

AMENDED IN ASSEMBLY JUNE 2, 2016

AMENDED IN ASSEMBLY MAY 27, 2016

AMENDED IN ASSEMBLY APRIL 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2878

**Introduced by Committee on Judiciary (Assembly Members
Mark Stone (Chair), Alejo, Chau, Chiu, Cristina Garcia, and
Holden)**

February 25, 2016

An act to amend Sections 6001, 6011, *6013.3, 6013.5*, 6015, 6016, 6019, 6021, 6022, 6026.7, *6030*, 6060.2, 6060.25, 6086.5, and 6140 of, *to amend, repeal, and add Section 6145 of*, to add ~~Section 6140.56~~, *Sections 6001.3, 6134, and 6140.56 to, to add and repeal Section 6075.6 of*, and to repeal Sections 6008.5, 6009.7, 6012, 6013.2, 6018, and 6026.5 of, the Business and Professions Code, relating to the State Bar.

LEGISLATIVE COUNSEL'S DIGEST

AB 2878, as amended, Committee on Judiciary. Attorneys: State Bar: board of trustees.

The State Bar Act provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation governed by a board of trustees. That act requires 6 members of the 19-member board to be attorneys elected from State Bar Districts. That act provides that the State Bar is subject to the Bagley-Keene Open Meeting Act and the California Public Records Act, as specified. That act, until January 1, 2017, requires the board to charge an annual membership fee for active members of up to \$315 for 2016. *The act requires the board of trustees to elect or select the president, vice president, and*

treasurer of the State Bar, as specified. Existing law prohibits the Legislature, when the board of trustees places a charge upon or otherwise makes available all or any portion of the income or revenue from membership fees for the payment of security of an obligation of the State Bar and so long as any obligation remains unpaid, from reducing the maximum membership fee below the maximum in effect at the time the obligation is created or incurred and provides that this provision constitutes a covenant to the holder of such an obligation. *The act requires the board of trustees to contract with the California State Auditor's Office to conduct a performance audit of the State Bar's operations, as specified.* That act establishes the State Bar Court to act in the place of the board of trustees in the determination of disciplinary proceedings, as specified. That act authorizes the State Bar to raise additional revenue by any lawful means, including, but not limited to, the creation of foundations or not-for-profit corporations. That act requires the board to establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by dishonest conduct of active members of the State Bar, as specified.

This bill would provide that the board of trustees consist of no more than 19 members and no fewer than 13 members and would require the board to transition to a 13-member board, as specified. The bill would remove from the board attorney members elected from State Bar Districts and would make conforming changes. The bill would require each member of the board appointed after December 31, 2016, to have demonstrated educational or experience expertise, or both, in one of 5 specified areas, including public finance. ~~This~~ *The bill would require that a minimum of 7 members of the board be public members, as appointed by specified entities, and would provide that no motion of the board can be approved unless a majority of the public members approve the motion. The bill would require the Supreme Court to select from its appointed members a president and vice president of the State Bar instead of the board of trustees electing a president and vice president.*

This bill would create the California State Bar Governance Commission and would provide that it consists of 9 members to be appointed as specified. The bill would require the commission to evaluate all issues of governance of the State Bar, including, but not limited to, a full review of other states with attorney regulatory structures that are different than the State Bar, in order to recommend the best governance structure for the State Bar and to ensure that

protection of the public is the highest priority of the State Bar in its regulatory duties. The bill would require the commission to provide a report to the Governor, the Chief Justice of the California Supreme Court, and the Senate and Assembly Committees on Judiciary by April 30, 2017. The bill would repeal these provisions as of January 1, 2018.

This bill would require the Chief Justice of the California Supreme Court to appoint a State Bar enforcement program monitor prior to March 31, 2017, and would require the program enforcement monitor to evaluate the disciplinary system and procedures of the State Bar, as specified. The bill would require the program enforcement monitor to submit an initial report no later than October 1, 2019, and to issue a final report before March 31, 2020. The bill would make these provisions inoperative on March 31, 2020, and would repeal the provision as of January 1, 2021.

The bill would require the board of trustees to contract with the California State Auditor's Office for an audit of its revenues, expenditures, reserves, and its financial statements for each fiscal year and would require the California State Auditor, for the performance audit due in January 2017, to review all of the State Bar's expenses, including, but not limited to, executive salaries.

This bill would provide that access to records of the State Bar Court is subject to the rules and laws applicable to the judiciary instead of the California Public Records Act and would exempt the State Bar Court from the Bagley-Keene Open Meeting Act.

This bill, until January 1, 2018, would require the board to charge an annual membership fee in a specified amount for 2017. The bill would repeal the provision prohibiting the Legislature from reducing the maximum membership fee and the provision authorizing the State Bar to raise additional revenue by any lawful means. The bill would specify that the State Bar is empowered to raise additional revenue by any lawful means and would prohibit the State Bar from creating any foundation or nonprofit corporations, as specified. The bill would require the State Bar to conduct a thorough analysis of the Client Security Fund and to submit a report to the Legislature on its analysis of that fund by March 15, 2017, as specified. The bill would state various findings and declarations of the Legislature.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the

interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The protection of the public is required, by statute, to be the
4 highest priority of the State Bar of California and must be the
5 paramount focus of the State Bar, its employees, and, most
6 importantly, its board of trustees. All other duties and activities of
7 the State Bar are ancillary to its regulatory oversight of the state’s
8 more than 250,000 attorneys, over 185,000 of whom are active
9 members.

10 (b) Throughout its history, the State Bar has been the subject
11 of substantial controversies, including allegations of serious fiscal
12 and management improprieties, and most recently failure to
13 properly protect the public against the unauthorized practice of
14 law, including allowing hundreds of complaints to languish in a
15 drawer.

16 (c) In May 2015, the California State Auditor released its
17 biannual performance audit of the State Bar, reviewing the State
18 Bar’s backlog of discipline cases and its recent \$75,000,000
19 purchase and renovation of a building in Los Angeles at three times
20 the cost originally estimated and requiring a loan against the Public
21 Protection Fund, which is designed to be an emergency fund to
22 protect the public in the event of a financial emergency. The audit
23 uncovered significant, questionable decisions made by the State
24 Bar in the handling of both matters, including that the State Bar
25 had not fully or consistently reported its backlog of discipline cases
26 and that, in order to reduce its backlog of discipline cases, the State
27 Bar made questionable choices, potentially causing “significant
28 risk to the public.”

29 (d) Most recently and without consultation with the Legislature,
30 the State Bar chose to replace the loan on the Los Angeles building,
31 along with a brand new loan for updating its San Francisco

1 building, with a securitization on future members dues, potentially
2 tying the hands of the Legislature in setting future dues amounts.

3 (e) As a result of the troubling findings of the audit, the
4 Legislature, as part of the 2015 State Bar dues legislation, imposed
5 important new preliminary reforms on the State Bar. First, the
6 Legislature mandated that the State Bar be subject to both the
7 California Public Records Act and the Bagley-Keene Open
8 Meetings Act. These good government reforms help ensure the
9 integrity, transparency, and accountability of the State Bar. Second,
10 the Legislature directed the California State Auditor to conduct a
11 full financial audit of the State Bar, which is due on May 15, 2016.
12 Finally, the State Bar must develop a workforce plan for its attorney
13 discipline system and a spending plan to determine the level for
14 dues to recommend to the Legislature, which are both due on May
15 15, 2016. These reports should help inform the Legislature
16 regarding the appropriate actions to take in its oversight
17 responsibility of the State Bar and its own determination of the
18 proper dues amount.

19 (f) In 2011, the Legislature directed the State Bar to establish
20 a Governance in the Public Interest Task Force to make
21 recommendations to the Governor, the Supreme Court, and the
22 Legislature every three years, beginning May 15, 2014, for, among
23 other things, enhancing the protection of the public and ensuring
24 that protection of the public is the highest priority in the licensing,
25 regulation, and discipline of attorneys, to be reviewed by the
26 Assembly and Senate Committees on Judiciary in their regular
27 consideration of the annual State Bar dues measure. That first
28 report is now two years overdue and, although the Governance in
29 the Public Interest Task Force finally began holding meetings this
30 year, it appears that this already long overdue report will not be
31 completed during this legislative session.

32 (g) It is the intent of the Legislature, in fulfilling its important
33 oversight responsibility over the State Bar and the proper amount
34 State Bar members must pay in annual dues, that this bill serve as
35 the vehicle to implement possible recommendations for
36 substantially improving the operations, effectiveness, and efficiency
37 of the State Bar based on the 2016 California State Auditor's audit
38 of the State Bar, along with the State Bar's discipline workforce
39 and spending plans and any draft Governance Task Force report
40 or other information, in order to ensure that the dues are the

1 appropriate amount, that the State Bar becomes more accountable
 2 to the public, and that public protection is, and remains, the State
 3 Bar’s top priority.

4 SEC. 2. Section 6001 of the Business and Professions Code is
 5 amended to read:

6 6001. The State Bar of California is a public corporation. It is
 7 hereinafter designated as the State Bar.

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

- 11 (a) Make contracts.
- 12 (b) Borrow money, contract debts, issue bonds, notes and
 13 debentures and secure the payment or performance of its
 14 obligations.
- 15 (c) Own, hold, use, manage and deal in and with real and
 16 personal property.
- 17 (d) Construct, alter, maintain and repair buildings and other
 18 improvements to real property.
- 19 (e) Purchase, lease, obtain options upon, acquire by gift, bequest,
 20 devise or otherwise, any real or personal property or any interest
 21 therein.
- 22 (f) Sell, lease, exchange, convey, transfer, assign, encumber,
 23 pledge, dispose of any of its real or personal property or any
 24 interest therein, including without limitation all or any portion of
 25 its income or revenues from membership fees paid or payable by
 26 members.
- 27 (g) Do all other acts incidental to the foregoing or necessary or
 28 expedient for the administration of its affairs and the attainment
 29 of its purposes.

30 Pursuant to those powers enumerated in subdivisions (a) to (g),
 31 inclusive, it is recognized that the State Bar has authority to raise
 32 revenue in addition to that provided for in Section 6140 and other
 33 statutory provisions. *The State Bar is empowered to raise that*
 34 *additional revenue by any lawful means. However, as of December*
 35 *31, 2016, the State Bar shall not create any foundations or*
 36 *nonprofit corporations.*

37 The State Bar shall conspicuously publicize to its members in
 38 the annual dues statement and other appropriate communications,
 39 including its Web site and electronic communications, that its
 40 members have the right to limit the sale or disclosure of member

1 information not reasonably related to regulatory purposes. In those
2 communications the State Bar shall note the location of the State
3 Bar's privacy policy, and shall also note the simple procedure by
4 which a member may exercise his or her right to prohibit or restrict,
5 at the member's option, the sale or disclosure of member
6 information not reasonably related to regulatory purposes. On or
7 before May 1, 2005, the State Bar shall report to the Assembly
8 and Senate Committees on Judiciary regarding the procedures that
9 it has in place to ensure that members can appropriately limit the
10 use of their member information not reasonably related to
11 regulatory purposes, and the number of members choosing to
12 utilize these procedures.

13 No law of this state restricting, or prescribing a mode of
14 procedure for the exercise of powers of state public bodies or state
15 agencies, or classes thereof, including, but not by way of limitation,
16 the provisions contained in Division 3 (commencing with Section
17 11000), Division 4 (commencing with Section 16100), and Part 1
18 (commencing with Section 18000) and Part 2 (commencing with
19 Section 18500) of Division 5, of Title 2 of the Government Code,
20 shall be applicable to the State Bar, unless the Legislature expressly
21 so declares. Notwithstanding the foregoing or any other law,
22 pursuant to Sections 6026.7 and 6026.11, the State Bar is subject
23 to the California Public Records Act (Chapter 3.5 (commencing
24 with Section 6250) of Division 7 of Title 1 of the Government
25 Code) and, commencing April 1, 2016, the Bagley-Keene Open
26 Meeting Act (Article 9 (commencing with Section 11120) of
27 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
28 Code).

29 *SEC. 3. Section 6001.3 is added to the Business and Professions*
30 *Code, to read:*

31 *6001.3. (a) There is hereby created, as of January 1, 2017,*
32 *the California State Bar Governance Commission, consisting of*
33 *nine members, who shall be appointed by February 1, 2017, and*
34 *selected as follows:*

35 *(1) Two members appointed by the Governor.*

36 *(2) Three members appointed by the Chief Justice of the*
37 *California Supreme Court.*

38 *(3) Two members appointed by the Speaker of the Assembly.*

39 *(4) Two members appointed by the Senate Committee on Rules.*

1 (b) *The chairperson of the commission shall be elected by the*
2 *members of the commission and shall preside at meetings of the*
3 *commission.*

4 (c) *Appointed members of the commission shall not receive a*
5 *salary, but shall be entitled to a per diem allowance of fifty dollars*
6 *(\$50) for each day's attendance at a meeting of the commission,*
7 *not to exceed three hundred dollars (\$300) in any month, and*
8 *reimbursement for expenses incurred in the performance of their*
9 *duties under this chapter, including travel and other necessary*
10 *expenses.*

11 (d) *The commission may adopt bylaws for the regulation of its*
12 *affairs and the conduct of its business.*

13 (e) *The commission shall meet on the call of the chairperson,*
14 *at the request of a majority of the members, or at the request of*
15 *the California Chief Justice of the Supreme Court. A majority of*
16 *all members of the commission constitutes a quorum for the*
17 *transaction of business.*

18 (f) *The State Bar shall furnish all administrative assistance*
19 *required by the commission.*

20 (g) *The commission shall evaluate all issues of governance of*
21 *the State Bar, including, but not limited to, a full review of other*
22 *states with attorney regulatory structures that are different than*
23 *the State Bar and a possible separation of the State Bar's*
24 *regulatory and trade association functions, in order to recommend*
25 *the best governance structure for the State Bar to ensure that the*
26 *protection of the public is the highest priority in the licensing,*
27 *regulation, and discipline of attorneys and that the State Bar*
28 *appropriately functions as a government agency subject to laws*
29 *that apply to similar regulatory bodies. The commission shall, by*
30 *April 30, 2017, provide a report to the Governor, the Chief Justice*
31 *of the California Supreme Court, and the Senate and Assembly*
32 *Committees on Judiciary on its recommendations, along with an*
33 *implementation plan for those recommendations. If the commission*
34 *does not reach a consensus on all of the recommendations in its*
35 *report, the dissenting members of the commission may prepare*
36 *and submit a dissenting report to the same entities described in*
37 *this subdivision.*

38 ~~SEC. 3.~~

39 SEC. 4. Section 6008.5 of the Business and Professions Code
40 is repealed.

1 ~~SEC. 4.~~

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

4 ~~SEC. 5.~~

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

7 6011. (a) The board shall consist of no more than 19 members
8 and no fewer than 13 members.

9 (b) It is the intent of the Legislature that the board consist of no
10 more than 19 members and no fewer than 13 members during the
11 period of transition from a 19-member board to a 13-member
12 board. It is the intent of the Legislature that the board decrease its
13 size without shortening, lengthening, or abolishing terms
14 commencing prior to December 31, 2016, with the ultimate goal
15 of instituting a 13-member board no later than October 31, 2019.
16 It is the intent of the Legislature that this transition occur by the
17 expiration of the terms of the elected members who are serving
18 on the board as of December 31, 2016.

19 (c) Each member appointed after December 31, 2016, shall have
20 demonstrated educational or experience expertise, or both, in at
21 least one of the following:

22 (1) Public finance.

23 (2) Public administration.

24 (3) Business or financial management.

25 (4) State government, particularly prior regulatory experience.

26 (5) Legal ethics.

27 ~~SEC. 6.~~

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

30 ~~SEC. 7.~~

31 *SEC. 8.* Section 6013.2 of the Business and Professions Code
32 is repealed.

33 *SEC. 9.* *Section 6013.3 of the Business and Professions Code*
34 *is amended to read:*

35 6013.3. (a) One attorney member of the board shall be
36 appointed by the Senate Committee on ~~Rules and one attorney~~
37 ~~member shall be appointed by the Speaker of the Assembly.~~ *Rules.*

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

1 SEC. 10. Section 6013.5 of the Business and Professions Code
2 is amended to read:

3 ~~6013.5. Notwithstanding any other provision of law, six~~
4 ~~(a) Effective January 1, 2017, a minimum of seven members of~~
5 ~~the board shall be members of the public who have never been~~
6 ~~members of the State Bar or admitted to practice before any court~~
7 ~~in the United States. They shall be appointed through 1982 by the~~
8 ~~Governor, subject to the confirmation of the Senate.~~

9 Each
10 (b) ~~Each of such these~~ members shall serve for a term of three
11 years, commencing at the conclusion of the annual meeting next
12 ~~succeeding his appointment, except that for the initial term after~~
13 ~~enactment of this section, two shall serve for one year, two for two~~
14 ~~years, and the other two for three years, as determined by lot. or~~
15 ~~her appointment.~~

16 ~~In 1983~~
17 (c) *Effective January 1, 2017, one public member shall be*
18 *appointed by the Senate Committee on Rules and one two public*
19 *member members shall be appointed by the Speaker of the*
20 *Assembly.*

21 ~~For each of the years, 1984 and 1985, two~~
22 (d) *Four public members shall be appointed by the Governor,*
23 *subject to the confirmation of the Senate.*

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

27 (f) *It is the intent of the Legislature that the increase of public*
28 *members appointed by the Speaker of the Assembly, from one to*
29 *two, as required by this measure adding this subdivision, occur*
30 *at the expiration of the terms of the attorney members who are*
31 *appointed by the Speaker of the Assembly and serving on the board*
32 *as of December 31, 2016.*

33 ~~SEC. 8.~~
34 SEC. 11. Section 6015 of the Business and Professions Code
35 is amended to read:

36 6015. No person is eligible for attorney membership on the
37 board unless all of the following conditions are satisfied:

- 38 (a) He or she is an active member of the State Bar.
- 39 (b) Either:

1 (1) Prior to October 31, 2019, if elected, he or she maintains
2 his or her principal office for the practice of law within the State
3 Bar district from which he or she is elected.

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

7 (c) If newly appointed after December 31, 2016, he or she
8 satisfies the requirements of subdivision (c) of Section 6011.

9 ~~SEC. 9.~~

10 *SEC. 12.* Section 6016 of the Business and Professions Code
11 is amended to read:

12 6016. The term of office of each attorney member of the board
13 shall commence at the conclusion of the annual meeting next
14 succeeding his or her election or appointment, and he or she shall
15 hold office until his or her successor is elected or appointed and
16 qualified. For the purposes of this section, the time intervening
17 between any two successive annual meetings shall be deemed to
18 be one year.

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

22 ~~SEC. 10.~~

23 *SEC. 13.* Section 6018 of the Business and Professions Code
24 is repealed.

25 ~~SEC. 11.~~

26 *SEC. 14.* Section 6019 of the Business and Professions Code
27 is amended to read:

28 6019. Each place upon the board for which a member is to be
29 appointed shall for the purposes of the appointment be deemed a
30 separate office.

31 ~~SEC. 12.~~

32 *SEC. 15.* Section 6021 of the Business and Professions Code
33 is amended to read:

34 6021. (a) (1) ~~Within~~ *The Supreme Court shall select from its*
35 *appointed members a president and a vice president to serve in*
36 *the absence of the president.*

37 (2) *Within* the period of 90 days next preceding the annual
38 meeting, the board, at a meeting called for that purpose, shall ~~elect~~
39 ~~the president, vice president, and~~ *select the* treasurer for the ensuing

1 year. ~~The president, the vice president, and the treasurer shall be~~
2 ~~elected from among all members of the board.~~

3 ~~(2)~~

4 (3) ~~The newly elected president, vice president, and treasurer~~
5 ~~shall assume the duties of their respective offices at the conclusion~~
6 ~~of the annual meeting following their election.~~ *appointment or*
7 *selection.*

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

11 (c) Notwithstanding the provisions of Section 6011 regarding
12 a 13-member board, if the president is elected from among those
13 members of the board whose terms on the board expire by that
14 year and has not been reappointed to another term under Section
15 6013.1 or 6013.5, the president shall serve as a 14th member of
16 the board during his or her one-year term, and he or she may vote.

17 ~~SEC. 13.~~

18 *SEC. 16.* Section 6022 of the Business and Professions Code
19 is amended to read:

20 6022. The officers of the State Bar shall be selected annually
21 by the board and need not be a member of the State Bar.

22 ~~SEC. 14.~~

23 *SEC. 17.* Section 6026.5 of the Business and Professions Code,
24 as added by Section 3 of Chapter 537 of the Statutes of 2015, is
25 repealed.

26 ~~SEC. 15.~~

27 *SEC. 18.* Section 6026.7 of the Business and Professions Code,
28 as added by Section 5 of Chapter 537 of the Statutes of 2015, is
29 amended to read:

30 6026.7. (a) The State Bar is subject to the Bagley-Keene Open
31 Meeting Act (Article 9 (commencing with Section 11120) of
32 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
33 Code) and all meetings of the State Bar are subject to the
34 Bagley-Keene Open Meeting Act.

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

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

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

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

9 *SEC. 19. Section 6030 of the Business and Professions Code*
10 *is amended to read:*

11 6030. (a) The board shall be charged with the executive
12 function of the State Bar and the enforcement of the provisions of
13 this chapter. ~~The~~

14 (b) ~~The~~ violation or threatened violation of any provision of
15 Articles 7 (commencing with Section 6125) and 9 (commencing
16 with Section 6150) of this chapter may be enjoined in a civil action
17 brought in the superior court by the State Bar and no undertaking
18 shall be required of the State Bar.

19 (c) *No motion of the board can be approved unless a majority*
20 *of the public members approve the motion.*

21 ~~SEC. 16.~~

22 *SEC. 20. Section 6060.2 of the Business and Professions Code*
23 *is amended to read:*

24 6060.2. (a) All investigations or proceedings conducted by
25 the State Bar concerning the moral character of an applicant shall
26 be confidential and shall not be disclosed pursuant to any state
27 law, including, but not limited to, the California Public Records
28 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
29 of Title 1 of the Government Code) unless the applicant, in writing,
30 waives the confidentiality.

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

33 (1) A lawfully issued subpoena.

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

38 ~~SEC. 17.~~

39 *SEC. 21. Section 6060.25 of the Business and Professions Code*
40 *is amended to read:*

1 6060.25. (a) Notwithstanding any other law, any identifying
2 information submitted by an applicant to the State Bar for
3 admission and a license to practice law and all State Bar admission
4 records, including, but not limited to, bar examination scores, law
5 school grade point average (GPA), undergraduate GPA, Law
6 School Admission Test scores, race or ethnicity, and any
7 information contained within the State Bar Admissions database
8 or any file or other data created by the State Bar with information
9 submitted by the applicant that may identify an individual
10 applicant, other than information described in subdivision (b), shall
11 be confidential and shall not be disclosed pursuant to any state
12 law, including, but not limited to, the California Public Records
13 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
14 of Title 1 of the Government Code).

15 (b) This section does not prohibit the disclosure of any of the
16 following:

17 (1) The names of applicants who have passed any examination
18 administered, given, or prescribed by the Committee of Bar
19 Examiners.

20 (2) Information that is provided at the request of an applicant
21 to another jurisdiction where the applicant is seeking admission
22 to the practice of law.

23 (3) Information provided to a law school that is necessary for
24 the purpose of the law school's compliance with accreditation or
25 regulatory requirements.

26 (4) Information provided to the National Conference of Bar
27 Examiners or a successor nonprofit organization in connection to
28 the State Bar's administration of any examination.

29 (c) Disclosure of any of the information in paragraphs (2) to
30 (4), inclusive, of subdivision (b) shall not constitute a waiver under
31 Section 6254.5 of the Government Code of the exemption from
32 disclosure provided for in subdivision (a) of this section.

33 *SEC. 22. Section 6075.6 is added to the Business and*
34 *Professions Code, to read:*

35 *6075.6. (a) (1) The Chief Justice of the California Supreme*
36 *Court shall appoint a State Bar enforcement program monitor*
37 *prior to March 31, 2017. The Chief Justice of the California*
38 *Supreme Court shall advertise the availability of the position and*
39 *conduct interviews of candidates for the position. The applicant*
40 *for the position shall have investigative experience, shall be*

1 *familiar with California laws and procedures, and, preferably,*
2 *shall be familiar with the rules and procedures of the State Bar*
3 *lawyer discipline system and relevant administrative procedures.*
4 *The monitor may be a state employee or his or her services may*
5 *be provided pursuant to contract.*

6 *(2) The Chief Justice of the California Supreme Court shall*
7 *supervise the monitor and may terminate or dismiss him or her*
8 *from this position.*

9 *(b) (1) The enforcement program monitor shall monitor and*
10 *evaluate the disciplinary system and procedures of the State Bar.*
11 *The enforcement program monitor shall make his or her highest*
12 *priority the reform and reengineering of the State Bar's*
13 *enforcement program and operations and the improvement of the*
14 *overall efficiency of the State Bar's disciplinary system so that the*
15 *State Bar is successfully and consistently protecting the public.*

16 *(2) This monitoring duty shall include, but not be limited to, the*
17 *prioritization of cases most impacting public protection, improving*
18 *the timeframe for the handling of complaints and in the rendering*
19 *of initial decisions on complaints, the efficiency of the system, the*
20 *fairness and courtesy given to complainants, the adequacy of the*
21 *staffing and the budget allocated to the discipline section of the*
22 *State Bar, the reduction of the complaint backlog, the consistency*
23 *in the application of sanctions or discipline imposed, the*
24 *implementation of laws affecting discipline and the State Bar's*
25 *operations, disciplinary standards and rules, staff concerns*
26 *regarding disciplinary matters or procedures, and the State Bar's*
27 *cooperation with other governmental entities charged with*
28 *enforcing related laws and regulations that affect members of the*
29 *State Bar.*

30 *(3) The monitor shall exercise no authority over the State Bar's*
31 *discipline operations or staff, however, the State Bar and its staff*
32 *shall cooperate with the program enforcement monitor, and the*
33 *Bar shall provide data, information, and case files as requested*
34 *by the enforcement program monitor to perform all of his or her*
35 *duties. The enforcement program monitor shall have the same*
36 *access to documents as the Chief Justice of the California Supreme*
37 *Court.*

38 *(c) The enforcement program monitor shall submit an initial*
39 *written report of his or her findings and conclusions to the State*
40 *Bar, the Supreme Court, and the Legislature no later than October*

1 1, 2019, and be available to make oral reports to each if requested
 2 to do so. The initial report shall include an analysis of the sources
 3 of information that resulted in each disciplinary action imposed
 4 since January 1, 2016. The monitor may also provide additional
 5 information to either the Supreme Court, the State Bar, or the
 6 Legislature at his or her discretion or at the request of the Supreme
 7 Court, the State Bar, or the Legislature. The program enforcement
 8 monitor shall make his or her reports available to the public or
 9 the media. The monitor shall make every effort to provide the State
 10 Bar with an opportunity to reply to any facts, findings, issues, or
 11 conclusions in his or her reports with which the State Bar may
 12 disagree.

13 (d) The enforcement program monitor shall issue a final report
 14 prior to March 31, 2020.

15 (e) This section shall become inoperative on March 31, 2020,
 16 and as of January 1, 2020, shall be repealed.

17 ~~SEC. 18.~~

18 SEC. 23. Section 6086.5 of the Business and Professions Code
 19 is amended to read:

20 6086.5. The board of trustees shall establish a State Bar Court,
 21 to act in its place and stead in the determination of disciplinary
 22 and reinstatement proceedings and proceedings pursuant to
 23 subdivisions (b) and (c) of Section 6007 to the extent provided by
 24 rules adopted by the board of trustees pursuant to this chapter. In
 25 these proceedings the State Bar Court may exercise the powers
 26 and authority vested in the board of trustees by this chapter,
 27 including those powers and that authority vested in committees
 28 of, or established by, the board, except as limited by rules of the
 29 board of trustees within the scope of this chapter.

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

34 For the purposes of Sections 6007, 6043, 6049, 6049.2, 6050,
 35 6051, 6052, 6077 (excluding the first sentence), 6078, 6080, 6081,
 36 and 6082, "board" includes the State Bar Court.

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

39 The Executive Committee of the State Bar Court may adopt
 40 rules of practice for the conduct of all proceedings within its

1 jurisdiction. These rules may not conflict with the rules of
2 procedure adopted by the board, unless approved by the Supreme
3 Court.

4 *SEC. 24. Section 6134 is added to the Business and Professions*
5 *Code, to read:*

6 *6134. (a) When the Office of the Chief Trial Counsel becomes*
7 *aware of an allegation that a person not licensed to practice law*
8 *in California has practiced or held himself or herself out as*
9 *practicing law or entitled to practice law in the state, the office's*
10 *intake unit shall open a nonattorney complaint against that person*
11 *for evaluation and processing.*

12 *(b) The intake unit shall open a case record in the office's case*
13 *management system with the complaint form received date. The*
14 *complaint form received date shall be the date the State Bar first*
15 *received the complaint. Evaluation and processing of the*
16 *nonattorney complaint shall include, but not be limited to, all of*
17 *the following:*

18 *(1) Creation of a summary of the allegation or allegations in*
19 *the case record and assignment to staff, including inputting staff*
20 *assignment codes into the case management system.*

21 *(2) Identifying the source of the complaint.*

22 *(3) Identifying the relevant practice area of law, such as*
23 *immigration, loan modification, or debt resolution, and recording*
24 *the relevant practice area of law in the case record.*

25 *(4) Identifying whether the allegations include potential identity*
26 *theft of a licensed attorney's identity and, if so, contacting the*
27 *potential victim attorney to verify whether the attorney is aware*
28 *of the potential identify theft and whether he or she has notified*
29 *law enforcement.*

30 *(5) Evaluating the nonattorney complaint for unauthorized*
31 *practice of law allegations, which includes opening a*
32 *corresponding attorney complaint case record, if appropriate,*
33 *such as in the case in which the nonattorney complaint also*
34 *identifies a licensed California attorney potentially aiding or*
35 *abetting the person in the unauthorized practice of law.*

36 *(6) Seeking additional information from the complainant or*
37 *other sources, such as the Internet, when the nonattorney complaint*
38 *does not provide specific or sufficient facts to establish that the*
39 *unauthorized practice of law may have occurred.*

1 (7) *Determining whether to forward the complaint to the*
2 *enforcement unit for investigation.*

3 (c) *If the nonattorney complaint sufficiently alleges an*
4 *unauthorized practice of law violation, the intake unit shall do*
5 *both of the following:*

6 (1) *Forward the nonattorney complaint to the enforcement unit*
7 *for further action.*

8 (2) *Refer the matter to law enforcement or other appropriate*
9 *agency for consideration of criminal or other enforcement action,*
10 *as specified in subdivisions (f) and (g).*

11 (d) *If the nonattorney complaint sufficiently alleges the use of*
12 *“notario,” “notario publico,” or other words or phrases in*
13 *violation of Section 6126.7 or there is other evidence of a violation*
14 *of Section 6126.7, the intake unit shall forward the complaint to*
15 *the enforcement unit for further action.*

16 (e) *If the nonattorney complaint does not sufficiently allege an*
17 *unauthorized practice of law violation or a violation of Section*
18 *6126.7, the intake unit shall do all of the following:*

19 (1) *Notify the complainant in writing of the determination.*

20 (2) *Advise the complainant in writing of the opportunity to seek*
21 *reconsideration of the determination.*

22 (3) *Process the case for closure, including updating the case*
23 *record.*

24 (f) *The intake unit’s staff shall resolve nonattorney complaints*
25 *by either:*

26 (1) *Forwarding the nonattorney complaint to the office’s*
27 *enforcement unit.*

28 (2) *Closing the nonattorney complaint in the intake unit.*

29 (g) (1) *A nonattorney complaint alleging the unauthorized*
30 *practice of law shall be presumed to warrant a law enforcement*
31 *referral to federal, state, or local authorities, such as the United*
32 *States Attorney, the Attorney General, the local district attorney,*
33 *local county counsel, or local city attorney, for criminal or other*
34 *enforcement action.*

35 (2) *After the intake unit forwards a nonattorney complaint, the*
36 *office’s enforcement unit shall make the referral required under*
37 *paragraph (1), where appropriate, and shall coordinate with law*
38 *enforcement, as appropriate, throughout the office’s investigation*
39 *of the nonattorney complaint.*

1 (3) *The intake unit may, where warranted, refer nonattorney*
2 *complaints that do not allege the unauthorized practice of law to*
3 *another regulatory agency, such as the Bureau of Real Estate, the*
4 *Department of Consumer Affairs, the United States Securities and*
5 *Exchange Commission, the Federal Trade Commission, and the*
6 *United States Patent and Trademark Office.*

7 (h) *Staff of the intake unit shall evaluate nonattorney complaints*
8 *and strive to meet all of the following in at least 90 percent of*
9 *nonattorney complaints filed:*

10 (1) *Open a nonattorney complaint case record within five days*
11 *from the complaint form received date, as defined in subdivision*
12 *(b).*

13 (2) *Complete the initial legal review of the nonattorney*
14 *complaint within 20 days from the complaint form received date.*

15 (3) *Process the nonattorney complaint to resolution, which*
16 *means closing the case or forwarding the case for investigation,*
17 *within 60 days from the complaint form received date.*

18 (i) *Staff of the intake unit shall maintain processing activities*
19 *in the nonattorney complaint case record, including the recording*
20 *and tracking of other regulatory agency referrals made in*
21 *connection with a nonattorney complaint.*

22 (j) *All nonattorney complaints forwarded by the intake unit to*
23 *the office's enforcement unit shall be investigated to determine*
24 *whether there is evidence of the unauthorized practice of law or*
25 *any violation of Section 6126.7. There shall be an appropriate law*
26 *enforcement referral upon assignment to a staff member of the*
27 *enforcement unit. Assigned enforcement unit staff shall update any*
28 *law enforcement agency to which the complaint was referred with*
29 *the status and findings of the investigation as it proceeds. Upon*
30 *completion of an investigation, the assigned staff of the enforcement*
31 *unit shall analyze the evidence to determine whether the evidence*
32 *is sufficient to support formal proceedings in superior court.*

33 (k) *Enforcement unit staff shall complete nonattorney complaint*
34 *investigations to resolution by one of the following:*

35 (1) *Filing enforcement proceedings in superior court.*

36 (2) *Issuing a cease and desist letter. Enforcement unit staff may*
37 *issue a cease and desist letter where the unauthorized practice of*
38 *law activity appears isolated in nature and unlikely to recur or*
39 *where it otherwise appears that a cease and desist warning will*
40 *sufficiently address and stop the activity at issue.*

- 1 (3) *Closing the complaint with no further action.*
- 2 (l) *Enforcement unit staff shall investigate nonattorney*
- 3 *complaints adhering to the same backlog time standard applicable*
- 4 *to attorney discipline complaints and shall resolve the complaint*
- 5 *within six months from the complaint form received date.*
- 6 (m) *Intake unit staff and enforcement unit staff shall, as*
- 7 *appropriate, maintain and update processing activities in the*
- 8 *nonattorney case record, as follows:*
- 9 (1) *Record and track the number of superior court proceedings*
- 10 *initiated pursuant to Section 6126.3.*
- 11 (2) *Record and track the number of superior court proceedings*
- 12 *initiated pursuant to Section 6126.4.*
- 13 (3) *Record and track the number of superior court proceedings*
- 14 *initiated pursuant to Section 6126.7.*
- 15 (4) *Record and track the number of superior court proceedings*
- 16 *initiated pursuant to Section 6127.*
- 17 (5) *Record and track the number of law enforcement referrals*
- 18 *made in connection with nonattorney complaints.*
- 19 (6) *Record and track the number of other agency referrals made*
- 20 *in connection with nonattorney complaints.*
- 21 (7) *Record and track the number of cease and desist letters*
- 22 *issued in connection with nonattorney complaints.*
- 23 ~~SEC. 19.~~
- 24 SEC. 25. Section 6140 of the Business and Professions Code
- 25 is amended to read:
- 26 6140. (a) The board shall fix the annual membership fee for
- 27 active members for 2017 at a sum not exceeding three hundred
- 28 fifteen dollars (\$315).
- 29 (b) The annual membership fee for active members is payable
- 30 on or before the first day of February of each year. If the board
- 31 finds it appropriate and feasible, it may provide by rule for payment
- 32 of fees on an installment basis with interest, by credit card, or other
- 33 means, and may charge members choosing any alternative method
- 34 of payment an additional fee to defray costs incurred by that
- 35 election.
- 36 (c) This section shall remain in effect only until January 1, 2018,
- 37 and, as of that date, is repealed, unless a later enacted statute, that
- 38 is enacted before January 1, 2018, deletes or extends that date.

1 ~~SEC. 20.~~

2 *SEC. 26.* Section 6140.56 is added to the Business and
3 Professions Code, to read:

4 6140.56. (a) To ensure that the Client Security Fund can
5 adequately protect the public and relieve or mitigate financial
6 losses caused by the dishonest conduct of members of the State
7 Bar by paying claims in a timely manner, the State Bar shall
8 conduct a thorough analysis of the Client Security Fund, including
9 a determination of the ongoing needs of the fund to satisfy claims
10 in a timely manner, a review of additional efforts that can be taken
11 to increase the collection of payments from the responsible
12 attorneys, and a review of other State Bar expenditures to determine
13 whether other expenditures that do not directly impact the State
14 Bar’s public protection functions, including, but not limited to,
15 executive salaries and benefits, can be reduced or redirected in
16 order to better fund the Client Security Fund through existing
17 revenue, and, whether, after all other options have been fully and
18 thoroughly exhausted, an increase in membership dues is necessary
19 to ensure that the Client Security Fund can timely pay claims.

20 (b) The State Bar shall submit a report on its analysis of the
21 Client Security Fund to the Legislature by March 15, 2017, so that
22 the plans can be reviewed in conjunction with the bill that would
23 authorize the imposition of the State Bar’s membership fee. The
24 report shall be submitted in compliance with Section 9795 of the
25 Government Code.

26 (c) For purposes of this section, “timely manner” means within
27 12 months from the time the claim is received by the State Bar.

28 *SEC. 27.* *Section 6145 of the Business and Professions Code*
29 *is amended to read:*

30 6145. (a) The board shall ~~engage the services of an independent~~
31 ~~national or regional public accounting firm with at least five years~~
32 ~~of experience in governmental auditing~~ *contract with the California*
33 *State Auditor’s Office for an audit of its revenues, expenditures,*
34 *reserves, and its financial statement for each fiscal year. The*
35 *financial statement shall be promptly certified under oath by the*
36 *Treasurer of the State Bar, and a copy of the audit and financial*
37 *statement shall be submitted within 120 days of the close of the*
38 *fiscal year to the board, to the Chief Justice of the Supreme Court,*
39 *and to the Assembly and Senate Committees on Judiciary.*

1 The audit shall examine the receipts and expenditures of the
2 State Bar and the State Bar sections to ensure that the receipts of
3 the sections are being applied, and their expenditures are being
4 made, in compliance with subdivision (a) of Section 6031.5, and
5 that the receipts of the sections are applied only to the work of the
6 sections.

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

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

20 *This subdivision is not intended to reduce the number of audits
21 the California State Auditor's Office may otherwise be able to
22 conduct.*

23 (b) The board shall contract with the California State Auditor's
24 Office to conduct a performance audit of the State Bar's operations
25 from July 1, 2000, to December 31, 2000, inclusive. A copy of the
26 performance audit shall be submitted by May 1, 2001, to the board,
27 to the Chief Justice of the Supreme Court, and to the Assembly
28 and Senate Committees on Judiciary.

29 Every two years thereafter, the board shall contract with the
30 California State Auditor's Office to conduct a performance audit
31 of the State Bar's operations for the respective fiscal year,
32 commencing with January 1, 2002, to December 31, 2002,
33 inclusive. A copy of the performance audit shall be submitted
34 within 120 days of the close of the fiscal year for which the audit
35 was performed to the board, to the Chief Justice of the Supreme
36 Court, and to the Assembly and Senate Committees on Judiciary.

37 *For the performance audit due to the board, to the Chief Justice
38 of the California Supreme Court, and to the Assembly and Senate
39 Committees on Judiciary in 2017, the California State Auditor
40 shall review all of the State Bar's expenses, including, but not*

1 *limited to, executive salaries and benefits, outside contracts, and*
2 *real estate holdings, to determine the expenses that are appropriate*
3 *and necessary to protect the public and what the appropriate level*
4 *of member dues should be.*

5 For the purposes of this subdivision, the California State
6 Auditor's Office may contract with a third party to conduct the
7 performance audit. This subdivision is not intended to reduce the
8 number of audits the California State Auditor's Office may
9 otherwise be able to conduct.

10 ~~(e) Effective January 1, 2016, the board shall contract with the~~
11 ~~California State Auditor's Office to conduct an in-depth financial~~
12 ~~audit of the State Bar, including an audit of its financial statement,~~
13 ~~internal controls, and relevant management practices. The contract~~
14 ~~shall include reimbursement for the California State Auditor's~~
15 ~~Office for the costs of conducting the audit. The audit shall, at a~~
16 ~~minimum, examine the revenues, expenditures, and reserves of~~
17 ~~the State Bar, including all fund transfers. The California State~~
18 ~~Auditor's Office shall commence the audit no later than January~~
19 ~~1, 2016, and a copy of the audit shall be submitted by May 15,~~
20 ~~2016, to the board, the Chief Justice of the Supreme Court, and to~~
21 ~~the Assembly and Senate Committees on Judiciary. The audit shall~~
22 ~~be submitted in compliance with Section 9795 of the Government~~
23 ~~Code. This subdivision shall cease to be operative January 1, 2017.~~

24 *(c) This section shall become inoperative on January 1, 2021,*
25 *and as of that date is repealed.*

26 *SEC. 28. Section 6145 is added to the Business and Professions*
27 *Code, to read:*

28 *6145. (a) The board shall engage the services of an*
29 *independent national or regional public accounting firm with at*
30 *least five years of experience in governmental auditing for an audit*
31 *of its financial statement for each fiscal year. The financial*
32 *statement shall be promptly certified under oath by the Treasurer*
33 *of the State Bar, and a copy of the audit and financial statement*
34 *shall be submitted within 120 days of the close of the fiscal year*
35 *to the board, to the Chief Justice of the California Supreme Court,*
36 *and to the Assembly and Senate Committees on Judiciary.*

37 *The audit shall examine the receipts and expenditures of the*
38 *State Bar and the State Bar sections to ensure that the receipts of*
39 *the sections are being applied, and their expenditures are being*
40 *made, in compliance with subdivision (a) of Section 6031.5, and*

1 *that the receipts of the sections are applied only to the work of the*
 2 *sections.*

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

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

16 *(b) The board shall contract with the California State Auditor’s*
 17 *Office to conduct a performance audit of the State Bar’s operations*
 18 *from July 1, 2000, to December 31, 2000, inclusive. A copy of the*
 19 *performance audit shall be submitted by May 1, 2001, to the board,*
 20 *to the Chief Justice of the California Supreme Court, and to the*
 21 *Assembly and Senate Committees on Judiciary.*

22 *Every two years thereafter, the board shall contract with the*
 23 *California State Auditor’s Office to conduct a performance audit*
 24 *of the State Bar’s operations for the respective fiscal year,*
 25 *commencing with January 1, 2002, to December 31, 2002,*
 26 *inclusive. A copy of the performance audit shall be submitted within*
 27 *120 days of the close of the fiscal year for which the audit was*
 28 *performed to the board, to the Chief Justice of the Supreme Court,*
 29 *and to the Assembly and Senate Committees on Judiciary.*

30 *For the purposes of this subdivision, the California State*
 31 *Auditor’s Office may contract with a third party to conduct the*
 32 *performance audit. This subdivision is not intended to reduce the*
 33 *number of audits the California State Auditor’s Office may*
 34 *otherwise be able to conduct.*

35 ~~SEC. 21.~~

36 *SEC. 29.* The Legislature finds and declares that Sections 17
 37 and 20 of this act, which amend Sections 6026.7 and 6086.5 of
 38 the Business and Professions Code, impose a limitation on the
 39 public’s right of access to the meetings of public bodies or the
 40 writings of public officials and agencies within the meaning of

1 Section 3 of Article I of the California Constitution. Pursuant to
2 that constitutional provision, the Legislature makes the following
3 findings to demonstrate the interest protected by this limitation
4 and the need for protecting that interest:

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

O