

Original sponsor: Judiciary Committee

Offered: 5/30/80
Referred: Rules

1 IN THE SENATE

BY THE RULES COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 588

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act continuing the existence of the Board of Govern-
7 nors of the Alaska Bar Association and amending the
8 statutes relating to the practice of law in the state;
9 amending Alaska State Supreme Court Bar Rules 2, 7, and
10 62; and providing for an effective date."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 * Section 1. AS 08.03.010(c) is amended by adding a new paragraph to
13 read:

14 (2) Board of Governors of the Alaska Bar Association (AS 08.-
15 08.040) - June 30, 1981.

16 * Sec. 2. AS 08.08.010 is amended to read:

17 Sec. 08.08.010. CREATION OF ALASKA BAR ASSOCIATION. (a) There is
18 created an agency [INSTRUMENTALITY] of the state known as the Alaska Bar
19 Association, referred to in this chapter as the Alaska Bar. The Alaska
20 Bar shall have a common seal, may sue and be sued, and may, for the
21 purpose of carrying into effect and promoting the objects of the Alaska
22 Bar, enter into contracts and acquire, hold, encumber and dispose of
23 real and personal property.

24 (b) Except as otherwise provided by this chapter, the Alaska Bar
25 is subject to statutory requirements imposed on state agencies including
26 but not limited to AS 08.03, AS 24.20.271, AS 24.55, AS 44.62.310,
27 44.62.312 and AS 44.66.

28 * Sec. 3. AS 08.08.040 is amended to read:

29 Sec. 08.08.040. BOARD OF GOVERNORS OF THE ALASKA BAR. (a) There

1 is [HEREBY] constituted a Board of Governors of the Alaska Bar to be
2 elected under bylaws and regulations adopted [PROMULGATED] by the board.

3 (b) The board consists of eight [NINE] active members elected by
4 the active members of the Alaska Bar and three persons who are appointed
5 by the governor and who are not attorneys.

6 * Sec. 4. AS 08.08.050(a) is amended to read:

7 Sec. 08.08.050. SELECTION [ELECTION] OF THE BOARD. (a) Two
8 members of the board shall be elected by and from among the members of
9 the association resident in the first judicial district; four members of
10 the board shall be elected by and from among the members of the associa-
11 tion resident in the third judicial district; two members by and from
12 among the members of the association resident in the combined area of
13 the second and fourth judicial districts. Three members who are not
14 attorneys shall be appointed by the governor and are subject to confir-
15 mation by the legislature in joint session [; AND ONE MEMBER AT LARGE
16 FROM THE ENTIRE STATE].

17 * Sec. 5. AS 08.08.050(b) is amended to read:

18 (b) Members of the Board of Governors shall hold office for three
19 years and until their successors are elected or appointed and qualified.

20 * Sec. 6. AS 08.08.050(c) is repealed and re-enacted to read:

21 (c) Board members shall be selected annually, on the following
22 triennial rotation:

23 (1) in the first year, one member shall be appointed; one
24 member shall be elected from the first judicial district, one member
25 from the combined second and fourth judicial district, and one member
26 from the third judicial district;

27 (2) in the second year, one member shall be appointed; one
28 member shall be elected from the first judicial district, one member
29 from the combined second and fourth judicial district, and one member

1 from the third judicial district;

2 (3) in the third year, one member shall be appointed and two
3 members shall be elected from the third judicial district.

4 * Sec. 7. AS 08.08.060 is amended to read:

5 Sec. 08.08.060. ELECTION OF OFFICERS. The active members of the
6 Alaska Bar [WHO ARE IN ACTUAL ATTENDANCE AT THE ASSOCIATION'S ANNUAL
7 CONVENTION] shall elect by a majority vote [DURING THE CONVENTION] the
8 association's officers from the membership of the Board of Governors.

9 * Sec. 8. AS 08.08.070 is repealed and re-enacted to read:

10 Sec. 08.08.070. VACANCIES ON THE BOARD. (a) The board shall fill
11 a vacancy in the elected membership of the board until the next annual
12 election.

13 (b) The governor shall appoint a member to fill a vacancy in the
14 appointed membership of the board for the unexpired term.

15 * Sec. 9. AS 08.08 is amended by adding a new section to read:

16 Sec. 08.08.075. MEETINGS OF THE BOARD. AS 44.62.310 and 44.62.312
17 apply to the meetings of the board. Members of the Alaska Bar and the
18 public shall be given 30 days notice of meetings of the board except for
19 emergency meetings dealing with the executive administration of the bar
20 examination. Meetings of the board shall take place in the state.

21 * Sec. 10. AS 08.08.080 is amended to read:

22 Sec. 08.08.080. POWERS OF BOARD. (a) Except as may be otherwise
23 provided in this chapter or the Alaska Bar Rules, the board may adopt
24 reasonable provisions

25 (1) concerning membership and the classification of member-
26 ship in the Alaska Bar;

27 (2) providing for employees of the Alaska Bar, the time,
28 place and method of their selection, and their respective powers, duties,
29 terms of office, and compensation;

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(3) concerning annual and special meetings;

(4) concerning the establishment, collection, deposit, investment, and disbursement of membership and admission fees, penalties, and all other funds;

[(5) PROVIDING FOR THE ORGANIZATION AND GOVERNMENT OF LOCAL SUBDIVISIONS OF THE ALASKA BAR;]

(6) providing for all other matters affecting in any way the organization and functioning of the Alaska Bar;

(7) providing for continuing legal education and for certification of a continuing legal education program;

(8) establishing and maintaining a program for the certification of attorneys as specialists.

(b) The board may

(1) approve and recommend to the state supreme court [ADDITIONAL] rules for promulgation by the court including rules concerning admission, [AND] discipline, licensing and continuing legal education [AND DEFINING THE PRACTICE OF LAW];

(2) adopt reasonable bylaws and regulations consistent with this chapter and the Alaska Bar Rules;

(3) sue in the name of the Alaska Bar in a court of competent jurisdiction to enjoin a person from doing an act constituting a violation of this chapter;

(4) fix the annual membership fee for active, [AND] inactive, and judicial members;

(5) recommend to the legislature changes to this chapter and to the provisions of state law generally.

* Sec. 11. AS 08.08.085 is amended to read:

Sec. 08.08.085. ANNUAL REPORT TO LEGISLATURE. (a) The Board of Governors shall report annually to the judiciary committees of the

1 legislature on all matters concerning admissions, discipline of members,
2 and disbarment proceedings, except for those matters defined as con-
3 fidential by court rule.

4 (b) The report of the Board of Governors shall note

5 (1) each addition, modification, or repeal of a bylaw or
6 regulation of the Alaska Bar;

7 (2) each addition, modification, or repeal of the Alaska Bar
8 Rules proposed to or adopted by the state supreme court.

9 * Sec. 12. AS 08.08.100 is amended to read:

10 Sec. 08.08.100. ADMINISTRATIVE PROCEDURE ACT. The bylaws and
11 regulations adopted by the board or the members of the Alaska Bar under
12 this chapter are [NOT] subject to the Administrative Procedure Act
13 (AS 44.62).

14 * Sec. 13. AS 08.08 is amended by adding new sections to read:

15 Sec. 08.08.105. THE PRACTICE OF LAW. (a) A person who is an
16 attorney, or who is not an attorney but who represents himself to be an
17 attorney, and who performs any of the following acts on behalf of another
18 person, with or without compensation, is engaged in the practice of law;

19 (1) appearance in or conduct of litigation or performance of
20 an act in connection with proceedings, pending or prospective, before a
21 court in the state unless otherwise provided by court rule;

22 (2) appearance in or conduct of litigation or performance of
23 an act in connection with proceedings pending or prospective before
24 another body constituted by law to settle controversies;

25 (3) giving counsel as to a person's legal rights or obliga-
26 tions;

27 (4) preparation or procurement of instruments or other papers
28 creating, limiting, claiming, granting, terminating, or otherwise se-
29 curing legal rights; or

1 (5) engaging in an act or other practice determined by the
2 supreme court to constitute the practice of law.

3 (b) A person who is not an attorney and who does not represent
4 himself to be an attorney and who for compensation performs an act
5 described in (a) of this section is engaged in the practice of law
6 unless he performs an act set out in (a)(2) - (5) of this section and
7 the act is performed as part of the regular conduct of business the
8 primary purpose of which is other than the performance of an act set out
9 in (a) of this section and if the act does not consume a majority of the
10 person's work time.

11 (c) The provisions of (b) of this section do not apply to a person
12 working under the direct supervision of an attorney in the course of
13 that employment or to a government employee in the course of his em-
14 ployment.

15 (d) The provisions of (b) of this section do not apply to a person
16 employed by a nonprofit corporation that is engaged in public interest
17 activities during the course of his employment by the nonprofit cor-
18 poration. A nonprofit corporation may be represented in court by an
19 officer or director who is not an attorney, notwithstanding AS 22.20.-
20 040, on a showing to the court that

21 (1) the nonprofit corporation cannot afford the expense of
22 hiring an attorney for the proceeding; and

23 (2) the officer or director is competent to represent the
24 nonprofit corporation before the court.

25 Sec. 08.08.201. ADMINISTRATION OF BAR EXAMINATION. (a) The Board
26 of Governors shall administer the bar examination under the Alaska Bar
27 Rules.

28 (b) The Board of Governors may contract with another state or a
29 testing organization for the preparation and grading of a portion of the

1 Alaska Bar examination.

2 (c) The Board of Governors shall contract with persons experienced
3 in the administration of bar examinations for advice on the preparation
4 and grading of the portion of the bar examination prepared under the
5 direction of the board.

6 (d) The Board of Governors shall establish and maintain standards
7 for experience and training of persons who administer the portion of the
8 bar examination prepared under the direction of the board.

9 * Sec. 14. AS 08.08.210(c)(3) is amended to read:

10 (3) is employed by or under contract to the legislature and
11 whose activities would constitute the practice of law under this chapter
12 [AND UNDER ALASKA BAR RULES], until the results are released of the
13 third Alaska Bar examination following that person's employment.

14 * Sec. 15. AS 08.08.210(d) is amended to read:

15 (d) Employees of the Department of Law whose activities would
16 constitute the practice of law under this chapter [AND UNDER ALASKA BAR
17 RULES] are required to obtain a license to practice law in Alaska, no
18 later than 10 months following the commencement of their employment.

19 * Sec. 16. AS 08.08.230(a) is amended to read:

20 (a) Any person not an active member of the Alaska Bar and not
21 licensed to practice law in Alaska who engages in the practice of law
22 under this chapter or [REPRESENTS HIMSELF AS ENTITLED TO ENGAGE IN THE
23 PRACTICE OF LAW AS THAT TERM IS DEFINED IN THE ALASKA BAR RULES, OR] an
24 active member of the Alaska Bar who wilfully employs such a person
25 knowing that the [SUCH] person is engaging in the practice of law or
26 representing himself to be entitled to so engage is guilty of a class A
27 misdemeanor [AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE
28 THAN \$5,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

29 * Sec. 17. Alaska State Supreme Court Bar Rule 2, Section 1(b), is

1 amended to read:

2 (b) Be a graduate of a law school which was accredited or approved
3 by the council of legal education of the American Bar Association or the
4 Association of American Law Schools when the applicant entered or
5 graduated or submit proof that the law course required for graduation
6 from such a law school will be completed and that a degree will be
7 received as a matter of course before the date of examination. An ap-
8 plicant who has not graduated from a law school accredited under this
9 section who has been licensed to practice law in one or more jurisdic-
10 tions in the United States for five years since his admission is eli-
11 gible to take the bar examination. Graduates of law schools in which
12 the principles of English common law are taught but which are located
13 outside the United States and beyond the jurisdiction of the American
14 Bar Association and the Association of American Law Schools, may qualify
15 for examination upon proof that the foreign law school from which they
16 graduated meets the American Bar Association Council of Legal Education
17 Standards for approval;

18 * Sec. 18. Alaska State Supreme Court Bar Rule 7, Section 1, is amended
19 to read:

20 Section 1. An applicant who has been denied an examination permit
21 or who has been denied certification to the Supreme Court for admission
22 to practice shall have the right within thirty days after notice of such
23 denial to file with the Board a written verified statement of appeal.
24 Failure timely to file an appeal statement shall constitute waiver of
25 appeal rights. In his statement an applicant shall state all grounds
26 upon which he intends to rely and may:

27 (a) object to the form of notice from which such appeal is taken
28 on the ground that it is so indefinite or uncertain that he cannot
29 reasonably prepare his statement;

1 (b) present new matter on which he relies to establish his eli-
2 gibility for admission to practice.

3 An applicant who is denied an examination permit or who is denied
4 certification shall allege facts which, if true, would establish an
5 abuse of discretion or improper conduct on the part of the Board, the
6 Executive Director, the Committee or a master. If the allegation in the
7 verified statement is [ARE] found to be sufficient by the Board, a
8 hearing shall be granted. A hearing shall be granted to an applicant
9 denied certification if his score on the bar examination is within five
10 points of the passing grade of the bar examination.

11 * Sec. 19. AS 08.03.010(b)(11), AS 08.08.090, 08.08.210(b), and 08.08.220
12 are repealed.

13 * Sec. 20. The provisions of AS 08.08.050 as amended by secs. 4 - 6 of
14 this Act that relate to the election of the members of the Board of Governors
15 of the Alaska Bar take effect at the first regular election of members of the
16 Board of Governors held after January 1, 1981. The term of the member of the
17 Board of Governors elected at large at the election held during 1980 ter-
18 minates on the appointment by the governor and qualification of the three
19 non-attorney members of the Board of Governors under AS 08.08.050(a) as
20 enacted in sec. 4 of this Act.

21 * Sec. 21. The governor shall appoint non-attorney members to the Board
22 of Governors for the following initial terms: one member for a three-year
23 term; one member for a two-year term; and one member for a one-year term.

24 * Sec. 22. Section 3 of Alaska Supreme Court Bar Rule 2 is repealed.
25 Section 7 of Alaska Supreme Court Bar Rule 3 is repealed.

26 * Sec. 23. Section 17 of this Act amends Alaska Supreme Court Bar Rule 2.
27 Section 18 of this Act amends Alaska Supreme Court Bar Rule 7.

28 * Sec. 24. Section 12 of this Act has the effect of changing Alaska
29 Supreme Court Bar Rule 62 by requiring the Board of Governors of the Alaska

1 Bar to adopt bylaws and regulations under the Administrative Procedures Act
2 (AS 44.62) and not under Bar Rule 62.

3 * Sec. 25. This Act takes effect June 30, 1980.
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