

SENATE THIRD READING
SB 211 (Umbertg)
As Amended September 2, 2021
Majority vote

SUMMARY

Sets the annual licensing fees for attorneys in California, requires the State Auditor to audit the State Bar's discipline system, requires the State Bar to develop case processing standards, and codifies the Legal Services Trust Fund Commission.

Major Provisions

- 1) Authorizes the Board of Trustees (Board) of the State Bar to collect an annual license fee of no more than \$395 from active licensees for 2022.
- 2) Authorizes the Board to collect an annual license fee of no more than \$97.40 from inactive licensees.
- 3) Removes governance restrictions imposed on the California Lawyers Association (CLA) that required that the bylaws ensure that: a) the governing board include one representative of each of the 16 Sections and one from the California Young Lawyers Association; b) each governing board member have equal voting power on the governing board; and c) the governing board may only terminate an individual Section or add new Sections by a two-thirds vote.
- 4) Directs the State Auditor to conduct an independent audit to determine whether the State Bar's attorney complaint and discipline process adequately protects the public from misconduct by licensed attorneys or those who wrongfully hold themselves out as licensed attorneys; and specifically provides that the audit analyze whether the State Bar takes reasonable steps to determine the existence and extent of alleged misconduct, if the State Bar has sufficient management controls, including conflict of interest policies, to ensure complaint investigations are not compromised by undue influence, and examine any data trends that could suggest racial or gender inequities in outcomes from the discipline process. Also provides that the audit include consideration of possible options for the State Bar to more proactively protect the public, including, to the extent possible, the appropriateness of an independent discipline monitor to more closely review the State Bar's discipline process, an independent ombudsperson to assist the public, and other options to protect the public. Requires that the audit be submitted no later than April 15, 2022 to the Board, the Chief Justice, and the Assembly and Senate Judiciary Committees.
- 5) Provides that notwithstanding the confidentiality of disciplinary investigations provisions, case related findings may be included in the State Auditor's report under 4), provided that the names of attorneys investigated, any complaining witnesses, and the names of other members of the public associated with complaints are not included in the State Auditor's report.
- 6) Codifies the Legal Services Trust Fund Commission (LSTFC) within the State Bar to administer the distribution of funds to qualified legal services projects and support centers. Specifies that the LSTFC is comprised of 24 members, clarifies the length of terms, and who makes the appointments – ten appointments by the Chair of the Judicial Council, six by the Board, two by the Speaker of the Assembly, two by the Senate Committee on Rules, and four

by the LSTFC itself. Sets forth the duties of the LSTFC, including recommending rules to the Board, which the Board shall approve unless it finds that the recommendations conflict with a statutory, fiduciary, or legal obligation of the State Bar. Requires the State Bar to develop a program to audit grantees. Subjects the LSTFC to the California Public Records Act and the Bagley-Keene Open Meeting Act. Requires the LSTFC annually to report on its receipts, expenditures, and disbursements, as provided.

- 7) Moves the due date of the State Bar's Annual Discipline Report to October 31st of each year and requires that data cover the state fiscal year, as provided. Clarifies which cases must be reported in the Annual Discipline Report.
- 8) Clarifies the current six-month case processing goals, as provided.
- 9) Requires the State Bar, no later than October 31, 2022, to propose case processing standards for competently, accurately, and timely resolving cases with the Office of Chief Trial Counsel. Sets forth what the case processing standards must be based upon and what they must take into account. Requires the State Bar to provide its analysis to the LAO, and requires the LAO to report to the Senate and Assembly Judiciary Committees on its review of the proposal. States the intent of the Legislature to enact legislation to codify case processing goals.
- 10) Allows qualified legal services projects and support centers, in writing and on an annual basis, to direct their allocation from affinity funds to ChangeLawyers for fellowships to law students and law graduates working at those organizations, as provided.
- 11) For purposes of eligible work by qualified legal services organizations and support centers, defines "civil legal services" to include legal services related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions.
- 12) Removes obsolete provisions of the State Bar Act.
- 13) Contains chaptering out amendments with SB 498 (Umberg) of the current legislative session.

COMMENTS

This is the annual State Bar fees reauthorization and legislative oversight bill. The annual bill allows the Legislature to review the performance and operation of the State Bar in the past year and determine if any statutory changes need to be made to improve its functioning, as well as approve annual licensing fees for attorneys in the state. As is often the case, this bill arrives during another year of controversy for the State Bar. First, the State Auditor discovered that the State Bar's backlog of discipline cases increased by 87% between 2015 and 2020, despite (at least near the end of the time period) the Bar's new case prioritization standards and new discipline staff. Second, the public learned that famed trial attorney Thomas Girardi is accused of stealing millions of dollars from his injured clients over many years; and it now appears that serious and repeated allegations of misconduct against him were reported to the State Bar over decades, but the Bar had, until just the last few months, never taken action against Girardi. The State Bar issued a statement acknowledging that mistakes were made over years in the handling of complaints in this case. It seems likely that if the State Bar had instituted disciplinary proceedings years earlier when allegations of misconduct first surfaced, many clients might have

avoided theft of their damage awards. Finally, the State Bar has also been operating without its required, Senate-confirmed chief trial counsel – the head of the State Bar's discipline program – for more than five years, although the State Bar just submitted the name of a new, proposed chief trial counsel to the Senate. A more detailed review of concerns about the State Bar's operations can be found in the Judiciary Committee's analysis of this bill.

As a result of these events, this legislation makes a number of reforms of State Bar operations, in addition to approving its annual fees charged to licensed attorneys. This bill seeks an outside, independent audit of the State Bar's discipline system to understand both what went wrong and how to ensure that those missteps do not happen again. Specifically, the bill directs the State Auditor, by April 15, 2022 – in time for next year's attorney fee bill – to conduct an independent audit to determine whether the State Bar's attorney complaint and discipline process adequately protects the public from misconduct by licensed attorneys or those who wrongfully hold themselves out as licensed attorneys. Additionally, in order to better support the state's legal services organizations that provide civil legal assistance to low-income Californians across the state, the bill seeks to codify the Legal Services Trust Fund Commission and give it greater autonomy in operations. This bill also revises the State Bar's Annual Discipline Report, and requires that the State Bar to propose case processing standards for competently, accurately, and timely resolving cases with the Office of Chief Trial Counsel, with a review by the LAO. The bill also permits qualified legal services projects and support centers to direct their allocation from affinity funds to ChangeLawyers for fellowships to law students and law graduates working at those organizations. Finally, the bill deletes unnecessary governance restrictions on the California Lawyers Association, the attorney trade association which separated from the State Bar as the result of SB 36 (Jackson), Chapter 422, Statutes of 2017.

According to the Author

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.

Arguments in Support

The Civil Justice Association of California supports the bill, writing:

The Bar's failure to exercise this important role [**appoint a chief trial counsel**] has allowed attorneys operating outside the scope of professional standards to continue in their practice of law to the detriment of their clients. A prime example of this is former attorney Thomas Girardi who misused client funds, leaving his victims out \$23 million dollars, because of delayed action on the part of the State Bar.

It is in the best interest of the public and the legal profession that the regulating body responsible for overseeing disciplinary action of attorneys be held accountable for properly managing their investigative system and removing unethical actors in a timely manner.

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

None

VOTES**SENATE FLOOR: 37-0-3**

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Caballero, Limón, Stern

ASM JUDICIARY: 11-0-0

YES: Stone, Gallagher, Chau, Chiu, Davies, Lorena Gonzalez, Holden, Kalra, Kiley, Maienschein, Reyes

UPDATED

VERSION: September 2, 2021

CONSULTANT: Leora Gershenzon / JUD. / (916) 319-2334

FN: 0001661