

WORKFORCE DEVELOPMENT COMMITTEE  
February 10, 2023

Testimony of the State Board of Law Examiners  
SENATE BILL NO. 2249

Chair Wobbema and members of the Committee, I am Scott Porsborg, member of the State Board of Law Examiners, appearing on behalf of the State Board of Law Examiners in opposition to Senate Bill 2249.

The understood goal of this legislation is to encourage workforce development and remove barriers to licensing of those already licensed out-of-state. The State Board of Law Examiners opposes the bill and requests to be exempted or removed from this bill.

Under NDCC Chapters 27-11, 13 and 14, as well as Article VI, Section 3 of the North Dakota Constitution, the power to regulate the admission of attorneys with the Supreme Court, which acts on the recommendation of the State Board of Law Examiners. We believe this task should be left to the Judicial Branch and the State Board of Law Examiners, and not the Legislative Branch and / or the Executive Branch.

As was recognized when these statutes and constitutional provisions were enacted, the practice of law is a matter of vital interest to the general public, because lawyers are engaged in the preservation and protection of fundamental liberties of the people. Because of that vital interest, these responsibilities are taken very seriously by the Court and the Board to protect the public. Background checks and investigation are a necessary part of that responsibility. It would be impossible for these functions to be performed and a license issued within 72 hours, as is proposed in the study recommended in SB 2249.

North Dakota is known nationally in the attorney admission and licensing area as being progressive in removing unnecessary barriers for people to apply and become admitted and licensed to practice law, while still maintaining protection of the public.

The Board renewed more than 3,000 licenses in 2022 and admitted 125 new attorneys in 2022. The complex decisions involved with examinations and licensing involve specialized administrative expertise, the Americans with Disabilities Act, accommodation decisions and best practices to protect the public.

Centralization of administration of occupational boards under the labor commissioner would disrupt professions and boards, which have the necessary technical training and expertise to accomplish their role. With respect to the Board, there are multiple conferences and training sessions annually on a national level for examination and admission experts. The staff and board members attend many, if not all, of the offered national education as well as other remote education.

The Board employs highly efficient administrative personnel to conduct daily operations and core functions. The Clerk of the Supreme Court oversees operations along with three board members who initially decide on admission.

Currently, the National Conference of Bar Examiners (NCBE) conducts investigations for North Dakota. These investigations take four to six months and that time is not within our local control. It may take less time for someone who was recently admitted in a State also using NCBE for the background check. However, North Dakota offers a temporary license to attorneys whom are licensed in another state and whom have an application pending. That temporary license is usually issued within days.

This legislation is unnecessary in light of the understood goal of the legislation – to encourage workforce development and remove barriers to licensing of those already licensed out-of-state. The Board has removed barriers to law students and out-of-state licensed attorneys to practice in North Dakota, in the following ways:

- The Board began giving a nationally uniform multiple-choice exam in 1976. It began using the uniform essay and multiple-choice exam, known today as the UBE, in 1997. In 2011, ND was the second state in the nation to officially adopt the UBE. Presently, 41 jurisdictions have adopted the UBE. The UBE allows for score portability across all of those jurisdictions.
- North Dakota has set the threshold for admission based solely on UBE score at 260 -- the lowest score allowed in the country. Thus, if an applicant takes the UBE in another state, and receives a score of 260 or higher, they may move for admission in ND without taking the bar exam.
- The Court also allows admission by a score related to the multiple-choice portion of the exam – the Multistate Bar Exam. This brings additional portability from jurisdictions that have not adopted the UBE.
- The Court allows practice by law students who have completed two semesters of education and law school graduates prior to admission.
- The Court allows licensing and practice of foreign legal consultants without examination.
- The Court allows practice without examination by volunteers with approved legal services organizations.
- The Court provided for practice following a major disaster such as occurred in 1997 in Grand Forks.
- The Court has provided for Military Spouse Certification.

Unqualified or unscrupulous attorneys can do great damage to individuals and society as a whole. We believe the current licensure process imposes the minimum burden necessary to protect the people of ND from this harm.

Finally, we note that the admission and licensing of attorneys is a confidential process, and pursuant to Court rule and the opinion of the Attorney General, is not subject to open records. Therefore, if this bill should pass as written, the information provided to the Labor Commissioner would be limited in scope so as to not violate that confidentiality.

We respectfully request ask the committee to recommend “do not pass” or exempt or remove the State Board of Law Examiners from this bill.