

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 690
Committee Substitute Favorable 5/18/11

Short Title: R/E Closing Interest/Civil Penalty UPL.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT INTEREST EARNED ON REAL ESTATE SETTLEMENT FUNDS HELD IN TRUST OR ESCROW ACCOUNTS BE PAID INTO THE NORTH CAROLINA STATE BAR'S INTEREST ON LAWYERS' TRUST ACCOUNT FUND AND TO PROVIDE FOR A PRIVATE CAUSE OF ACTION FOR PERSONS HARMED BY THE UNAUTHORIZED PRACTICE OF LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 45A of the General Statutes is amended by adding the following new section to read:

"§ 45A-9. Interest on settlement agent's real estate trust and escrow accounts.

(a) A settlement agent who maintains a trust or escrow account for purposes of receiving and disbursing closing funds and loan funds shall pay any interest earned on funds held in those accounts to the North Carolina State Bar to be used for the purposes authorized by the North Carolina State Bar under the Interest on Lawyers' Trust Account Program.

(b) The North Carolina State Bar shall adopt rules for the collection and disbursement of funds required to be paid to the North Carolina State Bar under subsection (a) of this section."

SECTION 2. G.S. 84-8 reads as rewritten:

"§ 84-8. Punishment for ~~violations; legal clinics of law schools and certain law students and lawyers excepted.~~violations.

(a) Any person, corporation, or association of persons violating any of the provisions of G.S. 84-4 to G.S. 84-7 through G.S. 84-6 or G.S. 84-9 shall be guilty of a Class 1 misdemeanor.

(b) No person shall be entitled to collect any fee for services performed in violation of G.S. 84-4 through G.S. 84-6, G.S. 84-9, or G.S. 84-10.1.

~~The provisions of G.S. 84-4 to G.S. 84-7 shall not apply to the following:~~

- ~~(1) Any law school conducting a legal clinic and receiving as its clientage only those persons unable financially to compensate for legal advice or services rendered and any law student permitted by the North Carolina State Bar to act as a legal intern in such a legal clinic.~~
- ~~(2) Any law student permitted by the North Carolina State Bar to act as a legal intern for a federal, state, or local government agency.~~
- ~~(3) Any lawyer licensed by another state and permitted by the North Carolina State Bar to represent indigent clients on a pro bono basis under the supervision of active members employed by nonprofit corporations qualified to render legal services pursuant to G.S. 84-5.1. This provision does not apply to a lawyer whose license has been suspended or revoked in any state."~~



1 **SECTION 3.** Article 1 of Chapter 84 of the General Statutes is amended by adding
2 a new section to read:

3 **"§ 84-7.1. Legal clinics of law schools and certain law students and lawyers excepted.**

4 The provisions of G.S. 84-4 through G.S. 84-6 shall not apply to any of the following:

- 5 (1) Any law school conducting a legal clinic and receiving as its clientage only
6 those persons unable financially to compensate for legal advice or services
7 rendered and any law student permitted by the North Carolina State Bar to
8 act as a legal intern in such a legal clinic.
9 (2) Any law student permitted by the North Carolina State Bar to act as a legal
10 intern for a federal, state, or local government agency.
11 (3) Any lawyer licensed by another state and permitted by the North Carolina
12 State Bar to represent indigent clients on a pro bono basis under the
13 supervision of active members employed by nonprofit corporations qualified
14 to render legal services pursuant to G.S. 84-5.1. This provision does not
15 apply to a lawyer whose license has been suspended or revoked in any state."

16 **SECTION 4.** G.S. 84-10 is repealed.

17 **SECTION 5.** Article 1 of Chapter 84 of the General Statutes is amended by adding
18 a new section to read:

19 **"§ 84-10.1. Private cause of action for the unauthorized practice of law.**

20 If any person violates any of the provisions of G.S. 84-4 through G.S. 84-6 or G.S. 84-9,
21 fraudulently holds himself or herself out as a North Carolina certified paralegal by use of the
22 designations set forth in G.S. 84-37(a), or knowingly aids and abets another person to commit
23 the unauthorized practice of law, in addition to any other liability imposed pursuant to this
24 Chapter or any other applicable law, any person who is damaged by the unlawful acts set out in
25 this section shall be entitled to maintain a private cause of action to recover damages and
26 reasonable attorneys' fees."

27 **SECTION 6.** G.S. 84-21 reads as rewritten:

28 **"§ 84-21. Organization of Council; publication of rules, regulations and bylaws.**

29 (a) The Council shall adopt the rules pursuant to G.S. 45A-9.

30 (b) The rules and regulations adopted by the Council under this Article may be
31 amended by the Council from time to time in any manner not inconsistent with this Article.
32 Copies of all rules and regulations and of all amendments adopted by the Council shall be
33 certified to the Chief Justice of the Supreme Court of North Carolina, entered by the North
34 Carolina Supreme Court upon its minutes, and published in the next ensuing number of the
35 North Carolina Reports and in the North Carolina Administrative Code: Provided, that the court
36 may decline to have so entered upon its minutes any rules, regulations and amendments which
37 in the opinion of the Chief Justice are inconsistent with this Article."

38 **SECTION 7.** Sections 1 and 6 of this act become effective January 1, 2012.
39 Sections 2, 3, and 4 of this act become effective December 1, 2011, and apply to offenses
40 committed on or after that date. The remainder of this act becomes effective October 1, 2011.