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HOUSE BILL 1664

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State of Washington

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By Representatives Shea, Rodne, Chandler, McCune, Bailey, Hinkle, Nealey, Rivers, Klippert, Warnick, Smith, Short, Condotta, Kristiansen, Angel, Ross, Schmick, Taylor, Buys, Fagan, Asay, and Overstreet

Read first time 01/28/11. 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 2011 at the level of four hundred eighty 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.** It is the clear, unambiguous, and express  
30 intent of the legislature by this act to transfer and place all  
31 mandatory, regulatory, licensing, and disciplinary functions regarding  
32 the practice of law and the administration of justice in this state  
33 currently administered by the Washington state bar association  
34 exclusively in the Washington state supreme court and that all  
35 mandatory fees currently paid by licensees to the Washington state bar  
36 association shall cease and be transferred and placed exclusively in

1 the Washington state supreme court. The Washington state supreme court  
2 is encouraged to utilize such fees solely for the mandatory,  
3 regulatory, licensing, and disciplinary functions regarding the  
4 practice of law and the administration of justice and to adjust fees  
5 downwardly accordingly.

6 NEW SECTION. **Sec. 4.** All mandatory, regulatory, licensing, and  
7 disciplinary functions regarding the practice of law and the  
8 administration of justice in this state currently administered by the  
9 Washington state bar association are hereby transferred to and placed  
10 exclusively in the Washington state supreme court. Judicial  
11 legislative policies and functions pertaining to the practice of law  
12 and the administration of justice should be reasonably related to the  
13 following subjects: Regulating and disciplining lawyers; improving the  
14 functioning of the courts, including issues of judicial independence,  
15 fairness, efficacy, and efficiency; making legal services available to  
16 society; regulating lawyer trust accounts; the education, ethics,  
17 competence, integrity, and regulation of the legal profession;  
18 providing law improvement assistance to elected and appointed  
19 government officials; issues involving the structure, organization, and  
20 operation of federal, state, and local courts in or affecting  
21 Washington; issues involving the rules of practice, procedure, and  
22 evidence in federal, state, or local courts in or affecting Washington;  
23 or issues involving the duties and functions of judges and lawyers in  
24 federal, state, and local courts in or affecting Washington. All  
25 mandatory fees currently paid by licensees to the Washington state bar  
26 association shall cease and be transferred and placed exclusively in  
27 the Washington state supreme court.

28 NEW SECTION. **Sec. 5.** The Washington state supreme court is  
29 respectfully requested to adopt rules necessary for the transfer to the  
30 court of all mandatory, regulatory, licensing, and disciplinary  
31 functions regarding the practice of law and the administration of  
32 justice in this state currently administered by the Washington state  
33 bar association. Court rules should establish an annual assessment of  
34 member dues and fees reasonably related to the costs necessary for the  
35 administration of functions pertaining to the practice of law and the  
36 administration of justice.

1        NEW SECTION.    **Sec. 6.** Voluntary, nonmandatory bar associations are  
2 hereby authorized as incorporated under chapter 24.03 RCW.

3        NEW SECTION.    **Sec. 7.** Nothing in this act is intended, nor shall  
4 be construed, to transfer, compromise, or otherwise diminish in any  
5 way, any constitutional prerogatives of the legislature or its inherent  
6 legislative power, to establish law, including substantive, remedial,  
7 evidentiary, and procedural law, as originally intended by, and  
8 implemented in accordance with, the provisions of the Washington state  
9 Constitution. Nothing in this act is intended, nor shall be construed,  
10 to interfere, intrude, or otherwise assume any of the constitutional  
11 prerogatives of the judiciary or its inherent judicial power, to  
12 regulate the practice of law and the administration of justice as  
13 originally intended by, and implemented in accordance with, the  
14 provisions of the Washington state Constitution.

15        NEW SECTION.    **Sec. 8.** The following acts or parts of acts are each  
16 repealed:

- 17        (1) RCW 2.48.010 (Objects and powers) and 1933 c 94 s 2;
- 18        (2) RCW 2.48.020 (First members) and 1933 c 94 s 3;
- 19        (3) RCW 2.48.021 (New members) and 1933 c 94 s 4;
- 20        (4) RCW 2.48.030 (Board of governors) and 1982 1st ex.s. c 30 s 1,  
21 1972 ex.s. c 66 s 1, & 1933 c 94 s 5;
- 22        (5) RCW 2.48.035 (Board of governors--Membership--Effect of  
23 creation of new congressional districts or boundaries) and 1982 1st  
24 ex.s. c 30 s 2;
- 25        (6) RCW 2.48.040 (State bar governed by board of governors) and  
26 1933 c 94 s 6;
- 27        (7) RCW 2.48.050 (Powers of governors) and 1933 c 94 s 7;
- 28        (8) RCW 2.48.060 (Admission and disbarment) and 1933 c 94 s 8;
- 29        (9) RCW 2.48.070 (Admission of veterans) and 1945 c 181 s 1;
- 30        (10) RCW 2.48.080 (Admission of veterans--Establishment of  
31 requirements if in service) and 1945 c 181 s 2;
- 32        (11) RCW 2.48.090 (Admission of veterans--Establishment of  
33 requirements if discharged) and 1945 c 181 s 3;
- 34        (12) RCW 2.48.100 (Admission of veterans--Effect of disability  
35 discharge) and 1945 c 181 s 4;

- 1 (13) RCW 2.48.110 (Admission of veterans--Fees of veterans) and  
2 1945 c 181 s 5;
- 3 (14) RCW 2.48.130 (Membership fee--Active) and 1957 c 138 s 1, 1953  
4 c 256 s 1, & 1933 c 94 s 9;
- 5 (15) RCW 2.48.140 (Membership fee--Inactive) and 1955 c 34 s 1 &  
6 1933 c 94 s 10;
- 7 (16) RCW 2.48.150 (Admission fees) and 1933 c 94 s 11;
- 8 (17) RCW 2.48.160 (Suspension for nonpayment of fees) and 1933 c 94  
9 s 12;
- 10 (18) RCW 2.48.165 (Disbarment or license suspension--Nonpayment or  
11 default on educational loan or scholarship) and 1996 c 293 s 1;
- 12 (19) RCW 2.48.166 (Admission to or suspension from practice--  
13 Noncompliance with support order--Rules) and 1997 c 58 s 810;
- 14 (20) RCW 2.48.170 (Only active members may practice law) and 1933  
15 c 94 s 13;
- 16 (21) RCW 2.48.180 (Definitions--Unlawful practice a crime--Cause  
17 for discipline--Unprofessional conduct--Defense--Injunction--Remedies--  
18 Costs--Attorneys' fees--Time limit for action) and 2003 c 53 s 2 & 2001  
19 c 310 s 2;
- 20 (22) RCW 2.48.190 (Qualifications on admission to practice) and  
21 1987 c 202 s 107 & 1921 c 126 s 4;
- 22 (23) RCW 2.48.200 (Restrictions on practice by certain officers)  
23 and 1992 c 225 s 1, 1975 1st ex.s. c 19 s 3, 1971 c 81 s 13, & 1921 c  
24 126 s 5;
- 25 (24) RCW 2.48.210 (Oath on admission) and 1921 c 126 s 12;
- 26 (25) RCW 2.48.220 (Grounds of disbarment or suspension) and 1921 c  
27 126 s 14 & 1909 c 139 s 7; and
- 28 (26) RCW 2.48.230 (Code of ethics) and 1921 c 126 s 15.

29 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act shall be  
30 codified and are each added to chapter 2.04 RCW.

31 NEW SECTION. **Sec. 10.** This act takes effect December 1, 2011.

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