SB-36 Attorneys: State Bar: Sections of the State Bar. (2017-2018)

SHARE THIS:

Date Published: 10/02/2017 09:00 PM

Senate Bill No. 36

CHAPTER 422

An act to amend Sections 6001, 6008.6, 6011, 6013.1, 6013.3, 6013.5, 6015, 6016, 6019, 6021, 6022, 6026.7, 6029, 6031.5, 6054, 6060.2, 6070, 6086.5, 6140.9, 6144, 6144.1, 6145, and 6232 of, to add Sections 6008.7, 6046.8, 6069.5, 6140.02, 6140.56, and 6141.3 to, to add Article 3 (commencing with Section 6055) to Chapter 4 of Division 3 of, to add and repeal Section 6140 of, and to repeal Sections 6008.5, 6009.7, 6012, 6013.2, 6018, and 6026.5 of, the Business and Professions Code, relating to attorneys.

[Approved by Governor October 02, 2017. Filed with Secretary of State October 02, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 36, Jackson. Attorneys: State Bar: Sections of the State Bar.

(1) The State Bar Act provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation governed by a board of trustees comprised of appointed and elected members. The act requires 6 members of the 19-member board to be attorneys elected from State Bar Districts. The act requires the board of trustees to elect or select the president, vice president, and treasurer of the State Bar, as specified.

This bill would state that it is the intent of the Legislature that the board transition to a 13-member board, as specified. The bill would require that a maximum of 6 members of the board be public members, appointed as specified, and would require members of the board to serve a term of 4 years. The bill would require the California Supreme Court to appoint a chair and vice chair, as specified, instead of the board electing a president and vice president. The bill would require members of the executive committee of the board to include at least one member of the board appointed by each appointing authority.

The bill would, until January 1, 2019, require the board to charge an annual membership fee for active members in a specified amount for 2018, and would require the State Bar to adhere to a Supreme Court-approved policy to identify and address any proposed decision of the board of trustees that raises antitrust concerns.

(2) Existing law prohibits the Legislature, when the board places a charge upon or otherwise makes available all or any portion of the income or revenue from membership fees for the payment of security of an obligation of the State Bar and so long as any obligation remains unpaid, from reducing the maximum membership fee below the maximum in effect at the time the obligation is created or incurred and provides that this provision constitutes a covenant to the holder of such an obligation.

This bill would repeal the provision prohibiting the Legislature from reducing the maximum membership fee.

(3) Existing law prohibits the State Bar from awarding contracts for goods or services in excess of specified amounts unless certain standards are followed.

This bill would additionally require the approval of the board of trustees for those contracts and would, by January 1, 2019, require the State Bar to align its purchasing policies with those of other state agencies. The bill would also require the State Bar to conduct a review and study regarding errors and omissions insurance and to report its findings to the California Supreme Court and the Legislature, as specified. The bill would also require the State Bar to provide offers of discounts and other benefits to active and inactive members, including, but not limited to, insurance and affinity programs and would specify how the revenues received from those programs are to be allocated.

(4) Existing law requires applicants for admission to, among other things, take and pass a bar examination and be fingerprinted, as specified.

This bill would require the board of trustees to, at least once every 7 years, oversee an evaluation of the bar examination to determine if it properly tests for minimally needed competence for entry-level attorneys and to report on the results of the evaluation to the California Supreme Court and the Legislature, as specified. The bill would require the State Bar to notify the Department of Justice about individuals who are no longer members of the State Bar and applicants who are denied admission and to request from the Department of Justice subsequent arrest notifications services for applicants to, and members of, the State Bar.

(5) The act provides that the State Bar is subject to the Bagley-Keene Open Meeting Act and the California Public Records Act, as specified.

This bill would provide that access to records of the State Bar Court is subject to the rules and laws applicable to the judiciary instead of the California Public Records Act and would exempt the State Bar Court from the Bagley-Keene Open Meeting Act. The bill would authorize closed sessions for meetings, or portions thereof, relating to, among other things, the preparation, approval, grading, or administration of the California Bar Examination or the First-Year Law Students' Examination.

(6) Existing law establishes the Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of, among others, active members of the State Bar.

This bill would require the State Bar to conduct a thorough analysis of the Client Security Fund to ensure that the structure provides for the most effective and efficient operation of the fund by, among other things, making a determination of the ongoing needs of the fund to satisfy claims in a timely manner, as defined. The bill would require the State Bar to submit a report on its analysis to the Legislature, as specified.

(7) Existing law requires the State Bar to establish and administer an Attorney Diversion and Assistance Program and requires the program to be funded by mandatory fees. Existing law provides that funds from those fees may be applied to costs of the State Bar general fund programs if alternative sources of funding are obtained and a specified amount of funds remain available for support of the program each year.

This bill would instead authorize any excess funds not needed to support the program to be transferred to fund the Client Security Fund, provided there are sufficient funds available to support the program. The bill would also authorize applicants who are in law school or who have applied for admission to the State Bar to enter the program subject to the approval of the board of trustees.

(8) Existing law requires the net proceeds from the sale or lease of real property, after payment of obligations and encumbrances and reasonable costs of acquiring and relocating its facilities, if any, to be held by the State Bar without expenditure or commitment until approved by the Legislature.

This bill would instead require the net proceeds from the lease of real property, after payment of obligations and encumbrances and reasonable costs of acquiring and relocating its facilities, if any, to be used by the State Bar for the protection of the public.

(9) Existing law authorizes the State Bar to establish sections and prohibits the activities of the sections from being funded from the annual membership fee. Existing law authorizes the State Bar to provide the sections with administrative support services, provided that the State Bar is reimbursed for the full cost of those services, and authorizes the State Bar to collect voluntary fees to fund the State Bar sections in conjunction with the collection of the annual membership fee. Existing law requires members of the State Bar to complete continuing education requirements, as specified.

This bill would require the State Bar to assist the Sections of the State Bar to incorporate as a private, nonprofit corporation and to transfer the functions and activities of the existing State Bar Sections to the new private, nonprofit corporation, defined as the Association. The bill would provide that the Association is a voluntary association, is not part of the State Bar, is prohibited from being funded by membership fees, and is not considered a state, local, or other public body for any purpose. The bill would require the bylaws of the Association to ensure that the governing board of the Association includes one representative of each of the existing Sections of the State Bar and that each of these governing board members have equal voting power. The bill would require the bylaws of the Association to ensure that the governing board may terminate individual sections or add individual sections by a $^2/_3$ vote of the governing board. The bill would require the Sections of the State Bar or the Association to enter into a memorandum of understanding with the State Bar regarding the terms of separation of the Sections of the State Bar from the State Bar. The bill would require the State Bar to, among other things, collect voluntary dues set by the Association with the annual membership fee and to pay any such voluntary dues collected to the Association. The bill would prohibit the State Bar from having sections and would transfer the existing Sections of the State Bar to the Association, as specified. The bill would require the Association to provide and develop low-cost continuing education programs and materials as a condition of the State Bar collecting membership fees on behalf of the Association.

(10) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.
Vote: majority   Appropriation: no   Fiscal Committee: yes   Local Program: no

---

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6001 of the Business and Professions Code is amended to read:

6001. The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.

The State Bar has perpetual succession and a seal and it may sue and be sued. It may, for the purpose of carrying into effect and promoting its objectives:

(a) Make contracts.

(b) Borrow money, contract debts, issue bonds, notes and debentures and secure the payment or performance of its obligations.

(c) Own, hold, use, manage and deal in and with real and personal property.

(d) Construct, alter, maintain and repair buildings and other improvements to real property.

(e) Purchase, lease, obtain options upon, acquire by gift, bequest, devise or otherwise, any real or personal property or any interest therein.

(f) Sell, lease, exchange, convey, transfer, assign, encumber, pledge, dispose of any of its real or personal property or any interest therein, including without limitation all or any portion of its income or revenues from membership fees paid or payable by members.

(g) Do all other acts incidental to the foregoing or necessary or expedient for the administration of its affairs and the attainment of its purposes.

Pursuant to those powers enumerated in subdivisions (a) to (g), inclusive, it is recognized that the State Bar has authority to raise revenue in addition to that provided for in Section 6140 and other statutory provisions. The State Bar is empowered to raise that additional revenue by any lawful means. However, as of March 31, 2018, the State Bar shall not create any foundations or nonprofit corporations.

The State Bar shall conspicuously publicize to its members in the annual dues statement and other appropriate communications, including its Internet Web site and electronic communications, that its members have the right to limit the sale or disclosure of member information not reasonably related to regulatory purposes. In those communications the State Bar shall note the location of the State Bar’s privacy policy, and shall also note the simple procedure by which a member may exercise his or her right to prohibit or restrict, at the member’s option, the sale or disclosure of member information not reasonably related to regulatory purposes. On or before May 1, 2005, the State Bar shall report to the Assembly and Senate Committees on Judiciary regarding the procedures that it has in place to ensure that members can appropriately limit the use of their member information not reasonably related to regulatory purposes, and the number of members choosing to utilize these procedures.

No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with Section 11000), Division 4 (commencing with Section 16100), and Part 1 (commencing with Section 18000) and Part 2 (commencing with Section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the Legislature expressly so declares. Notwithstanding the foregoing or any other law, pursuant to Sections 6026.7 and 6026.11, the State Bar is subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and, commencing April 1, 2016, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 2. Section 6008.5 of the Business and Professions Code is repealed.

SEC. 3. Section 6008.6 of the Business and Professions Code is amended 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), or for information technology goods, services, or both, for an aggregate amount in excess of one hundred thousand dollars ($100,000), 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 and approval of the board of trustees. In the event that approval for a particular contract by the board is not feasible because approval of the contract is necessary prior to the next regularly scheduled meeting of the board of trustees, the chief executive officer of the State Bar may approve the contract after consultation with and approval by a designated committee of the board and subject to notification of the full board at the board's next regularly scheduled meeting. 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. For the purposes of this section, "information technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion voice, video, and data communications, network systems, requisite facilities, equipment, system controls, stimulation, electronic commerce, and all related interactions between people and machines.

SEC. 4. Section 6008.7 is added to the Business and Professions Code, to read:

6008.7. The State Bar shall, by January 1, 2019, develop purchasing policies that align with the purchasing policies of other state agencies.

SEC. 5. Section 6009.7 of the Business and Professions Code is repealed.

SEC. 6. Section 6011 of the Business and Professions Code is amended to read:

6011. (a) The board shall consist of no more than 19 members and no fewer than 13 members.

(b) It is the intent of the Legislature that the board consist of no more than 19 members and no fewer than 13 members during the period of transition from a 19-member board to a 13-member board. It is the intent of the Legislature that the board decrease its size without shortening, lengthening, or abolishing terms commencing prior to December 31, 2017, with the ultimate goal of instituting a 13-member board no later than October 31, 2020. It is the intent of the Legislature that this transition occur by the expiration of the terms of the elected members who are serving on the board as of December 31, 2017.

SEC. 7. Section 6012 of the Business and Professions Code is repealed.

SEC. 8. Section 6013.1 of the Business and Professions Code is amended to read:

6013.1. (a) The Supreme Court shall appoint five attorney members of the board pursuant to a process that the Supreme Court may prescribe. These attorney members shall serve for a term of four years and may be reappointed by the Supreme Court for one additional term only.

(b) An attorney member elected pursuant to Section 6013.2 may be appointed by the Supreme Court pursuant to this section to a term as an appointed attorney member.

(c) The Supreme Court shall fill any vacancy in the term of, and make any reappointment of, any appointed attorney member.

(d) When making appointments to the board, the Supreme Court should consider appointing attorneys that represent the following categories: legal services; small firm or solo practitioners; historically underrepresented groups, including consideration of race, ethnicity, gender, and sexual orientation; and legal academics. In making appointments to the board, the Supreme Court should also consider geographic distribution, years of practice, particularly attorneys who are within the first five years of practice or 36 years of age and under, and participation in voluntary local or state bar activities.

(e) The State Bar shall be responsible for carrying out the administrative responsibilities related to the appointment process described in subdivision (a).

SEC. 9. Section 6013.2 of the Business and Professions Code is repealed.

SEC. 10. Section 6013.3 of the Business and Professions Code is amended to read:

6013.3. (a) One attorney member of the board shall be appointed by the Senate Committee on Rules and one attorney member of the board shall be appointed by the Speaker of the Assembly.

(b) An attorney member appointed pursuant to this section shall serve for a term of four years. Vacancies shall be filled for the remainder of the term. An appointed attorney member may be reappointed pursuant to this section.

SEC. 11. Section 6013.5 of the Business and Professions Code is amended to read:

6013.5. (a) Effective January 1, 2018, a maximum of six members of the board shall be members of the public who have never been members of the State Bar or admitted to practice before any court in the United States.

(b) Each of these members shall serve for a term of four years. Vacancies shall be filled for the remainder of the term.

(c) Effective January 1, 2018, one public member shall be appointed by the Senate Committee on Rules and one public member shall be appointed by the Speaker of the Assembly.

(d) Four public members shall be appointed by the Governor, subject to the confirmation of the Senate.

(e) Each respective appointing authority shall fill any vacancy in and make any reappointment to each respective office.

SEC. 12. Section 6015 of the Business and Professions Code is amended to read:

6015. No person is eligible for attorney membership on the board unless both of the following conditions are satisfied:

(a) He or she is an active member of the State Bar.

(b) Either:

(1) Prior to October 31, 2020, if elected, he or she maintains his or her principal office for the practice of law within the State Bar district from which he or she is elected.

(2) If appointed by the Supreme Court or the Legislature, he or she maintains his or her principal office for the practice of law within the State of California.

SEC. 13. Section 6016 of the Business and Professions Code is amended to read:

6016. The term of office of each attorney member of the board shall be four years and he or she shall hold office until his or her successor is appointed and qualified. Vacancies shall be filled for the remainder of the term.

The board of trustees may provide by rule for an interim board to act in the place and stead of the board when because of vacancies during terms of office there is less than a quorum of the board.

SEC. 14. Section 6018 of the Business and Professions Code is repealed.

SEC. 15. Section 6019 of the Business and Professions Code is amended to read:

6019. Each place upon the board for which a member is to be appointed shall for the purposes of the appointment be deemed a separate office.

SEC. 16. Section 6021 of the Business and Professions Code is amended to read:

6021. (a) On the effective date of the measure adding this subdivision, the selection of the chair and vice chair of the board shall be made by appointment of the Supreme Court.

(b) For 2018, the Supreme Court shall appoint a chair and a vice chair to serve a term that commences upon appointment and ends at the conclusion of the annual meeting in 2018. Thereafter, the term of the chair and the vice chair shall be one year, and the chair and vice chair shall assume the duties of their respective offices at the conclusion of the annual meeting following their appointment. The chair and vice chair shall not serve more than two terms, except that a chair or vice chair who is appointed to fill a vacancy for the balance of a term is eligible to serve two full terms in addition to the remainder of the term for which he or she was appointed.

(c) The president and vice president in place on the effective date of the measure adding this subdivision shall retain their positions until the chair and vice chair are appointed.

SEC. 17. Section 6022 of the Business and Professions Code is amended to read:

6022. The secretary of the State Bar shall be selected annually by the board and need not be a member of the State Bar.

SEC. 18. Section 6026.5 of the Business and Professions Code is repealed.

SEC. 19. Section 6026.7 of the Business and Professions Code is amended to read:

6026.7. (a) The State Bar is subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and all meetings of the State Bar are subject to the Bagley-Keene Open Meeting Act.

(b) Notwithstanding any other law, the Bagley-Keene Open Meeting Act shall not apply to the Judicial Nominees Evaluation Commission or the State Bar Court.

(c) In addition to the grounds authorized in the Bagley-Keene Open Meeting Act, a closed session may be held for those meetings, or portions thereof, relating to both of the following:

(1) Appeals from decisions of the Board of Legal Specialization refusing to certify or recertify an applicant or suspending or revoking a specialist’s certificate.

(2) The preparation, approval, grading, or administration of examinations for certification of a specialist.

(3) The preparation, approval, grading, or administration of the California Bar Examination or the First-Year Law Students’ Examination.

(4) Matters related to the Committee of Bar Examiners’ consideration of moral character, including allegations of criminal or professional misconduct, competence, or physical or mental health of an individual, requests by applicants for testing accommodations in connection with an application for admission to practice law, or appeals of the Committee of Bar Examiners’ determinations.

(5) Information about a law school’s operations that constitutes a trade secret as defined in subdivision (d) of Section 3426.1 of the Civil Code.

SEC. 20. Section 6029 of the Business and Professions Code is amended to read:

6029. (a) The board may appoint such committees, officers and employees as it deems necessary or proper, and fix and pay salaries and necessary expenses.

(b) The members of the executive committee of the board shall include at least one board member appointed by each of the following appointing authorities:

(1) The Supreme Court.

(2) The Governor.

(3) The Speaker of the Assembly.

(4) The Senate Committee on Rules.

SEC. 21. Section 6031.5 of the Business and Professions Code is amended to read:

6031.5. (a) The Association and its activities shall not be funded with mandatory fees collected pursuant to subdivision (a) of Section 6140.

The State Bar may provide the Association with administrative and support services, provided the Association agrees, before such services are provided, to the nature, scope, and cost of those services. The State Bar shall be reimbursed for the full cost of those services out of funds collected pursuant to subdivision (b) or funds provided by the Association. 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 Association. The State Bar and the Association may also contract for other services provided by the State Bar or by the Association.

(b) Notwithstanding any other law, the State Bar shall collect fees for the Association provided the Board of Trustees of the State Bar determines that both of the following conditions are met: (1) the Association continues to comply with the requirements in subdivision (b) of Section 6056, and (2) the Association continues to serve a public purpose by providing the services described in subdivision (f) of Section 6056. The Association shall pay for the actual costs of the collection.

(c) Notwithstanding any other law, the State Bar is expressly authorized to collect, in conjunction with the State Bar's collection of its annual membership dues, voluntary fees or donations on behalf of the Conference of Delegates of California Bar Associations, the independent nonprofit successor entity to the former Conference of Delegates of the State Bar which has been incorporated for the purposes of aiding in matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, and to convey any unexpended voluntary fees or donations previously made to the Conference of Delegates of the State Bar pursuant to this section to the Conference of Delegates of California Bar Associations. The Conference of Delegates of California Bar Associations shall pay for the cost of the collection. The State Bar and the Conference of Delegates of California Bar Associations may also contract for other services. The financial audit specified in Section 6145 shall confirm that the amount of any contract shall fully cover the costs of providing the services, and shall verify that mandatory dues are not used to fund any successor entity.

(d) The Conference of Delegates of California Bar Associations, which is the independent nonprofit successor entity to the former Conference of Delegates of the State Bar as referenced in subdivision (c), is a voluntary association, is not a part of the State Bar of California, and shall not be funded in any way through mandatory dues collected by the State Bar of California. Any contribution or membership option included with a State Bar of California mandatory dues billing statement shall include a statement that the Conference of Delegates of California Bar Associations is not a part of the State Bar of California and that membership in that organization is voluntary.

SEC. 22. Section 6046.8 is added to the Business and Professions Code, to read:

6046.8. At least once every seven years, or more frequently if directed by the Supreme Court, the board of trustees shall oversee an evaluation of the bar examination to determine if it properly tests for minimally needed competence for entry-level attorneys and shall make a determination, supported by findings, whether to adjust the examination or the passing score based on the evaluation. The board of trustees shall report the results of the evaluation and any determination regarding adjustment in the passing score to the Supreme Court and the Legislature no later than March 15, 2018, and at least every seven years from the date of the previous report.

SEC. 23. Section 6054 of the Business and Professions Code is amended to read:

6054. (a) State and local law enforcement and licensing bodies and departments, officers and employees thereof, and officials and attachés of the courts of this state shall cooperate with and give reasonable assistance and information, including the providing of state summary criminal history information and local summary criminal history information, to the State Bar of California or any authorized representative thereof, in connection with any investigation or proceeding within the jurisdiction of the State Bar of California, regarding the admission to the practice of law or discipline of attorneys or their reinstatement to the practice of law.

(b) The State Bar of California shall require that an applicant for admission or reinstatement to the practice of law in California, or may require a member to submit or resubmit fingerprints to the Department of Justice in order to establish the identity of the applicant and in order to determine whether the applicant or member has a record of criminal conviction in this state or in other states. The information obtained as a result of the fingerprinting of an applicant or member shall be limited to the official use of the State Bar in establishing the identity of the applicant and in determining the character and fitness of the applicant for admission or reinstatement, and in discovering prior and subsequent criminal arrests of an applicant, member, or applicant for reinstatement. The State Bar shall notify the Department of Justice about individuals who are no longer members and applicants who are denied admission to the State Bar within 30 days of any change in status of a member or denial of admission. All fingerprint records of applicants admitted or members reinstated, or provided by a member, shall be retained thereafter by the Department of Justice for the limited purpose of criminal arrest notification to the State Bar.

(c) The State Bar shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants to, and members of, the State Bar.

(d) If required to be fingerprinted pursuant to this section, a member of the State Bar who fails to be fingerprinted may be enrolled as an inactive member pursuant to rules adopted by the board of trustees.

(e) The State Bar shall report to the Supreme Court and the Legislature by March 15, 2018, regarding its compliance with the requirements of this section.

SEC. 24. Article 3 (commencing with Section 6055) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

Article 3. Nonprofit Association

6055. This article shall be known, and may be cited, as the Nonprofit Association Act.

6056. (a) The State Bar, acting pursuant to Section 6001, shall assist the Sections of the State Bar to incorporate as a private, nonprofit corporation organized under Section 501(c)(6) of the Internal Revenue Code and shall transfer the functions and activities of the 16 State Bar Sections and the California Young Lawyers Association to the new private, nonprofit corporation, defined as the Association in this article. The new private, nonprofit corporation shall be called any name that sufficiently distinguishes itself from the State Bar, makes clear that it is not a government entity, and is approved by the Chief Justice of California. The Association shall be a voluntary association, shall not be a part of the State Bar, and shall not be funded in any way through mandatory dues collected by the State Bar. The Association shall have independent contracting authority and full control of its resources. The Association shall not be considered a state, local, or other public body for any purpose, including, but not limited to, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(b) The Association shall be governed in accordance with the bylaws of the Association, which shall ensure that all of the State Bar Sections and the California Young Lawyers Association are adequately represented and are able to make decisions in a fair and representative manner that complies with all provisions of state and federal law governing private nonprofit corporations organized under Section 501(c)(6) of the Internal Revenue Code. The bylaws of the Association shall ensure that the governing board of the Association includes one representative of each of the 16 sections of the State Bar Sections and one representative from the California Young Lawyers Association. The bylaws shall ensure that each of these 17 governing board members have equal voting power on the governing board. The bylaws shall ensure that the governing board may terminate individual sections or add individual sections by a two-thirds vote of the governing board.

(c) The State Bar may assist the Association in gaining appointment to the American Bar Association (ABA) House of Delegates, consistent with the Association’s mission and subject to the consent of the ABA.

(d) The State Bar shall support the Association’s efforts to partner with the Continuing Education of the Bar (CEB), subject to agreement by the University of California.

(e) The State Bar of California shall ensure that State Bar staff who support the sections, as of September 15, 2017, are reassigned to other comparable positions within the State Bar.

(f) The Sections of the State Bar or the Association and the State Bar shall enter into a memorandum of understanding regarding the terms of separation of the Sections of the State Bar from the State Bar and mandatory duties of the Association, including a requirement to provide all of the following:

(1) Low- and no-cost mandatory continuing legal education (MCLE).

(2) Expertise and information to the State Bar, as requested.

(3) Educational programs and materials to the members of the State Bar and the public.

6056.3. (a) On or before January 31, 2018, the State Bar shall transfer to the Association all membership fees and other funds paid for membership in the sections or paid in sponsorships, donations, or funds for the benefit of the sections, including, but not limited to, State Bar section financial reserves, with an accounting that specifies which funds are attributable to each individual section of the Association. The State Bar shall work with the Association to transfer all contracts previously entered into by the State Bar on behalf of the sections, as soon as practicable, consistent with any contractual obligations and legal requirements, unless an alternative arrangement is mutually acceptable to the State Bar and the Association.

(b) On or before January 31, 2018, the State Bar shall provide an itemized list of any outstanding expenses, including contracts made on behalf of section activities.

(c) The State Bar and the Association shall confer and work cooperatively to establish an orderly transition plan.

(d) All current intellectual property of the Sections of the State Bar and the board of governors, currently in the possession of the State Bar, shall be transferred to and retained by the Association, including, but not limited to, publications, educational materials, online education, membership lists of section members, and products.

(e) Programs created by the sections within the State Bar’s online education catalog shall be transferred to the Association.

(f) The amount of the State Bar sections’ reserves that are to be transferred shall be determined by cooperative review and accounting between the State Bar and the Association no later than January 31, 2018. If the State Bar and Sections of the State Bar do not agree on the amount by January 31, 2018, the parties shall submit the matter to binding arbitration by a neutral arbitrator who will determine the amount. If the parties cannot agree on a neutral arbitrator, each shall select a neutral arbitrator and the two neutral arbitrators shall select a single neutral arbitrator to determine the amount. The neutral arbitrator chosen to oversee the matter may hire an auditor to assist in this task. The fees charged by the arbitrator, including any auditor fees, shall be borne equally by the State Bar and the Association.

(g) The State Bar shall no longer include individual sections or voluntary organizations that are similar to Sections of the State Bar as they existed before being transferred to the Association.

SEC. 25. Section 6060.2 of the Business and Professions Code is amended to read:

6060.2. (a) All investigations or proceedings conducted by the State Bar concerning the moral character of an applicant shall be confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) unless the applicant, in writing, waives the confidentiality.

(b) Notwithstanding subdivision (a), the records of the proceeding may be disclosed in response to either of the following:

(1) A lawfully issued subpoena.

(2) A written request from a government agency responsible for either the enforcement of civil or criminal laws or the professional licensing of individuals that is conducting an investigation about the applicant.

SEC. 26. Section 6069.5 is added to the Business and Professions Code, to read:

6069.5. (a) In recognition of the importance of protecting the public from attorney errors through errors and omissions insurance, the State Bar shall conduct a review and study regarding errors and omissions insurance for attorneys licensed in this state. The State Bar shall conduct this review and study, which shall specifically include determinations of all of the following:

(1) The adequacy, availability, and affordability of errors and omissions insurance for attorneys licensed in this state.

(2) Proposed measures for encouraging attorneys licensed in this state to obtain and maintain errors and omissions insurance.

(3) The ranges of errors and omissions insurance limits for attorneys licensed in this state recommended to protect the public.

(4) The adequacy and efficacy of the disclosure rule regarding errors and omissions insurance, currently embodied in Rule 3-410 of the Rules of Professional Conduct.

(5) The advisability of mandating errors and omissions insurance for attorneys licensed in this state and attendant considerations.

(6) Other proposed measures relating to errors and omissions insurance for attorneys in this state that will further the goal of public protection.

(b) The State Bar shall report its findings under this section to the Supreme Court and the Legislature no later than March 31, 2019.

(c) The State Bar may consider any past studies, including, but not limited to, any relevant actuarial studies, and any current information that is available to the State Bar from other entities, such as the American Bar Association, regarding errors and omissions insurance.

SEC. 27. 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. The legal education activities shall focus on California law and practice and federal law as relevant to its practice in California or tribal law. 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 Trustees of the State Bar.

(b) For purposes of this section, statewide associations of public agencies and incorporated, nonprofit professional associations of attorneys, including the Association, 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 Association shall provide and encourage the development of low-cost programs and materials by which members of the State Bar 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, as a condition of the State Bar’s collection of membership fees on behalf of the Association pursuant to subdivision (b) of Section 6031.5, the Association shall ensure that 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 twenty dollars ($20) per hour or less.

SEC. 28. Section 6086.5 of the Business and Professions Code is amended to read:

6086.5. The board of trustees shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of Section 6007 to the extent provided by rules adopted by the board of trustees pursuant to this chapter. In these proceedings the State Bar Court may exercise the powers and authority vested in the board of trustees by this chapter, including those powers and that authority vested in committees of, or established by, the board, except as limited by rules of the board of trustees within the scope of this chapter.

Access to records of the State Bar Court shall be governed by court rules and laws applicable to records of the judiciary and not the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

For the purposes of Sections 6007, 6043, 6049, 6049.2, 6050, 6051, 6052, 6077 (excluding the first sentence), 6078, 6080, 6081, and 6082, “board” includes the State Bar Court.

Nothing in this section shall authorize the State Bar Court to adopt rules of professional conduct or rules of procedure.

The Executive Committee of the State Bar Court may adopt rules of practice for the conduct of all proceedings within its jurisdiction. These rules may not conflict with the rules of procedure adopted by the board, unless approved by the Supreme Court.

SEC. 29. 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 for 2018 at a sum not exceeding three hundred fifteen dollars ($315).

(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, 2019, and as of that date is repealed.

SEC. 30. Section 6140.02 is added to the Business and Professions Code, to read:

6140.02. (a) The Association shall adopt a dues schedule for membership and shall provide that schedule to the State Bar by October 1 of each year.

(b) Payment of dues for membership in the Association and individual sections of the Association is voluntary. Each member of the State Bar shall have the option of joining the Association and one or more individual sections by including the dues set by the schedule established pursuant to subdivision (a) with that State Bar member’s annual membership fees. Any contribution or membership option included with a State Bar of California mandatory dues billing statement shall include a statement that the Association is not a part of the State Bar and that membership in that organization is voluntary.

(c) The State Bar shall collect, in conjunction with the collection of its annual membership fees under Section 6140, membership fees for the Association as provided by subdivision (b) of Section 6031.5.

(d) This section is not intended to limit the Association membership to members of the State Bar or restrict the Association from collecting membership dues or donations by other means.

SEC. 31. Section 6140.56 is added to the Business and Professions Code, to read:

6140.56. (a) To ensure that the Client Security Fund can adequately protect the public and relieve or mitigate financial losses caused by the dishonest conduct of members of the State Bar by paying claims in a timely manner, the State Bar shall conduct a thorough analysis of the Client Security Fund, including a review of the State Bar's oversight of the Client Security Fund, to ensure that the structure provides for the most effective and efficient operation of the fund, a determination of the ongoing needs of the fund to satisfy claims in a timely manner, a review of additional efforts that can be taken to increase the collection of payments from the responsible attorneys, and a review of other State Bar expenditures to determine whether other expenditures that do not directly impact the State Bar's public protection functions, including, but not limited to, executive salaries and benefits, can be reduced or redirected in order to better fund the Client Security Fund through existing revenue, and, whether, after all other options have been fully and thoroughly exhausted, an increase in membership dues is necessary to ensure that the Client Security Fund can timely pay claims.

(b) The State Bar shall submit a report on its analysis of the Client Security Fund to the Legislature by March 15, 2018, so that the plans can be reviewed in conjunction with the bill that would authorize the imposition of the State Bar's membership fee. The report shall be submitted in compliance with Section 9795 of the Government Code.

(c) For purposes of this section, "timely manner" means within 12 months from either the time the claim is received by the State Bar or the resolution of the underlying discipline case involving an attorney member that is a prerequisite to paying the claim, whichever is later.

SEC. 32. Section 6140.9 of the Business and Professions Code is amended to read:

6140.9. Moneys for the support of the program established pursuant to Article 15 (commencing with Section 6230) and related programs approved by the committee established pursuant to Section 6231 shall be paid in whole or part by a fee of ten dollars ($10) per active member per year, and by a fee of five dollars ($5) per inactive member per year.

The board may seek alternative sources for funding the program. Any excess funds not needed to support the program, including reserve funds, may be transferred to fund the Client Security Fund established pursuant to Section 6140.5, provided there are sufficient funds available to fully support the program.

SEC. 33. Section 6141.3 is added to the Business and Professions Code, to read:

6141.3. (a) Except as provided in subdivision (b), the State Bar shall provide offers of discounts and other benefits to active and inactive members of the State Bar, including, but not limited to, insurance and affinity programs. Any revenue generated by these programs shall be used as follows:

(1) The revenue received from the affinity programs shall support the programs of the California Bar Foundation.

(2) (A) For all other revenue received from January 1, 2018, until December 31, 2018, 50 percent of the revenue shall be used to assist the Association in transitioning to an independent entity, 25 percent of the revenue shall be distributed to qualified legal services projects and support centers as provided in Section 6216, and 25 percent shall be used to support the discipline functions of the State Bar or to support the Client Security Fund.

(B) For all other revenue received after December 31, 2018, 50 percent of the revenue shall be distributed to qualified legal services projects and support centers as provided in Section 6216, and 50 percent of the revenue shall be used to support the discipline functions of the State Bar or to support the Client Security Fund.

(b) Notwithstanding subdivision (a), if approved by the board of trustees and the California Bar Foundation, the State Bar may transfer administration of the programs offering discounts and other benefits to active and inactive members of the State Bar under subdivision (a) to the California Bar Foundation provided that any revenue received, less the administrative costs of the California Bar Foundation in operating the program, shall be distributed as follows on and after January 1, 2019:

(1) All of the revenue received from the affinity programs shall be kept by the California Bar Foundation, which shall distribute 50 percent of that revenue to support the programs of the California Bar Foundation and 50 percent of that revenue to qualified legal services projects and support centers as provided in Section 6216.

(2) For all other revenue received, 50 percent of the revenue shall be kept by the California Bar Foundation, which shall distribute 50 percent of that revenue to support the programs of the California Bar Foundation and 50 percent of that revenue to qualified legal services projects and support centers in accordance with the formula provided in Section 6216, and 50 percent of the revenue shall be used to support the discipline functions of the State Bar or to support the Client Security Fund.

(c) Given the public protection mission of the State Bar, the Legislature finds that it would be inappropriate for the State Bar to administer the program on a long-term basis. Therefore, should the program continue to operate after December 31, 2018, it is the intent of the Legislature that the program be administered by an entity other than the State Bar.

SEC. 34. Section 6144 of the Business and Professions Code is amended to read:

6144. (a) All fees shall be paid into the treasury of the State Bar, and, when so paid, shall become part of its funds.

(b) Notwithstanding subdivision (a) and consistent with the reimbursement requirement under Section 6031.5, all fees paid pursuant to Section 6140.02 shall be paid by the State Bar to the Association, and, when paid, shall become part of the funds of the Association.

SEC. 35. Section 6144.1 of the Business and Professions Code is amended to read:

6144.1. The net proceeds from the sale of real property, after payment of obligations and encumbrances and reasonable costs of acquiring and relocating its facilities, if any, shall be held by the State Bar without expenditure or commitment for any purpose until approved by the Legislature by statute. The net proceeds from the lease of real property, after payment of obligations and encumbrances and reasonable costs of acquiring and relocating its facilities, if any, shall be used by the State Bar for the protection of the public.

SEC. 36. Section 6145 of the Business and Professions Code is amended to read:

6145. (a) The board shall engage the services of an independent national or regional public accounting firm with at least five years of experience in governmental auditing for an audit of its financial statement for each fiscal year. 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, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

The audit also shall examine the receipts and expenditures of the State Bar to ensure that the funds collected on behalf of the Conference of Delegates of California Bar Associations as the independent successor entity to the former Conference of Delegates of the State Bar are conveyed to that entity, that the State Bar has been paid or reimbursed for the full cost of any administrative and support services provided to the successor entity, including the collection of fees or donations on its behalf, and that no mandatory dues are being used to fund the activities of the successor entity.

In selecting the accounting firm, the board shall consider the value of continuity, along with the risk that continued long-term engagements of an accounting firm may affect the independence of that firm.

(b) The board shall contract with the California State Auditor's Office 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 California State Auditor's Office 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. 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 California State Auditor's Office may contract with a third party to conduct the performance audit. This subdivision is not intended to reduce the number of audits the California State Auditor's Office may otherwise be able to conduct.

(c) Effective January 1, 2016, the board shall contract with the California State Auditor's Office to conduct an in-depth financial audit of the State Bar, including an audit of its financial statement, internal controls, and relevant management practices. The contract shall include reimbursement for the California State Auditor's Office for the costs of conducting the audit. The audit shall, at a minimum, examine the revenues, expenditures, and reserves of the State Bar, including all fund transfers. The California State Auditor's Office shall commence the audit no later than January 1, 2016, and a copy of the audit shall be submitted by May 15, 2016, to the board, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary. The audit shall be submitted in compliance with Section 9795 of the Government Code. This subdivision shall cease to be operative January 1, 2017.

SEC. 37. Section 6232 of the Business and Professions Code is amended to read:

6232. (a) The committee shall establish practices and procedures for the acceptance, denial, completion, or termination of attorneys in the Attorney Diversion and Assistance Program, and may recommend rehabilitative criteria for adoption by the board for acceptance, denial, completion of, or termination from, the program.

(b) An attorney currently under investigation by the State Bar may enter the program in the following ways:

(1) By referral of the Office of the Chief Trial Counsel.

(2) By referral of the State Bar Court following the initiation of a disciplinary proceeding.

(3) Voluntarily, and in accordance with terms and conditions agreed upon by the attorney participant with the Office of the Chief Trial Counsel or upon approval by the State Bar Court, as long as the investigation is based primarily on the self-administration of drugs or alcohol or the illegal possession, prescription, or nonviolent procurement of drugs for self-administration, or on mental illness, and does not involve actual harm to the public or his or her clients. An attorney seeking entry under this paragraph may be required to execute an agreement that violations of this chapter, or other statutes that would otherwise be the basis for discipline, may nevertheless be prosecuted if the attorney is terminated from the program for failure to comply with program requirements.

(c) Neither acceptance into nor participation in the Attorney Diversion and Assistance Program shall relieve the attorney of any lawful duties and obligations otherwise required by any agreements or stipulations with the Office of the Chief Trial Counsel, court orders, or applicable statutes relating to attorney discipline.

(d) An attorney who is not the subject of a current investigation may voluntarily enter, whether by self-referral or referral by a third party, the diversion and assistance program on a confidential basis and such information shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Confidentiality pursuant to this subdivision shall be absolute unless waived by the attorney.

(e) By rules subject to the approval of the board and consistent with the requirements of this article, applicants who are in law school or have applied for admission to the State Bar may enter the program.

SEC. 38. The State Bar shall adhere to a Supreme Court-approved policy to identify and address any proposed decision of the board of trustees of the State Bar that raises antitrust concerns, including a procedure for submitting any such proposed decisions to the California Supreme Court for the Supreme Court to review prior to implementation and for processing complaints from the public about antitrust issues.

SEC. 39. The Legislature finds and declares that Sections 19 and 28 of this act, which amend Sections 6026.7 and 6086.5 of the Business and Professions Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the decisionmaking process of the State Bar Court in a manner that is similar to the deliberative functions of other courts and in order to ensure that personal or sensitive information regarding discipline by the State Bar Court is kept confidential, including for persons participating in discussions and offers of settlement pursuant to arbitration or mediation, it is necessary to exempt the State Bar Court from the provision of the Bagley-Keene Open Meeting Act and the California Public Records Act.

SEC. 40. The Legislature finds and declares that in order to assist the State Bar in fulfilling its licensing and regulatory duties and its duty to protect the public, the Sections of the State Bar and the California Young Lawyers Association are properly separated into an independent nonprofit organization and that these amendments serve a public purpose.