

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

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**SENATE DRS85334-RCf-20 (5/24)**

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

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Sponsors: Senator Rand.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT 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 RECORDS CHECKS, TO AUTHORIZE THE BOARD OF LAW EXAMINERS TO COLLECT FEES ASSOCIATED WITH CRIMINAL HISTORY RECORDS 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.** Section 29A.12(b) of S.L. 2002-126 reads as rewritten:

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

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

**"§ 84-24. Admission to practice.**

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

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

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

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

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

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

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

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

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

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

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

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

14 "**§ 84-23.2. Attorney solicitations.**

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

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