

Senate Bill No. 144

CHAPTER 342

An act to amend Sections 6068, 6070, 6085, and 6141.1 of, to add Sections 6008.6, 6031.5, and 6140.05 to, to add and repeal Section 6140 of, and to repeal and add Section 6145 of, the Business and Professions Code, relating to the State Bar.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 144, 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 State Bar to provide the Conference of Delegates and State Bar sections with administrative and support services, subject to full reimbursement, as specified.

(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.

(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 \$5 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 \$5 fee, multiplied by \$5.

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.

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 require the Board of Governors of the State Bar to contract with a nationally recognized independent public accounting firm to conduct an audit of the State Bar's financial statement for each fiscal year beginning after December 31, 1998. It would require the financial statement to be certified under oath by the Treasurer of the State Bar, and a copy of the audit and the financial statement 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. It would also require the Board of Governors of the State Bar to contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations from July 1, 2000, through December 31, 2000, inclusive, and would require a copy of the performance audit to be submitted by May 1, 2001, to



the Board of Governors of the State Bar, the Chief Justice of the Supreme Court, and the Assembly and Senate Committees on Judiciary. It would require that the Board of Governors contract with the Bureau of State Audits every 2 years thereafter to conduct a performance audit of the State Bar's operations for the respective fiscal year, commencing with January 1, 2002, to December 31, 2002, inclusive, and would require a copy of the performance audit to be submitted within 120 days of the close of the fiscal year for which the audit was performed to the Board of Governors of the State Bar, the Chief Justice of the Supreme Court, and the Assembly and Senate Committees on Judiciary. It would authorize the Bureau of State Audits to contract with a 3rd party to conduct these performance audits.

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.

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

SECTION 1. Section 6008.6 is added to the Business and Professions Code, to read:

6008.6. The State Bar shall award no contract for goods, services, or both, for an aggregate amount in excess of fifty thousand dollars (\$50,000), except pursuant to the standards established in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. The State Bar shall establish a request for proposal procedure by rule, pursuant to the general standards established in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 1.5. Section 6031.5 is added to the Business and Professions Code, to read:

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

The State Bar may provide the Conference of Delegates with administrative and support services, provided the State Bar shall be reimbursed for the full cost of those services out of funds collected pursuant to subdivision (c), funds raised by or through the activities of the Conference of Delegates, or other funds collected from voluntary sources. The financial audit specified in Section 6145 shall confirm that the amount assessed by the State Bar for providing the services reimburses the costs of providing them, and shall verify that mandatory dues are not used to fund the Conference of Delegates.



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

The State Bar may provide an individual section, or two or more sections collectively, with administrative and support services, provided the State Bar shall be reimbursed for the full cost of those services out of funds collected pursuant to subdivision (c), funds raised by or through the activities of the sections, or other funds collected from voluntary sources. The financial audit specified in Section 6145 shall confirm that the amount assessed by the State Bar for providing the services reimburses the costs of providing them, and shall verify that mandatory dues are not used to fund the sections.

(c) Notwithstanding the other provisions of this section, the State Bar is expressly authorized to collect voluntary fees to fund the Conference of Delegates or the State Bar sections on behalf of those organizations in conjunction with the State Bar's collection of its annual membership dues. Funds collected pursuant to this subdivision, and other funds raised by or through the activities of the Conference of Delegates or sections, or collected from voluntary sources, for their support or operation, shall not be subject to the expenditure limitations of subdivision (b) of Section 6140.05.

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

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

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

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

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

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

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

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

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

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



(i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States or any other constitutional or statutory privileges. This subdivision 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. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.

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

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

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

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

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

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

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

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

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

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

(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of any felony, or any misdemeanor committed in the course of the practice of law, or in any manner such that a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a



conspiracy or solicitation of another to commit a felony or any misdemeanor of that type.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

(c) To be represented by counsel.

(d) To examine and cross-examine witnesses.

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

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

SEC. 5. Section 6140 is added to the Business and Professions Code, to read:

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

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



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

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

SEC. 6. Section 6140.05 is added to the Business and Professions Code, to read:

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

(b) For the support or defense of lobbying and related activities conducted by the State Bar on or after January 1, 2000, outside of the parameters of *Keller v. State Bar of California*, and in support or defense of any litigation arising therefrom, the Board of Governors of the State Bar shall not expend a sum exceeding the following: the product of the number of members paying their annual dues who did not elect the optional deduction multiplied by five dollars (\$5).

Moneys collected pursuant to this section shall not be deemed voluntary fees or funds for the purpose of subdivision (c) of Section 6031.5.

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

SEC. 7. Section 6141.1 of the Business and Professions Code is amended to read:

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

(b) The board shall adopt rules providing that:

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

(2) An active member who can demonstrate annual income from the practice of law of less than twenty-five thousand dollars (\$25,000)



shall presumptively qualify for a waiver of 50 percent of the annual membership fee.

SEC. 8. Section 6145 of the Business and Professions Code is repealed.

SEC. 9. Section 6145 is added to the Business and Professions Code, to read:

6145. (a) The board shall contract with a nationally recognized independent public accounting firm for an audit of its financial statement for each fiscal year beginning after December 31, 1998. The financial statement shall be promptly certified under oath by the treasurer of the State Bar, and a copy of the audit and financial statement shall be submitted within 120 days of the close of the fiscal year to the board, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

The audit shall examine the receipts and expenditures of the State Bar, the Conference of Delegates, and the State Bar sections, to assure that the receipts of the Conference of Delegates and the sections are being applied, and their expenditures are being made, in compliance with subdivisions (a) and (b) of Section 6031.5, and that the receipts of the Conference of Delegates and the receipts of the sections are applied only to the work of the Conference of Delegates and the sections, respectively.

(b) The board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations from July 1, 2000, to December 31, 2000, inclusive. A copy of the performance audit shall be submitted by May 1, 2001 to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

Every two years thereafter, the board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations for the respective fiscal year, commencing with January 1, 2002, through December 31, 2002, inclusive. A copy of the performance audit shall be submitted within 120 days of the close of the fiscal year for which the audit was performed to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

For the purposes of this subdivision, the Bureau of State Audits may contract with a third party to conduct the performance audit. This subdivision is not intended to reduce the number of audits the Bureau of State Audits may otherwise be able to conduct.

SEC. 10. The Legislature finds and declares that it is in the public interest to continue the mandatory continuing legal education requirements for attorneys licensed to practice law. The Legislature further finds and declares that officers and elected officials of the State of California, and their full-time employees, undergo ongoing continuing legal education in their review of the implementation of current statutes and regulations, including any court interpretation



of a statute or regulation, and in their consideration and analysis of proposed changes in those statutes and regulations, thereby warranting their exemption from the requirements of Section 6070 of the Business and Professions Code. The Legislature also finds and declares that full-time law professors at accredited law schools also undergo ongoing continuing legal education in their review of the statutes and regulations of this state, including any court interpretation of a statute or regulation, thereby warranting their exemption from the requirements of Section 6070 of the Business and Professions Code.

SEC. 11. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 12. This act shall become operative only if Senate Bill 143 of the 1999–2000 Regular Session is enacted and becomes effective on or before January 1, 2000.

