

# HOUSE . . . . No. 137

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By Mr. Leonard of Watertown, petition of Arnold Leonard that the Board of Bar Examiners be abolished and that their duties be vested in a Massachusetts Bar Commission with authority to inquire into cases of alleged misconduct on the part of attorneys at law. Judiciary (Joint).

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## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty.

An Act providing Official Machinery for the Admission of Attorneys at Law and for Inquiry into Cases of Alleged Misconduct.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter two hundred and twenty-one  
2 of the General Laws is hereby amended by striking  
3 out section thirty-five and inserting in place thereof  
4 the following:—

5 *Section 35.* There shall be a commission to be  
6 known as the Massachusetts bar commission, in this  
7 and the fourteen following sections called the com-  
8 mission, consisting of nine members, not more than  
9 two from any county, three of whom shall be ap-  
10 pointed in every even-numbered year by the justices  
11 of the supreme judicial court, to serve for a term of  
12 six years from October first in the year of appoint-  
13 ment and until the appointment and qualification of  
14 their successors. They may be removed by said

15 justices, who may fill vacancies for unexpired terms.  
16 Whenever said justices make annual appointments to  
17 said commission they shall designate its chairman.  
18 The commission shall not be deemed to be executive  
19 or administrative officers within the meaning of the  
20 constitution, but shall serve directly under the su-  
21 preme judicial court. The commission shall appoint a  
22 secretary who shall receive such compensation as  
23 shall be determined by the supreme judicial court.  
24 The commission shall have power to remove the  
25 secretary.

1 SECTION 2. Section thirty-six of said chapter two  
2 hundred and twenty-one is hereby amended by strik-  
3 ing out, in the first and in the ninth lines, the word  
4 "board" and inserting in place thereof, in each in-  
5 stance, the word: — commission, — and by adding at  
6 the end thereof the words: —, except as provided in  
7 section forty E, — so as to read as follows: — *Section*  
8 *36.* Said commission may, subject to the approval  
9 of the supreme judicial court, make rules with ref-  
10 erence to examinations for admission to the bar and  
11 the qualifications of applicants therefor, and deter-  
12 mine the time and place of such examinations, and  
13 conduct the same; provided, that any applicant for  
14 admission to the bar who is a graduate of a college or  
15 who has complied with the entrance requirements of  
16 a college, or who has fulfilled for two years the re-  
17 quirements of a day or evening high school or of a  
18 school of equal grade, shall not be required to take  
19 any examination as to his general education. The  
20 expenses of said commission, as certified by its chair-  
21 man and approved by a justice of the supreme judicial  
22 court, shall be paid by the commonwealth, together

23 with such compensation to each member as the  
24 justices of the supreme judicial court approve, but  
25 said expenses and compensation shall not be in excess  
26 of the amounts paid to the commonwealth under the  
27 following section, except as provided in section  
28 forty E.

1 SECTION 3. Said chapter two hundred and twenty-  
2 one, as amended in section thirty-seven by section  
3 one of chapter two hundred and ninety of the acts  
4 of nineteen hundred and twenty-one and by chapter  
5 eleven of the acts of nineteen hundred and twenty-  
6 five, is hereby further amended by striking out said  
7 section thirty-seven and inserting in place thereof  
8 the following:—

9 *Section 37.* A citizen of the United States, whether  
10 man or woman, may, if over twenty-one, file a petition  
11 in the supreme judicial or superior court to be ex-  
12 amined for admission as an attorney at law, and, if  
13 found qualified, to be admitted as such; whereupon,  
14 unless the court otherwise orders, the petition shall  
15 be referred to the commission to ascertain his acquire-  
16 ments and qualifications. If the commission reports  
17 that the petitioner is of good moral character and of  
18 sufficient acquirements and qualifications, and rec-  
19 ommends his admission, he shall be admitted unless  
20 the court otherwise determines, and thereafter may  
21 practice in all the courts of the commonwealth. The  
22 petitioner shall pay to the clerk of the court in which  
23 his petition is filed a fee of           dollars upon the  
24 entry thereof, and a further fee of           dollars  
25 upon the entry of any subsequent petition. Such  
26 fees shall be paid over to the commonwealth.

1 SECTION 4. Section thirty-eight A of said chapter  
2 two hundred and twenty-one, inserted therein by  
3 chapter three hundred and sixteen of the acts of  
4 nineteen hundred and twenty-four, is hereby amended  
5 by striking out, in the ninth line, the words "board of  
6 bar examiners" and inserting in place thereof the  
7 word: — commission, — so as to read as follows: —  
8 *Section 38A.* Every alien who has made the primary  
9 declaration to become a citizen of the United States  
10 under the federal naturalization laws shall, upon  
11 otherwise complying with section thirty-seven, be  
12 permitted to file a petition in the supreme judicial or  
13 superior court to be examined for admission as an  
14 attorney at law, and to take the examinations held  
15 under said section; provided, that upon passing such  
16 examinations and otherwise meeting the requirements  
17 for admission as set forth in said section, the com-  
18 mission shall not recommend his admission until  
19 satisfied that the applicant has become a citizen of  
20 the United States. No alien who claimed exemption  
21 during the world war on the ground of being an alien  
22 shall be entitled to the benefits of this section.

1 SECTION 5. Said chapter two hundred and twenty-  
2 one, as amended in section forty by chapter one  
3 hundred and thirty-four of the acts of nineteen hun-  
4 dred and twenty-four, is hereby further amended by  
5 striking out said section forty and inserting in place  
6 thereof the nine following sections: —

7 *Section 40.* An attorney may be censured, sus-  
8 pended, removed or otherwise dealt with for deceit,  
9 malpractice, or other unprofessional conduct as here-  
10 inafter, in sections forty A to forty-one, inclusive,  
11 provided, but not otherwise, save of the court's own

12 motion, and shall also be liable in damages to the  
13 person injured thereby and to such other punishment  
14 as may be provided by law.

15 *Section 40A.* It shall be the duty of the secretary  
16 of the commission to receive and investigate charges  
17 and complaints against attorneys and to present to a  
18 board of inquiry consisting of three members of the  
19 commission to be named by its chairman such cases  
20 as he and the chairman consider proper for formal  
21 hearing. It shall be the duty of such a board of in-  
22 quiry to hear charges and/or complaints of unpro-  
23 fessional conduct against attorneys as hereinafter  
24 provided. Witnesses may be summoned to attend and  
25 testify and produce books and papers before the board  
26 of inquiry and may be sworn by any member thereof.

27 *Section 40B.* If, in the opinion of a majority of the  
28 members of such a board, sitting in any such case, the  
29 case calls for consideration of the court they shall  
30 report their findings of fact, with a transcript of the  
31 evidence, and with any desired recommendations, to  
32 the chief justice of the supreme judicial court, who,  
33 if he thinks proper, shall file the same with the clerk.  
34 Unless and until so filed the record shall not be made  
35 public. Any case so filed shall stand for hearing by a  
36 justice of said court, sitting in any county, and on  
37 such hearing any such report of findings shall be given  
38 the weight which is given to an auditor's report, ac-  
39 companied by a report of the evidence, and, after due  
40 hearing, in which the case shall be presented by an  
41 attorney appointed by the commission, unless the court  
42 makes special appointment for that purpose, the court  
43 shall enter such order or decree as it may deem proper.

44 *Section 40C.* If, in the opinion of a majority of the  
45 board of inquiry sitting in any such case, the case

46 does not call for consideration by the court, the board  
47 may dismiss the case or administer to the person  
48 charged such censure as it deems proper.

49 *Section 40D.* The justices of the supreme judicial  
50 court shall, from time to time, make such rules as  
51 they deem proper with respect to the giving of notice  
52 to the person charged or complained of, of the nature  
53 of the charges and the times and places for the board  
54 hearings, and as to such other details as they may  
55 deem proper for the fair conduct of such inquiries,  
56 or the subsequent proceedings of the court.

57 *Section 40E.* The chief justice may appoint a  
58 stenographer, or authorize a board of inquiry to em-  
59 ploy a stenographer, to report hearings by the board,  
60 and the compensation of the attorney appointed to  
61 present the case to the court, and of the secretary,  
62 together with such expenses for necessary travel, and  
63 other clerical and incidental expenses as may be ap-  
64 proved by a justice of the supreme judicial court,  
65 shall be paid from the treasury of the commonwealth  
66 upon his certificate. After a case has been filed for  
67 hearing by the court the expenses of further pro-  
68 ceedings shall be paid as in criminal prosecutions in  
69 the superior court.

70 *Section 40F.* If any complaint be filed in court  
71 on account of alleged professional misconduct of an  
72 attorney, it shall be forthwith referred by the clerk  
73 to the secretary of the commission for investigation  
74 by a board of inquiry to be named by the chairman  
75 of the commission, and unless and until a report of  
76 the board is filed with the clerk by a justice of the  
77 supreme judicial court, the case shall not be docketed  
78 and the record shall not be a public record.

79 *Section 40G.* Proper records of all complaints

80 against attorneys, and the disposition made thereof,  
81 shall be kept by the secretary of the commission and  
82 shall be at all times in the custody of the secretary  
83 for the time being. They shall not be public records  
84 in his hands, but shall be available for the use of the  
85 commission or any board of inquiry appointed under  
86 section forty A, and for other proper purposes and at  
87 all times subject to the order of the supreme judicial  
88 court, or any justice thereof.

89 *Section 40H.* Petitions for re-admission to the bar  
90 of attorneys who have been disbarred shall be filed  
91 in the supreme judicial court and may be referred by  
92 the court to the commission for investigation and  
93 report by a board of inquiry thereof, to be appointed  
94 by the chairman of the commission, preliminary to  
95 court action thereupon.

1 SECTION 6. Section forty-one of said chapter two  
2 hundred and twenty-one is hereby amended by in-  
3 serting after the word "removed", in the first line,  
4 the words: — or suspended, — by striking out, in the  
5 same line, the word "thereafter" and inserting in  
6 place thereof the words: — after such removal or  
7 during such suspension, — and by inserting after the  
8 word "removal", in the third line, the words: — or  
9 during such suspension, — so as to read as follows: —  
10 *Section 41.* Whoever has been so removed or sus-  
11 pended and continues after such removal or during  
12 such suspension to practice law or to receive any fee  
13 for his services as an attorney at law, rendered after  
14 such removal, and during such suspension, or who  
15 holds himself out or represents himself as an attorney  
16 at law, or whoever, not having been lawfully admitted  
17 to practice, represents himself in any manner to be an

18 attorney at law, or to be lawfully qualified to practice  
19 in the courts of the commonwealth, or holds himself  
20 out or represents himself as having authority or  
21 power in behalf of any person or persons, having claim  
22 for damages, either to person or property, or whoever,  
23 not being an attorney at law, solicits or procures from  
24 any such person, or his representative, either for  
25 himself or another, the management or control of any  
26 such claim or authority to adjust or bring suit to  
27 recover for the same, or solicits for himself or another  
28 from a person accused of crime, or his representative,  
29 the right to defend the accused person, shall be pun-  
30 ished for the first offence by a fine of not more than  
31 one hundred dollars, or by imprisonment for not more  
32 than six months, and for a subsequent offence by a  
33 fine of not more than five hundred dollars, or by  
34 imprisonment for not more than one year.

1 SECTION 7. The terms of office of the members of  
2 the board of examiners established under said section  
3 thirty-five shall terminate on October first in the  
4 current year and the said board shall be abolished as  
5 of said date and shall be succeeded by the Massachu-  
6 setts bar commission, established by this act, which  
7 shall thereafter be vested with all the powers and  
8 duties heretofore vested in said board of bar ex-  
9 aminers by chapter two hundred and twenty-one of  
10 the General Laws. Prior to said date, the justices of  
11 the supreme judicial court shall appoint the initial  
12 members of said board for the following terms of  
13 office:— three to serve for two years, three for four  
14 years and three for six years, and until the qualifica-  
15 tion of their successors.