**South Carolina General Assembly**

120th Session, 2013-2014

**H. 3828**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Cobb‑Hunter

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Introduced in the House on March 19, 2013

Currently residing in the House Committee on **Judiciary**

Summary: Regulation of Attorneys at Law

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/19/2013 House Introduced and read first time ([House Journal‑page 19](file:///h:\HJ%20Archive\2013\03-19-13.docx))

3/19/2013 House Referred to Committee on **Judiciary** ([House Journal‑page 19](file:///h:\HJ%20Archive\2013\03-19-13.docx))

**VERSIONS OF THIS BILL**

[3/19/2013](file:///p:\pprever\2013-14\3828_20130319.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40‑5‑15 SO AS TO PROVIDE NECESSARY DEFINITIONS CONCERNING THE REGULATION OF ATTORNEYS AT LAW; TO AMEND SECTION 40-5-10, RELATING TO THE INHERENT POWER OF THE SUPREME COURT OVER ADMISSIONS TO THE PRACTICE OF LAW AND THE PRACTICE OF LAW ITSELF, SO AS TO PROVIDE THESE POWERS ARE SUBJECT TO STATUTORY LAW AS PROVIDED BY THE CONSTITUTION OF THIS STATE; TO AMEND SECTION 40‑5‑20, RELATING TO THE AUTHORITY OF THE SUPREME COURT TO PROMULGATE CERTAIN RULES AND REGULATIONS CONCERNING THE PRACTICE OF LAW AND THE ESTABLISHMENT OF THE SOUTH CAROLINA STATE BAR, SO AS TO MAKE MEMBERSHIP IN THE BAR OPTIONAL AND TO PROVIDE THE COURT MAY PRESCRIBE THE PROCEDURE FOR LICENSURE AS AN ATTORNEY RATHER THAN ADMISSION TO THE BAR, AND DELETE AN OBSOLETE REFERENCE; AND TO AMEND SECTIONS 40‑5‑40, 40‑5‑210, 40‑5‑220, 40‑5‑230, AND 40‑5‑310, ALL RELATING TO THE REGULATION OF ATTORNEYS AT LAW, SO AS TO MAKE CONFORMING CHANGES.

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:

“Section 40‑5‑15. For the purposes of this chapter:

(1) ‘Disbar’ or ‘disbarment’ means to deprive a person of a license to practice law in this State.

(2) ‘Licensee’ means a person licensed to practice law in this State by the Supreme Court.

(3) ‘South Carolina State Bar’ or ‘South Carolina Bar’ means the association that acts as the administrative agency of the Supreme Court to improve the administration of justice.

(4) ‘Supreme Court’ means the Supreme Court of South Carolina.”

SECTION 2. Section 40‑5‑10 of the 1976 Code is amended to read:

“Section 40‑5‑10. The inherent power of the Supreme Court with respect to regulating the practice of law, determining the qualifications for ~~admission to the bar~~ licensure to practice law and disciplining, suspending and disbarring attorneys at law is hereby recognized and declared, subject to the statutory laws of this State pursuant to Section 4, Article V of the South Carolina Constitution. The authority conferred on that court in Sections 40‑5‑10 to 40‑5‑60 shall be deemed as cumulative ~~thereto~~ to this inherent power.”

SECTION 3. Section 40‑5‑20 of the 1976 Code is amended to read:

“Section 40‑5‑20. The Supreme Court may from time to time prescribe, adopt, promulgate and amend such rules and regulations as it may deem proper ~~(a)~~:

(1) defining and regulating the practice of law~~, (b)~~;

(2) determining the qualifications and requirements for ~~admission~~ licensure to the practice of law~~, (c)~~;

(3) prescribing a code of ethics governing the professional conduct of attorneys at law~~, (d)~~;

(4) prescribing the procedure for disciplining, suspending, disbarring and reinstating attorneys at law~~, (e)~~;

(5) organizing and governing an association to be known as the South Carolina State Bar which ~~shall be composed of the attorneys at law of the State, and which~~ shall act as an administrative agency of the Supreme Court ~~of South Carolina~~ for the purpose of improving the administration of justice~~,~~; and ~~(f)~~

(6) fixing an annual license fee for the practice of law in this State and providing for the collection and disbursement of these fees, the payment of which ~~shall entitle~~ entitles but does not require ~~any~~ an attorney to be a member in the South Carolina State Bar ~~and providing for the collection and the disbursement of such license fees. At such time as the South Carolina State Bar is established all offices, appointments or official duties heretofore delegated or given to the South Carolina Bar Association or any officer of the same by statute or appointment of the State of South Carolina or any branch thereof shall be vested in the South Carolina State Bar and its officers~~.”

SECTION 4. Section 40‑5‑40 of the 1976 Code is amended to read:

“Section 40‑5‑40. The Supreme Court may appoint boards or committees to examine all applicants for ~~admission to the bar~~ licensure to practice law, and boards or committees to act as administrative agencies of the court for the purpose of investigating and reporting the violation of such rules and regulations as are adopted by the court and to hear all causes involving discipline, disbarment, suspension, or reinstatement of attorneys and to make recommendations ~~thereon~~ on them to the Supreme Court. ~~Such~~ These hearings ~~shall~~ must be ~~had~~ conducted under ~~such~~ a procedure ~~as may be~~ established by the court. Any ~~such~~ administrative agency created by the Supreme Court shall have the power of subpoena for the purpose of aiding it in hearing cases of discipline, suspension or disbarment.”

SECTION 5. Section 40‑5‑210 of the 1976 Code is amended to read:

“Section 40‑5‑210. There is hereby created a State Board of Law Examiners. The Board of Law Examiners ~~shall~~ must be appointed by the Supreme Court and shall have such duties as the court ~~shall prescribe~~ prescribes. The number of members of the board and the terms of the members shall be set by the Supreme Court. To be eligible for appointment to the board, a person must be actively engaged in the practice of law in South Carolina and must have been ~~an active member of the South Carolina Bar~~ a licensee for at least seven years. Members ~~shall~~ must be eligible for reappointment. Should a vacancy occur, the court shall fill the vacancy for the unexpired term. At least one member from each congressional district must be appointed by the Supreme Court.”

SECTION 6. Section 40‑5‑220 of the 1976 Code is amended to read:

“Section 40‑5‑220. ~~No~~ An original license to practice as an attorney, solicitor, or counsellor ~~shall~~ may be granted except by the Supreme Court. All applications for ~~admission to the bar~~ licensure in ~~the~~ this State ~~shall~~ must be made by petition to the Supreme Court.”

SECTION 7. Section 40‑5‑230 of the 1976 Code is amended to read:

“Section 40‑5‑230. Nothing in this article contained ~~shall~~ may be construed to deprive the courts of this State of the power, as at present existing, of disbarring or otherwise punishing ~~members of the bar~~ a licensee.”

SECTION 8. Section 40‑5‑310 of the 1976 Code is amended to read:

“Section 40‑5‑310. ~~No~~ A person may ~~either~~ not practice law or solicit the legal cause of another person or entity in this State unless he is ~~enrolled as a member of the South Carolina Bar pursuant to applicable court rules,~~ licensed to practice law by the Supreme Court or otherwise authorized to perform prescribed legal activities by action of the Supreme Court ~~of South Carolina~~. The type of conduct that is the subject of any charge filed pursuant to this section must have been defined as the unauthorized practice of law by the Supreme Court of South Carolina prior to any charge being filed. A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars ~~or~~, imprisoned not more than five years, or both.”

SECTION 9. This act takes effect upon approval of the Governor and ratification of an amendment to Section 4, Article V of the Constitution of this State, providing the jurisdiction of the Supreme Court over admissions to the practice of law be subject to statutory law.

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