

AMENDED IN SENATE MAY 6, 1999
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 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 *from the practice of law* 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. *It would also provide that its provisions shall become operative only if SB 143 of the 1999–2000 Regular Session is enacted.*

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 6031.5 is added to the Business
2 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~~ *those* actions,
39 proceedings, or defenses only as appear to him or her



1 legal or just, except the defense of a person charged with
2 a public offense.

3 (d) To employ, for the purpose of maintaining the
4 causes confided to him or her ~~such~~ *those* 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~~ *misdemeanor of that type.*



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 25
31 hours of legal education activities approved by the State
32 Bar or offered by a State Bar approved provider, with four
33 of those hours in legal ethics. A member of the State Bar
34 who fails to satisfy the mandatory continuing legal
35 education requirements of the program authorized by
36 the Supreme Court rule shall be enrolled as an inactive
37 member pursuant to rules adopted by the Board of
38 Governors of the State Bar.

39 (b) For purposes of this section, statewide associations
40 of public agencies and incorporated, nonprofit



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

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

26 (d) The State Bar shall provide and encourage the
27 development of low-cost programs and materials by
28 which members may satisfy their continuing education
29 requirements. Special emphasis shall be placed upon the
30 use of internet capabilities and computer technology in
31 the development and provision of no-cost and low-cost
32 programs and materials. Towards this purpose, the State
33 Bar shall ensure that by July 1, 2000, any member
34 possessing or having access to the internet or specified
35 generally available computer technology shall be capable
36 of satisfying the full self-study portion of his or her MCLE
37 requirement at a cost of fifteen dollars (\$15) per hour or
38 less.

39 SEC. 4. Section 6085 of the Business and Professions
40 Code is amended to read:



1 6085. Any person complained against shall be given
2 fair, adequate, and reasonable notice and have a fair,
3 adequate, and reasonable opportunity and right:

4 (a) To defend against the charge by the introduction
5 of evidence.

6 (b) To receive any and all exculpatory evidence from
7 the State Bar after the initiation of a disciplinary
8 proceeding in State Bar Court, and thereafter when this
9 evidence is discovered and available. This subdivision
10 shall not require the disclosure of mitigating evidence.

11 (c) To be represented by counsel.

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

13 (e) To exercise any right guaranteed by the California
14 Constitution or the United States Constitution, including
15 the right against self-incrimination.

16 He or she shall also have the right to the issuance of
17 subpoenas for attendance of witnesses to appear and
18 testify or produce books and papers, as provided in this
19 chapter.

20 SEC. 5. Section 6095.1 is added to the Business and
21 Professions Code, to read:

22 6095.1. (a) On or before January 1, 2000, the State Bar
23 shall begin compiling statistics indicating the number of
24 complaints against attorneys, broken down to reflect the
25 percentage of complaints brought against attorneys
26 practicing as solo practitioners, in small law firms or
27 partnerships, and in large law firms. The State Bar shall
28 also begin compiling statistics indicating the percentage
29 of complaints that are investigated and the percentage of
30 complaints that are prosecuted against solo practitioners,
31 attorneys practicing in small law firms or partnerships,
32 and attorneys practicing in large law firms. Practicing
33 attorneys shall provide any information that is requested
34 by the bar deemed necessary for the purpose of compiling
35 the statistics. For purposes of this section, "small law firm"
36 means a firm, partnership, association, corporation, or
37 limited liability partnership that includes 10 or fewer
38 attorneys.

39 (b) On or before December 31, 2000, the State Bar
40 shall issue a written report to the Senate Committee on



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

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

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

31 SEC. 6. Section 6140 is added to the Business and
32 Professions Code, to read:

33 6140. (a) The board shall fix the annual membership
34 fee for active members at a sum not exceeding three
35 hundred eighteen dollars (\$318).

36 (b) The annual membership fee for active members is
37 payable on or before the first day of February of each
38 year. If the board finds it appropriate and feasible, it may
39 provide by rule for payment of fees on an installment
40 basis with interest, by credit card, or other means, and



1 may charge members choosing any alternative method of
2 payment an additional fee to defray costs incurred by that
3 election.

4 (c) This section shall remain in effect only until
5 January 1, 2001, and as of that date is repealed, unless a
6 later enacted statute, that is enacted before January 1,
7 2001, deletes or extends that date.

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

10 6140.05. (a) The invoice provided to members for
11 payment of the annual membership fee shall provide
12 each member the option of deducting four dollars (\$4)
13 from the annual fee if the member elects not to support
14 lobbying and related activities by the State Bar outside of
15 the parameters established by the United States Supreme
16 Court in *Keller v. State Bar of California* (1990) 496 U.S.
17 1.

18 (b) For the support or defense of lobbying and related
19 activities by the State Bar outside of the parameters of
20 *Keller v. State Bar of California*, the Board of Governors
21 of the State Bar shall not expend a sum exceeding the
22 following: the product of the number of members paying
23 their annual dues who did not elect the optional
24 deduction multiplied by four dollars (\$4).

25 (c) As used in this section “lobbying and related
26 activities by the State Bar” includes the consideration of
27 measures by the Board of Governors of the State Bar that
28 are deemed outside the parameters established in *Keller*
29 *v. State Bar*, the purview determination, lobbying and the
30 preparation for lobbying of the measures, and any
31 litigation in support or defense of that lobbying. The
32 determination of these costs shall include, but not be
33 limited to, overhead and administrative costs.

34 SEC. 8. Section 6141.1 of the Business and Professions
35 Code is amended to read:

36 6141.1. (a) The payment by any member of the
37 annual membership fee, any portion thereof, or any
38 penalty thereon, may be waived by the board as it may
39 provide by rule. The board may require submission of
40 recent federal and state income tax returns and other



1 proof of financial condition as to those members seeking
2 waiver of all or a portion of their fee or penalties on the
3 ground of financial hardship.

4 (b) The board shall adopt rules providing that:

5 (1) An active member who can demonstrate annual
6 income from ~~all sources~~ *the practice of law* of less than
7 forty thousand dollars (\$40,000) shall presumptively
8 qualify for a waiver of 25 percent of the annual
9 membership fee.

10 (2) An active member who can demonstrate annual
11 income from ~~all sources~~ *the practice of law* of less than
12 twenty-five thousand dollars (\$25,000) shall
13 presumptively qualify for a waiver of 50 percent of the
14 annual membership fee.

15 SEC. 9. Section 6145 of the Business and Professions
16 Code is amended to read:

17 6145. (a) A comprehensive independent financial
18 audit of all State Bar operations shall be conducted, prior
19 to authorization of dues collection for the budget cycle
20 commencing January 1, 2001. The audit results and
21 recommendations shall be submitted to the Chief Justice
22 of the Supreme Court and the Committees on Judiciary
23 of the Senate and the Assembly no later than June 30,
24 2001.

25 (b) The board annually shall prepare a statement
26 showing the total amount of all receipts and expenditures
27 of the State Bar for the twelve months preceding. The
28 statement shall be promptly certified under oath by the
29 treasurer, and a copy of the financial audit shall be
30 submitted within 120 days of the close of the fiscal year to
31 the board, to the Chief Justice of the Supreme Court, and
32 to the Committees on Judiciary of the Senate and the
33 Assembly.

34 SEC. 10. The Legislature finds and declares that it is
35 in the public interest to continue the mandatory
36 continuing legal education requirements for attorneys
37 licensed to practice law. The Legislature further finds
38 and declares that officers and elected officials of the State
39 of California, and their full-time employees, undergo
40 ongoing continuing legal education in their review of the



1 implementation of current statutes and regulations,
2 including any court interpretation of a statute or
3 regulation, and in their consideration and analysis of
4 proposed changes in those statutes and regulations,
5 thereby warranting their exemption from the
6 requirements of Section 6070 of the Business and
7 Professions Code. The Legislature also finds and declares
8 that full-time law professors at accredited law schools also
9 undergo ongoing continuing legal education in their
10 review of the statutes and regulations of this state,
11 including any court interpretation of a statute or
12 regulation, thereby warranting their exemption from the
13 requirements of Section 6070 of the Business and
14 Professions Code.

15 *SEC. 11. This act shall become operative only if*
16 *Senate Bill 143 of the 1999–2000 Regular Session is enacted*
17 *and becomes effective on or before January 1, 2000.*

