
CONSENT

Bill No: SB 211
Author: Umberg (D)
Amended: 5/5/21
Vote: 21

SENATE JUDICIARY COMMITTEE: 11-0, 5/4/21

AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird, Stern, Wieckowski, Wiener

SUBJECT: State Bar: board of trustees: report: attorneys' annual license fees: California Lawyers Association

SOURCE: Author

DIGEST: This bill prohibits the State Bar from charging the annual license fee for active licensees for 2022 and the annual license fee for inactive licensees for 2022 and thereafter unless and until the Senate confirms the appointment of the chief trial counsel, in which case the bill would require the board to charge those annual license fees up to unspecified amounts. This bill removes governance restrictions that were imposed by statute on the California Lawyers Association and removes obsolete provisions of the State Bar Act.

ANALYSIS:

Existing law:

- 1) Establishes that protection of the public, which includes support for greater access to, and inclusion in, the legal system, shall be the highest priority for the State Bar and the Board of Trustees (Board) in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Bus. & Prof. Code § 6001.1.)
- 2) Requires all attorneys who practice law in California to be licensed by the State Bar and establishes the State Bar for the purpose of regulating the legal

profession. The Legislature sets the annual fees. (Bus. & Prof. Code § 6000 et seq.)

- 3) Authorizes the State Bar to collect the following fees from active licensees for the year 2021:
 - a) \$395 annual license fee for 2021. (Bus. & Prof. Code § 6140.)
 - b) \$40 fee for the CSF. (Bus. & Prof. Code § 6140.55.)
 - c) \$25 fee for the costs of the disciplinary system. (Bus. & Prof. Code § 6140.6.)
 - d) \$10 fee for the attorney diversion and assistance program. (Bus. & Prof. Code § 6140.9.)
- 4) Authorizes the State Bar to collect the following fees from inactive licensees for the year 2021:
 - a) \$97.40 annual license fee. (Bus. & Prof. Code § 6141 (a).)
 - b) \$10 fee for the CSF. (Bus. & Prof. Code § 6140.55)
 - c) \$25 fee for the costs of the disciplinary system. (Bus. & Prof. Code § 6140.6.)
 - d) \$5 fee for the attorney diversion and assistance program. (Bus. & Prof. Code § 6140.9.)
 - e) An inactive licensee who is 70 years old or older is not required to pay an annual license fee. (Bus. & Prof. Code § 6141 (b).)
- 5) Requires the State Bar to charge a \$45 fee in addition to the annual license fee for active and inactive licensees for the purposes of funding legal services for persons of limited means, as provided, unless a licensee elects not to support those activities in which case the licensee can deduct the amount from the annual license fee. Requires \$5 of the \$45 fee to be allocated to qualified legal services projects or qualified support centers, as defined, to hire law school graduates with a temporary provisional license issued by the State Bar, as provided. (Bus. & Prof. Code § 6140.03.)
- 6) Provides for the establishment of the California Lawyers Association as a private nonprofit corporation composed of what were formerly the sections of the State Bar. Requires the State Bar to assist the sections to incorporate as a private, nonprofit corporation and transfer the functions and activities of the 16 State Bar sections and the California Young Lawyers Association to the new private, nonprofit corporation. Specified the governance structure of the

California Lawyers Association and required that the bylaws must ensure that the governing board include one representative of each of the 16 sections and one representative from the California Young Lawyers Association and that each governing board member have equal voting power on the governing board, among other things. (Bus. & Prof. § 6056(a).)

- 7) Requires the State Bar Board of Trustees to establish and administer the Client Security Fund to relieve or mitigate pecuniary losses caused by dishonest conduct of active members of the State Bar, as specified. (Bus. & Prof. Code § 6140.5.)
- 8) Requires the State Bar to contract with the California State Auditor's Office to conduct a performance audit of the State Bar's operations every two years.¹ (Bus. & Prof. Code § 6145 (b).)
- 9) Requires the State Bar board to appoint a chief trial counsel and to notify the Senate Committee on Rules and Senate and Assembly Committees on Judiciary within seven days of the dismissal or hiring of a chief trial counsel. The appointment of the chief trial counsel is subject to confirmation by the Senate, as specified. (Bus. & Prof. Code § 6079.5.)
- 10) Provides that the chief trial counsel, with or without the filing or presentation of any complaint, may initiate and conduct investigations of all matters affecting or relating to: the discipline of the licensees of the State Bar; the acts or practices of a person whom the chief trial counsel has reason to believe has violated or is about to violate any provision of Articles 7 (commencing with Section 6125) and 9 (commencing with Section 6150) of the State Bar Act; and any other matter within the jurisdiction of the State Bar. (Bus. & Prof. Code § 6044.)
- 11) Provides that it shall be the goal and policy of the State Bar to dismiss a complaint, admonish the attorney, or forward a completed investigation to the Office of Trial Counsel within six months after receipt of a written complaint. As to complaints designated as complicated matters by the chief trial counsel, it shall be the goal and policy of the State Bar to dismiss, terminate by admonition, or forward those complaints to the Office of Trial Counsel within 12 months. (Bus. & Prof. Code § 6094.5 (a).)

¹ *The State Bar of California: It Is Not Effectively Managing Its System for Investigating and Disciplining Attorneys Who Abuse the Public Trust* (Auditor of the State of California) April 2021, available at <https://www.auditor.ca.gov/pdfs/reports/2020-030.pdf> (as of May 1, 2021).

- 12) Provides that the State Bar shall issue an annual discipline report by April 30 of each year describing the performance and condition of the State Bar discipline system, including all matters that affect public protection. (Bus. & Prof. Code § 6085.15 (a).)
- 13) Provides that the annual discipline report shall include statistical information presented in a consistent manner for year-to-year comparison and shall compare the information required under 6086.15 (a) to similar information for the previous three years. (Bus. & Prof. Code § 6085.15 (b).)
- 14) Provides that the report shall cover the previous calendar year and shall include accurate and complete descriptions, as specified.

This bill:

- 1) Removes the license fee for active and inactive licensees for 2022.
- 2) Prohibits the State Bar from charging the annual license fee for active licensees for 2022 and the annual license fee for inactive licensees for 2022 and thereafter unless and until the Senate confirms the appointment of the chief trial counsel, in which case the bill would require the board to charge those annual license fees up to unspecified amounts.
- 3) Removes governance restrictions that were imposed by statute on the California Lawyers Association.
- 4) Removes obsolete provisions of the State Bar Act.

Background

The State Bar of California (State Bar) is a public corporation and the largest state bar in the country. Attorneys who wish to practice law in California generally must be admitted and licensed in this state and must be members of the State Bar. (Cal. Const., art. VI, § 9.) This bill is the annual State Bar licensing fee bill.

The Auditor of the State of California (Auditor) is required by law to conduct a performance audit every two years of the State Bar's operations. This year's audit report is entitled "The State Bar of California: It Is Not Effectively Managing Its System for Investigating and Disciplining Attorneys Who Abuse the Public Trust"

and was released on April 29, 2021.² The audit report details how the State Bar's changes to its discipline system have significantly reduced that system's efficiency. The Auditor notes that "the State Bar's backlog grew by 87 percent from the end of December 2015, to the end of June 2020." As pointed out by the Auditor, this "growing backlog allows attorneys who are under investigation more time to continue practicing law while their cases are pending, increasing the risk for potential harm to the public." The Auditor's "analysis indicates that both higher- and lower-priority cases are taking significantly longer to resolve." Additionally, as the Auditor highlights, the "State Bar is also disciplining attorneys at a drastically lower rate for reasons it cannot adequately explain. From 2015 through 2019, the total number of cases that resulted in discipline—including reprimands, suspensions, and disbarments—declined by 54 percent."

It is clear from the Auditor's audit report that there are serious issues with the State Bar's management of its system for investigating and disciplining attorneys. The State Bar Act provides that the State Bar's chief trial counsel is subject to Senate confirmation. However, the State Bar has not followed the statute and has instead managed its discipline system without a Senate confirmed chief trial counsel for over five years. In order to ensure that the State Bar actually follows through with the Senate confirmation process as required by statute, this bill prohibits the State Bar from charging attorneys a licensing fee for active and inactive licensees unless and until the Senate confirms the appointment of the chief trial counsel. In order to allow the Legislature the time to better assess what the appropriate licensing fee amounts should be in light of the recently released audit report, this bill does not specify what the 2022 licensing fee will be for active and inactive licensees.

Comments

According to the author:

The California Lawyers Association (CLA), formerly the sections of the California State Bar, was incorporated as a non-profit corporation in 2018. The CLA was authorized by SB 36 (Jackson, Ch. 422, Stats. 2017) as part of a series of major reforms to the State Bar Act. SB 36 specified that the State Bar would assist the sections in incorporating as a private, nonprofit corporation and transfer the functions and activities of the 16 State Bar sections and the California Young Lawyers Association to the new private, nonprofit corporation. The bill also specified the governance structure of

² *The State Bar of California: It Is Not Effectively Managing Its System for Investigating and Disciplining Attorneys Who Abuse the Public Trust* (Auditor of the State of California) April 2021, available at <https://www.auditor.ca.gov/pdfs/reports/2020-030.pdf> (as of May 1, 2021).

the CLA and required that the bylaws ensure that the governing board include one representative of each of the 16 sections and one representative from the California Young Lawyers association. SB 36 also required each governing board member to have equal voting power on the CLA governing board. SB 211 removes these governance restrictions at the request of the California Lawyers Association.

This measure also authorizes the State Bar to collect licensing fees from California attorneys. In 2019, after years of requests from the State Bar to increase the annual license fee, the Legislature approved a significant increase in the licensing fee paid by attorneys for 2020. The 2020 fee increase was less than half of what the State Bar originally sought and instead reflected an amount justified by the analysis of the State Auditor and Legislative Analyst's Office. The fee approved for 2021 was \$34 less for active attorneys than it was in 2020.

It is clear from the State Auditor's April 29, 2021 audit report that there are serious issues with how the State Bar has managed its system for investigating and disciplining attorneys. The State Bar has been managing its discipline system without a Senate confirmed chief trial counsel for over five years. In order to ensure that the State Bar actually follows through with the Senate confirmation process as required by statute, SB 211 prohibits the State Bar from charging active and inactive attorneys a licensing fee for 2022 unless and until the Senate confirms the appointment of the chief trial counsel. The bill also removes the 2022 licensing fee for active and inactive attorneys so the Legislature can take the time to assess what an appropriate licensing fee should be.

The California Lawyers Association writes the following in support of the removal of their governance restrictions:

Section 6056(b) was added as part of SB 36 (Jackson), Statutes of 2017, Chapter 422, the bill that deunified the State Bar of California, created CLA, and contained other significant reforms of the State Bar.

SB 36 moved the 16 State Bar Sections and the California Young Lawyers Association (CYLA) into CLA, a new nonprofit corporation that was to be established by the State Bar. At the time, there was a great deal of discussion about the governance of what would be the newly formed CLA, in light of the transition of the Sections and CYLA from the State Bar to

CLA. This ultimately resulted in Section 6056(b), mandating that certain specified provisions be contained in CLA's bylaws.

In March 2020, CLA's Board of Representatives voted unanimously to seek removal of Section 6056(b). CLA has been up and running successfully since the beginning of 2018. CLA's Board of Representatives supports the removal of Section 6056(b), providing CLA with more flexibility to self-govern, thereby bringing the association more in line with other independent professional associations.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 5/4/21)

California Lawyers Association
State Bar of California

OPPOSITION: (Verified 5/4/21)

None received

Prepared by: Margie Estrada / JUD. / (916) 651-4113
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**** **END** ****