

AMENDED IN SENATE MAY 25, 1999

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 6008.6, 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.~~

Existing law requires the Board of Governors of the State Bar to prepare an annual financial statement for the State Bar, which is required to be certified under oath by the President and the Treasurer of the State Bar to the Chief Justice of the Supreme Court.

This bill would also require the Board of Governors of the State Bar to contract with the Bureau of State Audits to



conduct an annual performance audit of the State Bar for each fiscal year, commencing July 1, 1999, to June 30, 2001, inclusive, and would require a copy of the financial statement, certified under oath by the treasurer, and a copy of the annual performance audit to be submitted within 120 days of the close of the fiscal year to the Board of Governors of the State Bar, the Chief Justice of the Supreme Court, and the Assembly and Senate Committees on Judiciary.

The bill would prohibit the State Bar from awarding a contract for goods, services, or both, for an aggregate amount in excess of \$50,000, except pursuant to specified provisions of the Public Contract Code. 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 6008.6 is added to the Business*
 2 *and Professions Code, to read:*
 3 6008.6. *The State Bar shall award no contract for*
 4 *goods, services, or both, for an aggregate amount in excess*
 5 *of fifty thousand dollars (\$50,000), except pursuant to the*
 6 *standards established in Article 4 (commencing with*
 7 *Section 10335) of Chapter 2 of Part 2 of Division 2 of the*
 8 *Public Contract Code. The State Bar shall establish a*
 9 *request for proposal procedure by rule, pursuant to the*
 10 *general standards established in Article 4 (commencing*
 11 *with Section 10335) of Chapter 2 of Part 2 of Division 2 of*
 12 *the Public Contract Code.*
 13 SEC. 1.5. Section 6031.5 is added to the Business and
 14 Professions Code, to read:
 15 6031.5. (a) The Conference of Delegates, as
 16 established under and pursuant to Article 6 of the Rules
 17 and Regulations of the State Bar, shall not be funded after
 18 January 1, 2000, with mandatory fees collected pursuant
 19 to subdivision (a) of Section 6140.



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

7 (b) State Bar sections, as established under and
8 pursuant to Article 13 of the Rules and Regulations of the
9 State Bar, and their activities shall not be funded after
10 January 1, 2000, with mandatory fees collected pursuant
11 to subdivision (a) of Section 6140.

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

19 (c) Notwithstanding the other provisions of this
20 section, the State Bar is expressly authorized to collect
21 voluntary fees to fund the Conference of Delegates or the
22 State Bar sections on behalf of those organizations in
23 conjunction with the State Bar's collection of its annual
24 membership dues.

25 SEC. 2. Section 6068 of the Business and Professions
26 Code is amended to read:

27 6068. It is the duty of an attorney to do all of the
28 following:

29 (a) To support the Constitution and laws of the United
30 States and of this state.

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

33 (c) To counsel or maintain those actions, proceedings,
34 or defenses only as appear to him or her legal or just,
35 except the defense of a person charged with a public
36 offense.

37 (d) To employ, for the purpose of maintaining the
38 causes confided to him or her those means only as are
39 consistent with truth, and never to seek to mislead the



1 judge or any judicial officer by an artifice or false
2 statement of fact or law.

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

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

10 (g) Not to encourage either the commencement or
11 the continuance of an action or proceeding from any
12 corrupt motive of passion or interest.

13 (h) Never to reject, for any consideration personal to
14 himself or herself, the cause of the defenseless or the
15 oppressed.

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

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

33 (k) To comply with all conditions attached to any
34 disciplinary probation, including a probation imposed
35 with the concurrence of the attorney.

36 (l) To keep all agreements made in lieu of disciplinary
37 prosecution with the agency charged with attorney
38 discipline.

39 (m) To respond promptly to reasonable status
40 inquiries of clients and to keep clients reasonably



1 informed of significant developments in matters with
2 regard to which the attorney has agreed to provide legal
3 services.

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

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

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

13 (2) The entry of judgment against the attorney in any
14 civil action for fraud, misrepresentation, breach of
15 fiduciary duty, or gross negligence committed in a
16 professional capacity.

17 (3) The imposition of any judicial sanctions against the
18 attorney, except for sanctions for failure to make
19 discovery or monetary sanctions of less than one thousand
20 dollars (\$1,000).

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

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

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

37 (7) Reversal of judgment in a proceeding based in
38 whole or in part upon misconduct, grossly incompetent
39 representation, or willful misrepresentation by an
40 attorney.



1 (8) As used in this subdivision, “against the attorney”
2 includes claims and proceedings against any firm of
3 attorneys for the practice of law in which the attorney was
4 a partner at the time of the conduct complained of and
5 any law corporation in which the attorney was a
6 shareholder at the time of the conduct complained of
7 unless the matter has to the attorney’s knowledge already
8 been reported by the law firm or corporation.

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

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

15 SEC. 3. Section 6070 of the Business and Professions
16 Code is amended to read:

17 6070. (a) The State Bar shall request the California
18 Supreme Court to adopt a rule of court authorizing the
19 State Bar to establish and administer a mandatory
20 continuing legal education program. The rule that the
21 State Bar requests the Supreme Court to adopt shall
22 require that, within designated 36-month periods, all
23 active members of the State Bar shall complete at least 25
24 hours of legal education activities approved by the State
25 Bar or offered by a State Bar approved provider, with four
26 of those hours in legal ethics. A member of the State Bar
27 who fails to satisfy the mandatory continuing legal
28 education requirements of the program authorized by
29 the Supreme Court rule shall be enrolled as an inactive
30 member pursuant to rules adopted by the Board of
31 Governors of the State Bar.

32 (b) For purposes of this section, statewide associations
33 of public agencies and incorporated, nonprofit
34 professional associations of attorneys, shall be certified as
35 State Bar approved providers upon completion of an
36 appropriate application process to be established by the
37 State Bar. The certification may be revoked only by
38 majority vote of the board, after notice and hearing, and
39 for good cause shown. Programs provided by the
40 California District Attorneys Association or the California



1 Public Defenders Association, or both, including, but not
2 limited to, programs provided pursuant to Title 1.5
3 (commencing with Section 11500) of Part 4 of the Penal
4 Code, are deemed to be legal education activities
5 approved by the State Bar or offered by a State Bar
6 approved provider.

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

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

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

34 6085. Any person complained against shall be given
35 fair, adequate, and reasonable notice and have a fair,
36 adequate, and reasonable opportunity and right:

37 (a) To defend against the charge by the introduction
38 of evidence.

39 (b) To receive any and all exculpatory evidence from
40 the State Bar after the initiation of a disciplinary



1 proceeding in State Bar Court, and thereafter when this
2 evidence is discovered and available. This subdivision
3 shall not require the disclosure of mitigating evidence.

4 (c) To be represented by counsel.

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

6 (e) To exercise any right guaranteed by the California
7 Constitution or the United States Constitution, including
8 the right against self-incrimination.

9 He or she shall also have the right to the issuance of
10 subpoenas for attendance of witnesses to appear and
11 testify or produce books and papers, as provided in this
12 chapter.

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

15 6095.1. (a) On or before January 1, 2000, the State Bar
16 shall begin compiling statistics indicating the number of
17 complaints against attorneys, broken down to reflect the
18 percentage of complaints brought against attorneys
19 practicing as solo practitioners, in small law firms or
20 partnerships, and in large law firms. The State Bar shall
21 also begin compiling statistics indicating the percentage
22 of complaints that are investigated and the percentage of
23 complaints that are prosecuted against solo practitioners,
24 attorneys practicing in small law firms or partnerships,
25 and attorneys practicing in large law firms. Practicing
26 attorneys shall provide any information that is requested
27 by the bar deemed necessary for the purpose of compiling
28 the statistics. For purposes of this section, "small law firm"
29 means a firm, partnership, association, corporation, or
30 limited liability partnership that includes 10 or fewer
31 attorneys.

32 (b) On or before December 31, 2000, the State Bar
33 shall issue a written report to the Senate Committee on
34 Judiciary and the Assembly Committee on Judiciary on
35 procedures used in the disciplinary process to ensure that
36 resources of the State Bar are used fairly and equitably in
37 the investigation and prosecution of complaints against
38 attorneys. In particular, the report shall focus on whether
39 disciplinary proceedings are brought in disproportionate
40 numbers against attorneys practicing as solo practitioners



1 or in small law firms or partnerships, as compared to
2 proceedings brought against attorneys practicing in large
3 law firms. The report shall also describe any procedures
4 in place or under consideration to correct any
5 institutional bias. After issuing the report, the State Bar
6 shall continue to compile and maintain statistics pursuant
7 to subdivision (a), and shall make those statistics available
8 to the public upon request.

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

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

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

26 6140. (a) The board shall fix the annual membership
27 fee for active members at a sum not exceeding three
28 hundred eighteen dollars (\$318).

29 (b) The annual membership fee for active members is
30 payable on or before the first day of February of each
31 year. If the board finds it appropriate and feasible, it may
32 provide by rule for payment of fees on an installment
33 basis with interest, by credit card, or other means, and
34 may charge members choosing any alternative method of
35 payment an additional fee to defray costs incurred by that
36 election.

37 (c) This section shall remain in effect only until
38 January 1, 2001, and as of that date is repealed, unless a
39 later enacted statute, that is enacted before January 1,
40 2001, deletes or extends that date.



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

3 6140.05. (a) The invoice provided to members for
4 payment of the annual membership fee shall provide
5 each member the option of deducting four dollars (\$4)
6 from the annual fee if the member elects not to support
7 lobbying and related activities by the State Bar outside of
8 the parameters established by the United States Supreme
9 Court in *Keller v. State Bar of California* (1990) 496 U.S.
10 1.

11 (b) For the support or defense of lobbying and related
12 activities by the State Bar outside of the parameters of
13 *Keller v. State Bar of California*, the Board of Governors
14 of the State Bar shall not expend a sum exceeding the
15 following: the product of the number of members paying
16 their annual dues who did not elect the optional
17 deduction multiplied by four dollars (\$4).

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

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

29 6141.1. (a) The payment by any member of the
30 annual membership fee, any portion thereof, or any
31 penalty thereon, may be waived by the board as it may
32 provide by rule. The board may require submission of
33 recent federal and state income tax returns and other
34 proof of financial condition as to those members seeking
35 waiver of all or a portion of their fee or penalties on the
36 ground of financial hardship.

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

38 (1) An active member who can demonstrate annual
39 income from the practice of law of less than forty



1 thousand dollars (\$40,000) shall presumptively qualify for
2 a waiver of 25 percent of the annual membership fee.

3 (2) An active member who can demonstrate annual
4 income from the practice of law of less than twenty-five
5 thousand dollars (\$25,000) shall presumptively qualify for
6 a waiver of 50 percent of the annual membership fee.

7 ~~SEC. 9. Section 6145 of the Business and Professions~~
8 ~~Code is amended to read:~~

9 ~~6145. (a) A comprehensive independent financial~~
10 ~~audit of all State Bar operations shall be conducted, prior~~
11 ~~to authorization of dues collection for the budget cycle~~
12 ~~commencing January 1, 2001. The audit results and~~
13 ~~recommendations shall be submitted to the Chief Justice~~
14 ~~of the Supreme Court and the Committees on Judiciary~~
15 ~~of the Senate and the Assembly no later than June 30,~~
16 ~~2001.~~

17 ~~(b) The board annually shall prepare a statement~~
18 ~~showing the total amount of all receipts and expenditures~~
19 ~~of the State Bar for the twelve months preceding. The~~
20 ~~statement shall be promptly certified under oath by the~~
21 ~~treasurer, and a copy of the financial audit shall be~~
22 ~~submitted within 120 days of the close of the fiscal year to~~
23 ~~the board, to the Chief Justice of the Supreme Court, and~~
24 ~~to the Committees on Judiciary of the Senate and the~~
25 ~~Assembly.~~

26 ~~SEC. 9. Section 6145 of the Business and Professions~~
27 ~~Code is amended to read:~~

28 ~~6145. (a) The board annually shall prepare a~~
29 ~~financial statement showing the total amount of receipts~~
30 ~~and expenditures of the State Bar for the twelve months~~
31 ~~preceding, and shall contract with the Bureau of State~~
32 ~~Audits to conduct an annual performance audit of the~~
33 ~~State Bar for each fiscal year, commencing July 1, 1999, to~~
34 ~~June 30, 2001, inclusive. The~~

35 ~~(b) The financial statement shall be promptly~~
36 ~~certified under oath by the president and treasurer, and~~
37 ~~a copy of the financial statement and the annual~~
38 ~~performance audit shall be submitted within 120 days of~~
39 ~~the close of the fiscal year to the board, to the Chief Justice~~



1 of the Supreme Court, *and to the Assembly and Senate*
2 *Committees on Judiciary.*

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

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

