
Civil Rights & Judiciary Committee

HB 1788

Brief Description: Concerning the Washington state bar association.

Sponsors: Representative Stokesbary.

Brief Summary of Bill

- Transfers all mandatory, regulatory, licensing, and disciplinary functions regarding the practice of law and the administration of justice currently administered by the Washington State Bar Association to the Washington Supreme Court and authorizes voluntary nonmandatory bar associations.
- Repeals most of the State Bar Act.

Hearing Date: 2/19/19

Staff: Cece Clynych (786-7195).

Background:

Bar Associations, Generally.

Across the country, the structure of bar associations varies. Some, like Washington, have what is known as an "integrated bar," which means that the WSBA administers regulatory functions as well as professional association services. Other states have voluntary bar associations and members choose to join for professional services while the state's Supreme Court oversees all regulatory functions. In still others, membership is mandatory but the mandatory bar association may or may not administer regulatory functions.

Washington State Bar Association.

Washington's Constitution, Article II, vests the legislative power of the State in the Legislature, consisting of the House of Representatives and the Senate. Article IV vests the judicial power of the State in the Judiciary.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Between 1888 and 1933, the bar association was a voluntary professional association. The Washington Supreme Court (Court) and a board of state bar examiners administered the admission and discipline of attorneys. In 1933, the Legislature enacted the Washington State Bar Act (Act) which created an association known as the Washington State Bar Association (WSBA) to be governed by a board of governors charged with the executive functions and the enforcement of many of the provisions of the Act. Among other things, the board was empowered to adopt rules concerning membership, classification of membership, privileges of membership, and the collection, deposit, and disbursement of membership and admission fees, penalties, and all other funds.

The Act provides that in order to practice law in Washington a person has to be a member of the WSBA. It also includes provisions relating to: admission and disbarment; qualifications on admission; the oath on admission; admission of veterans; membership fees for active and inactive members; suspension for nonpayment; the effect of noncompliance with a child support order; the unlawful practice of law; restrictions on practice by certain officers such as judges, sheriffs, coroners, clerks of court, and prosecutors; grounds for disbarment; and the code of ethics.

The Court has held that as a separate, independent branch of government, it has inherent constitutional powers to control the WSBA and its functions. Court rules known as General Rules (GR) provide that the Court has inherent and plenary authority to regulate the practice of law, and that the Court ensures the integrity of the legal profession and protects the public by adopting rules for the regulation of the practice of law and actively supervising persons acting under the its authority. The rules further provide that the Court authorizes and supervises the WSBA, which carries out the administrative responsibilities and functions expressly delegated by the Court (GR 12.2).

The Admission and Practice Rules (APR) provide that the Court has the exclusive responsibility and the inherent power to establish the qualifications for admission to practice law. Pursuant to APR 1(b), a person shall not appear as an attorney or counsel in any of the courts or practice law in Washington unless that person has passed an examination for admission, has complied with the APRs, and is an active member of the WSBA. A person is admitted to the practice of law and becomes an active member only by order of the Court.

In order to remain active, a member must pay an annual fee. For 2019 the WSBA license fee for lawyers admitted to any bar before 2017 was \$453. A mandatory client protection fund fee of \$30 was also required. Lawyers admitted to any bar before 2017 were allowed a Keller deduction of \$1.25 if they so chose. (In a United States Supreme Court case, *Keller v. State Bar of California*, the Supreme Court ruled that a bar association may not use mandatory member fees to support political or ideological activities that are not reasonably related to the regulation of the legal profession or improving the quality of legal services. The bar is required to identify that portion of mandatory license fees that go to such activities and establish a system whereby objecting members may either deduct that portion of their fees or receive a refund.)

The WSBA also administers professional association services. Among these are voluntary, topical sections which members may choose to join, and for which a separate fee is paid.

In September 2018, the Court announced that it would undertake a review of the structure of the WSBA to determine whether it is compliant with recent United States Supreme Court opinions regarding anti-trust law (*North Carolina State Board of Dental Examiners v. Federal Trade Commission*) and the First Amendment (*Janus v. American Federation of State, County, and Municipal Employees*).

Summary of Bill:

All mandatory, regulatory, licensing, and disciplinary functions regarding the practice of law and the administration of justice that are currently administered by the Washington State Bar Association (WSBA) are transferred to and placed exclusively in the Washington Supreme Court (Court). An orderly transition is to be accomplished no later than January 1, 2020. On or before that date, the WSBA shall cease collection of mandatory dues or fees currently paid by licensees and transfer any remaining balances to the Court. The Legislature respectfully requests the Court to adopt rules necessary for the transfer, and provides that the annual assessment of member dues and fees not exceed the costs necessary for the administration of functions pertaining to the practice of law and the administration of justice.

Voluntary, nonmandatory bar associations are authorized; however, any such association must be entirely voluntary and may not be funded through mandatory dues or fees. On or before January 1, 2020, the WSBA shall cease the collection of fees and other funds currently paid for membership in the various sections of the WSBA and shall transfer any remaining balances attributable to each section to the appropriate voluntary, nonmandatory association counterpart for that section. If no counterpart is in existence by January 1, 2020, these funds shall be transferred to the Court.

All but two sections of the State Bar Act chapter of the Revised Code of Washington are repealed. The two sections remaining concern the unlawful practice of law and certain restrictions on the practice of law applicable to judges, sheriffs, coroners, clerks of court, and prosecuting attorneys.

It is explicitly provided that nothing in the bill transfers, compromises, or otherwise diminishes the prerogatives or inherent powers of the Legislature, or interferes, intrudes, or otherwise assumes any of the powers of the Judiciary.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.