## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2009

Η

## HOUSE DRH80324-LU-150 (03/26)

Short Title:	Amend Reqs for Comity Applicants/NC State Bar.	(Public)
Sponsors:	Representative Jones.	
Referred to:		

1	A BILL TO BE ENTITLED
2	AN ACT AMENDING THE REQUIREMENTS FOR COMITY UNDER THE LAWS
3	PERTAINING TO THE NORTH CAROLINA STATE BAR.
4	Whereas, at least 40% of female lawyers take time off for childrearing and
5	approximately a quarter of them take leave from the workforce for childrearing for six to nine
6	years; and
7	Whereas, the history of women at the bar has been fraught with discrimination and
8	roadblocks, both intentional and unintentional; and
9	Whereas, the proportion of women law students and women attorneys hovers at or
10	around half of the respective legal population, such gains being hard-fought; and
11	Whereas, the American Bar Association, local and State bar associations, the media,
12	and women themselves have highlighted the staggering attrition numbers of women attorneys
13	attributable to caregiving and childrearing, and the deleterious effects on the careers of women
14	attorneys who avail themselves of a caregiving hiatus, have joined in a trend to publicize this
15	problem and create effective "on-ramps" to facilitate reentry into the workforce; and
16	Whereas, the State of North Carolina, one of the nation's fastest-growing states,
17	desires to attract and retain talented professionals, and in order to do so, has examined such
18	barriers with an eye toward alleviating them; and
19	Whereas, we find our State is part of an increasingly interconnected and mobile
20	workforce and economy; and
21	Whereas, the North Carolina Board of Bar Examiners' rules, in certain instances
22	where the applicant-attorney's hiatus is attributable to childbearing or caregiving, operate to bar
23	otherwise qualified candidates from admission to the bar of North Carolina through comity,
24 25	thus depriving the State of needed talent; and
25	Whereas, these rules do not operate in an onerous manner against those already
26	admitted to the North Carolina State Bar, but are only directed at those who wish to relocate or
27	have relocated to this State; and
28	Whereas, these rules artificially proscribe comity after arbitrarily set, very short
29	time frames of absence from the full-time practice of law; and
30 21	Whereas, the North Carolina Board of Law Examiners' rule .0502(3), regarding
31 32	requirements for comity applicants, as it now stands bars comity for an applicant who did not practice full-time for a cumulative 24 months of the prior six years, regardless of the length of
32 33	admission to any other bar, duration of full-time practice, or depth of experience, creating
33 34	anomalous results barring comity for even very long-standing attorneys who have recently
34 35	reduced their practice to accommodate childrearing or caregiving; and
55	reduced then practice to accommodate embrearing of caregiving, and



D

Whereas, laws that tend in application to negatively affect a protected class of 1 2 people need to be subjected to strict scrutiny and narrowly tailored so their effect is justifiable 3 and proportionate in light of practicality and common sense and in recognition of the common 4 human experience; and

5 Whereas, practical inequities would be rectified, family values and families 6 reinforced, and justice would be served, by relieving from a protected class of persons -7 women - on whom the burden of childbearing, childrearing, and caregiving fall 8 disproportionately, of the Draconian effects of this North Carolina Board of Law Examiners' 9 rule; and

10 Whereas, protections to working women have been found necessary and are 11 reflected in national legislation such as the Family and Medical Leave Act and the Pregnancy Discrimination Act, wherein women's rights to move in and out of the workforce due to 12 13 childrearing and caregiving have risen to the level of civil rights; and

14 Whereas, the quality of attorneys bears little provable relationship to the time they 15 may spend in childrearing or caregiving and there is no evidence of the public being injured by women who took a hiatus from the full-time practice of law to bear and raise children or give 16 17 care to ill family members; and

18 Whereas, it is an undue hardship to force otherwise qualified applicants for comity 19 to undertake the expense, time, and effort of retaking the bar examination and any study 20 courses necessary for preparation, many of whom have been members of comity-state bars for 21 decades; and

22 Whereas, the proposed legislation will ensure comity applicants have equal 23 experience as under the current rules, as the prior law allowed a hiatus one-third of the most 24 recent six years, and the proposed legislation does as well but also allows consideration of the 25 sum of the applicant's full-time practice of law, eliminating the requirement of only counting 26 the most recent six years' of experience to the neglect of what may be decades of prior legal 27 experience, which will produce a more equitable and logical result; Now, therefore,

28 The General Assembly of North Carolina enacts:

29 **SECTION 1.** Article 4 of Chapter 84 of the General Statutes is amended by adding 30 the following new section to read: 31

## '§ 84-24.1. Comity applicants.

32 If all other qualifications for eligibility for comity have been met by an applicant (a) 33 pursuant to rules adopted by the Board of Law Examiners, the Board of Law Examiners shall 34 examine any short-term hiatus from an applicant's full-time practice of law that is attributable 35 to the applicant's verifiable caregiving responsibilities by measuring and weighing the totality 36 of circumstances and the qualifications of the applicant.

37 If any applicant due to caregiving has experienced a period of not engaging in the (b) 38 full-time practice of law, that period shall be deemed a short-term hiatus and deemed excusable 39 if the applicant has otherwise been in the active full-time practice of law for an additional 40 minimum of double the period of non-full-time work, as follows: a hiatus of eight years is excusable if the applicant otherwise practiced law full-time for 16 years; a hiatus of seven years 41 42 is excusable if the applicant otherwise practiced law full-time for 14 years; a hiatus of six years is excusable if the applicant otherwise practiced law full-time for 12 years; or five years if the 43 44 applicant otherwise practiced law full-time for 10 years; or four years if the applicant otherwise practiced law full-time for eight years; or three years if the applicant otherwise practiced law 45 full-time for six years. Therefore, if an applicant has otherwise practiced law full-time for a 46 47 minimum of six years, a caregiving or childrearing hiatus of up to one-third that time is 48 excusable and shall not be a bar to comity. 49 If all other qualifications for eligibility for comity have been met by an applicant (c)

with at least a minimum of six years continuous active practice experience, the Board of Law 50

51 Examiners, after carefully measuring and weighing the totality of circumstances and the

	General Assem	bly of North Carolina	Session 2009			
1	1 qualifications of the applicant, shall allow any short-term hiatus from an applicant's full-time					
2	2 practice of law that is attributable to the applicant's verifiable caregiving responsibilities to be					
3	remedied by:					
4	<u>(1)</u>	Requiring the applicant to complete continuing legal educ	cation, the number			
5		of continuing legal education hours to be set by the Board	of Law Examiners			
6		after taking into account the totality of circumstances and	l the qualifications			
7		of the applicant; or				
8	<u>(2)</u>	Requiring a period of 24 months of part-time practice	or 12 months of			
9		full-time practice under the direct supervision of a licens	sed member of the			
10		North Carolina bar in good standing.				
11	<u>(d)</u> <u>For</u>	purposes of determining comity under this section, the phra	se 'full-time work'			
12	shall be defined as a minimum of 30 hours a week."					
13	SEC	<b>TION 2.</b> This act is effective when it becomes law.				