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VERSIONS OF THIS BILL

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TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40-5-5 SO AS TO CREATE THE COMMISSION ON THE LEGAL PROFESSION AND JUDICIARY, TO PROVIDE FOR THE COMPOSITION AND TERMS OF THE COMMISSION, TO PROVIDE FOR THE FILLING OF A VACANCY, AND TO PROVIDE POWERS AND DUTIES OF THE COMMISSION, AMONG OTHER THINGS; TO AMEND SECTION 40-1-40, RELATING TO THE DOMAIN OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION, SO AS TO PROVIDE THAT THE COMMISSION ON THE LEGAL PROFESSION AND JUDICIARY IS AMONG THE BOARDS OF PROFESSIONS AND OCCUPATIONS ADMINISTERED BY THE DEPARTMENT; TO AMEND SECTIONS 40-5-10, 40-5-20, 40-5-40, 40-5-50, 40-5-70, 40-5-210, AS AMENDED, 40-5-220, 40-5-340, 40-5-350, 40-5-360, 40-5-520, ALL RELATING TO THE REGULATION OF THE PRACTICE OF LAW, ADMISSION TO THE PRACTICE OF LAW, AND DISCIPLINARY ACTION AGAINST ATTORNEYS, SO AS TO PROVIDE THAT THE COMMISSION ON THE LEGAL PROFESSION AND JUDICIARY HAS EXCLUSIVE AUTHORITY TO REGULATE ADMISSION TO THE PRACTICE OF LAW AND DISCIPLINARY ACTIONS AGAINST ATTORNEYS, TO PROVIDE FURTHER CONFORMING CHANGES, AND TO CORRECT ARCHAIC LANGUAGE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 5, Title 40 of the 1976 Code is amended by adding:

1

2 “Section 40-5-5. (A) There is hereby created the Commission
3 on the Legal Profession and Judiciary, to be known as the
4 Commission on the Legal Profession and Judiciary of the State of
5 South Carolina.

6 (B)(1) As used in this chapter, ‘commission’ means the
7 Commission on the Legal Profession and Judiciary of the State of
8 South Carolina.

9 (2) The commission is composed of thirteen members as
10 follows:

11 (a) three lay members;

12 (b) two members of the judiciary;

13 (c) two attorneys from the State at large; and

14 (d) six attorneys, each representing one of the six
15 congressional districts.

16 (3) A member of the commission must reside in this State.

17 A member who represents a congressional district must reside in
18 the district he represents. An attorney member of the commission
19 must be licensed in good standing by the commission, must be
20 without prior disciplinary action or conviction of a felony or other
21 crime of moral turpitude, and must be practicing the legal
22 profession in this State. A lay member of the commission must
23 hold a baccalaureate degree or higher from an accredited
24 institution, must not have been convicted of a felony or a crime of
25 moral turpitude, and must not be employed or have a member of
26 his immediate family employed in a law firm, legal department, or
27 the judiciary.

28 (4) A member of the commission may serve a term of four
29 years or until his successor is appointed and qualifies. A member
30 of the commission may serve no more than three consecutive
31 terms.

32 (5) A member of the commission has full voting rights.

33 (6) One lay member and one attorney from the State at large
34 must be appointed by the Governor, with the advice and consent of
35 the Senate. Two lay members must be appointed by the Governor,
36 with the advice and consent of the Senate, one upon the
37 recommendation of the chairman of the Senate Judiciary
38 Committee and one upon the recommendation of the chairman of
39 the House Judiciary Committee.

40 (7) The commission shall conduct an election to nominate
41 one attorney from the State at large. The election must provide for
42 participation by all attorneys licensed in good standing and
43 residing in South Carolina. To nominate the attorneys who will

1 represent the six congressional districts, the commission shall
2 conduct an election within each district. These elections must
3 provide for participation by all permanently licensed attorneys
4 residing in the particular district. The commission shall conduct an
5 election to nominate two members of the judiciary from the State
6 at large, and this election must provide for participation by any
7 judge serving on this state's family court, circuit court, court of
8 appeals, and Supreme Court. The commission shall certify in
9 writing to the Governor the results of each election. The Governor
10 may reject any or all of the nominees upon satisfactory showing of
11 the unfitness of those rejected. If the Governor declines to appoint
12 a nominee submitted, additional nominees must be submitted in
13 the same manner following another election. A vacancy must be
14 filled in the same manner of the original appointment for the
15 unexpired portion of the term.

16 (8) A vacancy that occurs when the General Assembly is not
17 in session may be filled by an interim appointment of the Governor
18 in the manner provided for in Section 1-3-210.

19 (C) A public and lay member of commission and a panel of the
20 commission must be appointed in accordance with Section
21 40-1-45.

22 (D) A commission member or person authorized by the
23 commission to engage in business for the commission must be
24 compensated for his services at the usual rate for mileage,
25 subsistence, and per diem as provided by law for members of state
26 boards, committees, and commissions. A commission member or
27 person authorized by the commission to engage in business for the
28 commission may be reimbursed for actual and necessary expenses
29 incurred in connection with and as a result of their work as
30 members or persons acting on behalf of the commission.

31 (E) The commission annually shall elect from among its
32 members a chairman, vice chairman, secretary, and other officers
33 as the commission determines necessary. The commission may
34 adopt rules and regulations reasonably necessary for the
35 performance of its duties and the governance of its operations and
36 proceedings; governing the practice of law; and governing the
37 judiciary, employees of the judicial department, and others
38 assisting the judiciary.

39 (F) The commission shall meet at least four times a year and at
40 other times upon the call of the chair or a majority of the
41 commission.

1 (G) A majority of the members of the commission constitutes a
2 quorum; however, if there is a vacancy on the commission, a
3 majority of the members serving constitutes a quorum.

4 (H) A commission member is required to attend meetings or to
5 provide proper notice and justification of inability to do so. The
6 Governor may remove members from the commission for
7 absenteeism, as well as for other grounds provided for in Section
8 1-3-240.”

9

10 SECTION 2. Section 40-1-40 of the 1976 Code is amended to
11 read:

12

13 “Section 40-1-40. (A) The purpose of the Division of
14 Professional and Occupational Licensing, South Carolina
15 Department of Labor, Licensing and Regulation, is to protect the
16 public through the regulation of professional and occupational
17 licensees and the administration of boards charged with the
18 regulation of professional and occupational practitioners.

19 (B) The following boards and the professions and occupations
20 they license or otherwise regulate must be administered by the
21 Department of Labor, Licensing and Regulation pursuant to this
22 article:

- 23 Board of Accountancy
- 24 Board of Architectural Examiners
- 25 Athletic Commission
- 26 Auctioneers Commission
- 27 Board of Barber Examiners
- 28 Accessibility Committee of the Building Codes Council
- 29 Building Code Council
- 30 Board of Chiropractic Examiners
- 31 Contractors’ Licensing Board
- 32 Board of Cosmetology
- 33 Board of Dentistry
- 34 Engineers and Land Surveyors Board
- 35 Environmental Certification Board
- 36 Board of Registration for Foresters
- 37 Board of Funeral Service
- 38 Board of Registration for Geologists
- 39 Commission on the Legal Profession and Judiciary
- 40 Manufactured Housing Board
- 41 Board of Medical Examiners
- 42 Modular Buildings Board of Appeals
- 43 Board of Nursing

- 1 Long Term Health Care Administrators Board
- 2 Board of Occupational Therapy
- 3 Board of Examiners in Opticianry
- 4 Board of Examiners in Optometry
- 5 Board of Pharmacy
- 6 Board of Physical Therapy Examiners
- 7 Pilotage Commission
- 8 Board of Podiatry Examiners
- 9 Board of Examiners for Licensure of Professional Counselors and
- 10 Marital and Family Therapists
- 11 Board of Examiners in Psychology
- 12 Board of Pyrotechnic Safety
- 13 Real Estate Appraisers Board
- 14 Real Estate Commission
- 15 Residential Builders Commission
- 16 Board of Social Work Examiners
- 17 Board of Examiners in Speech-Language Pathology and
- 18 Audiology
- 19 Board of Veterinary Medical Examiners

20 (C) Each regulatory board within the department is a separate
21 board.

22 (D) The Department of Labor, Licensing and Regulation is a
23 member of the Governor's executive cabinet and must be headed
24 by a director who must be appointed by the Governor with the
25 advice and consent of the Senate, subject to removal from office
26 by the Governor pursuant to Section 1-3-240(B). The director
27 shall supervise the department under the direction and control of
28 the Governor and shall exercise other powers and perform other
29 duties as the Governor requires.”

30
31 SECTION 3. Section 40-5-10 of the 1976 Code is amended to
32 read:

33
34 “Section 40-5-10. ~~The inherent power of the Supreme Court~~
35 commission has exclusive power with respect to ~~regulating the~~
36 ~~practice of law,~~ determining the qualifications for admission to the
37 bar and disciplining, suspending and disbarring attorneys at law is
38 hereby recognized and declared. ~~The authority conferred on that~~
39 ~~court in Sections 40-5-10 to 40-5-60 shall be deemed as~~
40 cumulative thereto in this State. The Supreme Court has exclusive
41 authority to regulate the practice of law in this State in all other
42 respects.”

43

1 SECTION 4. Section 40-5-20 of the 1976 Code is amended to
2 read:

3
4 “Section 40-5-20. (A) The Supreme Court commission alone
5 may from time to time prescribe, adopt, promulgate, and amend
6 such rules and regulations as it ~~may deem~~ considers proper for:

7 ~~(a) defining and regulating the practice of law,~~
8 ~~(b)(1) determining the qualifications and requirements for~~
9 admission to the practice of law;₂

10 ~~(c) prescribing a code of ethics governing the professional~~
11 ~~conduct of attorneys at law;~~

12 ~~(d)(2) prescribing the procedure for disciplining, suspending,~~
13 ~~disbarring, and reinstating attorneys at law and the judiciary;~~

14 (B) The Supreme Court alone may from time to time prescribe,
15 adopt, promulgate, and amend such rules and regulations it
16 considers proper for:

17 (1) defining and regulating the practice of law, except
18 concerning admission to the practice of law and attorney or
19 judicial discipline;

20 (2) prescribing a code of ethics governing the professional
21 conduct of attorneys at law and the judiciary;

22 ~~(e)(3)~~ organizing and governing an association to be known as
23 the South Carolina State Bar which shall be composed of the
24 attorneys at law of the State, and which shall act as an
25 administrative agency of the Supreme Court of South Carolina for
26 the purpose of improving the administration of justice;₂ and

27 ~~(f)(4)~~ fixing an annual license fee for the practice of law in this
28 State, the payment of which shall entitle but not require ~~any an~~
29 attorney to be a member in the South Carolina State Bar and
30 providing for the collection and the disbursement of such license
31 fees. At such time as the South Carolina State Bar is established
32 all offices, appointments or official duties heretofore delegated or
33 given to the South Carolina Bar Association or ~~any an~~ officer of
34 the ~~same~~ South Carolina Bar Association by statute or appointment
35 of the State of South Carolina or ~~any a~~ branch ~~thereof~~ of the State
36 of South Carolina shall be vested in the South Carolina State Bar
37 and its officers.”

38

39 SECTION 5. Section 40-5-40 of the 1976 Code is amended to
40 read:

41

42 “Section 40-5-40. The ~~Supreme Court~~ commission alone may
43 appoint boards or committees to examine all applicants for

1 admission to the bar, and boards or committees to act as
2 administrative agencies of the court for the purpose of
3 investigating and reporting the violation of ~~such~~ rules and
4 regulations ~~as are~~ adopted by the court and to hear all causes
5 involving discipline, disbarment, suspension or reinstatement of
6 attorneys and to make recommendations ~~thereon~~ regarding these
7 things to the ~~Supreme Court~~ commission. Such hearings shall be
8 ~~had under such procedure as may be held pursuant to procedures~~
9 established by the ~~court~~ commission. ~~Any such~~ An administrative
10 agency created by the ~~Supreme Court~~ shall have commission has
11 the power of subpoena for the purpose of aiding it in hearing cases
12 of discipline, suspension or disbarment.”

13

14 SECTION 6. Section 40-5-50 of the 1976 Code is amended to
15 read:

16

17 “Section 40-5-50. All rules and regulations promulgated and
18 adopted under the terms of Sections 40-5-20 and 40-5-40 ~~shall~~
19 must be filed with the clerk of the Supreme Court or the
20 commission, as appropriate, and ~~shall~~ must not be effective until
21 the lapse of three months after they are ~~so~~ filed. Upon ~~such~~
22 these rules and regulations becoming effective, they shall
23 supersede all laws or parts of laws in conflict ~~therewith~~ with
24 them to the extent of the conflict.”

25

26 SECTION 7. Section 40-5-70 of the 1976 Code is amended to
27 read:

28

29 “Section 40-5-70. The justices of the Supreme Court or the
30 commission may pass ~~such~~ rules as may be necessary to carry into
31 effect the provisions of this chapter and from time to time amend
32 ~~such~~ the rules as occasion may require. The State Board of Law
33 Examiners may also make rules for its conduct and government,
34 not inconsistent with the provisions of law and subject to the
35 approval of the ~~Supreme Court~~ commission.”

36

37 SECTION 8. Section 40-5-210 of the 1976 Code, as last amended
38 by Act 307 of 2002, is further amended to read:

39

40 “Section 40-5-210. There is hereby created a State Board of Law
41 Examiners. The Board of Law Examiners ~~shall~~ must be appointed
42 by the ~~Supreme Court~~ commission and shall have ~~such~~ duties as
43 the ~~court~~ shall prescribe commission prescribes. The number of

1 members of the board and the terms of the members shall be set by
2 the ~~Supreme Court~~ commission. To be eligible for appointment to
3 the board, a person must be actively engaged in the practice of law
4 in South Carolina and must have been an active member of the
5 South Carolina Bar for at least seven years. Members ~~shall be~~ are
6 eligible for reappointment. Should a vacancy occur, the ~~court~~
7 commission shall fill the vacancy for the unexpired term. At least
8 one member from each congressional district must be appointed by
9 the ~~Supreme Court~~ commission.”

10

11 SECTION 9. Section 40-5-220 of the 1976 Code is amended to
12 read:

13

14 “Section 40-5-220. ~~No~~ An original license to practice as an
15 attorney, solicitor or counsellor ~~shall may only~~ be granted ~~except~~
16 by the ~~Supreme Court~~ commission. ~~All applications~~ An
17 application for admission to the bar in the State ~~shall must~~ be made
18 by petition to the ~~Supreme Court~~ commission.”

19

20 SECTION 10. Section 40-5-340 of the 1976 Code is amended to
21 read:

22

23 “Section 40-5-340. If ~~any~~ an attorney, solicitor or counsellor
24 ~~shall enter~~ enters into ~~any a~~ a speculating ~~practices~~ practice, by
25 purchasing or procuring to be purchased ~~any a~~ a note or other
26 demand for the purpose of putting the ~~same a note or demand~~ in
27 suit, when otherwise the owner or holder ~~thereof~~ of the note or
28 demand would not sue upon it, ~~such the~~ the attorney, solicitor, or
29 counsellor shall pay a fine of one hundred dollars and ~~shall is~~
30 thereafter ~~be~~ incapable of practicing as such in ~~any court~~ a court in
31 this State until restored by the ~~Supreme Court~~ commission.”

32

33 SECTION 11. Section 40-5-350 of the 1976 Code is amended to
34 read:

35

36 “Section 45-5-350. It is unlawful for a person or his agent,
37 employee, or anyone acting on his behalf to:

38 (1) solicit or procure through solicitation, either directly or
39 indirectly, legal business; or

40 (2) solicit or procure through solicitation a retainer, written or
41 oral, or an agreement authorizing an attorney to perform or render
42 legal services.

1 A person who violates a provision of this section is guilty of a
2 misdemeanor and, upon conviction, must be fined in the discretion
3 of the ~~court~~ commission or imprisoned not more than three years,
4 or both.”

5

6 SECTION 12. Section 40-5-360 of the 1976 Code is amended to
7 read:

8

9 “Section 40-5-360. It is unlawful for a person, partnership,
10 corporation, or association to divide with or receive from, or to
11 agree to divide with or receive from, an attorney or group of
12 attorneys, whether practicing in this State or elsewhere, ~~any~~ a
13 portion of a fee or compensation charged or received by an
14 attorney or any valuable consideration or reward as an inducement
15 for placing or in consideration of having placed in the hands of an
16 attorney, or in the hands of another person a claim or demand of
17 any kind for the purpose of collecting the claim or bringing an
18 action on the claim or of representing the claimant in the pursuit of
19 ~~any~~ a civil remedy for the recovery of the claim. This section does
20 not apply to an agreement between attorneys to divide between
21 themselves the compensation to be received.

22 A person who violates the provisions of this section is guilty of
23 a misdemeanor and, upon conviction, must be fined in the
24 discretion of the ~~court~~ commission or imprisoned not more than
25 three years, or both.”

26

27 SECTION 13. Section 40-5-520 of the 1976 Code is amended to
28 read:

29

30 “Section 40-5-520. ~~Any~~ An attorney, solicitor, or counsellor
31 may be removed or suspended ~~who shall be~~ by the commission if
32 he is guilty of any deceit, malpractice or misbehavior, but not until
33 a copy of the charges against him ~~shall~~ have been delivered to him
34 by the ~~clerk of the court in which the proceedings shall be had~~
35 commission and an opportunity ~~shall have~~ has been given him ~~of~~
36 being to be heard in his defense.”

37

38 SECTION 14. Section 40-5-230 of the 1976 Code is repealed.

39

40 SECTION 15. The Code Commissioner is directed to change
41 references from the Supreme Court to the Commission on the

1 Legal Profession and Judiciary as necessary after the enactment of
2 this act.

3 SECTION 16. This act takes effect upon ratification of the
4 constitutional amendment providing that the jurisdiction over the
5 admission of the practice of law and discipline of persons admitted
6 shall not be under the Supreme Court but rather must be as
7 provided by the General Assembly.

8 ----XX----

9