
HOUSE BILL 2216

State of Washington

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By Representatives Shea, DeBolt, Kristiansen, McCune, Newhouse, Short, Klippert, Ross, Herrera, Schmick, Kretz, Warnick, Angel, Cox, Condotta, Crouse, and Orcutt

Read first time 02/13/09. Referred to Committee on Judiciary.

1 AN ACT Relating to transferring all mandatory, regulatory,
2 licensing, and disciplinary functions of the Washington state bar
3 association to the Washington state supreme court; adding new sections
4 to chapter 2.04 RCW; repealing RCW 2.48.010, 2.48.020, 2.48.021,
5 2.48.030, 2.48.035, 2.48.040, 2.48.050, 2.48.060, 2.48.070, 2.48.080,
6 2.48.090, 2.48.100, 2.48.110, 2.48.130, 2.48.140, 2.48.150, 2.48.160,
7 2.48.165, 2.48.166, 2.48.170, 2.48.180, 2.48.190, 2.48.200, 2.48.210,
8 2.48.220, and 2.48.230; and providing an effective date.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 NEW SECTION. **Sec. 1.** The legislature recognizes that the
11 Washington state bar association, as an administrative arm of the
12 Washington state supreme court, is currently the sole statewide bar
13 association of Washington state that administers the admissions,
14 licensing, and discipline functions for lawyers practicing in the state
15 of Washington. The Washington state bar association also acts as the
16 exclusive statewide professional association for all lawyers licensed
17 to practice law in active status, and as a mandatory bar association,
18 membership in the Washington state bar association is required in order
19 to practice law in the state of Washington.

1 The legislature recognizes that from its creation in 1888, the
2 Washington bar association, or the Washington state bar association, as
3 it was named in 1890, was a voluntary organization that did not include
4 all lawyers admitted to practice. In 1930, it was proposed that the
5 Washington state bar association be incorporated, and eventually it was
6 proposed that the bar association be an agency of the state. In 1933,
7 after much debate, the legislature enacted the state bar act, chapter
8 2.48 RCW.

9 The legislature recognizes that although the state supreme court
10 has never specifically held that the state bar act is an
11 unconstitutional infringement on the separation of powers between the
12 legislative and judicial branches of state government, it has found
13 several of its provisions to be contrary to the inherent power of the
14 supreme court to regulate the judiciary and the bar, *Graham v. State*
15 *Bar Association*, 86 Wn.2d 624, 548 P.2d 310 (1976), and *WSBA v. State*
16 *of Washington*, 125 Wn.2d 901, 890 P.2d 1047 (1995). In *Graham*, the
17 court held that, ". . . the source of the court's power to admit,
18 enroll, disbar, and discipline is exclusively in the Supreme Court as
19 one of its inherent powers . . . It was not necessary, therefore, for
20 the legislature to act to accomplish the purposes achieved by the 1933
21 legislation [chapter 2.48 RCW]. The power to accomplish the
22 integration of the bar, its supervision and regulation is found in this
23 court, not the legislature." In *WSBA v. Washington*, the court held,
24 "This court's control over Bar Association functions is not limited to
25 admissions and discipline of lawyers. The control extends to ancillary
26 administrative functions as well The ultimate power to
27 regulate court-related functions, including the administration of the
28 Bar Association, belongs exclusively to this court."

29 The legislature recognizes that mandatory bar associations such as
30 the Washington state bar association exist at the present time in a
31 slight majority of states. The Washington state bar association has
32 always been funded by member dues and other fees. In 2007, the
33 Washington state bar association dues and fees ranked twelfth highest
34 in the nation at four hundred fourteen dollars per year, up from
35 twenty-seventh highest in the nation in 1995, and have been raised even
36 higher for 2009 at the level of four hundred thirty dollars per year.
37 There is currently before the supreme court for approval a Washington

1 state bar association recommendation to increase the annual members'
2 assessment of dues and fees to an even higher level.

3 The legislature recognizes that the Washington state bar
4 association has adopted as part of its bylaws the following:
5 "ACTIVITIES NOT AUTHORIZED. The Washington State Bar Association will
6 not: . . . [t]ake positions on political or social issues which do not
7 relate to or affect the practice of law or the administration of
8 justice." Over the past several years the Washington state bar
9 association, a mandatory bar association, has begun to take positions
10 on political and social issues which do not relate to or affect the
11 practice of law or the administration of justice by officially
12 endorsing and lobbying for highly controversial and divisive social and
13 political causes. The Washington state bar association's official
14 endorsement and support for such factious social, political, and
15 partisan causes are far beyond any reasonable, fair, or just
16 understanding of what constitutes the practice of law or the
17 administration of justice, or the purview of what a professional
18 mandatory membership bar association should engage in. Positions the
19 Washington state bar association, a mandatory bar association, and
20 administrative arm of the Washington state supreme court, have taken in
21 recent years on contentious social, political, and partisan issues not
22 only have been in knowing, willful, and intentional contradiction to
23 the opinions and beliefs of numerous members of the Washington state
24 bar association, but also matters of conscience. Thus, a professional
25 organization that once promoted only issues of interest to the bar in
26 general, or issues of interest to lawyers engaged in certain areas of
27 practice, is now clearly taking the side of special interests in
28 disputatious social, political, and partisan causes.

29 The legislature recognizes that voluntary bar associations are
30 private organizations of lawyers, each voluntary bar association
31 choosing its own purposes regarding social, educational, and lobbying
32 functions, and that voluntary bar associations do not regulate the
33 practice of law, admit, enroll, disbar, or discipline lawyers. There
34 is a voluntary bar association in every state that has no mandatory bar
35 association, and many voluntary bar associations throughout most
36 states, including Washington, organized by city, county, or other
37 communities. Voluntary bar associations are most often focused on
38 common professional interests. Minnesota does not require bar

1 association membership and the Minnesota state bar association, one of
2 the oldest state bar associations in the United States having been
3 organized in 1883, is a purely voluntary professional association with
4 a membership of nearly sixteen thousand legal professionals consisting
5 of lawyers, judges, and other legal practitioners, such as clerks,
6 registrars, and paralegals.

7 NEW SECTION. **Sec. 2.** The legislature finds that it is in the best
8 interests of the practice of law, the administration of justice, the
9 professionalism of the legal community, and the maintenance of the
10 integrity and rightful respect due to the legal profession as a whole
11 to eliminate a mandatory state bar association, to transfer all the
12 mandatory, regulatory, licensing, and disciplinary functions of the
13 Washington state bar association to the Washington state supreme court
14 where those powers belong, and to authorize voluntary bar associations
15 that best represent the diverse professional and personal interests,
16 values, ideals, and principles, of their individual memberships.

17 The legislature finds that voluntary bar associations will best
18 demonstrate the value of diversity, equality, and fairness within and
19 without the legal community; aid the courts in the administration of
20 justice; promote programs which develop high standards of competence;
21 professionalism, and ethics; foster collegiality among their members
22 and goodwill between the legal profession and the public; provide
23 quality programs of continuing legal education; provide lower costs for
24 memberships and continuing legal education; apply the knowledge and
25 experience of the profession to the public good; provide varied forums
26 for the discussion of subjects pertaining to law, jurisprudence, and
27 legal reform; cooperate with other bar associations and organizations;
28 and be a positive and constructive force for justice in society.

29 NEW SECTION. **Sec. 3.** All mandatory, regulatory, licensing, and
30 disciplinary functions regarding the practice of law and the
31 administration of justice in this state currently administered by the
32 Washington state bar association are hereby transferred to and placed
33 exclusively in the Washington state supreme court. Judicial
34 legislative policies and functions pertaining to the practice of law
35 and the administration of justice should be reasonably related to the
36 following subjects: Regulating and disciplining lawyers; improving the

1 functioning of the courts, including issues of judicial independence,
2 fairness, efficacy, and efficiency; making legal services available to
3 society; regulating lawyer trust accounts; the education, ethics,
4 competence, integrity, and regulation of the legal profession;
5 providing law improvement assistance to elected and appointed
6 government officials; issues involving the structure, organization, and
7 operation of federal, state, and local courts in or affecting
8 Washington; issues involving the rules of practice, procedure, and
9 evidence in federal, state, or local courts in or affecting Washington;
10 or issues involving the duties and functions of judges and lawyers in
11 federal, state, and local courts in or affecting Washington.

12 NEW SECTION. **Sec. 4.** The Washington state supreme court is
13 respectfully requested to adopt rules necessary for the transfer to the
14 court of all mandatory, regulatory, licensing, and disciplinary
15 functions regarding the practice of law and the administration of
16 justice in this state currently administered by the Washington state
17 bar association. Court rules should establish an annual assessment of
18 member dues and fees reasonably related to the costs necessary for the
19 administration of functions pertaining to the practice of law and the
20 administration of justice.

21 NEW SECTION. **Sec. 5.** Voluntary, nonmandatory bar associations are
22 hereby authorized as incorporated under chapter 24.03 RCW.

23 NEW SECTION. **Sec. 6.** Nothing in this act is intended, nor shall
24 be construed, to transfer, compromise, or otherwise diminish in any
25 way, any constitutional prerogatives of the legislature or its inherent
26 legislative power, to establish law, including substantive, remedial,
27 evidentiary, and procedural law, as originally intended by, and
28 implemented in accordance with, the provisions of the Washington state
29 Constitution. Nothing in this act is intended, nor shall be construed,
30 to interfere, intrude, or otherwise assume any of the constitutional
31 prerogatives of the judiciary or its inherent judicial power, to
32 regulate the practice of law and the administration of justice as
33 originally intended by, and implemented in accordance with, the
34 provisions of the Washington state Constitution.

1 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each
2 repealed:

3 (1) RCW 2.48.010 (Objects and powers) and 1933 c 94 s 2;

4 (2) RCW 2.48.020 (First members) and 1933 c 94 s 3;

5 (3) RCW 2.48.021 (New members) and 1933 c 94 s 4;

6 (4) RCW 2.48.030 (Board of governors) and 1982 1st ex.s. c 30 s 1,
7 1972 ex.s. c 66 s 1, & 1933 c 94 s 5;

8 (5) RCW 2.48.035 (Board of governors--Membership--Effect of
9 creation of new congressional districts or boundaries) and 1982 1st
10 ex.s. c 30 s 2;

11 (6) RCW 2.48.040 (State bar governed by board of governors) and
12 1933 c 94 s 6;

13 (7) RCW 2.48.050 (Powers of governors) and 1933 c 94 s 7;

14 (8) RCW 2.48.060 (Admission and disbarment) and 1933 c 94 s 8;

15 (9) RCW 2.48.070 (Admission of veterans) and 1945 c 181 s 1;

16 (10) RCW 2.48.080 (Admission of veterans--Establishment of
17 requirements if in service) and 1945 c 181 s 2;

18 (11) RCW 2.48.090 (Admission of veterans--Establishment of
19 requirements if discharged) and 1945 c 181 s 3;

20 (12) RCW 2.48.100 (Admission of veterans--Effect of disability
21 discharge) and 1945 c 181 s 4;

22 (13) RCW 2.48.110 (Admission of veterans--Fees of veterans) and
23 1945 c 181 s 5;

24 (14) RCW 2.48.130 (Membership fee--Active) and 1957 c 138 s 1, 1953
25 c 256 s 1, & 1933 c 94 s 9;

26 (15) RCW 2.48.140 (Membership fee--Inactive) and 1955 c 34 s 1 &
27 1933 c 94 s 10;

28 (16) RCW 2.48.150 (Admission fees) and 1933 c 94 s 11;

29 (17) RCW 2.48.160 (Suspension for nonpayment of fees) and 1933 c 94
30 s 12;

31 (18) RCW 2.48.165 (Disbarment or license suspension--Nonpayment or
32 default on educational loan or scholarship) and 1996 c 293 s 1;

33 (19) RCW 2.48.166 (Admission to or suspension from practice--
34 Noncompliance with support order--Rules) and 1997 c 58 s 810;

35 (20) RCW 2.48.170 (Only active members may practice law) and 1933
36 c 94 s 13;

37 (21) RCW 2.48.180 (Definitions--Unlawful practice a crime--Cause

1 for discipline--Unprofessional conduct--Defense--Injunction--Remedies--
2 Costs--Attorneys' fees--Time limit for action) and 2003 c 53 s 2 & 2001
3 c 310 s 2;

4 (22) RCW 2.48.190 (Qualifications on admission to practice) and
5 1987 c 202 s 107 & 1921 c 126 s 4;

6 (23) RCW 2.48.200 (Restrictions on practice by certain officers)
7 and 1992 c 225 s 1, 1975 1st ex.s. c 19 s 3, 1971 c 81 s 13, & 1921 c
8 126 s 5;

9 (24) RCW 2.48.210 (Oath on admission) and 1921 c 126 s 12;

10 (25) RCW 2.48.220 (Grounds of disbarment or suspension) and 1921 c
11 126 s 14 & 1909 c 139 s 7; and

12 (26) RCW 2.48.230 (Code of ethics) and 1921 c 126 s 15.

13 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act shall be
14 codified and are each added to chapter 2.04 RCW.

15 NEW SECTION. **Sec. 9.** This act takes effect December 1, 2009.

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