
4 section."

5 **SECTION 3.(c)** This section becomes effective October 1, 2004, and applies
6 to written communications made on or after that date.

7 **SECTION 4.** Except as otherwise provided in this act, this act is effective
8 when it becomes law.