

Senate Bill No. 163

CHAPTER 417

An act to amend Sections 6005, 6006, 6007, 6008.1, 6008.4, 6010, 6011, 6013.6, 6015, 6016, 6018, 6019, 6020, 6021, 6024, 6033, 6036, 6037, 6040, 6042, 6046.7, 6069, 6070, 6076, 6076.5, 6079.5, 6086, 6086.5, 6086.14, 6140, 6140.01, 6140.05, 6140.5, 6141, 6161, 6168, 6169, 6170, 6190.1, 6200, 6201, 6203, 6204, 6206, 6222, 6225, 6226, 6231, and 6238 of, to add Sections 6001.1, 6009.7, 6012, 6013.2, 6013.3, 6013.5.5, 6026.7, and 6140.12 to, to add and repeal Section 6140.02 of, to repeal Sections 6012.5, 6013.4, 6014, and 6017 of, and to repeal and add Sections 6001.2 and 6013.1 of, the Business and Professions Code, relating to attorneys.

[Approved by Governor October 2, 2011. Filed with
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LEGISLATIVE COUNSEL'S DIGEST

SB 163, Evans. Attorneys: board of trustees: annual membership fee.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation.

(1) Under existing law, the State Bar is governed by a board known as the Board of Governors of the State Bar. The board of governors consists of 23 members, including 15 attorney members, one attorney member elected by the board of directors of the California Young Lawyers Association, 6 public members, and the President of the State Bar. Existing law provides for the election of attorney members to the board from specified counties included in State Bar Districts. Under existing law, the public members of the board are appointed by the Governor and the Legislature. Existing law requires a public member to have never been a member of the State Bar or admitted to practice before any court in the United States. Public members are subject to specified conflict-of-interest provisions.

This bill would revise and recast these provisions by renaming the board of governors as the board of trustees and would also revise the composition of the board to include no more than 23 members and no less than 19 members, as specified and determined by the State Bar, to include the existing 6 public members appointed by the Governor and the Legislature and 13 attorney members. Under the bill, the 13 attorney members would consist of 6 attorney members elected from State Bar Districts based on the 6 court of appeal districts, 5 attorney members appointed by the Supreme Court, and 2 attorney members appointed by the Senate Committee on Rules and the Speaker of the Assembly. The bill would require these attorney members to serve for a term of 3 years and would limit the elected and Supreme Court appointed members to being reappointed or reelected for one additional term. With respect to the Supreme Court appointments, the

bill would specify criteria that the Supreme Court should consider in making these appointments and would require the State Bar to carry out the administrative responsibilities related to the Supreme Court's appointments.

The bill would require the State Bar to reduce the board of trustees from 23 members to 19 members by October 31, 2014. The bill would require the State Bar to develop a plan for implementing the transition to a 19-member board by January 31, 2012, and to submit a written report detailing that plan to the Committees on Judiciary by January 31, 2012. The bill would also require the State Bar to report annually to the Committees on Judiciary on its progress toward implementing this transition. The bill would prohibit the State Bar from changing or abolishing a board member's term that commenced prior to December 31, 2011, or forcing any board member to resign whose term commenced prior to that date in order to accomplish the transition. The bill would also declare the intent of the Legislature in this regard.

The bill would make public members subject to additional conflict-of-interest provisions, such as the provision that prohibits a public member from being a close family member of a member of the State Bar.

The bill would make other conforming changes related to the renaming of the board and the establishment of both an election and appointment process for attorney members of the board.

(2) Under existing law, the officers of the State Bar are a president, 4 vice presidents, a secretary, and a treasurer, and one of the vice presidents may also be elected to the office of treasurer. Existing law requires the board, within 270 days before the annual meeting, to elect the officers for the ensuing year. Existing law requires the president and other officers to be elected from among members with specified terms. Under existing law, the president may vote only in the case of a specified tie vote.

This bill would instead provide that the officers shall include a president, a vice president, a secretary, and a treasurer. The bill would require the board to elect the officers within 90 days before the annual meeting. The bill would also authorize the president and the other officers to be elected from among all members of the board. The bill would also delete the limitation on the president's voting authority.

(3) The bill would require the board to complete and implement a 5-year strategic plan and would require the president to report to the Supreme Court, the Governor, and the Committees on Judiciary on certain aspects of the strategic plan.

(4) Existing law establishes a Governance in the Public Interest Task Force within the State Bar. The task force is made up of 11 specified board members, including the President of the State Bar, and these board members are appointed by the president. Existing law requires the task force to prepare a report that includes its recommendations for, among other things, enhancing and ensuring the protection of the public.

This bill would repeal that provision establishing that task force. The bill would, on and after January 1, 2013, and no later than February 1, 2013, establish a task force to be comprised of a total of 7 members, including 2

elected attorney members, 2 appointed members, and 2 public members, who would be selected as specified, and the president. The bill would require the task force to make suggestions to the board of trustees regarding the strategic plan described above and other issues as requested by the Legislature.

(5) Existing law requires the board of governors to charge an annual membership fee for active members of up to \$315 for 2011. Existing law also requires the board to charge an annual membership fee for inactive members of up to \$75. Existing law authorizes, until January 1, 2014, \$10 of those membership fees to be allocated to support nonprofit organizations that provide free legal service to persons of limited means, and authorizes a member to deduct that amount from his or her annual fee if the member elects not to make this allocation.

This bill would require the board to charge that annual membership fee for active members for 2012 minus a \$10 rebate to be described in a specified manner on the annual dues statement. The bill would require the board to charge that annual membership fee for inactive members minus a \$10 rebate to be described in a specified manner on the annual dues statement. The bill would increase the amount of those membership fees that may be allocated to support nonprofit organizations that provide free legal services to \$20.

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

SECTION 1. Section 6001.1 is added to the Business and Professions Code, to read:

6001.1. Protection of the public shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

SEC. 2. Section 6001.2 of the Business and Professions Code is repealed.

SEC. 2.5. Section 6001.2 is added to the Business and Professions Code, to read:

6001.2. (a) On or before February 1, 2013, 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 President of the State Bar. Two members shall be elected attorney members of the board of trustees who are selected by the elected attorney members, two members shall be attorney members of the board of trustees appointed by the Supreme Court who are selected by the Supreme Court appointees, and two members shall be public members of the board of trustees selected by the public members. The president 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 dues 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 6005 of the Business and Professions Code is amended to read:

6005. Inactive members are those members who have requested that they be enrolled as inactive members or who have been enrolled as inactive members by action of the board of trustees as set forth in Section 6007.

SEC. 4. Section 6006 of the Business and Professions Code is amended to read:

6006. Active members who retire from practice shall be enrolled as inactive members at their request.

Inactive members are not entitled to hold office or vote or practice law. Those who are enrolled as inactive members at their request may, on application and payment of all fees required, become active members. Those who are or have been enrolled as inactive members at their request are members of the State Bar for purposes of Section 15 of Article VI of the California Constitution. Those who are enrolled as inactive members pursuant to Section 6007 may become active members as provided in that section.

Inactive members have such other privileges, not inconsistent with this chapter, as the board of trustees provides.

SEC. 5. Section 6007 of the Business and Professions Code is amended to read:

6007. (a) When a member requires involuntary treatment pursuant to Article 6 (commencing with Section 5300) of Chapter 2 of Division 5 of, or Part 2 (commencing with Section 6250) of Division 6 of the Welfare and Institutions Code, or when under an order pursuant to Section 3051, 3106.5, or 3152 of the Welfare and Institutions Code he or she has been placed in or returned to inpatient status at the California Rehabilitation Center or its branches, or when he or she has been determined insane or mentally incompetent and is confined for treatment or placed on outpatient status pursuant to the Penal Code, or on account of his or her mental condition a guardian or conservator, for his or her estate or person or both, has been appointed, the Board of Trustees or an officer of the State Bar shall enroll the member as an inactive member.

The clerk of any court making an order containing any of the determinations or adjudications referred to in the immediately preceding paragraph shall send a certified copy of that order to the State Bar at the same time that the order is entered.

The clerk of any court with which is filed a notice of certification for intensive treatment pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Division 5 of the Welfare and Institutions Code, upon receipt of the notice, shall transmit a certified copy of it to the State Bar.

The State Bar may procure a certified copy of any determination, order, adjudication, appointment, or notice when the clerk concerned has failed to transmit one or when the proceeding was had in a court other than a court of this state.

In the case of an enrollment pursuant to this subdivision, the State Bar shall terminate the enrollment when the member has had the fact of his or her restoration to capacity judicially determined, upon the member's release from inpatient status at the California Rehabilitation Center or its branches pursuant to Section 3053, 3109, or 3151 of the Welfare and Institutions Code, or upon the member's unconditional release from the medical facility pursuant to Section 5304 or 5305 of the Welfare and Institutions Code; and on payment of all fees required.

When a member is placed in, returned to, or released from inpatient status at the California Rehabilitation Center or its branches, or discharged from the narcotics treatment program, the Director of Corrections or his or her designee shall transmit to the State Bar a certified notice attesting to that fact.

(b) The board shall also enroll a member of the State Bar as an inactive member in each of the following cases:

(1) A member asserts a claim of insanity or mental incompetence in any pending action or proceeding, alleging his or her inability to understand the nature of the action or proceeding or inability to assist counsel in representation of the member.

(2) The court makes an order assuming jurisdiction over the member's law practice, pursuant to Section 6180.5 or 6190.3.

(3) After notice and opportunity to be heard before the board or a committee, the board finds that the member, because of mental infirmity or illness, or because of the habitual use of intoxicants or drugs, is (i) unable or habitually fails to perform his or her duties or undertakings competently, or (ii) unable to practice law without substantial threat of harm to the interests of his or her clients or the public. No proceeding pursuant to this paragraph shall be instituted unless the board or a committee finds, after preliminary investigation, or during the course of a disciplinary proceeding, that probable cause exists therefor. The determination of probable cause is administrative in character and no notice or hearing is required.

In the case of an enrollment pursuant to this subdivision, the board shall terminate the enrollment upon proof that the facts found as to the member's disability no longer exist and on payment of all fees required.

(c) (1) The board may order the involuntary inactive enrollment of an attorney upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public or upon a finding based on all the available evidence, including affidavits, that the attorney has not complied with Section 6002.1 and cannot be located after reasonable investigation.

(2) In order to find that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or the public pursuant to this subdivision, each of the following factors shall be found, based on all the available evidence, including affidavits:

(A) The attorney has caused or is causing substantial harm to the attorney's clients or the public.

(B) The attorney's clients or the public are likely to suffer greater injury from the denial of the involuntary inactive enrollment than the attorney is likely to suffer if it is granted, or there is a reasonable likelihood that the harm will reoccur or continue. Where the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shall shift to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue.

(C) There is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter.

(3) In the case of an enrollment under this subdivision, the underlying matter shall proceed on an expedited basis.

(4) The board shall order the involuntary inactive enrollment of an attorney upon the filing of a recommendation of disbarment after hearing or default. For purposes of this section, that attorney shall be placed on involuntary inactive enrollment regardless of the membership status of the attorney at the time.

(5) The board shall formulate and adopt rules of procedure to implement this subdivision.

In the case of an enrollment pursuant to this subdivision, the board shall terminate the involuntary inactive enrollment upon proof that the attorney's conduct no longer poses a substantial threat of harm to the interests of the attorney's clients or the public or where an attorney who could not be located proves compliance with Section 6002.1.

(d) (1) The board may order the involuntary inactive enrollment of an attorney for violation of probation upon the occurrence of all of the following:

(A) The attorney is under a suspension order any portion of which has been stayed during a period of probation.

(B) The board finds that probation has been violated.

(C) The board recommends to the court that the attorney receive an actual suspension on account of the probation violation or other disciplinary matter.

(2) The board shall terminate an enrollment under this subdivision upon expiration of a period equal to the period of stayed suspension in the probation matter, or until the court makes an order regarding the

recommended actual suspension in the probation matter, whichever occurs first.

(3) If the court orders a period of actual suspension in the probation matter, any period of involuntary inactive enrollment pursuant to this subdivision shall be credited against the period of actual suspension ordered.

(e) (1) The board shall order the involuntary, inactive enrollment of a member whose default has been entered pursuant to the State Bar Rules of Procedure if both of the following conditions are met:

(A) The notice was duly served pursuant to subdivision (c) of Section 6002.1.

(B) The notice contained the following language at or near the beginning of the notice, in capital letters:

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INVOLUNTARY INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

(2) The board shall terminate the involuntary inactive enrollment of a member under this subdivision when the member's default is set aside on motion timely made under the State Bar Rules of Procedure or the disciplinary proceedings are completed.

(3) The enrollment under this subdivision is administrative in character and no hearing is required.

(4) Upon the involuntary inactive enrollment of a member under this subdivision, the notice required by subdivision (b) of Section 6092.5 shall be promptly given.

(5) The board may delegate its authority under this subdivision to the presiding referee or presiding judge of the State Bar Court or his or her designee.

(f) The pendency or determination of a proceeding or investigation provided for by this section shall not abate or terminate a disciplinary investigation or proceeding except as required by the facts and law in a particular case.

(g) No membership fees shall accrue against the member during the period he or she is enrolled as an inactive member pursuant to this section.

(h) The board may order a full range of interim remedies or final discipline short of involuntary inactive enrollment, including, but not limited to, conditions of probation following final discipline, or directly ordered interim remedies, to restrict or supervise an attorney's practice of law, as well as proceedings under subdivision (a), (b), (c), or (d), or under Section 6102 or 6190. They may include restrictions as to scope of practice, monetary

accounting procedures, review of performance by probation or other monitors appointed by the board, or such other measures as may be determined, after hearing, to protect present and future clients from likely substantial harm. These restrictions may be imposed upon a showing as provided in subdivision (c), except that where license restriction is proposed, the showing required of the State Bar under the factors described in subparagraph (B) of paragraph (2) of subdivision (c) need not be made.

SEC. 6. Section 6008.1 of the Business and Professions Code is amended to read:

6008.1. No bond, note, debenture, evidence of indebtedness, mortgage, deed of trust, assignment, pledge, contract, lease, agreement, or other contractual obligation of the State Bar shall:

(a) Create a debt or other liability of the state nor of any entity other than the State Bar (or any successor public corporation).

(b) Create any personal liability on the part of the members of the State Bar or the members of the board of trustees or any person executing the same, by reason of the issuance or execution thereof.

(c) Be required to be approved or authorized under the provisions of any other law or regulation of this state.

SEC. 7. Section 6008.4 of the Business and Professions Code is amended to read:

6008.4. All powers granted to the State Bar by Sections 6001 and 6008.3 may be exercised and carried out by action of its board of trustees. In any resolution, indenture, contract, agreement, or other instrument providing for, creating, or otherwise relating to, any obligation of the State Bar, the board may make, fix, and provide such terms, conditions, covenants, restrictions, and other provisions as the board deems necessary or desirable to facilitate the creation, issuance, or sale of such obligation or to provide for the payment or security of such obligation and any interest thereon, including, but not limited to, covenants and agreements relating to fixing and maintaining membership fees.

SEC. 8. Section 6009.7 is added to the Business and Professions Code, to read:

6009.7. (a) (1) The State Bar shall determine the manner by which to reduce the board of trustees from 23 members to 19 members, as described in Section 6011, pursuant to the election and appointment processes specified in Sections 6012, 6013.1, 6013.2, and 6013.3.

(2) The State Bar shall develop a plan for implementing the transition to a 19-member board by January 31, 2012.

(3) By January 31, 2012, the State Bar shall submit a written report to the Senate and Assembly Committees on Judiciary that includes, but is not limited to, the implementation plan described in paragraph (2).

(b) The State Bar shall complete the transition to a 19-member board no later than October 31, 2014.

(c) The State Bar shall not change, reduce, shorten, lengthen, or abolish the terms of board members commencing prior to December 31, 2011, or

force any board member to resign in order to institute a 19-member board pursuant to this section.

(d) The State Bar shall report annually to the Senate and Assembly Committees on Judiciary on its progress toward implementing the transition to a 19-member board.

SEC. 9. Section 6010 of the Business and Professions Code is amended to read:

6010. (a) The State Bar is governed by a board known as the board of trustees of the State Bar. The board has the powers and duties conferred by this chapter.

(b) As used in this chapter or any other provision of law, “board of governors” shall be deemed to refer to the board of trustees.

SEC. 10. Section 6011 of the Business and Professions Code is amended to read:

6011. (a) The board shall consist of no more than 23 members and no less than 19 members.

(b) It is the intent of the Legislature that the board consist of no more than 23 members and no less than 19 members during the period of transition from a 23-member board to a 19-member board, as described in Section 6009.7. It is the intent of the Legislature that the board, pursuant to the plan developed by the State Bar as described in Section 6009.7, gradually decrease its size without shortening, lengthening, or abolishing terms commencing prior to December 31, 2011, with the ultimate goal of instituting a 19-member board no later than October 31, 2014, pursuant to Section 6009.7.

SEC. 11. Section 6012 is added to the Business and Professions Code, to read:

6012. (a) State Bar Districts, as they existed on December 31, 2011, pursuant to Section 6012.5, as added by Chapter 1223 of the Statutes of 1989, shall cease, pursuant to the act that added this section, for purposes of the election of attorney members of the board. However, attorney members who were elected in 2009, 2010, or 2011 to serve for a three-year term commencing at the conclusion of the annual meeting held in those years shall be eligible to serve their full three-year terms.

(b) Commencing on January 1, 2012, State Bar Districts shall be based on the six court of appeal districts as constituted pursuant to Section 69100 of the Government Code, as they existed on December 31, 2011. The board shall provide for the election of six attorney members of the board from these six State Bar Districts as specified in Section 6013.2.

SEC. 12. Section 6012.5 of the Business and Professions Code is repealed.

SEC. 13. Section 6013.1 of the Business and Professions Code is repealed.

SEC. 14. Section 6013.1 is added to the Business and Professions Code, 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 three 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. 15. Section 6013.2 is added to the Business and Professions Code, to read:

6013.2. (a) Six members of the board shall be attorneys elected from the State Bar Districts created by the board pursuant to Section 6012.

(b) An attorney member elected pursuant to this section shall serve for a term of three years. An elected attorney member may run for reelection, but may be reelected to only serve one additional term.

SEC. 15.5. Section 6013.3 is added to the Business and Professions Code, to read:

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

(b) An attorney member appointed pursuant to this section shall serve for a term of three years. An appointed attorney member may be reappointed pursuant to this section.

SEC. 16. Section 6013.4 of the Business and Professions Code is repealed.

SEC. 17. Section 6013.5.5 is added to the Business and Professions Code, to read:

6013.5.5. Sections 450 to 450.6, inclusive, shall apply to public members appointed or reappointed on or after January 1, 2012.

SEC. 18. Section 6013.6 of the Business and Professions Code is amended to read:

6013.6. (a) Except as provided in subdivision (b), any full-time employee of any public agency who serves as a member of the Board of Trustees of the State Bar of California shall not suffer any loss of rights, promotions, salary increases, retirement benefits, tenure, or other job-related benefits, which he or she would otherwise have been entitled to receive.

(b) Notwithstanding the provisions of subdivision (a), any public agency which employs a person who serves as a member of the Board of Trustees of the State Bar of California may reduce the employee's salary, but no other right or job-related benefit, pro rata to the extent that the employee does not work the number of hours required by statute or written regulation to be worked by other employees of the same grade in any particular pay period and the employee does not claim available leave time. The employee shall be afforded the opportunity to perform job duties during other than regular working hours if such a work arrangement is practical and would not be a burden to the public agency.

(c) The Legislature finds that service as a member of the Board of Trustees of the State Bar of California by a person employed by a public agency is in the public interest.

SEC. 19. Section 6014 of the Business and Professions Code is repealed.

SEC. 20. 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) 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. 21. 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 commence at the conclusion of the annual meeting next succeeding his or her election or appointment, and he or she shall hold office until his or her successor is elected or appointed and qualified. For the purposes of this section, the time intervening between any two successive annual meetings shall be deemed to be one year.

Except as specified in Section 6013.1, vacancies in the board of trustees shall be filled by the board by special election or by appointment for the unexpired 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. 22. Section 6017 of the Business and Professions Code is repealed.

SEC. 23. Section 6018 of the Business and Professions Code is amended to read:

6018. Nominations of elected members of the board shall be by petition signed by at least 20 persons entitled to vote for such nominees.

Only active members of the State Bar maintaining their principal offices for the practice of the law in the respective State Bar districts shall be entitled to vote for the member or members of the board therefrom.

SEC. 24. 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 elected or appointed shall for the purposes of the election or appointment be deemed a separate office.

If only one member seeks election to an office, the member is deemed elected. If two or more members seek election to the same office, the election shall be by ballot. The ballots shall be distributed to those entitled to vote at least twenty days prior to the date of canvassing the ballots and shall be returned to a site or sites designated by the State Bar, where they shall be canvassed at least five days prior to the ensuing annual meeting. At the annual meeting, the count shall be certified and the result officially declared.

In all other respects the elections shall be as the board may by rule direct.

SEC. 25. Section 6020 of the Business and Professions Code is amended to read:

6020. The officers of the State Bar are a president, a vice president, a secretary, and a treasurer.

SEC. 26. Section 6021 of the Business and Professions Code is amended to read:

6021. (a) (1) Within the period of 90 days next preceding the annual meeting, the board, at a meeting called for that purpose, shall elect the president, vice president, and treasurer for the ensuing year. The president, the vice president, and the treasurer shall be elected from among all members of the board.

(2) The newly elected president, vice president, and treasurer shall assume the duties of their respective offices at the conclusion of the annual meeting following their election.

(b) The term of the board president shall be one year, except that he or she may be reelected to a second one-year term as the board president.

SEC. 27. Section 6024 of the Business and Professions Code is amended to read:

6024. The president shall preside at all meetings of the State Bar and of the board, and in the event of his or her absence or inability to act, the vice president shall preside.

Other duties of the president and the vice president, and the duties of the secretary and the treasurer, shall be such as the board may prescribe.

SEC. 28. Section 6026.7 is added to the Business and Professions Code, to read:

6026.7. The board shall ensure that its open meeting requirements, as described in Section 6026.5, are consistent with, and conform to, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

SEC. 29. Section 6033 of the Business and Professions Code is amended to read:

6033. (a) Notwithstanding any other provision of law, the State Bar is expressly authorized to facilitate the professional responsibilities of members by collecting, in conjunction with the State Bar's collection of its annual

membership dues or otherwise, voluntary financial support for nonprofit organizations that provide free legal services to persons of limited means.

(b) To implement this section, the State Bar, in consultation with the Chief Justice of California, shall appoint a task force of key stakeholders to analyze the mechanisms and experience of bar associations that have adopted programs for the collection of financial contributions from bar members and shall propose an appropriate method for facilitating the collection and distribution of voluntary contributions that is best calculated to generate the greatest level of financial support and participation from State Bar members, taking into account such issues as the justice-gap between the legal needs of low-income people in California and the legal resources available to assist them. The method and any recommended voluntary contribution amount adopted by the Board of Trustees of the State Bar of California shall be implemented for the 2008 fiscal year, and shall be reviewed and adjusted as needed after two years and, thereafter, every five years as needed, in consultation with affected service providers and other key stakeholders.

SEC. 30. Section 6036 of the Business and Professions Code is amended to read:

6036. (a) Any member of the board of trustees shall disqualify himself or herself from making, participating in the making of, or attempting to influence any decisions of the board or a committee of the board in which he or she has a financial interest, as that term is defined in Section 87103 of the Government Code, that it is reasonably foreseeable may be affected materially by the decision.

(b) Any member of the board of trustees shall likewise disqualify himself or herself when there exists a personal nonfinancial interest that will prevent the member from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions.

(c) Notwithstanding subdivisions (a) and (b), no member shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the action or decision to be made. The fact that a member's vote is needed to break a tie does not make his or her participation legally required for the purposes of this section.

(d) A member required to disqualify himself or herself because of a conflict of interest shall (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting. It is sufficient for the purpose of this section that the member indicate only that he or she has a disqualifying financial or personal interest.

(e) For purposes of this article and unless otherwise specified, "member" means any appointed or elected member of the board of trustees.

SEC. 31. Section 6037 of the Business and Professions Code is amended to read:

6037. No action or decision of the board or committee of the board shall be invalid because of the participation therein by a member or members in violation of Section 6036. However, any member who intentionally violates

the provisions of subdivision (a) of Section 6036 is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding five days, or by a fine not exceeding one thousand dollars (\$1,000), or by both, and, if the member is an attorney member of the board, a certified copy of the record of conviction shall be transmitted to the Supreme Court for disposition as provided in Sections 6101 and 6102. Upon entry of final judgment of conviction, the member's term of office on the board of trustees, and duties and authority incidental thereto, shall automatically terminate. Any member who intentionally violates the provisions of subdivision (b) of Section 6036 shall be liable for a civil penalty not to exceed five hundred dollars (\$500) for each violation, which shall be assessed and recovered in a civil action in a court of competent jurisdiction brought in the name of the state only by a district attorney of a county in which the member resides or maintains offices and the penalty collected shall be paid to the treasurer of that county.

SEC. 32. Section 6040 of the Business and Professions Code is amended to read:

6040. The board of trustees may create local administrative committees and delegate to them such of its powers and duties as seems advisable. The board may in its discretion divide any committee into units or sections with concurrent powers and duties in order to handle the work of the committee more expeditiously. The board may also prescribe the powers of the committee and the units or sections thereof.

SEC. 33. Section 6042 of the Business and Professions Code is amended to read:

6042. The members of local administrative committees, except ex officio members of the board of trustees, shall hold office at the pleasure of the board.

SEC. 34. Section 6046.7 of the Business and Professions Code is amended to read:

6046.7. (a) (1) Notwithstanding any other provision of law, the Committee of Bar Examiners shall adopt rules that shall be effective on and after January 1, 2008, for the regulation and oversight of unaccredited law schools that are required to be authorized to operate as a business in California and to have an administrative office in California, including correspondence schools, that are not accredited by the American Bar Association or the Committee of Bar Examiners, with the goal of ensuring consumer protection and a legal education at an affordable cost.

(2) Notwithstanding any other provision of law, the committee shall adopt rules that shall be effective on and after January 1, 2008, for the regulation and oversight of nonlaw school legal programs leading to a juris doctor (J.D.) degree, bachelor of laws (LL.B.) degree, or other law study degree.

(b) Commencing January 1, 2008, the committee shall assess and collect a fee from unaccredited law schools and legal programs in nonlaw schools in an amount sufficient to fund the regulatory and oversight responsibilities imposed by this section. Nothing in this subdivision precludes the board of trustees from using other funds or fees collected by the State Bar or by the

committee to supplement the funding of the regulatory and oversight responsibilities imposed by this section with other funds, if that supplemental funding is deemed necessary and appropriate to mitigate some of the additional costs of the regulation and oversight to facilitate the provision of a legal education at an affordable cost.

SEC. 35. Section 6069 of the Business and Professions Code is amended to read:

6069. (a) Every member of the State Bar shall be deemed by operation of this law to have irrevocably authorized the disclosure to the State Bar and the Supreme Court pursuant to Section 7473 of the Government Code of any and all financial records held by financial institutions as defined in subdivisions (a) and (b) of Section 7465 of the Government Code pertaining to accounts which the member must maintain in accordance with the Rules of Professional Conduct; provided that no such financial records shall be disclosed to the State Bar without a subpoena therefor having been issued pursuant to Section 6049 of this code, and further provided that the board of trustees shall by rule provide notice to the member similar to that notice provided for in subdivision (d) of Section 7473 of the Government Code. Such notice may be sent by mail addressed to the member's current office or other address for State Bar purposes as shown on the member's registration records of the State Bar.

The State Bar shall, by mail addressed to the member's current office or other address for State Bar purposes as shown on the member's registration records of the State Bar, notify its members annually of the provisions of this subdivision.

(b) With regard to the examination of all financial records other than those mentioned in subdivision (a), held by financial institutions as defined in subdivisions (a) and (b) of Section 7465 of the Government Code, no such financial records shall be disclosed to the State Bar without a subpoena therefor having been issued pursuant to Section 6049 of this code and the board of trustees shall by rule provide for service of a copy of the subpoena on the customer as defined in subdivision (d) of Section 7465 of the Government Code and an opportunity for the customer to move the board or committee having jurisdiction to quash the subpoena prior to examination of the financial records. Review of the actions of the board or any committee on such motions shall be had only by the Supreme Court in accordance with the procedure prescribed by the court. Service of a copy of any subpoena issued pursuant to this subdivision (b) may be made on a member of the State Bar by mail addressed to the member's current office or other address for State Bar purposes as shown on the member's registration records of the State Bar. If the customer is other than a member, service shall be made pursuant to Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, except that service may be made by an employee of the State Bar.

(c) For purposes of this section, "member of the State Bar" or "member" means every member of the State Bar, law firm in California of which a

member of the State Bar is a member, and law corporation within the meaning of Article 10 of Chapter 4 of Division 3 of this code.

SEC. 36. 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. 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, 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 State Bar shall provide and encourage the development of low-cost programs and materials by which members 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, the State Bar shall ensure that by July 1, 2000, 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 fifteen dollars (\$15) per hour or less.

SEC. 37. Section 6076 of the Business and Professions Code is amended to read:

6076. With the approval of the Supreme Court, the Board of Trustees may formulate and enforce rules of professional conduct for all members of the State Bar.

SEC. 38. Section 6076.5 of the Business and Professions Code is amended to read:

6076.5. (a) With the approval of the Supreme Court, the members of the State Bar may formulate by initiative, pursuant to the provisions of this section, rules of professional conduct for all members of the bar in the state.

(b) Only active members of the State Bar shall be proponents of initiative measures pursuant to this section.

(c) Prior to the circulation of any initiative petition for signatures, the proponents shall file the text of the proposed initiative measure with both the Secretary of the State Bar and the Clerk of the Supreme Court.

(d) Upon receipt of the text of a proposed initiative measure, the secretary shall prepare a summary of the chief purposes and points of the proposed initiative measure. The summary shall give a true and impartial statement of the purpose of the measure in such language that it shall not be an argument or likely to create prejudice either for or against the measure. The secretary shall provide a copy of the summary to the proponents within 30 days after receipt of the final version of the proposed measure. If during the 30-day period the proponents submit amendments, other than technical, nonsubstantive amendments, to the final version of such measure, the secretary shall provide a copy of the summary to the proponents within 30 days after receipt of such amendments.

(e) The proponents of any proposed initiative measure shall, prior to its circulation, place upon each section of the petition, above the text of the measure and across the top of each page of the petition on which signatures are to appear, in boldface type not smaller than 12-point, the summary prepared by the secretary.

(f) All such initiative petitions shall have printed across the top thereof in 12-point boldface type the following: "Initiative measure to be submitted directly to the members of the State Bar of California."

(g) Any initiative petition may be presented in sections, but each section shall contain a full and correct copy of the title and text of the proposed measure.

(h) The petition sections shall be designed so that each signer shall personally affix his or her:

- (1) Signature;
- (2) Printed name;
- (3) State Bar membership number; and
- (4) Principal office address for the practice of law.

Only a person who is an active member of the State Bar at the time of signing the petition is entitled to sign it.

The number of signatures attached to each section shall be at the discretion of the person soliciting the signatures.

(i) Any member of the State Bar, or employee or agent thereof, may circulate an initiative petition anywhere within the state.

Any person circulating a petition may sign the section he or she is circulating if he or she is otherwise qualified to do so.

(j) Each section shall have attached thereto the affidavit of the person soliciting the signatures stating:

- (1) The qualifications of the solicitor;
- (2) That the signatures affixed to the section were made in his or her presence;
- (3) That to the best of his or her knowledge and belief, each signature is the genuine signature of the person whose name it purports to be;
- (4) That to the best of his or her knowledge and belief, each State Bar membership number is the genuine membership number of the person whose number it purports to be; and
- (5) The dates between which all signatures were obtained.

The affidavit shall be verified free of charge by any officer authorized to administer oaths.

Petitions so verified shall be prima facie evidence that the signatures thereon are genuine and that the persons signing are active members of the State Bar. Unless and until it be otherwise proven upon official investigation, it shall be presumed that the petition presented contains the signatures of the requisite number of active members of the State Bar.

(k) All sections of the petition shall be filed with the Secretary of the State Bar within 180 days after the date upon which the secretary mailed or delivered to the proponents a copy of the summary specified in subdivision (d), but all sections circulated in any State Bar district shall be filed at the same time.

(l) No initiative measure shall be submitted to the members of the State Bar for a vote unless with regard to each State Bar district the petition has been signed by at least 20 percent of the number of active members whose principal office for the practice of law was within the district as of the January 1 preceding the date upon which all sections of the petition from all State Bar districts were filed with the secretary.

(m) The secretary shall promptly determine the total number of signatures from each State Bar district affixed to the petition. If the total number of signatures from any State Bar district is less than the number required by subdivision (l), the secretary shall so notify the proponents and no further action shall be taken in regard to the petition. If the total number of signatures from each and every State Bar district is equal to or greater than the number required by subdivision (l), the secretary shall verify the names and State Bar membership numbers, and may, in his or her discretion, verify the office addresses and signatures of the persons who signed the petition. If the total number of verified signers of the petition from any State Bar district is less than the number required by subdivision (l), the secretary shall so notify the proponents and no further action shall be taken in regard to the petition. If the total number of verified signers of the petition from each and every State Bar district is equal to or greater than the number required by subdivision (l), the secretary shall cause the initiative measure to be submitted within 90 days to all of the active members of the State Bar for

mail vote pursuant to such rules and regulations as the board may from time to time prescribe.

(n) The board of trustees, without petition, may also direct the secretary to cause an initiative measure embodying a rule of professional conduct formulated by the board to be submitted to all of the active members of the State Bar for mail vote in accordance with the rules and regulations prescribed by the board.

(o) If a majority of the active members of the State Bar fail to approve the initiative measure, the secretary shall so notify the proponents and the Clerk of the Supreme Court.

If a majority of the active members of the State Bar approve the initiative measure, the secretary shall cause the measure to be submitted to the Supreme Court for its consideration as a rule of professional conduct.

(p) The rules of professional conduct submitted to the Supreme Court pursuant to the provisions of this section, when approved by the Supreme Court, shall have the same force and effect as the rules of professional conduct formulated by the board of trustees and approved by the Supreme Court pursuant to Sections 6076 and 6077.

SEC. 39. Section 6079.5 of the Business and Professions Code is amended to read:

6079.5. (a) The board shall appoint a lawyer admitted to practice in California to serve as chief trial counsel. He or she shall be appointed for a term of four years and may be reappointed for additional four-year periods. He or she shall serve at the pleasure of the board. He or she shall not engage in private practice. The State Bar shall notify the Senate Committee on Rules and the Senate and Assembly Committees on Judiciary within seven days of the dismissal or hiring of a chief trial counsel.

The appointment of the chief trial counsel is subject to confirmation by the Senate, and the time limits prescribed in Section 1774 of the Government Code for Senate confirmation and for service in office are applicable to the appointment.

He or she shall report to and serve under the Regulation, Admissions, and Discipline Oversight Committee of the Board of Trustees of the State Bar or its successor committee on attorney discipline, and shall not serve under the direction of the chief executive officer.

(b) The chief trial counsel shall have the following qualifications:

(1) Be an attorney licensed to practice in the State of California, be in good standing and shall not have committed any disciplinary offenses in California or any other jurisdiction.

(2) Have a minimum of five years of experience in the practice of law, including trial experience, with law practice in broad areas of the law.

(3) Have a minimum of two years of prosecutorial experience or similar experience in administrative agency proceedings or disciplinary agencies.

(4) Have a minimum of two years of experience in an administrative role, overseeing staff functions.

The board may except an appointee from any of the above qualifications for good cause upon a determination of necessity to obtain the most qualified person.

On or after July 1, 1987, the chief trial counsel may, as prescribed by the Supreme Court, petition the court for a different disposition of a matter than the recommendations of the review department or the board to the court.

SEC. 40. Section 6086 of the Business and Professions Code is amended to read:

6086. The board of trustees, subject to the provisions of this chapter, may by rule provide the mode of procedure in all cases of complaints against members.

SEC. 41. 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.

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. 42. Section 6086.14 of the Business and Professions Code is amended to read:

6086.14. (a) The Board of Trustees of the State Bar is authorized to formulate and adopt rules and regulations necessary to establish an alternative dispute resolution discipline mediation program to resolve complaints against attorneys that do not warrant the institution of formal investigation or prosecution. The program should identify sources of client dissatisfaction and provide a mediation process to resolve those complaints or disputes unless the client objects to mediation. The refusal of an attorney to participate in the State Bar’s alternative dispute resolution discipline mediation program established pursuant to this section, or the failure of an attorney to comply with any agreement reached in the State Bar’s alternative dispute resolution discipline mediation program may subject that attorney to discipline. The rules may authorize discipline mediation under this article to proceed under discipline mediation programs sponsored by local bar associations in this state. The rules shall authorize a local bar association

to charge a reasonable administrative fee for the purpose of offsetting the costs of maintaining the discipline mediation programs.

(b) The board of trustees shall have the authority to formulate and adopt standards and guidelines to implement the alternative dispute resolution discipline mediation program. The standards and guidelines formulated and adopted by the board, as from time to time amended, shall be effective and binding on all members, and may encompass any discipline mediation programs sponsored by local bar associations.

(c) It is the intent of the Legislature that the authorization of an alternative dispute resolution discipline mediation program not be construed as limiting or altering the powers of the Supreme Court of this state or the State Bar to disbar or discipline members of the State Bar. The records relating to the alternative dispute resolution discipline mediation program may be made available in any subsequent disciplinary action pursuant to any rule, standard, or guideline adopted by the Board of Trustees of the State Bar.

SEC. 43. 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 for 2012 at a sum not exceeding three hundred fifteen dollars (\$315) minus a ten dollar (\$10) rebate to be shown as such on the annual dues statement directly below the 2012 membership fee.

(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, 2013, and, as of that date, is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 44. Section 6140.01 of the Business and Professions Code is amended to read:

6140.01. (a) (1) Twenty dollars (\$20) of the annual membership fee authorized pursuant to Sections 6140 and 6141 shall be allocated for the purposes established pursuant to Section 6033, except to the extent that a member elects not to support those activities.

(2) The invoice provided to members for payment of the annual membership fee shall provide each member the option of deducting twenty dollars (\$20) from the annual membership fee if the member elects not to have this amount allocated as provided in this section.

(3) The allocation pursuant to this section shall be known as the Temporary Emergency Legal Services Voluntary Assistance Option.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 45. Section 6140.02 is added to the Business and Professions Code, to read:

6140.02. (a) In the 2012 and 2013 fiscal years, two million dollars (\$2,000,000) of nonmandatory dues collected pursuant to Section 6033 shall be allocated in each of those years for the purposes established pursuant to Section 6033, unless the general fund of the State Bar faces overriding extraordinary circumstances in the 2013 fiscal year.

(b) This section shall become inoperative on July 1, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 46. Section 6140.05 of the Business and Professions Code is amended to read:

6140.05. (a) The invoice provided to members for payment of the annual membership fee shall provide each member the option of deducting five dollars (\$5) from the annual fee if the member elects not to support lobbying and related activities by the State Bar outside of the parameters established by the United States Supreme Court in *Keller v. State Bar of California* (1990) 496 U.S. 1.

(b) For the support or defense of lobbying and related activities conducted by the State Bar on or after January 1, 2000, outside of the parameters of *Keller v. State Bar of California*, and in support or defense of any litigation arising therefrom, the Board of Trustees of the State Bar shall not expend a sum exceeding the following: the product of the number of members paying their annual dues who did not elect the optional deduction multiplied by five dollars (\$5).

Moneys collected pursuant to this section shall not be deemed voluntary fees or funds for the purpose of subdivision (c) of Section 6031.5.

(c) As used in this section, “lobbying and related activities by the State Bar” includes the consideration of measures by the Board of Trustees of the State Bar that are deemed outside the parameters established in *Keller v. State Bar*, the purview determination, lobbying and the preparation for lobbying of the measures, and any litigation in support or defense of that lobbying. The determination of these costs shall include, but not be limited to, overhead and administrative costs.

SEC. 47. Section 6140.12 is added to the Business and Professions Code, to read:

6140.12. The board shall complete and implement a five-year strategic plan to be updated every two years. In conjunction with the submission of the board’s proposed final budget as required by Section 6140.1, the president shall report to the Supreme Court, the Governor, and the Senate and Assembly Committees on Judiciary on the measures the board has taken to implement the strategic plan and shall indicate the measures the board will need to take in the remaining years of the strategic plan to address the projected needs contained in the plan.

SEC. 48. Section 6140.5 of the Business and Professions Code is amended to read:

6140.5. (a) The board shall establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct

of active members of the State Bar, Foreign Legal Consultants registered with the State Bar, and attorneys registered with the State Bar under the Multijurisdictional Practice Program, arising from or connected with the practice of law. Any payments from the fund shall be discretionary and shall be subject to regulation and conditions as the board shall prescribe. The board may delegate the administration of the fund to the State Bar Court, or to any board or committee created by the board of trustees.

(b) Upon making a payment to a person who has applied to the fund for payment to relieve or mitigate pecuniary losses caused by the dishonest conduct of an active member of the State Bar, the State Bar is subrogated, to the extent of that payment, to the rights of the applicant against any person or persons who, or entity that, caused the pecuniary loss. The State Bar may bring an action to enforce those rights within three years from the date of payment to the applicant.

(c) Any attorney whose actions have caused the payment of funds to a claimant from the Client Security Fund shall reimburse the fund for all moneys paid out as a result of his or her conduct with interest, in addition to payment of the assessment for the procedural costs of processing the claim, as a condition of continued practice. The reimbursed amount, plus applicable interest and costs, shall be added to and become a part of the membership fee of a publicly reprovved or suspended member for the next calendar year. For a member who resigns with disciplinary charges pending or a member who is suspended or disbarred, the reimbursed amount, plus applicable interest and costs, shall be paid as a condition of reinstatement of membership.

(d) Any assessment against an attorney pursuant to subdivision (c) that is part of an order imposing a public reproof on a member or is part of an order imposing discipline or accepting a resignation with a disciplinary matter pending, may also be enforced as a money judgment. This subdivision does not limit the power of the Supreme Court to alter the amount owed or to authorize the State Bar Court, in the enforcement of a judgment under this subdivision, to approve an agreement for the compromise of that judgment.

SEC. 49. Section 6141 of the Business and Professions Code is amended to read:

6141. (a) Until December 31, 2006, the board shall fix the annual membership fee for inactive members at a sum not exceeding sixty-five dollars (\$65). On January 1, 2007, and thereafter, the board shall fix the annual membership fee for inactive members at a sum not exceeding seventy-five dollars (\$75) minus a ten dollar (\$10) rebate to be shown as such on the annual dues statement directly below the 2012 membership fee. The annual membership fee for inactive members is payable on or before the first day of February of each year.

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

SEC. 50. Section 6161 of the Business and Professions Code is amended to read:

6161. An applicant for registration as a law corporation shall supply to the State Bar all necessary and pertinent documents and information requested by the State Bar concerning the applicant's plan of operation, including, but not limited to, a copy of its articles of incorporation, certified by the Secretary of State, a copy of its bylaws, certified by the secretary of the corporation, the name and address of the corporation, the names and addresses of its officers, directors, shareholders, members, if any, and employees who will render professional services, the address of each office, and any fictitious name or names which the corporation intends to use. The State Bar may provide forms of application. If the Board of Trustees or a committee authorized by it finds that the corporation is duly organized and existing or duly qualified for the transaction of intrastate business pursuant to the General Corporation Law, or pursuant to subdivision (b) of Section 13406 of the Corporations Code, that each officer (except as provided in Section 13403 of the Corporations Code), director, shareholder (except as provided in subdivision (b) of Section 13406 of the Corporations Code), and each employee who will render professional services is a licensed person as defined in the Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and that from the application it appears that the affairs of the corporation will be conducted in compliance with law and the rules and regulations of the State Bar, the State Bar shall upon payment of the registration fee in such amount as it may determine issue a certificate of registration. The applicant shall include with the application, for each shareholder of the corporation licensed in a foreign country but not in this state or in any other state, territory, or possession of the United States, a certificate from the authority in the foreign country currently having final jurisdiction over the practice of law, which shall verify the shareholder's admission to practice in the foreign country, the date thereof, and the fact that the shareholder is currently in good standing as an attorney or counselor at law or the equivalent. If the certificate is not in English, there shall be included with the certificate a duly authenticated English translation thereof. The application shall be signed and verified by an officer of the corporation.

SEC. 51. Section 6168 of the Business and Professions Code is amended to read:

6168. The State Bar may conduct an investigation of the conduct of the business of a law corporation.

Upon such investigation, the Board of Trustees, or a committee authorized by it, shall have power to issue subpoenas, administer oaths, examine witnesses, and compel the production of records, in the same manner as upon an investigation or formal hearing in a disciplinary matter under the State Bar Act. Such investigation shall be private and confidential, except to the extent that disclosure of facts and information may be required if a cease and desist order is thereafter issued and subsequent proceedings are had.

SEC. 52. Section 6169 of the Business and Professions Code is amended to read:

6169. (a) When there is reason to believe that a law corporation has violated or is about to violate any of the provisions of this article or the Professional Corporation Act or of any other pertinent statute, rule, or regulation, the State Bar may issue a notice directing the corporation to show cause why it should not be ordered to cease and desist from specified acts or conduct or its certificate of registration should not be suspended or revoked. A copy of the notice shall be served upon the corporation in the manner provided for service of summons upon a California corporation.

(b) A hearing upon the notice to show cause shall be held before a standing or special committee appointed by the board of trustees. Upon the hearing, the State Bar and the corporation shall be entitled to the issue of subpoenas, to be represented by counsel, to present evidence, and examine and cross-examine witnesses.

(c) The hearing committee shall make findings in writing and shall either recommend that the proceeding be dismissed or that a cease and desist order be issued or that the certificate of registration of the corporation be suspended or revoked. The determination may be reviewed by the board of trustees or by a committee authorized by the Board of Trustees to act in its stead, upon written petition for review, filed with the State Bar by the corporation or the State Bar within 20 days after service of the findings and recommendation. Upon review, the board of trustees or the committee may take additional evidence, may adopt new or amended findings, and make such order as may be just, as to the notice to show cause.

(d) Subdivisions (a), (b), and (c) shall not apply to the suspension or revocation of the certificate of registration of a corporation in either of the following cases:

(1) The death of a sole shareholder, as provided in Section 6171.1.

(2) Failure to file the annual report and renew the certificate of registration, as provided in Sections 6161.1 and 6163.

SEC. 53. Section 6170 of the Business and Professions Code is amended to read:

6170. Any action of the State Bar or the Board of Trustees or a committee of the State Bar, or the chief executive officer of the State Bar or the designee of the chief executive officer, provided for in this article, may be reviewed by the Supreme Court by petition for review pursuant to rules prescribed by the Supreme Court.

SEC. 54. Section 6190.1 of the Business and Professions Code is amended to read:

6190.1. (a) An application for assumption by the court of jurisdiction under this article shall be made to the superior court for the county where the attorney maintains or most recently has maintained his or her principal office for the practice of law or where such attorney resides. The court may assume jurisdiction over the law practice of an attorney to the extent provided in Article 11 (commencing with Section 6180) of Chapter 4 of Division 3.

(b) Where an attorney consents to the assumption by the court of jurisdiction under the article, the State Bar, a client, or an interested person or entity may apply to the court for assumption of jurisdiction over the law practice of the attorney. In any proceeding under this subdivision, the State Bar shall be permitted to intervene and to assume primary responsibility for conducting the action.

(c) Where an attorney does not consent to the assumption by the court of jurisdiction under this article, only the State Bar may apply to the court for assumption of jurisdiction over the law practice of the attorney.

(d) The chief trial counsel may appoint, pursuant to rules adopted by the board of trustees, an examiner or coexaminer from among the members of the State Bar in an investigation or formal proceeding under this article.

SEC. 55. Section 6200 of the Business and Professions Code is amended to read:

6200. (a) The board of trustees shall, by rule, establish, maintain, and administer a system and procedure for the arbitration, and may establish, maintain, and administer a system and procedure for mediation of disputes concerning fees, costs, or both, charged for professional services by members of the State Bar or by members of the bar of other jurisdictions. The rules may include provision for a filing fee in the amount as the board may, from time to time, determine.

(b) This article shall not apply to any of the following:

(1) Disputes where a member of the State Bar of California is also admitted to practice in another jurisdiction or where an attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California.

(2) Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct, except as provided in subdivision (a) of Section 6203.

(3) Disputes where the fee or cost to be paid by the client or on his or her behalf has been determined pursuant to statute or court order.

(c) Unless the client has agreed in writing to arbitration under this article of all disputes concerning fees, costs, or both, arbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client. Mediation under this article shall be voluntary for an attorney and a client.

(d) The board of trustees shall adopt rules to allow arbitration and mediation of attorney fee and cost disputes under this article to proceed under arbitration and mediation systems sponsored by local bar associations in this state. Rules of procedure promulgated by local bar associations are subject to review by the board or a committee designated by the board to ensure that they provide for a fair, impartial, and speedy hearing and award.

(e) In adopting or reviewing rules of arbitration under this section, the board shall provide that the panel shall include one attorney member whose area of practice is either, at the option of the client, civil law, if the attorney's

representation involved civil law, or criminal law, if the attorney's representation involved criminal law, as follows:

(1) If the panel is composed of three members the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or criminal law, and shall include one lay member.

(2) If the panel is composed of one member, that member shall be an attorney whose area of practice is either, at the option of the client, civil or criminal law.

(f) In any arbitration or mediation conducted pursuant to this article by the State Bar or by a local bar association, pursuant to rules of procedure approved by the board of trustees, an arbitrator or mediator, as well as the arbitrating association and its directors, officers, and employees, shall have the same immunity which attaches in judicial proceedings.

(g) In the conduct of arbitrations under this article the arbitrator or arbitrators may do all of the following:

(1) Take and hear evidence pertaining to the proceeding.

(2) Administer oaths and affirmations.

(3) Issue subpoenas for the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.

(h) Participation in mediation is a voluntary consensual process, based on direct negotiations between the attorney and his or her client, and is an extension of the negotiated settlement process. All discussions and offers of settlement are confidential and may not be disclosed in any subsequent arbitration or other proceedings.

SEC. 56. Section 6201 of the Business and Professions Code is amended to read:

6201. (a) The rules adopted by the board of trustees shall provide that an attorney shall forward a written notice to the client prior to or at the time of service of summons or claim in an action against the client, or prior to or at the commencement of any other proceeding against the client under a contract between attorney and client which provides for an alternative to arbitration under this article, for recovery of fees, costs, or both. The written notice shall be in the form that the board of trustees prescribes, and shall include a statement of the client's right to arbitration under this article. Failure to give this notice shall be a ground for the dismissal of the action or other proceeding. The notice shall not be required, however, prior to initiating mediation of the dispute.

The rules adopted by the board of trustees shall provide that the client's failure to request arbitration within 30 days after receipt of notice from the attorney shall be deemed a waiver of the client's right to arbitration under the provisions of this article.

(b) If an attorney, or the attorney's assignee, commences an action in any court or any other proceeding and the client is entitled to maintain arbitration under this article, and the dispute is not one to which subdivision (b) of Section 6200 applies, the client may stay the action or other proceeding by serving and filing a request for arbitration in accordance with the rules established by the board of trustees pursuant to subdivision (a) of Section

6200. The request for arbitration shall be served and filed prior to the filing of an answer in the action or equivalent response in the other proceeding; failure to so request arbitration prior to the filing of an answer or equivalent response shall be deemed a waiver of the client's right to arbitration under the provisions of this article if notice of the client's right to arbitration was given pursuant to subdivision (a).

(c) Upon filing and service of the request for arbitration, the action or other proceeding shall be automatically stayed until the award of the arbitrators is issued or the arbitration is otherwise terminated. The stay may be vacated in whole or in part, after a hearing duly noticed by any party or the court, if and to the extent the court finds that the matter is not appropriate for arbitration under the provisions of this article. The action or other proceeding may thereafter proceed subject to the provisions of Section 6204.

(d) A client's right to request or maintain arbitration under the provisions of this article is waived by the client commencing an action or filing any pleading seeking either of the following:

(1) Judicial resolution of a fee dispute to which this article applies.

(2) Affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct.

(e) If the client waives the right to arbitration under this article, the parties may stipulate to set aside the waiver and to proceed with arbitration.

SEC. 57. Section 6203 of the Business and Professions Code is amended to read:

6203. (a) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy. The award shall not include any award to either party for costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding, notwithstanding any contract between the parties providing for such an award or costs or attorney's fees. However, the filing fee paid may be allocated between the parties by the arbitrators. This section shall not preclude an award of costs or attorney's fees to either party by a court pursuant to subdivision (c) of this section or of subdivision (d) of Section 6204. The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver to each of the parties with the award, an original declaration of service of the award.

Evidence relating to claims of malpractice and professional misconduct, shall be admissible only to the extent that those claims bear upon the fees, costs, or both, to which the attorney is entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying the claim. Nothing in this section shall be construed to prevent the arbitrators from awarding the client a refund of unearned fees, costs, or both previously paid to the attorney.

(b) Even if the parties to the arbitration have not agreed in writing to be bound, the arbitration award shall become binding upon the passage of 30 days after service of notice of the award, unless a party has, within the 30 days, sought a trial after arbitration pursuant to Section 6204. If an action

has previously been filed in any court, any petition to confirm, correct, or vacate the award shall be to the court in which the action is pending, and may be served by mail on any party who has appeared, as provided in Chapter 4 (commencing with Section 1003) of Title 14 of Part 2 of the Code of Civil Procedure; otherwise it shall be in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure. If no action is pending in any court, the award may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the arbitration award, but otherwise in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(c) Neither party to the arbitration may recover costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding with the exception of the filing fee paid pursuant to subdivision (a) of this section. However, a court confirming, correcting, or vacating an award under this section may award to the prevailing party reasonable fees and costs incurred in obtaining confirmation, correction, or vacation of the award including, if applicable, fees and costs on appeal. The party obtaining judgment confirming, correcting, or vacating the award shall be the prevailing party except that, without regard to consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner provided by the rules adopted by the board of trustees, that party shall not be entitled to attorney's fees or costs upon confirmation, correction, or vacation of the award.

(d) (1) In any matter arbitrated under this article in which the award is binding or has become binding by operation of law or has become a judgment either after confirmation under subdivision (c) or after a trial after arbitration under Section 6204, or in any matter mediated under this article, if: (A) the award, judgment, or agreement reached after mediation includes a refund of fees or costs, or both, to the client and (B) the attorney has not complied with that award, judgment, or agreement the State Bar shall enforce the award, judgment, or agreement by placing the attorney on involuntary inactive status until the refund has been paid.

(2) The State Bar shall provide for an administrative procedure to determine whether an award, judgment, or agreement should be enforced pursuant to this subdivision. An award, judgment, or agreement shall be so enforced if:

(A) The State Bar shows that the attorney has failed to comply with a binding fee arbitration award, judgment, or agreement rendered pursuant to this article.

(B) The attorney has not proposed a payment plan acceptable to the client or the State Bar.

However, the award, judgment, or agreement shall not be so enforced if the attorney has demonstrated that he or she (i) is not personally responsible for making or ensuring payment of the refund, or (ii) is unable to pay the refund.

(3) An attorney who has failed to comply with a binding award, judgment, or agreement shall pay administrative penalties or reasonable costs, or both, as directed by the State Bar. Penalties imposed shall not exceed 20 percent of the amount to be refunded to the client or one thousand dollars (\$1,000), whichever is greater. Any penalties or costs, or both, that are not paid shall be added to the membership fee of the attorney for the next calendar year.

(4) The board shall terminate the inactive enrollment upon proof that the attorney has complied with the award, judgment, or agreement and upon payment of any costs or penalties, or both, assessed as a result of the attorney's failure to comply.

(5) A request for enforcement under this subdivision shall be made within four years from the date (A) the arbitration award was mailed, (B) the judgment was entered, or (C) the date the agreement was signed. In an arbitrated matter, however, in no event shall a request be made prior to 100 days from the date of the service of a signed copy of the award. In cases where the award is appealed, a request shall not be made prior to 100 days from the date the award has become final as set forth in this section.

SEC. 58. Section 6204 of the Business and Professions Code is amended to read:

6204. (a) The parties may agree in writing to be bound by the award of arbitrators appointed pursuant to this article at any time after the dispute over fees, costs, or both, has arisen. In the absence of such an agreement, either party shall be entitled to a trial after arbitration if sought within 30 days, pursuant to subdivisions (b) and (c), except that if either party willfully fails to appear at the arbitration hearing in the manner provided by the rules adopted by the board of trustees, that party shall not be entitled to a trial after arbitration. The determination of willfulness shall be made by the court. The party who failed to appear at the arbitration shall have the burden of proving that the failure to appear was not willful. In making its determination, the court may consider any findings made by the arbitrators on the subject of a party's failure to appear.

(b) If there is an action pending, the trial after arbitration shall be initiated by filing a rejection of arbitration award and request for trial after arbitration in that action within 30 days after service of notice of the award. If the rejection of arbitration award has been filed by the plaintiff in the pending action, all defendants shall file a responsive pleading within 30 days following service upon the defendant of the rejection of arbitration award and request for trial after arbitration. If the rejection of arbitration award has been filed by the defendant in the pending action, all defendants shall file a responsive pleading within 30 days after the filing of the rejection of arbitration award and request for trial after arbitration. Service may be made by mail on any party who has appeared; otherwise service shall be made in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Upon service and filing of the rejection of arbitration award, any stay entered pursuant to Section 6201 shall be vacated, without the necessity of a court order.

(c) If no action is pending, the trial after arbitration shall be initiated by the commencement of an action in the court having jurisdiction over the amount of money in controversy within 30 days after service of notice of the award. After the filing of such an action, the action shall proceed in accordance with the provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure, concerning civil actions generally.

(d) The party seeking a trial after arbitration shall be the prevailing party if that party obtains a judgment more favorable than that provided by the arbitration award, and in all other cases the other party shall be the prevailing party. The prevailing party may, in the discretion of the court, be entitled to an allowance for reasonable attorney's fees and costs incurred in the trial after arbitration, which allowance shall be fixed by the court. In fixing the attorney's fees, the court shall consider the award and determinations of the arbitrators, in addition to any other relevant evidence.

(e) Except as provided in this section, the award and determinations of the arbitrators shall not be admissible nor operate as collateral estoppel or res judicata in any action or proceeding.

SEC. 59. Section 6206 of the Business and Professions Code is amended to read:

6206. The time for filing a civil action seeking judicial resolution of a dispute subject to arbitration under this article shall be tolled from the time an arbitration is initiated in accordance with the rules adopted by the board of trustees until (a) 30 days after receipt of notice of the award of the arbitrators, or (b) receipt of notice that the arbitration is otherwise terminated, whichever comes first. Arbitration may not be commenced under this article if a civil action requesting the same relief would be barred by any provision of Title 2 (commencing with Section 312) of Part 2 of the Code of Civil Procedure; provided that this limitation shall not apply to a request for arbitration by a client, pursuant to the provisions of subdivision (b) of Section 6201, following the filing of a civil action by the attorney.

SEC. 60. Section 6222 of the Business and Professions Code is amended to read:

6222. A recipient of funds allocated pursuant to this article annually shall submit a financial statement to the State Bar, including an audit of the funds by a certified public accountant or a fiscal review approved by the State Bar, a report demonstrating the programs on which they were expended, a report on the recipient's compliance with the requirements of Section 6217, and progress in meeting the service expansion requirements of Section 6221.

The Board of Trustees of the State Bar shall include a report of receipts of funds under this article, expenditures for administrative costs, and disbursements of the funds, on a county-by-county basis, in the annual report of State Bar receipts and expenditures required pursuant to Section 6145.

SEC. 61. Section 6225 of the Business and Professions Code is amended to read:

6225. The Board of Trustees of the State Bar shall adopt the regulations and procedures necessary to implement this article and to ensure that the

funds allocated herein are utilized to provide civil legal services to indigent persons, especially underserved client groups such as but not limited to the elderly, the disabled, juveniles, and non-English-speaking persons.

In adopting the regulations the Board of Trustees shall comply with the following procedures:

(a) The board shall publish a preliminary draft of the regulations and procedures, which shall be distributed, together with notice of the hearings required by subdivision (b), to commercial banking institutions, to members of the State Bar, and to potential recipients of funds.

(b) The board shall hold at least two public hearings, one in southern California and one in northern California where affected and interested parties shall be afforded an opportunity to present oral and written testimony regarding the proposed regulations and procedures.

SEC. 62. Section 6226 of the Business and Professions Code is amended to read:

6226. The program authorized by this article shall become operative only upon the adoption of a resolution by the Board of Trustees of the State Bar stating that regulations have been adopted pursuant to Section 6225 which conform the program to all applicable tax and banking statutes, regulations, and rulings.

SEC. 63. Section 6231 of the Business and Professions Code is amended to read:

6231. (a) The board shall establish and administer an Attorney Diversion and Assistance Program, and shall establish a committee to oversee the operation of the program. The committee shall be comprised of 12 members who shall be appointed as follows:

(1) Six members appointed by the Board of Trustees, including the following:

(A) Two members who are licensed mental health professionals with knowledge and expertise in the identification and treatment of substance abuse and mental illness.

(B) One member who is a physician with knowledge and expertise in the identification and treatment of alcoholism and substance abuse.

(C) One member of the board of directors of a statewide nonprofit organization established for the purpose of assisting lawyers with alcohol or substance abuse problems, which has been in continuous operation for a minimum of five years.

(D) Two members who are attorneys, at least one of which is in recovery and has at least five years of continuous sobriety.

(2) Four members appointed by the Governor, including the following:

(A) Two members who are attorneys.

(B) Two members of the public.

(3) One member of the public appointed by the Speaker of the Assembly.

(4) One member of the public appointed by the Senate Committee on Rules.

(b) Committee members shall serve terms of four years, and may be reappointed as many times as desired. The board shall stagger the terms of the initial members appointed.

(c) Subject to the approval of the board, the committee may adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the program.

SEC. 64. Section 6238 of the Business and Professions Code is amended to read:

6238. The committee shall report to the Board of Trustees and to the Legislature not later than March 1, 2003, and annually thereafter, on the implementation and operation of the program. The report shall include, but is not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance, and annual expenditures related to the program.