

AMENDED IN SENATE APRIL 21, 1999

SENATE BILL

No. 144

Introduced by Senator Schiff

(Principal coauthor: Assembly Member Hertzberg)

January 5, 1999

An act to ~~add and repeal Section 6140 of~~ amend Sections 6068, 6070, 6085, 6141.1, and 6145 of, to add Sections 6031.5, 6095.1, and 6140.05 to, and to add and repeal Section 6140 of, the Business and Professions Code, relating to the State Bar.

LEGISLATIVE COUNSEL'S DIGEST

SB 144, as amended, Schiff. State Bar: membership fees.

Existing law establishes the State Bar. The Board of Governors of the State Bar has broad responsibilities for the State Bar's operation and function, including, among other things, administration of the State Bar, admission to the practice of law, and disciplinary authority over its members.

This bill would revise various provisions relating to the State Bar.

(1) Existing rules and regulations of the State Bar provide for the creation of, and specify the functions and activities of, the Conference of Delegates, which represents locally based general bar associations. Existing rules and regulations of the State Bar also provide for advisory organizations of the State Bar known as sections.

This bill would provide that the Conference of Delegates of the State Bar and State Bar sections shall not be funded with mandatory fees after January 1, 2000, but would authorize the Conference of Delegates and the sections to contract with the

State Bar for services, and would authorize the State Bar to collect voluntary fees on behalf of the Conference of Delegates and the sections.

(2) Existing law imposes various duties on attorneys. Among other things, it requires attorneys to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney.

This bill would provide that this requirement shall not be construed to require an attorney to cooperate with a request that requires the attorney to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice, as specified.

Existing law provides that a person complained against in a disciplinary action of the State Bar shall be given a reasonable notice and have a reasonable opportunity to exercise various rights, including the right to defend, to receive exculpatory evidence, to be represented by counsel, and to examine and cross-examine witnesses.

This bill would also provide that the notice and rights shall be fair and adequate, as well as reasonable, and would also specify that the person has a right to exercise any right guaranteed by the California or United States Constitution, including the right against self-incrimination.

The bill would require the State Bar to compile statistics on attorney discipline and to report to legislative committees on procedures used in the disciplinary process to ensure that resources of the State Bar are used fairly and equitably, as specified. It would specifically require that procedures used in the disciplinary process ensure that resources of the State Bar are used fairly and equitably and that these procedures be reported to specified legislative committees by the State Bar on or before December 31, 2000.

(3) Existing law requires the State Bar to request the California Supreme Court to adopt a rule authorizing a mandatory continuing legal education program. Existing law establishes minimum hours of participation, and exempts various persons from the requirement.



This bill would reduce the required hours, would eliminate the exemption for retired judges, would encourage the use of low-cost programs, would set forth findings, and would make related changes.

(4) Existing law, until January 1, 1998, required the Board of Governors of the State Bar to establish annual membership fees for active members based on the amount of time the member has been practicing law, as specified. Existing law also provides for additional fees.

This bill would provide for an annual fee not exceeding \$318. This provision would be repealed on January 1, 2001.

The bill would also require the invoice for the annual fee to provide each member the option of deducting \$4 from the annual fee if the member elects not to support lobbying and related activities, and would prohibit the Board of Governors of the State Bar from expending a sum exceeding the number of members paying the \$4 fee, multiplied by \$4.

The bill would require the Board of Governors of the State Bar to adopt a rule to permit members whose income is less than a specified amount to presumptively qualify for a waiver of a portion of the annual membership fees based on hardship.

(5) The bill would require a comprehensive independent financial audit of all State Bar operations to be conducted prior to authorization of dues collection for the January 1, 2001, budget cycle, and would require the audit results and recommendations to be submitted to the Chief Justice of the Supreme Court and specified legislative committees.

The bill would make related changes.

~~Existing law authorizes the Board of Governors of the State Bar to charge its members certain annual fees to defray the expenses of various duties and functions of the board of governors. Until January 1, 1998, existing law required the board of governors to establish annual membership fees for active members based on the amount of time the member has been practicing law, as specified.~~

~~This bill would require the board of governors to fix annual membership fees for active members based on the amount of time the member has been practicing law, pursuant to a schedule containing unspecified fee amounts. It would~~



~~provide for the repeal of these fee provisions as of an unspecified date.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 6140 is added to the Business and~~
 2 ~~Professions Code, to read:~~

3 ~~6140. (a) The board shall fix the annual membership~~
 4 ~~fee for _____ as follows:~~

5 ~~(1) For active members who have been admitted to~~
 6 ~~the practice of law in this state for three years or longer~~
 7 ~~preceding the first day of February of the year for which~~
 8 ~~the fee is payable, at the sum of _____ dollars~~
 9 ~~(\$_____).~~

10 ~~(2) For active members who have been admitted to~~
 11 ~~the practice of law in this state for less than three years~~
 12 ~~but more than one year preceding the first day of~~
 13 ~~February of the year for which the fee is payable, at the~~
 14 ~~sum of _____ dollars (\$_____).~~

15 ~~(3) For active members who have been admitted to~~
 16 ~~the practice of law in this state during, or for less than one~~
 17 ~~year preceding the first day of February of the year for~~
 18 ~~which the fee is payable, at a sum not exceeding _____~~
 19 ~~dollars (\$_____).~~

20 ~~(b) The annual membership fee for active members is~~
 21 ~~payable on or before the first day of February of each~~
 22 ~~year. If the board finds it appropriate and feasible, it may~~
 23 ~~provide by rule for payment of fees on an installment~~
 24 ~~basis with interest, by credit card, or other means, and~~
 25 ~~may charge members choosing any alternative method of~~
 26 ~~payment an additional fee to defray costs incurred by that~~
 27 ~~election.~~

28 ~~This section shall remain in effect only until January 1,~~
 29 ~~_____, and as of that date is repealed, unless a later~~
 30 ~~enacted statute, that is enacted before January 1,~~
 31 ~~_____, deletes or extends that date.~~

32 ~~SECTION 1. Section 6031.5 is added to the Business~~
 33 ~~and Professions Code, to read:~~



1 6031.5. (a) *The Conference of Delegates, as*
2 *established under and pursuant to Article 6 of the Rules*
3 *and Regulations of the State Bar, shall not be funded after*
4 *January 1, 2000, with mandatory fees collected pursuant*
5 *to subdivision (a) of Section 6140.*

6 *The Conference of Delegates may contract with the*
7 *State Bar, at cost, for administrative and support services.*
8 *An audit shall be conducted to ensure that the State Bar*
9 *neither suffers a loss nor earns more than a nominal profit*
10 *from any such contract, and to verify that no mandatory*
11 *dues are applied to support the Conference of Delegates.*

12 (b) *State Bar sections, as established under and*
13 *pursuant to Article 13 of the Rules and Regulations of the*
14 *State Bar, and their activities shall not be funded after*
15 *January 1, 2000, with mandatory fees collected pursuant*
16 *to subdivision (a) of Section 6140.*

17 *An individual section, or an organization comprised of*
18 *two or more sections, may contract with the State Bar, at*
19 *cost, for administrative and support services. An audit*
20 *shall be conducted to ensure that the State Bar neither*
21 *suffers a loss nor earns more than a nominal profit from*
22 *any such contract, and to verify that no mandatory dues*
23 *are applied to support such a section or organization.*

24 (c) *Notwithstanding the other provisions of this*
25 *section, the State Bar is expressly authorized to collect*
26 *voluntary fees to fund the Conference of Delegates or the*
27 *State Bar sections on behalf of those organizations in*
28 *conjunction with the State Bar's collection of its annual*
29 *membership dues.*

30 *SEC. 2. Section 6068 of the Business and Professions*
31 *Code is amended to read:*

32 6068. It is the duty of an attorney to do all of the
33 following:

34 (a) To support the Constitution and laws of the United
35 States and of this state.

36 (b) To maintain the respect due to the courts of justice
37 and judicial officers.

38 (c) To counsel or maintain such actions, proceedings,
39 or defenses only as appear to him or her legal or just,



1 except the defense of a person charged with a public
2 offense.

3 (d) To employ, for the purpose of maintaining the
4 causes confided to him or her such means only as are
5 consistent with truth, and never to seek to mislead the
6 judge or any judicial officer by an artifice or false
7 statement of fact or law.

8 (e) To maintain inviolate the confidence, and at every
9 peril to himself or herself to preserve the secrets, of his or
10 her client.

11 (f) To abstain from all offensive personality, and to
12 advance no fact prejudicial to the honor or reputation of
13 a party or witness, unless required by the justice of the
14 cause with which he or she is charged.

15 (g) Not to encourage either the commencement or
16 the continuance of an action or proceeding from any
17 corrupt motive of passion or interest.

18 (h) Never to reject, for any consideration personal to
19 himself or herself, the cause of the defenseless or the
20 oppressed.

21 (i) To cooperate and participate in any disciplinary
22 investigation or other regulatory or disciplinary
23 proceeding pending against the attorney. However, this
24 subdivision shall not be construed to deprive an attorney
25 of any privilege guaranteed by the Fifth Amendment to
26 the Constitution of the United States or any other
27 constitutional or statutory privileges. *This subdivision*
28 *shall not be construed to require an attorney to cooperate*
29 *with a request that requires the attorney to waive any*
30 *constitutional or statutory privilege or to comply with a*
31 *request for information or other matters within an*
32 *unreasonable period of time in light of the time*
33 *constraints of the attorney's practice. Any exercise by a an*
34 *attorney of any constitutional or statutory privilege shall*
35 *not be used against the attorney in a regulatory or*
36 *disciplinary proceeding against him or her.*

37 (j) To comply with the requirements of Section 6002.1.

38 (k) To comply with all conditions attached to any
39 disciplinary probation, including a probation imposed
40 with the concurrence of the attorney.



1 (l) To keep all agreements made in lieu of disciplinary
2 prosecution with the agency charged with attorney
3 discipline.

4 (m) To respond promptly to reasonable status
5 inquiries of clients and to keep clients reasonably
6 informed of significant developments in matters with
7 regard to which the attorney has agreed to provide legal
8 services.

9 (n) To provide copies to the client of certain
10 documents under time limits and as prescribed in a rule
11 of professional conduct which the board shall adopt.

12 (o) To report to the agency charged with attorney
13 discipline, in writing, within 30 days of the time the
14 attorney has knowledge of any of the following:

15 (1) The filing of three or more lawsuits in a 12-month
16 period against the attorney for malpractice or other
17 wrongful conduct committed in a professional capacity.

18 (2) The entry of judgment against the attorney in any
19 civil action for fraud, misrepresentation, breach of
20 fiduciary duty, or gross negligence committed in a
21 professional capacity.

22 (3) The imposition of any judicial sanctions against the
23 attorney, except for sanctions for failure to make
24 discovery or monetary sanctions of less than one thousand
25 dollars (\$1,000).

26 (4) The bringing of an indictment or information
27 charging a felony against the attorney.

28 (5) The conviction of the attorney, including any
29 verdict of guilty, or plea of guilty or no contest, of any
30 felony, or any misdemeanor committed in the course of
31 the practice of law, or in any manner such that a client of
32 the attorney was the victim, or a necessary element of
33 which, as determined by the statutory or common law
34 definition of the misdemeanor, involves improper
35 conduct of an attorney, including dishonesty or other
36 moral turpitude, or an attempt or a conspiracy or
37 solicitation of another to commit a felony or any such
38 misdemeanor.



1 (6) The imposition of discipline against the attorney
2 by any professional or occupational disciplinary agency or
3 licensing board, whether in California or elsewhere.

4 (7) Reversal of judgment in a proceeding based in
5 whole or in part upon misconduct, grossly incompetent
6 representation, or willful misrepresentation by an
7 attorney.

8 (8) As used in this subdivision, “against the attorney”
9 includes claims and proceedings against any firm of
10 attorneys for the practice of law in which the attorney was
11 a partner at the time of the conduct complained of and
12 any law corporation in which the attorney was a
13 shareholder at the time of the conduct complained of
14 unless the matter has to the attorney’s knowledge already
15 been reported by the law firm or corporation.

16 (9) The State Bar may develop a prescribed form for
17 the making of reports required by this section, usage of
18 which it may require by rule or regulation.

19 (10) This subdivision is only intended to provide that
20 the failure to report as required herein may serve as a
21 basis of discipline.

22 *SEC. 3. Section 6070 of the Business and Professions*
23 *Code is amended to read:*

24 6070. (a) The State Bar shall request the California
25 Supreme Court to adopt a rule of court authorizing the
26 State Bar to establish and administer a mandatory
27 continuing legal education program. The rule that the
28 State Bar requests the Supreme Court to adopt shall
29 require that, within designated 36-month periods, all
30 active members of the State Bar shall complete at least—~~36~~
31 ~~25~~ hours of legal education activities approved by the
32 State Bar or offered by a State Bar approved provider,
33 with ~~eight~~ *four* of those hours in legal ethics—~~or law~~
34 ~~practice management, four hours of which shall be legal~~
35 ~~ethics. If the California Supreme Court adopts a rule~~
36 ~~authorizing the State Bar to establish and administer the~~
37 ~~program, the State Bar shall establish and administer a~~
38 ~~mandatory continuing legal education program~~
39 ~~commencing on or after January 1, 1991.~~ A member of the
40 State Bar who fails to satisfy the mandatory continuing



1 legal education requirements of the program authorized
2 by the Supreme Court rule shall be enrolled as an inactive
3 member pursuant to rules adopted by the Board of
4 Governors of the State Bar.

5 (b) For purposes of this section, statewide associations
6 of public agencies and incorporated, nonprofit
7 professional associations of attorneys, shall be certified as
8 State Bar approved providers upon completion of an
9 appropriate application process to be established by the
10 State Bar. The certification may be revoked only by
11 majority vote of the board, after notice and hearing, and
12 for good cause shown. Programs provided by the
13 California District Attorneys Association or the California
14 Public Defenders Association, or both, including, but not
15 limited to, programs provided pursuant to Title 1.5
16 (commencing with Section 11500) of Part 4 of the Penal
17 Code, are deemed to be legal education activities
18 approved by the State Bar or offered by a State Bar
19 approved provider.

20 (c) Notwithstanding the provisions of subdivision (a),
21 ~~retired judges~~, officers and elected officials of the State of
22 California, and full-time professors at law schools
23 accredited by the State Bar of California, the American
24 Bar Association, or both, shall be exempt from the
25 provisions of this section. Full-time employees of the State
26 of California, acting within the scope of their
27 employment, shall be exempt from the provisions of this
28 section. Nothing in this section shall prohibit the State of
29 California, or any political subdivision thereof, from
30 establishing or maintaining its own continuing education
31 requirements for its employees.

32 (d) *The State Bar shall provide and encourage the*
33 *development of low-cost programs and materials by*
34 *which members may satisfy their continuing education*
35 *requirements. Special emphasis shall be placed upon the*
36 *use of internet capabilities and computer technology in*
37 *the development and provision of no-cost and low-cost*
38 *programs and materials. Towards this purpose, the State*
39 *Bar shall ensure that by July 1, 2000, any member*
40 *possessing or having access to the internet or specified*



1 *generally available computer technology shall be capable*
2 *of satisfying the full self-study portion of his or her MCLE*
3 *requirement at a cost of fifteen dollars (\$15) per hour or*
4 *less.*

5 *SEC. 4. Section 6085 of the Business and Professions*
6 *Code is amended to read:*

7 6085. Any person complained against shall be given
8 *fair, adequate, and reasonable notice and have a fair,*
9 *adequate, and reasonable opportunity and right:*

10 (a) To defend against the charge by the introduction
11 of evidence.

12 (b) To receive any and all exculpatory evidence from
13 the State Bar after the initiation of a disciplinary
14 proceeding in State Bar Court, and thereafter when this
15 evidence is discovered and available. This subdivision
16 shall not require the disclosure of mitigating evidence.

17 (c) To be represented by counsel.

18 (d) To examine and cross-examine witnesses.

19 (e) *To exercise any right guaranteed by the California*
20 *Constitution or the United States Constitution, including*
21 *the right against self-incrimination.*

22 He or she shall also have the right to the issuance of
23 subpoenas for attendance of witnesses to appear and
24 testify or produce books and papers, as provided in this
25 chapter.

26 *SEC. 5. Section 6095.1 is added to the Business and*
27 *Professions Code, to read:*

28 6095.1. (a) *On or before January 1, 2000, the State Bar*
29 *shall begin compiling statistics indicating the number of*
30 *complaints against attorneys, broken down to reflect the*
31 *percentage of complaints brought against attorneys*
32 *practicing as solo practitioners, in small law firms or*
33 *partnerships, and in large law firms. The State Bar shall*
34 *also begin compiling statistics indicating the percentage*
35 *of complaints that are investigated and the percentage of*
36 *complaints that are prosecuted against solo practitioners,*
37 *attorneys practicing in small law firms or partnerships,*
38 *and attorneys practicing in large law firms. Practicing*
39 *attorneys shall provide any information that is requested*
40 *by the bar deemed necessary for the purpose of compiling*



1 *the statistics. For purposes of this section, “small law firm”*
2 *means a firm, partnership, association, corporation, or*
3 *limited liability partnership that includes 10 or fewer*
4 *attorneys.*

5 *(b) On or before December 31, 2000, the State Bar*
6 *shall issue a written report to the Senate Committee on*
7 *Judiciary and the Assembly Committee on Judiciary on*
8 *procedures used in the disciplinary process to ensure that*
9 *resources of the State Bar are used fairly and equitably in*
10 *the investigation and prosecution of complaints against*
11 *attorneys. In particular, the report shall focus on whether*
12 *disciplinary proceedings are brought in disproportionate*
13 *numbers against attorneys practicing as solo practitioners*
14 *or in small law firms or partnerships, as compared to*
15 *proceedings brought against attorneys practicing in large*
16 *law firms. The report shall also describe any procedures*
17 *in place or under consideration to correct any*
18 *institutional bias. After issuing the report, the State Bar*
19 *shall continue to compile and maintain statistics pursuant*
20 *to subdivision (a), and shall make those statistics available*
21 *to the public upon request.*

22 *(c) Procedures used in the disciplinary process shall*
23 *ensure that resources of the State Bar are used fairly and*
24 *equitably in the investigation and prosecution of*
25 *complaints against all attorneys. Disciplinary*
26 *proceedings shall not be brought in disproportionate*
27 *numbers against attorneys practicing as solo practitioners*
28 *or in small law firms or partnerships, as compared to*
29 *proceedings brought against attorneys practicing in large*
30 *law firms, unless the number of complaints against solo*
31 *practitioners, or attorneys practicing in small law firms or*
32 *partnerships, is commensurate with the higher number*
33 *of disciplinary proceedings.*

34 *(d) The report of the State Bar prepared pursuant to*
35 *this section shall not be used as a defense or mitigating*
36 *factor in any disciplinary proceeding against an attorney.*

37 *SEC. 6. Section 6140 is added to the Business and*
38 *Professions Code, to read:*

1 6140. (a) The board shall fix the annual membership
2 fee for active members at a sum not exceeding three
3 hundred eighteen dollars (\$318).

4 (b) The annual membership fee for active members is
5 payable on or before the first day of February of each
6 year. If the board finds it appropriate and feasible, it may
7 provide by rule for payment of fees on an installment
8 basis with interest, by credit card, or other means, and
9 may charge members choosing any alternative method of
10 payment an additional fee to defray costs incurred by that
11 election.

12 (c) This section shall remain in effect only until
13 January 1, 2001, and as of that date is repealed, unless a
14 later enacted statute, that is enacted before January 1,
15 2001, deletes or extends that date.

16 SEC. 7. Section 6140.05 is added to the Business and
17 Professions Code, to read:

18 6140.05. (a) The invoice provided to members for
19 payment of the annual membership fee shall provide
20 each member the option of deducting four dollars (\$4)
21 from the annual fee if the member elects not to support
22 lobbying and related activities by the State Bar outside of
23 the parameters established by the United States Supreme
24 Court in *Keller v. State Bar of California* (1990) 496 U.S.
25 1.

26 (b) For the support or defense of lobbying and related
27 activities by the State Bar outside of the parameters of
28 *Keller v. State Bar of California*, the Board of Governors
29 of the State Bar shall not expend a sum exceeding the
30 following: the product of the number of members paying
31 their annual dues who did not elect the optional
32 deduction multiplied by four dollars (\$4).

33 (c) As used in this section “lobbying and related
34 activities by the State Bar” includes the consideration of
35 measures by the Board of Governors of the State Bar that
36 are deemed outside the parameters established in *Keller*
37 *v. State Bar*; the purview determination, lobbying and the
38 preparation for lobbying of the measures, and any
39 litigation in support or defense of that lobbying. The



1 *determination of these costs shall include, but not be*
2 *limited to, overhead and administrative costs.*

3 *SEC. 8. Section 6141.1 of the Business and Professions*
4 *Code is amended to read:*

5 6141.1. (a) The payment by any member of the
6 annual membership fee, any portion thereof, or any
7 penalty thereon, may be waived by the board as it may
8 provide by rule. The board may require submission of
9 recent federal and state income tax returns and other
10 proof of financial condition as to those members seeking
11 waiver of all or a portion of their fee or penalties on the
12 ground of financial hardship.

13 (b) *The board shall adopt rules providing that:*

14 (1) *An active member who can demonstrate annual*
15 *income from all sources of less than forty thousand dollars*
16 *(\$40,000) shall presumptively qualify for a waiver of 25*
17 *percent of the annual membership fee.*

18 (2) *An active member who can demonstrate annual*
19 *income from all sources of less than twenty-five thousand*
20 *dollars (\$25,000) shall presumptively qualify for a waiver*
21 *of 50 percent of the annual membership fee.*

22 *SEC. 9. Section 6145 of the Business and Professions*
23 *Code is amended to read:*

24 6145. (a) *A comprehensive independent financial*
25 *audit of all State Bar operations shall be conducted, prior*
26 *to authorization of dues collection for the budget cycle*
27 *commencing January 1, 2001. The audit results and*
28 *recommendations shall be submitted to the Chief Justice*
29 *of the Supreme Court and the Committees on Judiciary*
30 *of the Senate and the Assembly no later than June 30,*
31 *2001.*

32 (b) *The board annually shall prepare a statement*
33 *showing the total amount of all receipts and expenditures*
34 *of the State Bar for the twelve months preceding. The*
35 *statement shall be promptly certified under oath by the*
36 ~~*president and*~~ *treasurer, and a copy of the financial audit*
37 *shall be submitted within 120 days of the close of the fiscal*
38 *year to the board, to the Chief Justice of the Supreme*
39 *Court, and to the Committees on Judiciary of the Senate*
40 *and the Assembly.*



1 SEC. 10. The Legislature finds and declares that it is
2 in the public interest to continue the mandatory
3 continuing legal education requirements for attorneys
4 licensed to practice law. The Legislature further finds
5 and declares that officers and elected officials of the State
6 of California, and their full-time employees, undergo
7 ongoing continuing legal education in their review of the
8 implementation of current statutes and regulations,
9 including any court interpretation of a statute or
10 regulation, and in their consideration and analysis of
11 proposed changes in those statutes and regulations,
12 thereby warranting their exemption from the
13 requirements of Section 6070 of the Business and
14 Professions Code. The Legislature also finds and declares
15 that full-time law professors at accredited law schools also
16 undergo ongoing continuing legal education in their
17 review of the statutes and regulations of this state,
18 including any court interpretation of a statute or
19 regulation, thereby warranting their exemption from the
20 requirements of Section 6070 of the Business and
21 Professions Code.

