

BILL ANALYSIS

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S.B. 62
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

With the continuing deployment of many Judges Advocate Generals (JAGs), to Iraq, the shortage of JAGs continues to become more critical. Many servicemen and women do not have the financial resources to afford civilian lawyers, and the critical shortage of military lawyers is forcing servicemen and women to rely on military lawyers that are not licensed to practice in their state of residence. Without a license to practice in the jurisdiction, military lawyers are not allowed to represent their client in court, which prevents them from providing adequate legal assistance to their client. Without adequate representation in the courtroom, many military personnel are unable to achieve a fair resolution regarding the most minute legal issues.

As proposed, S.B. 62 authorizes certain military attorneys who are admitted to practice law in another state to practice law in Texas without a license or state bar membership and to represent military personnel in certain civil and administrative matters.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 3 (Sections 82.101, 82.103, and 82.108, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 81.102(a), Government Code, to prohibit a person from practicing law in this state unless the person is a member of the state bar, except as provided by Subsection (b) or Subchapter D, Chapter 82.

SECTION 2. Amends Section 82.0361, Government Code, by adding Subsection (g), to prohibit that this section does not apply to an attorney requesting permission to practice law under Subchapter D.

SECTION 3. Amends Chapter 82, Government Code, by adding Subchapter D, as follows:

SUBCHAPTER D. PRACTICE OF LAW WITHOUT LICENSE OR STATE BAR MEMBERSHIP BY CERTAIN MILITARY ATTORNEYS

Sec. 82.101. CERTAIN MILITARY ATTORNEYS: AUTHORIZATION TO PRACTICE LAW WITHOUT LICENSE OR STATE BAR MEMBERSHIP. (a) Authorizes an attorney who is admitted to practice law in a state other than Texas, or in a territory of the United States or the District of Columbia, and who is a full-time active duty military officer serving in the office of a staff judge advocate of the air force, army, navy, marines, or coast guard of the United States, a Naval Legal Service Office, or a Trial Service Office that is located in this state, to, on application and approval by the Texas Supreme Court (supreme court), represent military personnel and their dependents before the courts of this state in any civil or administrative proceeding, in accordance with 10 U.S.C. Section 1044 and subject to this subchapter and any rules adopted by the supreme court.

(b) Requires the judge advocate general of the air force, army, or navy, the staff judge advocate of the commandant of the marine corps, or the chief counsel of the coast guard, as appropriate, to determine the classification of military personnel

and their dependents who are eligible to receive representation under this subchapter.

(c) Authorizes the supreme court by rule to limit the types of civil or administrative proceedings in which an attorney is authorized to practice law under this subchapter.

Sec. 82.102. APPLICATION. Requires an applicant to file an application on a form and in the manner prescribed by the supreme court to apply for permission to practice law under this subchapter.

Sec. 82.103. GRANT OF PERMISSION TO PRACTICE LAW BY SUPREME COURT. Authorizes the supreme court to grant permission to practice law under this subchapter to an attorney who takes certain actions and meets certain requirements.

Sec. 82.104. NO BAR MEMBERSHIP OR LICENSE TO PRACTICE; CERTAIN REPRESENTATIONS PROHIBITED. (a) Provides that an attorney permitted to practice law under this subchapter is not licensed to practice law in this state or a member of the state bar.

(b) Prohibits an attorney permitted to practice law under this subchapter from representing himself or herself to be licensed to practice law in this state or a member of the state bar.

Sec. 82.105. TERMINATION OF PERMISSION TO PRACTICE. (a) Authorizes the supreme court to terminate an attorney's permission to practice law under this subchapter at any time with or without cause.

(b) Requires that an attorney's permission to practice law under this subchapter automatically terminate when the attorney is no longer a full-time active duty military officer serving in the office of a staff judge advocate of the air force, army, navy, marines, or coast guard of the United States, a Naval Legal Service Office, or a Trial Service Office that is located in this state, or when the attorney is licensed to practice law in this state.

(c) Requires an attorney permitted to practice law under this subchapter and the attorney's supervisory staff judge advocate or commanding officer to immediately inform the clerk of the supreme court of any change in status of the attorney that may affect the attorney's authority to practice law under this subchapter.

Sec. 82.106. ATTORNEY CONDUCT AND DISCIPLINE. (a) Provides that, notwithstanding any other law or any rule adopted by the supreme court, an attorney granted permission to practice law under this subchapter is subject to the provisions of this subtitle and the rules adopted by the supreme court relating to attorney conduct and discipline, including the Texas Disciplinary Rules of Professional Conduct, to the same extent as a member of the state bar is subject to those provisions or rules.

(b) Requires that the supreme court continue to have jurisdiction to discipline an attorney who was granted permission to practice law under this subchapter regardless of whether that permission terminates.

Sec. 82.107. COMPENSATION FROM CLIENTS PROHIBITED. Prohibits an attorney from receiving compensation from a client who the attorney represents under the authority of this subchapter.

Sec. 82.108. RULES. Authorizes the supreme court to adopt rules that the supreme court determines necessary to accomplish the purpose of this subchapter, except that notwithstanding Sections 81.061 (regarding exclusive supreme court jurisdiction) and 82.036 (regarding foreign attorneys), the supreme court is prohibited from amending or adopting rules in conflict with this subchapter.

SECTION 4. Effective date: upon passage or September 1, 2009.