

AMENDED IN SENATE MARCH 5, 2001

SENATE BILL

No. 139

Introduced by Senator Haynes

January 29, 2001

An act to amend ~~Section 7316~~ Sections 6210, 6211, and 6212 of the Business and Professions Code, relating to ~~barbering~~ attorneys.

LEGISLATIVE COUNSEL'S DIGEST

SB 139, as amended, Haynes. ~~Barbering Attorneys.~~

Existing law, the State Bar Act, requires an attorney or law firm that handles client trust funds to establish and maintain an interest bearing demand trust account and that all unsegregated client funds be placed into this account. Existing law also provides that all interest earned on these unsegregated trust accounts shall be paid to the State Bar to be used to expand the availability of quality free legal services in civil matters to indigent persons.

This bill would instead require that the interest earned on unsegregated client trust fund accounts be paid to the clients on a pro rata basis. This bill would also make certain legislative findings and declarations.

~~Existing law governing the licensing and regulation of barbering provides that shampooing hair is included in the practice of barbering.~~

~~This bill would remove shampooing hair from the practice of barbering.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 ~~SECTION 1. Section 7316 of the Business and Professions~~
 2 SECTION 1. *The Legislature finds and declares that the State*
 3 *Bar may no longer place the interest earned from client trust fund*
 4 *accounts into its Legal Services Trust Fund Program. The*
 5 *Legislature finds and declares that it is necessary to make this*
 6 *change because:*

7 (a) *In Phillips v. Washington Legal Foundation 141 L.Ed.2d*
 8 *174 (1998), the United States Supreme Court held that interest on*
 9 *client trust fund accounts is the private property of the client.*

10 (b) *In Washington Legal Foundation v. Legal Foundation of*
 11 *Washington (9th Cir. 2001) 236 F.3d 1097, the court held that a*
 12 *mandatory IOLTA program constitutes a “taking” in violation of*
 13 *the Fifth Amendment to the United States Constitution.*

14 SEC. 2. *Section 6210 of the Business and Professions Code is*
 15 *amended to read:*

16 6210. The Legislature finds that, due to insufficient funding,
 17 existing programs providing free legal services in civil matters to
 18 indigent persons, especially underserved client groups, such as the
 19 elderly, the disabled, juveniles, and non-English-speaking
 20 persons, do not adequately meet the needs of these persons. It is the
 21 purpose of this article to expand the availability and improve the
 22 quality of existing free legal services in civil matters to indigent
 23 persons, and to initiate new programs that will provide services to
 24 them. ~~The Legislature finds that the use of funds collected by the~~
 25 ~~State Bar pursuant to this article for these purposes is in the public~~
 26 ~~interest, is a proper use of the funds, and is consistent with essential~~
 27 ~~public and governmental purposes in the judicial branch of~~
 28 ~~government.~~ The Legislature further finds that the expansion,
 29 improvement, and initiation of legal services to indigent persons
 30 will aid in the advancement of the science of jurisprudence and the
 31 improvement of the administration of justice.

32 SEC. 3. *Section 6211 of the Business and Professions Code is*
 33 *amended to read:*

34 6211. (a) An attorney or law firm, which in the course of the
 35 practice of law receives or disburses trust funds, shall establish and
 36 maintain an interest bearing demand trust account and shall
 37 deposit ~~therein~~ all client deposits that are nominal in amount or are
 38 on deposit for a short period of time. All ~~such~~ client funds may be



1 deposited in a single unsegregated account. The interest earned on
2 all ~~such these~~ accounts shall be paid to ~~the State Bar of California~~
3 ~~to be used for the purposes set forth in this article~~ *each client on*
4 *a pro rata basis.*

5 (b) Nothing in this article shall be construed to prohibit an
6 attorney or law firm from establishing one or more interest bearing
7 bank accounts or other trust investments as may be permitted by
8 the Supreme Court, with the interest or dividends earned on the
9 accounts payable to clients for trust funds not deposited in
10 accordance with subdivision (a).

11 (c) With the approval of the Supreme Court, the State Bar may
12 formulate and enforce rules of professional conduct pertaining to
13 the use by attorneys or law firms of interest bearing trust accounts
14 for unsegregated client funds pursuant to this article.

15 (d) Nothing in this article shall be construed as affecting or
16 impairing the disciplinary powers and authority of the Supreme
17 Court or of the State Bar or as modifying the statutes and rules
18 governing the conduct of members of the State Bar.

19 *SEC. 4. Section 6212 of the Business and Professions Code is*
20 *amended to read:*

21 6212. An attorney who, or a law firm which, establishes an
22 interest bearing demand trust account pursuant to subdivision (a)
23 of Section 6211 shall comply with all of the following provisions:

24 (a) The interest bearing trust account shall be established with
25 a bank or ~~such~~ other financial institutions as are authorized by the
26 Supreme Court.

27 (b) The rate of interest payable on any interest bearing demand
28 trust account shall not be less than the rate paid by the depository
29 institution to regular, nonattorney depositors. Higher rates offered
30 by the institution to customers whose deposits exceed certain time
31 or quantity qualifications, ~~such as~~ *similar to* those offered in the
32 form of certificates of deposit, may be obtained by an attorney or
33 law firm so long as there is no impairment of the right to withdraw
34 or transfer principal immediately (except as accounts generally
35 may be subject to statutory notification requirements), even
36 though interest may be sacrificed thereby.

37 ~~(e) The depository institution shall be directed to do all of the~~
38 ~~following:~~



1 ~~(1) To remit interest on the average daily balance in the~~
2 ~~account, less reasonable service charges, to the State Bar, at least~~
3 ~~quarterly.~~

4 ~~(2) To transmit to the State Bar with each remittance a~~
5 ~~statement showing the name of the attorney or law firm for whom~~
6 ~~the remittance is sent, the rate of interest applied, and the amount~~
7 ~~of service charges deducted, if any.~~

8 ~~(3) To transmit to the depositing attorney or law firm at the~~
9 ~~same time a report showing the amount paid to the State Bar for~~
10 ~~that period, the rate of interest applied, the amount of service~~
11 ~~charges deducted, if any, and the average daily account balance for~~
12 ~~each month of the period for which the report is made.~~

13 ~~Code is amended to read:~~

14 ~~7316. — (a) The practice of barbering is all or any combination~~
15 ~~of the following practices:~~

16 ~~(1) Shaving or trimming the beard or cutting the hair.~~

17 ~~(2) Giving facial and scalp massages or treatments with oils,~~
18 ~~creams, lotions, or other preparations either by hand or mechanical~~
19 ~~appliances.~~

20 ~~(3) Singeing, arranging, dressing, curling, waving, chemical~~
21 ~~waving, hair relaxing, or dyeing the hair or applying hair tonics.~~

22 ~~(4) Applying cosmetic preparations, antiseptics, powders, oils,~~
23 ~~clays or lotions to scalp, face, or neck.~~

24 ~~(5) Hair styling of all textures of hair by standard methods~~
25 ~~which are current at the time of the hair styling.~~

26 ~~(b) The practice of cosmetology is all or any combination of the~~
27 ~~following practices:~~

28 ~~(1) Arranging, dressing, curling, waving, machineless~~
29 ~~permanent waving, permanent waving, cleansing, cutting,~~
30 ~~shampooing, relaxing, singeing, bleaching, tinting, coloring,~~
31 ~~straightening, dyeing, applying hair tonics to, beautifying, or~~
32 ~~otherwise treating by any means, the hair of any person.~~

33 ~~(2) Massaging, cleaning or stimulating the scalp, face, neck,~~
34 ~~arms, or upper part of the human body, by means of the hands,~~
35 ~~devices, apparatus or appliances, with or without the use of~~
36 ~~cosmetic preparations, antiseptics, tonics, lotions, or creams.~~

37 ~~(3) Beautifying the face, neck, arms, or upper part of the human~~
38 ~~body, by use of cosmetic preparations, antiseptics, tonics, lotions,~~
39 ~~or creams.~~



1 ~~(4) Removing superfluous hair from the body of any person by~~
2 ~~the use of depilatories or by the use of tweezers, chemicals,~~
3 ~~preparations or by the use of devices or appliances of any kind or~~
4 ~~description, except by the use of light waves, commonly known as~~
5 ~~rays.~~

6 ~~(5) Cutting, trimming, polishing, tinting, coloring, cleansing,~~
7 ~~or manicuring the nails of any person.~~

8 ~~(6) Massaging, cleansing, treating, or beautifying the hands or~~
9 ~~feet of any person.~~

10 ~~(c) Within the practice of cosmetology there exist the specialty~~
11 ~~branches of skin care, and nail care.~~

12 ~~(1) Skin care is any one or more of the following practices:~~

13 ~~(A) Giving facials, applying makeup, giving skin care,~~
14 ~~removing superfluous hair from the body of any person by the use~~
15 ~~of depilatories, tweezers or waxing, or applying eyelashes to any~~
16 ~~person.~~

17 ~~(B) Beautifying the face, neck, arms, or upper part of the~~
18 ~~human body, by use of cosmetic preparations, antiseptics, tonics,~~
19 ~~lotions, or creams.~~

20 ~~(C) Massaging, cleaning, or stimulating the face, neck, arms,~~
21 ~~or upper part of the human body, by means of the hands, devices,~~
22 ~~apparatus, or appliances, with the use of cosmetic preparations,~~
23 ~~antiseptics, tonics, lotions, or creams.~~

24 ~~(2) Nail care is the practice of cutting, trimming, polishing,~~
25 ~~coloring, tinting, cleansing, or manicuring the nails of any person~~
26 ~~or massaging, cleansing, or beautifying the hands or feet of any~~
27 ~~person.~~

28 ~~(d) The practice of barbering and the practice of cosmetology~~
29 ~~do not include any of the following:~~

30 ~~(1) The mere sale, fitting, or styling of wigs or hairpieces.~~

31 ~~(2) Natural hair braiding. Natural hair braiding is a service that~~
32 ~~results in tension on hair strands or roots by twisting, wrapping,~~
33 ~~weaving, extending, locking, or braiding by hand or mechanical~~
34 ~~device, provided that the service does not include hair cutting or~~
35 ~~the application of dyes, reactive chemicals, or other preparations~~
36 ~~to alter the color of the hair or to straighten, curl, or alter the~~
37 ~~structure of the hair.~~

38 ~~(e) Notwithstanding paragraph (2) of subdivision (d), a person~~
39 ~~who engages in natural hair styling, which is defined as the~~
40 ~~provision of natural hair braiding services together with any of the~~



1 ~~services or procedures defined within the regulated practices of~~
2 ~~barbering or cosmetology, is subject to regulation pursuant to this~~
3 ~~chapter and shall obtain and maintain a barbering or cosmetology~~
4 ~~license as applicable to the services respectively offered or~~
5 ~~performed.~~

6 ~~(f) Electrolysis is the practice of removing hair from, or~~
7 ~~destroying hair on, the human body by the use of an electric needle~~
8 ~~only.~~

9 ~~“Electrolysis” as used in this chapter includes electrolysis or~~
10 ~~thermolysis.~~

