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SB-176 State Bar of California. (2019-2020)

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Date Published: 10/10/2019 09:00 PM

Senate Bill No. 176

CHAPTER 698

An act to amend Sections 6001.2, 6025, 6052, 6077, 6101, 6140, 6140.03, 6140.9, 6141, 6141.1, 6141.3, and 6230 of, to add Section 6032.1 to, and to repeal Sections 6022, 6026, and 6076.5 of, the Business and Professions Code, relating to attorneys.

[Approved by Governor October 09, 2019. Filed with Secretary of State October 09, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 176, Jackson. State Bar of California.

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, and provides that protection of the public is the highest priority of the State Bar and the board of trustees in exercising their licensing, regulatory, and disciplinary functions.

(1) Existing law creates within the State Bar the Governance in the Public Interest Task Force, comprised of the Chair of the State Bar and 6 other members of the Board of Trustees of the State Bar, 4 of whom are attorney members and 2 of whom are public members, appointed as specified.

This bill would revise the composition of the 6 appointed members of the task force to include 3 attorney members and 3 public members, and would revise the manner of appointment of those task force members.

(2) Existing law requires the secretary of the State Bar to be selected annually by the board, and specifies that the secretary need not be a licensee. Existing law requires the board by rule to set meetings and to determine what constitutes a quorum, as specified. Existing law requires, at the annual meeting of the board, reports to be received and authorizes matters pertaining to the State Bar and the administration of justice to be acted upon.

This bill would repeal those provisions.

(3) Existing law requires the board to establish a State Bar Court to act in its place and stead in the determination of specified disciplinary proceedings. Existing law authorizes the State Bar Court to, among other things, take and hear evidence pertaining to the proceeding, to administer oaths and affirmations, and to compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.

Existing law authorizes a member of the board, or of a committee, unit, or section of the board having jurisdiction, to administer oaths and issue a subpoena pursuant to the provisions described above.

This bill would remove this authority of a member of the board, or of a committee, unit, or section of the board having jurisdiction, and would, instead, provide that the State Bar Court is authorized to administer oaths and issue a subpoena pursuant to the aforementioned provisions.

(4) Existing law authorizes the board to formulate and enforce rules of professional conduct for all licensees. Existing law provides that rules of professional conduct adopted by the board, when approved by the Supreme Court, are binding upon all licensees. Existing law additionally authorizes licensees to formulate by initiative rules of professional conduct for all licensees of the State Bar, as specified, and requires the rules of professional conduct approved by a majority of licensees and the Supreme Court have the same force and effect as the rules of professional conduct formulated and approved by the above-described provisions. Existing law authorizes the board, without petition, to direct the secretary to cause an initiative measure embodying a rule of professional conduct formulated by the board to be submitted to all active licensees for mail vote, as specified.

This bill would remove the authority of licensees to formulate, and submit to licensees for a vote, rules of professional conduct and remove the authority of the board to submit to licensees for a vote, rules of professional conduct.

(5) Under existing law, the board has the power to discipline licensees of the State Bar for willful breach of a rule of professional conduct approved by the Supreme Court, as specified.

This bill would remove this power of the board, and would, instead, give this power to the State Bar Court.

(6) Existing law provides that conviction of a licensee of a felony or misdemeanor involving moral turpitude constitutes cause for disbarment or suspension. Existing law requires the district attorney, city attorney, or other prosecuting agency to notify the State Bar of the pendency of the action, requires the clerk of the court in which a licensee is convicted to transmit a certified copy of the record of conviction to the State Bar, and requires the State Bar to transmit the record of conviction to the Supreme Court within 5 days.

This bill would instead require the State Bar of California's Office of Chief Trial Counsel to be notified of the pendency of the action, would require the clerk of the court to transmit a certified copy of the record of conviction to the Office of Chief Trial Counsel, and would require the Office of Chief Trial Counsel to transmit the record of conviction to the Supreme Court within 30 days.

(7) Existing law, until January 1, 2020, requires the board to charge an annual license fee for active licensees at a sum not exceeding \$315 for 2019. Existing law requires the board to fix the annual license fee for inactive licensees at a sum not exceeding \$75. Existing law authorizes the board to waive the payment by a licensee of the annual license fee, any portion thereof, or any penalty thereon, as the board is authorized to provide by rule. Existing law requires the board to adopt a rule or rules providing that an active licensee who can demonstrate total gross annual individual income from all sources of less than \$40,000 presumptively qualifies for a waiver of 25% of the annual license fee.

This bill would require the board to charge an annual license fee for active licensees at a sum not exceeding \$438 for 2020. The bill would require the board to fix the annual license fee for inactive licensees at a sum not exceeding \$108. The bill would require the board to adopt a rule or rules providing that an active licensee who can demonstrate total gross annual individual income from all sources of less than \$60,478.35 presumptively qualifies for a waiver of 25% of the annual license fee.

(8) Existing law requires the annual license fees for active and inactive licensees to be increased by an additional \$40 to be allocated to fund qualified legal services projects and support centers that provide free legal services to persons of limited means, and further authorizes a licensee to deduct \$40 from their invoice if the licensee elects not to have the amount allocated for those purposes.

This bill would require the State Bar to report to the Senate and Assembly Committees on Judiciary the total amount of fees received pursuant to those provisions and the percentage of licensees who elected to opt out of the fees for specified time periods.

(9) Existing law requires a fee of \$10 for active licensees and a fee of \$5 for inactive licensees to be paid for purposes of funding the Attorney Diversion and Assistance Program. Existing law requires certain amounts of those fees to be transferred by the State Bar to a nonprofit corporation to fund the support of recovery efforts of the nonprofit corporation.

This bill would provide that, for 2020 only, the fee shall be \$1 for active licensees, which would be paid to the nonprofit corporation, and no fee for inactive licensees.

(10) Existing law authorizes the State Bar to collect voluntary fees on behalf of and for the purpose of funding the California Supreme Court Historical Society, which advances the science of jurisprudence by preserving and disseminating to the general public the history of the Supreme Court and the Judicial Branch.

This bill would authorize the State Bar to collect voluntary donations on behalf of and for the purposes of funding California ChangeLawyers, which promotes a better justice system for all Californians.

(11) Existing law requires the State Bar to provide offers of discounts and other benefits to active and inactive licensees of the State Bar, including insurance and affinity programs. Existing law requires revenue received from the affinity programs to support

the programs of the California Bar Foundation. Existing law authorizes the State Bar, if approved by the board and the California Bar Foundation, to transfer administration of those programs offering discounts and other benefits to active and inactive licensees to the California Bar Foundation, subject to specified distributions of the revenue received from those programs, as provided.

This bill would provide that the State Bar was authorized to provide noninsurance affinity programs until December 31, 2018, and has been authorized to provide insurance affinity programs only, after December 31, 2018. The bill would make other related changes, including revising the expiration date of provisions relating to the distribution of revenues from those programs from December 31, 2018, to December 31, 2019. The bill would authorize the State Bar to transfer administration of these programs to Cal Bar Affinity, subject to specified approval, provided that revenue has been distributed as specified from January 1, 2019, until December 31, 2019. The bill would require, subject to approval by the California Lawyers Association, California ChangeLawyers, and Cal Bar Affinity, all revenue received from the noninsurance affinity programs and the insurance affinity programs, less the administrative costs of the State Bar and Cal Bar Affinity in operating the programs, up to 12% of revenue received, and less taxes incurred by Cal Bar Affinity in operating the programs, to be distributed in a specified manner. The bill would prohibit the California Lawyers Association, if it elects to accept affinity fund revenue, from creating or operating an affinity or royalty program involving the sale of insurance or noninsurance products or services with a percentage or share of costs being distributed to the California Lawyers Association and, if the California Lawyers Association does so, would require all funds that would have been provided to the California Lawyers Association from affinity or royalty programs that transferred from the State Bar or are similar to programs that transferred from the State Bar to be provided to California ChangeLawyers and distributed as specified.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

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

SECTION 1. It is the intent of the Legislature that:

(a) The State Bar of California's licensing fees in future years be sufficient to fund the State Bar's proposed technology and capital improvement projects that the California State Auditor recommended funding in its 2019 audit of the State Bar, at the levels recommended by the California State Auditor, over a 5-year period for the technology and over a 10-year period for the capital improvements, less the technology updates that are included in the ongoing funding, as recommended by the Legislative Analyst's Office.

(b) The State Bar's licensing fees in future years be reduced by the increase in income generated by increasing all real estate leases of State Bar property to market rate as soon as the existing below market rate leases expire, as recommended by the California State Auditor in its 2019 audit of the State Bar, and that all leases entered into by the State Bar for lease of State Bar property on and after January 1, 2020, be at or above market rate in order to reduce licensing fees.

(c) The State Bar of California use license fees for active and inactive licensees in a manner that is consistent with the California State Auditor's Report released on April 30, 2019, and the Legislative Analyst's Office report released on June 26, 2019.

(d) The State Bar be included as part of the annual budget process for the State of California beginning with the 2021–22 fiscal year.

SEC. 2. Section 6001.2 of the Business and Professions Code is amended to read:

6001.2. (a) There shall be created within the State Bar a Governance in the Public Interest Task Force comprised of 7 members, including 6 members appointed as provided herein and the Chair of the Board of Trustees of the State Bar. Three members shall be attorney members of the board of trustees, one of whom shall be a Supreme Court appointee who is selected by the Supreme Court appointees, one of whom shall be the member appointed by the Senate Committee on Rules, and one of whom shall be the member appointed by the Speaker of the Assembly. Three members shall be public members of the board of trustees, one of whom shall be the member appointed by the Senate Committee on Rules, one of whom shall be the member appointed by the Speaker of the Assembly, and one of whom shall be selected by the Governor's appointees. The chair shall preside over its meetings, all of which shall be held consistent with Section 6026.5.

(b) On or before May 15, 2014, and every three years thereafter, the task force shall prepare and submit a report to the Supreme Court, the Governor, and the Assembly and Senate Committees on Judiciary that includes its recommendations for enhancing the protection of the public and ensuring that protection of the public is the highest priority in the licensing, regulation, and discipline of attorneys, to be reviewed by the Assembly and Senate Committees on Judiciary in their regular consideration of the annual State Bar fees measure. If the task force does not reach a consensus on all of the recommendations in its report, the dissenting members of the task force may prepare and submit a dissenting report to the same entities described in this subdivision, to be reviewed by the committees in the same manner.

(c) The task force shall make suggestions to the board of trustees regarding possible additions to, or revisions of, the strategic plan required by Section 6140.12. In addition, the task force shall also make suggestions to the board of trustees regarding other

issues requested from time to time by the Legislature.

(d) This section shall become operative on January 1, 2013.

SEC. 3. Section 6022 of the Business and Professions Code is repealed.

SEC. 4. Section 6025 of the Business and Professions Code is amended to read:

6025. Subject to the laws of this state, the board may formulate and declare rules and regulations necessary or expedient for the carrying out of this chapter.

SEC. 5. Section 6026 of the Business and Professions Code is repealed.

SEC. 6. Section 6032.1 is added to the Business and Professions Code, to read:

6032.1. Notwithstanding any other law, the State Bar is expressly authorized to collect, in conjunction with the State Bar's collection of its annual license fees, voluntary donations on behalf of and for the purpose of funding California ChangeLawyers, which promotes a better justice system for all Californians.

SEC. 7. Section 6052 of the Business and Professions Code is amended to read:

6052. The State Bar Court or the chief trial counsel, or their designee, may administer oaths and issue any subpoena pursuant to Section 6049.

Depositions may be taken and used as provided in the rules of procedure adopted by the board pursuant to this chapter.

SEC. 8. Section 6076.5 of the Business and Professions Code is repealed.

SEC. 9. Section 6077 of the Business and Professions Code is amended to read:

6077. The rules of professional conduct adopted by the board, when approved by the Supreme Court, are binding upon all licensees of the State Bar.

For a willful breach of any of these rules, the State Bar Court has power to discipline attorneys by reproof, public or private, or to recommend to the Supreme Court the suspension from practice for a period not exceeding three years of licensees of the State Bar.

SEC. 10. Section 6101 of the Business and Professions Code is amended to read:

6101. (a) Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension.

In any proceeding, whether under this article or otherwise, to disbar or suspend an attorney on account of that conviction, the record of conviction shall be conclusive evidence of guilt of the crime of which they have been convicted.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the State Bar of California's Office of Chief Trial Counsel of the pendency of an action against an attorney charging a felony or misdemeanor immediately upon obtaining information that the defendant is an attorney. The notice shall identify the attorney and describe the crimes charged and the alleged facts. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is an attorney, and the clerk shall record prominently in the file that the defendant is an attorney.

(c) The clerk of the court in which an attorney is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the Office of Chief Trial Counsel. Within 30 days of receipt, the Office of the Chief Trial Counsel shall transmit the record of any conviction which involves or may involve moral turpitude to the Supreme Court with such other records and information as may be appropriate to establish the Supreme Court's jurisdiction. The Office of Chief Trial Counsel may procure and transmit the record of conviction to the Supreme Court when the clerk has not done so or when the conviction was had in a court other than a court of this state.

(d) The proceedings to disbar or suspend an attorney on account of such a conviction shall be undertaken by the Supreme Court pursuant to the procedure provided in this section and Section 6102, upon the receipt of the certified copy of the record of conviction.

(e) A plea or verdict of guilty, an acceptance of a nolo contendere plea, or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of those sections.

SEC. 11. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual license fee for active licensees for 2020 at a sum not exceeding four hundred thirty-eight dollars (\$438).

(b) The annual license fee for active licensees 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 licensees 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, 2021, and as of that date is repealed.

SEC. 12. Section 6140.03 of the Business and Professions Code is amended to read:

6140.03. (a) The board shall increase each of the annual license fees fixed by Sections 6140 and 6141 by an additional forty dollars (\$40), to be allocated only for the purposes established pursuant to Section 6033, except to the extent that a licensee elects not to support those activities.

(b) The invoice provided to licensees for payment of the annual license fee shall provide each licensee the option of deducting forty dollars (\$40) from the annual license fee if the licensee elects not to have this amount allocated for the purposes established pursuant to Section 6033.

(c) The State Bar shall report to the Senate and Assembly Committees on Judiciary by April 30, 2020, on the total amount of fees received pursuant to this section and Section 6033 and the percentage of licensees who elected to opt out of the fees under this section for the following periods:

- (1) For the 2020 fee statement, funds received by April 15, 2020.
- (2) For the 2019 fee statement, funds received by April 15, 2019.
- (3) For the 2018 fee statement, funds received by April 15, 2018.
- (4) For the 2017 fee statement, funds received by April 15, 2017.
- (5) For the 2016 fee statement, funds received by April 15, 2016.

SEC. 13. Section 6140.9 of the Business and Professions Code is amended to read:

6140.9. (a) Moneys for the support of the program established pursuant to Article 15 (commencing with Section 6230), treatment services for those who cannot afford to pay, 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 licensee per year, and by a fee of five dollars (\$5) per inactive licensee per year, except that for 2020 only, the fee shall be one dollar (\$1) per active licensee and zero dollars (\$0) per inactive licensee. The State Bar is not required to expend any additional funds to either support those programs or to provide treatment services for those who cannot afford to pay.

(b) On and after January 1, 2019, one dollar (\$1) of the ten-dollar (\$10) fee paid by each active licensee pursuant to subdivision (a) shall be transferred by the State Bar to a statewide nonprofit corporation, established by attorneys that has, for the last 25 years or more, provided peer support to attorneys recovering from alcohol and substance abuse in a confidential and anonymous manner, to fund the support of recovery efforts of the nonprofit corporation. In 2020 only, the statewide nonprofit corporation shall receive the one dollar (\$1) fee paid by each active licensee.

(c) Any nonprofit corporation that receives funds pursuant to subdivision (b) shall submit an annual report to the State Bar accounting for the use of the funds. The report shall be submitted to the State Bar no later than March 1, 2020, and no later than March 1 of each year thereafter. The report shall include, but not be limited to, the following:

- (1) An accounting of all receipts and expenditures of the funds.
- (2) The balance of the funds as of the end of the previous calendar year.
- (3) A brief narrative describing the goals of the work supported by the expenditures.
- (4) A summary of the number of clients served, the modality of treatment, and any outcome data on the impact of the treatment.

(d) 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. 14. Section 6141 of the Business and Professions Code is amended to read:

6141. (a) On January 1, 2020, and thereafter, the board shall fix the annual license fee for inactive licensees at a sum not exceeding one hundred eight dollars (\$108). The annual license fee for inactive licensees is payable on or before the first day of February of each year.

(b) An inactive licensee shall not be required to pay the annual license fee for inactive licensees for any calendar year following the calendar year in which the licensee attains 70 years of age.

SEC. 15. Section 6141.1 of the Business and Professions Code is amended to read:

6141.1. (a) The payment by any licensee of the annual license 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 licensees seeking waiver of all or a portion of their fee or penalties on the ground of financial hardship.

(b) The board shall adopt a rule or rules providing that an active licensee who can demonstrate total gross annual individual income from all sources of less than sixty thousand four hundred and seventy-eight dollars and thirty-five cents (\$60,478.35), which is reflective of the previous limit adjusted for 20 years of inflation pursuant to the Consumer Price Index, shall presumptively qualify for a waiver of 25 percent of the annual license fee.

SEC. 16. Section 6141.3 of the Business and Professions Code is amended 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 licensees of the State Bar, including, but not limited to, insurance and noninsurance affinity programs, until December 31, 2018, and insurance affinity programs only, after December 31, 2018. Any revenue generated by these programs shall be used as follows:

(1) For all revenue received from January 1, 2018, until December 31, 2018, 50 percent of the revenue shall be used to assist the California Lawyers 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.

(2) For all revenue received on and after January 1, 2019, until December 31, 2019, 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, California ChangeLawyers, and Cal Bar Affinity, a subsidiary of California ChangeLawyers, the State Bar may transfer administration of the programs offering discounts and other benefits to active and inactive licensees of the State Bar under subdivision (a) to Cal Bar Affinity provided that any revenue received, less the administrative costs of the State Bar and Cal Bar Affinity in operating the programs, up to a maximum of 12 percent of the revenue received, and less the taxes incurred by Cal Bar Affinity in operating the programs, shall be distributed as follows from January 1, 2019, until December 31, 2019:

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

(2) For all revenue received from the insurance affinity programs, 50 percent of the revenue shall be kept by California ChangeLawyers, which shall distribute 50 percent of that revenue to support the programs of California ChangeLawyers 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) If approved by the California Lawyers Association, California ChangeLawyers, and Cal Bar Affinity, and provided the California Lawyers Association complies with the requirement in subdivision (e), all revenue received from the noninsurance affinity programs and the insurance affinity programs, less the administrative costs of the State Bar and Cal Bar Affinity in operating the programs, up to a maximum of 12 percent of the revenue received, and the taxes incurred by Cal Bar Affinity in operating the programs, shall be distributed as follows on and after January 1, 2020:

(1) The first one hundred fifty thousand dollars (\$150,000) of revenue received in 2020 and the first one hundred fifty thousand dollars (\$150,000) received in 2021 shall go to the California Commission on Access to Justice, payable as follows:

(A) Seventy-five thousand dollars (\$75,000) shall be paid on or before March 31, 2020, and seventy-five thousand dollars (\$75,000) shall be paid on or before June 30, 2020.

(B) Thirty-seven thousand five hundred dollars (\$37,500) shall be paid on or before March 31, 2021, thirty-seven thousand five hundred dollars (\$37,500) shall be paid on or before June 30, 2021, thirty-seven thousand five hundred dollars (\$37,500) shall be paid on or before September 30, 2021, and thirty-seven thousand five hundred dollars (\$37,500) shall be paid on or before December 31, 2021.

(2) Any additional revenue shall be distributed as follows:

(A) One-third of the remaining revenue shall go to California ChangeLawyers.

(B) One-third of the remaining revenue shall go to the California Lawyers Association or an affiliated 501(c)(3) organization to support their respective diversity, equity and inclusion, access to justice, and civic engagement efforts.

(C) One-third of the remaining revenue shall go to California ChangeLawyers, which shall distribute that revenue to qualified legal services projects and support centers in accordance with the formula provided in Section 6216.

(d) 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.

(e) If the California Lawyers Association elects to accept any share of the affinity funds revenue under this section, the California Lawyers Association shall not create or operate, or participate in the creation or operation, or otherwise solicit its members, or arrange to have its members solicited, for any affinity or royalty program involving similar insurance or noninsurance products or services with a percentage or share of costs being distributed to the California Lawyers Association, other than as provided in this section. If the California Lawyers Association creates or operates, or participates in the creation or operation, or otherwise solicits its members, or arranges to have its members solicited for any affinity or royalty program involving the sale of insurance or noninsurance products or services with a percentage or share of costs being distributed to the California Lawyers Association, all funds that would have been provided to the California Lawyers Association from affinity or royalty programs that transferred from the State Bar or are similar to programs that transferred from the State Bar shall be provided to California ChangeLawyers, which shall distribute 50 percent of that revenue to support the programs of California ChangeLawyers and 50 percent of that revenue to qualified legal services projects and support centers as provided in Section 6216.

SEC. 17. Section 6230 of the Business and Professions Code is amended to read:

6230. It is the intent of the Legislature that the State Bar of California seek ways and means to identify and rehabilitate attorneys with impairment due to substance use or a mental health disorder affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.