

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

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SENATE BILL 38

Short Title: Small Business Owners/S Corp Fairness Act. (Public)

Sponsors: Senators Perry, Lazzara, and Johnson (Primary Sponsors).

Referred to: Rules and Operations of the Senate

February 2, 2021

A BILL TO BE ENTITLED

AN ACT TO ALLOW A NONATTORNEY SOLE OWNER OF AN S CORPORATION TO LEGALLY REPRESENT AND APPEAR IN COURT ON BEHALF OF THE S CORPORATION IN CERTAIN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-5 reads as rewritten:

"§ 84-5. Prohibition as to practice of law by corporation.

(a) ~~It~~ Except as provided in subsection (c) of this section, it shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the Department of Commerce, Division of Employment Security, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. The provisions of this section shall be in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in this section shall be construed to prohibit a banking corporation authorized and licensed to act in a fiduciary capacity from performing any clerical, accounting, financial or business acts required of it in the performance of its duties as a fiduciary or from performing ministerial and clerical acts in the preparation and filing of such tax returns as are so required, or from discussing the business and financial aspects of fiduciary relationships. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina.

To further clarify the foregoing provisions of this section as they apply to corporations which are authorized and licensed to act in a fiduciary capacity:

...

(b) Nothing in this section shall prohibit an attorney retained by a corporation, whether or not the attorney is also a salaried employee of the corporation, from representing the corporation or an affiliate, or from representing an officer, director, or employee of the corporation or an affiliate in any matter arising in connection with the course and scope of the employment of the officer, director, or employee. Notwithstanding the provisions of this subsection, the attorney providing such representation shall be governed by and subject to all of the Rules of Professional Conduct of the North Carolina State Bar to the same extent as all other attorneys licensed by this State.

(c) S Corporations as defined in G.S. 105-131 may be represented by and appear in court in this State using a nonattorney representative who is the sole owner of the business entity if the



1 owner files an affidavit with the court providing that the owner's interest in the business entity is
2 one hundred percent (100%). This subsection applies only to the trial of civil actions in which
3 the amount in controversy is twenty-five thousand dollars (\$25,000) or less. For purposes of
4 determining the amount in controversy, the rules in G.S. 7A-243 shall apply."

5 **SECTION 2.** G.S. 84-2.1(b) reads as rewritten:

6 "(b) The phrase "practice law" does not encompass:

7 ...

8 (4) The representation by or appearance in court by a nonattorney representative
9 who is the sole owner of an S Corporation as permitted by G.S. 84-5(c)."

10 **SECTION 3.** G.S. 84-4 reads as rewritten:

11 **"§ 84-4. Persons other than members of State Bar prohibited from practicing law.**

12 Except as otherwise permitted by law, it shall be unlawful for any person or association of
13 persons, except active members of the Bar of the State of North Carolina admitted and licensed
14 to practice as attorneys-at-law, to appear as attorney or counselor at law in any action or
15 proceeding before any judicial body, including the North Carolina Industrial Commission, or the
16 Utilities Commission; to maintain, conduct, or defend the same, except in his own behalf as a
17 party thereto; or, by word, sign, letter, or advertisement, to hold out himself, or themselves, as
18 competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being
19 engaged in advising or counseling in law or acting as attorney or counselor-at-law, or in
20 furnishing the services of a lawyer or lawyers; and it shall be unlawful for any person or
21 association of persons except active members of the Bar, for or without a fee or consideration, to
22 give legal advice or counsel, perform for or furnish to another legal services, or to prepare directly
23 or through another for another person, firm or corporation, any will or testamentary disposition,
24 or instrument of trust, or to organize corporations or prepare for another person, firm or
25 corporation, any other legal document. Provided, that nothing herein shall prohibit any person
26 from drawing a will for another in an emergency wherein the imminence of death leaves
27 insufficient time to have the same drawn and its execution supervised by a licensed
28 attorney-at-law. The provisions of this section shall be in addition to and not in lieu of any other
29 provisions of this Chapter. Provided, however, this section shall not apply to corporations
30 authorized to practice law under the provisions of Chapter 55B of the General Statutes of North
31 ~~Carolina~~ Carolina or the representation by or appearance in court by a nonattorney representative
32 who is the sole owner of an S Corporation as permitted by G.S. 84-5(c)."

33 **SECTION 4.** This act is effective when it becomes law.