

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 309

Short Title: State Bar/Attorneys.

(Public)

Sponsors: Representative Dawkins.

Referred to: Judiciary II.

March 25, 1991

A BILL TO BE ENTITLED

1 AN ACT TO MAKE VARIOUS AMENDMENTS TO CHAPTER 84 OF THE
2 GENERAL STATUTES RELATING TO OUT-OF-STATE ATTORNEYS,
3 PREPAID LEGAL SERVICES, DEPOSITS OF THE STATE BAR, AND BOARD
4 OF LAW EXAMINERS RECORDS.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 84-23.1 reads as rewritten:

8 "**§ 84-23.1. Prepaid legal services.**

9 (a) This section is in addition to and not a limitation of the powers and
10 responsibilities of the council set out in G.S. 84-23. To the extent that this section deals
11 with the same powers and responsibilities it shall be taken to be in amplification of
12 those powers and not in derogation thereof.

13 ~~(b) The council has the responsibility and duty of discipline and regulation of the~~
14 ~~practice of law in this State. Plans providing for prepaid legal services must be~~
15 ~~submitted to the council and may not be implemented or operated without the prior and~~
16 ~~continuing approval by the council as being proper under the statutes, rules and~~
17 ~~regulations governing the practice of law in this State; provided, however, the council~~
18 ~~shall not approve any plan for prepaid legal services which in any way restricts the right~~
19 ~~of the client or person receiving prepaid legal services to select his own attorney from~~
20 ~~the actual members of the North Carolina State Bar, or a member of any other state bar~~
21 ~~in any other state where the claim or cause of action may arise.~~

22 (b1) All organizations offering prepaid legal services plans must register those
23 plans with the North Carolina State Bar Council on forms provided by the Council.
24 Each plan must be registered prior to its implementation or operation in this State.

1 ~~(e) The council is authorized to initiate and cause the creation of a nonprofit~~
2 ~~corporation pursuant to Chapter 55A of the General Statutes, for the purpose of~~
3 ~~providing for prepayment for legal services. The corporation authorized by this section~~
4 ~~shall have the following powers:~~

5 ~~(1) To provide for the collection of payments for the plan or plans it~~
6 ~~offers, the payment of legal fees in accordance with its approved plans,~~
7 ~~and the investment and safeguarding of funds held for such purposes.~~

8 ~~(2) To contract with insurance companies or other companies for actuarial~~
9 ~~services, administrative and other services, use of facilities,~~
10 ~~underwriting and reinsurance.~~

11 ~~(3) All other powers necessary and appropriate for the offering of plans~~
12 ~~for prepaid legal services.~~

13 ~~(4) All other powers granted to nonprofit corporations by law or by virtue~~
14 ~~of their charters and bylaws.~~

15 ~~The corporation may not directly employ an attorney to perform legal services for~~
16 ~~another person. It shall not be subject to regulation under Articles 1 through 64 of~~
17 ~~Chapter 58 of the General Statutes or other provisions relating to insurance companies,~~
18 ~~but it shall be subject to regulation pursuant to subsection (b) of this section. Neither~~
19 ~~the existence of this authorization, nor the creation of such a corporation shall limit the~~
20 ~~authority of the council to approve other plans for prepaid legal services. The council~~
21 ~~may cause funds of the North Carolina State Bar to be contributed, advanced or loaned~~
22 ~~to, or used for the benefit of the corporation so created upon such terms as the council~~
23 ~~deems appropriate, and pursuant to such regulations as the council may promulgate to~~
24 ~~assure such funds are used for the purposes herein provided.~~

25 ~~(d) Notwithstanding approval of the council pursuant to subsection (b), registration~~
26 ~~of the plan with the North Carolina State Bar Council pursuant to subsection (b1), any~~
27 ~~plan for prepaid legal services other than pursuant to subsection (e) is subject to regulation~~
28 ~~under Articles 1 through 64 of Chapter 58 of the General Statutes if offered by a company~~
29 ~~engaged in the insurance business or if the plan itself constitutes the offering of~~
30 ~~insurance.~~

31 ~~(e) Notwithstanding any other provision of this section or any other statute or law, no~~
32 ~~plan providing for prepaid legal services shall be authorized to exist or function in the~~
33 ~~State of North Carolina which in any way restricts or denies the client or person~~
34 ~~receiving prepaid legal services the right to select an attorney of his own choice from~~
35 ~~the active membership of the North Carolina State Bar, or a member of any other state~~
36 ~~bar in any other state where the claim or cause of action may arise to represent said~~
37 ~~person or client."~~

38 Sec. 2. G.S. 84-4.1 reads as rewritten:

39 "**§ 84-4.1. Limited practice of out-of-state attorneys.**

40 Any attorney domiciled in another state, and regularly admitted to practice in the
41 courts of record of another that state and in good standing therein, having been retained
42 as attorney for any party to a legal proceeding, civil or criminal, a party to any civil or
43 criminal legal proceeding pending in the General Court of Justice of North Carolina, or
44 the North Carolina Utilities Commission or the North Carolina Industrial Commission

1 or the Office of Administrative Hearings of North Carolina may, on motion, be admitted
 2 to practice in the General Court of Justice or the North Carolina Utilities Commission or
 3 the North Carolina Industrial Commission or the Office of Administrative Hearings of
 4 North Carolina for the sole purpose of appearing for ~~his client in said litigation, but only~~
 5 ~~upon compliance with the following conditions precedent:~~ a client in the litigation. The
 6 motion required under this section shall contain or be accompanied by:

- 7 (1) The attorney's ~~He shall set forth in his motion his~~ full name, post-office
 8 address and status as a practicing attorney in ~~such other~~ another state.
- 9 (2) ~~He shall attach to his motion a~~ A statement, signed by the client, setting
 10 forth the client's address and declaring that the client has retained the
 11 attorney to represent the client in the proceeding. ~~his client, in which the~~
 12 ~~client sets forth his post-office address and declares that he has retained the~~
 13 ~~attorney to represent him in such proceeding.~~
- 14 (3) ~~He shall attach to his motion a~~ A statement that unless permitted to
 15 withdraw sooner by order of the court, ~~he~~ the attorney will continue to
 16 represent ~~his~~ the client in ~~such~~ the proceeding until the final
 17 determination thereof, and that with reference to all matters incident to
 18 ~~such~~ the proceeding, ~~he~~ the attorney agrees ~~that he shall to~~ be subject to
 19 the orders and amenable to the disciplinary action and the civil
 20 jurisdiction of the General Court of Justice and the North Carolina
 21 State Bar in all respects as if ~~he~~ the attorney were a regularly admitted
 22 and licensed member of the Bar of North Carolina in good standing.
- 23 (4) ~~He shall attach to his motion a~~ A statement ~~to the effect that the state in~~
 24 ~~which he~~ the attorney is regularly admitted to practice grants like
 25 privileges to members of the Bar of North Carolina in good standing.
- 26 (5) ~~He shall attach to his motion a~~ A statement to the effect that ~~he~~ the
 27 attorney has associated and ~~has~~ is personally appearing ~~with him in such~~
 28 ~~proceeding in the proceeding,~~ with an attorney who is a resident of this
 29 State and is duly and legally admitted to practice in the General Court
 30 of Justice of North Carolina, upon whom service may be had in all
 31 matters connected with such legal proceedings, or any disciplinary
 32 matter, with the same effect as if personally made on ~~such~~ the foreign
 33 attorney within this State.

34 (6) Compliance with the foregoing requirements ~~shall~~ does not deprive the court
 35 of the discretionary power to allow or reject the application."

36 Sec. 3. Chapter 84 of the General Statutes is amended by adding a new
 37 section to read:

38 "**§ 84-34.1. Deposits of the North Carolina State Bar.**

39 Deposits of the North Carolina State Bar, its boards, agencies, and committees shall
 40 be secured as provided in G.S. 159-31(b)."

41 Sec. 4. G.S. 84-24 reads as rewritten:

42 "**§ 84-24. Admission to practice.**

43 The provisions of the law now obtaining with reference to admission to the practice
 44 of law, as amended, and the rules and regulations prescribed by the Supreme Court of

1 North Carolina with reference thereto, shall continue in force until superseded, changed
2 or modified by or under the provisions of this Article.

3 For the purpose of examining applicants and providing rules and regulations for
4 admission to the Bar including the issuance of license therefor, there is hereby created
5 the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by
6 the council of the North Carolina State Bar, who need not be members of the council.
7 No teacher in any law school, however, shall be eligible. The members of the Board of
8 Law Examiners elected from the Bar shall each hold office for a term of three years:
9 Provided, that the members first elected shall hold office, two for one year, two for two
10 years, and two for three years.

11 The Board of Law Examiners shall elect a member of said Board as chairman
12 thereof, and the Board may employ an executive secretary and provide such assistance
13 as may be required to enable said Board to perform its duties promptly and properly.
14 The chairman and any employees shall serve for such period as said Board may
15 determine.

16 The examination shall be held in such manner and at such times as the Board of Law
17 Examiners may determine.

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

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

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

42 All such rules and regulations, and modifications, alterations and amendments
43 thereof, shall be recorded and promulgated as provided in G.S. 84-21 in relation to the
44 certificate 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 such person, noting thereon that the same is issued in compliance with
4 an order of the council of the North Carolina State Bar, whether the license to practice
5 law was issued by the Board of Law Examiners or the Supreme Court in the first
6 instance.

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

10 Sec. 5. This act is effective upon ratification.