

Senate Bill No. 352

Passed the Senate May 14, 2001

Secretary of the Senate

Passed the Assembly June 14, 2001

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2001, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 6068, 6092, 6140, and 6140.55 of, and to repeal Sections 6032, 6033, 6140.8, 6140.10, and 6140.15 of, the Business and Professions Code, and to repeal Chapter 868 of the Statutes of 1994, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

SB 352, Kuehl. Attorneys.

Under existing law, the State Bar of California is authorized until January 1, 2002, to charge an annual membership fee of \$318 to active members of the State Bar. Existing law also allows the board to increase annual membership fees by an amount up to \$40 per year per active member, with the additional funds to be used for the Client Security Fund and its administration. Existing law provides that an attorney has a duty to abstain from having an offensive personality. Existing law also contains various provisions referring to past obligations and studies of the State Bar.

This bill would extend the State Bar's authority to charge the membership fee to active members to December 31, 2003, and would decrease the maximum amount of the fee to \$310. The bill would also decrease the maximum allowable increase in membership fees for the Client Security Fund to \$35 per active member per year. The bill would remove the provision on an attorney's duty to abstain from having an offensive personality. The bill would also delete provisions relating to certain past obligations of the State Bar. The bill would become operative contingent upon the enactment of SB 479, as specified.

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

SECTION 1. The Legislature hereby finds and declares that the provision imposing the duty on an attorney to abstain from having an offensive personality, which is codified in subdivision (f) of Section 6068 of the Business and Professions Code, has been held to be unconstitutionally void for vagueness by the United States Court of Appeals, Ninth Circuit (*U.S.A. v. Wunsch* (9th Cir. 1996) 84 F.3d 1110).



SEC. 2. Section 6032 of the Business and Professions Code is repealed.

SEC. 3. Section 6033 of the Business and Professions Code is repealed.

SEC. 4. Section 6068 of the Business and Professions Code is amended to read:

6068. It is the duty of an attorney to do all of the following:

(a) To support the Constitution and laws of the United States and of this state.

(b) To maintain the respect due to the courts of justice and judicial officers.

(c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.

(d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

(e) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

(f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

(i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be



used against the attorney in a regulatory or disciplinary proceeding against him or her.

(j) To comply with the requirements of Section 6002.1.

(k) To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

(l) To keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline.

(m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

(n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.

(o) To report to the agency charged with attorney discipline, in writing, within 30 days of the time the attorney has knowledge of any of the following:

(1) The filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.

(2) The entry of judgment against the attorney in any civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.

(3) The imposition of any judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).

(4) The bringing of an indictment or information charging a felony against the attorney.

(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of any felony, or any misdemeanor committed in the course of the practice of law, or in any manner in which a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or any misdemeanor of that type.



(6) The imposition of discipline against the attorney by any professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.

(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

(8) As used in this subdivision, “against the attorney” includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct complained of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the matter has to the attorney’s knowledge already been reported by the law firm or corporation.

(9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.

(10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline.

SEC. 5. Section 6092 of the Business and Professions Code is amended to read:

6092. The disciplinary agency may engage the services of consultants and an unpaid volunteer peer review committee and undertake any other steps that may be appropriate for devising methods for determining and improving attorney competence.

SEC. 6. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee for active members at a sum not exceeding three hundred ten dollars (\$310).

(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, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.



SEC. 7. Section 6140.55 of the Business and Professions Code is amended to read:

6140.55. The board may increase the annual membership fees fixed by it pursuant to Section 6140 by an additional amount per active member not to exceed thirty-five dollars (\$35) in any year, the additional amount to be applied only for the purposes of the Client Security Fund and the costs of its administration, including, but not limited to, the costs of processing, determining, defending, or insuring claims against the fund.

SEC. 8. Section 6140.8 of the Business and Professions Code is repealed.

SEC. 9. Section 6140.10 of the Business and Professions Code is repealed.

SEC. 10. Section 6140.15 of the Business and Professions Code is repealed.

SEC. 11. Chapter 868 of the Statutes of 1994 is repealed.

SEC. 12. This act shall become operative only if Senate Bill 479 of the 2001–2002 Regular Session is enacted and becomes operative on or before January 1, 2002.



Approved _____, 2001

Governor

