

AMENDED IN ASSEMBLY FEBRUARY 23, 1998

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1669**

**Introduced by Assembly Members Hertzberg, Bustamante,  
and Villaraigosa**  
(Coauthor: Senator Lockyer)

January 14, 1998

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An act to amend Sections ~~6086.65 and 6145~~ of, to amend and repeal Section ~~6031~~ 6031, 6086.65, and 6145 of, to add Sections 6001.2, 6001.5, 6001.7, and 6008.6 to, and to add, repeal, and add Section 6140 of, the Business and Professions Code, relating to the State Bar of California, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1669, as amended, Hertzberg. State Bar.

(1) Existing law establishes procedures under which the State Bar, through its Board of Governors, assumes broad responsibilities for its operation and function, including, among other things, administration of the State Bar, admission to the practice of law, and disciplinary authority over its members.

This bill would limit the ~~responsibilities of the State Bar, as specified, to specific areas~~ *functions of the State Bar to those authorized by the Legislature and the Supreme Court*, including, among others, *responsibilities related to the enforcement of disciplinary provisions, the maintenance of member records, the determination of the qualifications and*

testing of candidates regarding admission to the practice of law, the development and promulgation of standards of professional conduct for its members, the making of various recommendations to the Legislature, the Governor, the courts, the federal government, and other agencies where directed by statute, the development, maintenance, and certification of programs to improve the quality of legal services, and the maintenance of a continuing program of legal policy research and analysis in legal practice and procedure and in other subjects, as specified.

This bill would state legislative findings and declarations that there should be established a voluntary association or associations to aid in matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, as specified.

(2) Existing law authorizes the Board of Governors of the State Bar to charge its members an annual fee for membership and to manage the revenue of the State Bar, as specified.

This bill would limit, as of January 1, 1999, the State Bar's use of fees collected as revenue and would provide that mandatory fees—~~can~~ *may* only be used for those activities specified in (1) above. This bill would also prohibit the State Bar from awarding a contract for goods, services, or both, in an aggregate amount in excess of \$50,000, except under a procedure which makes use of a request for a proposal, as specified.

(3) Under existing law, the Board of Governors of the State Bar may aid in all matters pertaining to the advancement of jurisprudence or to the improvement of the administration of justice, including matters advancing the professional interests of its members, and those matters concerning the relation of the bar with the public.

This bill would prohibit the Board of Governors from expending compulsory membership fees to engage in advocacy for or against any legislation that is not related to the State Bar, the regulation of the legal profession, the improvement of the quality of legal services, or the administration of justice in California.

This bill would prohibit the Conference of Delegates from being funded with mandatory fees, as specified, collected



after July 1, 1998, except to fulfill contracts and obligations entered into prior to January 8, 1998. This bill would also prohibit the State Bar sections established to further knowledge and education of members from being funded with mandatory fees after January 1, 1999, except to fulfill contracts and obligations entered into prior to that date.

(4) Existing law provides for a Review Department of the State Bar Court, as specified, and any decision or order reviewable by the Review Department and issued by a judge of the State Bar Court may be reviewed only upon timely request of a party to the proceeding and not on the Review Department's own motion. Existing law also authorizes the board to provide by rule that other decisions or orders reviewable by the Review Department may be reviewed only upon timely request of a party to the proceeding.

This bill would provide that, unless otherwise provided by a rule of practice or procedure approved by the Supreme Court, the party requesting the review will have the burden of showing that the Hearing Department did not proceed in the manner required by law, or the Hearing Department's findings are not supported by evidence, or the Hearing Department's decision or recommendation is clearly erroneous. This bill would also delete the provisions regarding review of decisions and orders not issued by a State Bar Court Judge.

(5) Existing law, until January 1, 1998, required the Board of Governors to establish annual membership fees for active members based on the amount of time the member has been practicing law, as specified. Existing law also provides for additional fees of up to \$77 per member.

This bill would require the Board of Governors to charge active members who have been in practice 3 years or longer the sum of \$342, to charge active members who have been in practice for less than 3 years but more than one year the sum of \$284, and to charge active members who have been in practice for ~~less than~~ one year *or less* the sum of \$243. *This bill would provide for repeal of these fee provisions as of January 1, 1999.* This bill would also authorize the State Bar to collect funds for the Conference of Delegates, for the sections established, and for any voluntary association through the



statement for the annual membership fee or any other lawful means. ~~This bill would provide for the repeal of these fee provisions as of January 1, 1999.~~

This bill would, as of January 1, 1999, require the Board of Governors to charge active members who have been in practice for 3 years or longer; the sum of \$322, to charge active members who have been in practice less than 3 years; but more than one year; the sum of \$264, and to charge active members who have been in practice for one year or less; the sum of \$223.

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*All of these* amounts would be in addition to a maximum of \$77 in other fees authorized for various purposes, as specified.

(6) Existing law requires the Board of Governors annually to prepare a statement showing the total amount of receipts and expenditures for the preceding 12 months, and to promptly have the statement certified under oath by the president and treasurer to the Chief Justice of the Supreme Court.

This bill would substitute the “State Bar” for the reference to the “Board of Governors,” and would require the State Bar to prepare the annual statement, as specified, have the statement certified by an independent auditor, and have a copy of the audit submitted within 120 days of the close of the fiscal year to the Board of Governors, the Chief Justice of the Supreme Court, and to the Judiciary Committees of the Senate and Assembly.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 6001.2 is added to the Business  
 2 and Professions Code, to read:  
 3 6001.2. *The functions of the State Bar shall be limited*  
 4 *to those authorized by the Legislature and the Supreme*  
 5 *Court.* The responsibilities of the State Bar shall be



1 limited to, *and compulsory membership fees shall only be*  
2 *expended on*, the following functions:

3 (a) The enforcement of disciplinary provisions set  
4 forth in statutes, rules of professional conduct, court rules  
5 or orders. This charge shall include:

6 (1) Receiving reports and complaints and  
7 investigating allegations of misconduct against its  
8 members.

9 (2) Administering and hearing disciplinary actions.

10 (3) Recommending appropriate discipline to the  
11 Supreme Court and defending its disciplinary  
12 recommendations thereto.

13 (4) Administering the Client Security Fund,  
14 established pursuant to Section 6140.5.

15 (b) The maintenance of records relating to the  
16 members of the State Bar, including records required by  
17 statute, court order or rule.

18 (c) The determination of the qualifications and testing  
19 of candidates to practice law, and the accreditation of  
20 institutions of legal education in California, as the  
21 administrative arm of the Supreme Court in matters  
22 pertaining to admission to the practice of law.

23 (d) The development and promulgation of standards  
24 of professional conduct for its members, including Rules  
25 of Professional Conduct approved by the Supreme Court,  
26 and the oversight and administration of programs to  
27 increase and facilitate knowledge of and adherence to  
28 those standards.

29 (e) The making of recommendations to the  
30 Legislature, the Governor, the courts, the federal  
31 government, and, where directed by statute, other  
32 agencies, concerning the State Bar, the regulation of the  
33 legal profession, the improvement of the quality and  
34 availability of legal services, and the administration of  
35 justice in California, alone or in coordination with other  
36 groups, such as the Judicial Council and volunteer bar  
37 associations.

38 (f) The development, maintenance, and certification  
39 of programs to improve the quality of legal services  
40 available to the people of California, including, but not



1 limited to, the certification of Lawyer Referral Services  
2 pursuant to Section 6155, and the establishment of  
3 committees to analyze, and make recommendations to  
4 the board concerning barriers to access to the legal  
5 system and profession, and equality therein.

6 (g) The maintenance of a continuing program of legal  
7 and policy research and analysis in legal practice and  
8 procedure, the technical aspects of substantive law, and  
9 the improvement of the quality of legal services available  
10 to the people of California, including the establishment of  
11 committees to study and make recommendations in these  
12 areas.

13 (h) The development of standards for, certification of  
14 qualification for, and administration of programs, where  
15 and as prescribed by statute, or order or rule of court.  
16 Applicable rules and statutes shall include, but shall not  
17 be limited to:

18 (1) Rules of Court 958 (Minimum Continuing Legal  
19 Education), 983 (Counsel Pro Hac Vice), 983.2 (Practical  
20 Training of Law Students), 983.5 (Legal Specialization),  
21 and 988 (Foreign Legal Consultants).

22 (2) Article 13 (commencing with Section  
23 6200)(Arbitration of Attorney's Fees).

24 (3) Article 14 (commencing with Section 6210)  
25 (Funds for the Provision of Legal Services to Indigent  
26 Persons).

27 (4) Sections 13400 et seq., 15049, and 15056 of the  
28 Corporations Code (Professional Corporations and  
29 Limited Liability Partnerships).

30 (5) Sections 12011.5 of the Government Code (Judicial  
31 Nominees Evaluation).

32 (i) This section shall become operative on January 1,  
33 1999.

34 SEC. 2. Section 6001.5 is added to the Business and  
35 Professions Code, to read:

36 6001.5. The Legislature finds and declares that there  
37 should be established a voluntary association or  
38 associations to aid in matters pertaining to the  
39 advancement of the science of jurisprudence or to the  
40 improvement of the administration of justice, including,



1 but not limited to, all matters that may advance the  
2 professional interests of the members of the State Bar of  
3 California and such matters as concern the relations of the  
4 bar with the public. The objectives of the association or  
5 associations should include, but not be limited to:

6 (a) To safeguard the proper professional interests of  
7 the members of the bar.

8 (b) To foster and maintain the professional interests of  
9 members of the bar practicing in or with an interest in  
10 particular areas of the law, including the continuation of  
11 sections comprised of attorneys and associates who share  
12 those areas of interest, as provided in Article 13 of the  
13 Rules and Regulations of the State Bar (1997), or the  
14 establishment of new or additional sections.

15 (c) To encourage the formation and activities of local  
16 bar associations.

17 (d) To conduct programs of continuing legal  
18 education.

19 (e) To provide a Conference of Delegates, as provided  
20 for in Article 13 of the Rules and Regulations of the State  
21 Bar (1997), or a similar or successor forum for the  
22 representatives of local and other bar associations to  
23 discuss subjects pertaining to the practice of law, and laws  
24 and policies affecting the profession or the public and to  
25 propose and advocate positions thereon.

26 (f) To establish a newspaper.

27 (g) To provide that the public responsibility of the  
28 legal profession may be more effectively discharged.

29 SEC. 3. Section 6001.7 is added to the Business and  
30 Professions Code, to read:

31 6001.7. (a) Except as otherwise specified in this  
32 chapter, on or after January 1, 1999, the State Bar may use  
33 mandatory fees collected pursuant to Article 8  
34 (commencing with Section 6140) only for those activities  
35 specified in Section 6001.2.

36 (b) The funds collected by the State Bar pursuant to  
37 subdivision (b) of Section 6140, user fees, or any other  
38 revenue from other sources generated by or received for  
39 support of a voluntary association or associations created  
40 consistent with Section 6001.5, or its programs, shall not



1 be commingled with the mandatory fees collected  
2 pursuant to Article 8 (commencing with Section 6140).

3 (c) All funds received and expended by the State Bar,  
4 as provided in this section, shall be verified by the annual  
5 independent audit required by Section 6145.

6 (d) The board's Committee on Administration and  
7 Finance, or its successor, shall conduct an annual budget  
8 review of the State Bar and its programs.

9 SEC. 4. Section 6008.6 is added to the Business and  
10 Professions Code, to read:

11 6008.6. The State Bar shall award no contract for  
12 goods, services, or both, for an aggregate amount in excess  
13 of fifty thousand dollars (\$50,000), except under a  
14 procedure which makes use of a request for proposal. The  
15 State Bar shall establish a request for proposal procedure  
16 by rule, pursuant to the general standards established in  
17 Article 4 (commencing with Section 10335) of Chapter 2  
18 of Part 2 of Division 2 of the Public Contract Code.

19 SEC. 5. Section 6031 of the Business and Professions  
20 Code is amended to read:

21 6031. (a) The board may aid in all matters pertaining  
22 to the advancement of the science of jurisprudence or to  
23 the improvement of the administration of justice,  
24 including, but not by way of limitation, all matters that  
25 may advance the professional interests of the members of  
26 the State Bar and those matters that concern the relations  
27 of the bar with the public.

28 (b) Notwithstanding subdivision (a), the board shall  
29 expend no compulsory membership fees to engage in  
30 advocacy for or against any legislation not relating to the  
31 State Bar of California, the regulation of the legal  
32 profession, the improvement of the quality and  
33 availability of legal services, or the administration of  
34 justice in California.

35 (c) The Conference of Delegates, as established under  
36 and pursuant to Article 6 of the Rules and Regulations of  
37 the State Bar (1997), shall not be funded with mandatory  
38 fees collected pursuant to subdivision (a) of Section 6140  
39 after July 1, 1998, except to any extent necessary to fulfill



1 contracts and obligations entered into prior to January 8,  
2 1998.

3 (d) State Bar sections, as established under and  
4 pursuant to Article 13 of the Rules and Regulations of the  
5 State Bar (1997), shall not be funded with mandatory fees  
6 collected pursuant to subdivision (a) of Section 6140 after  
7 January 1, 1999, except to any extent necessary to fulfill  
8 contracts and obligations entered into prior to that date.

9 (e) Notwithstanding this section or any other  
10 provision of law, the board shall not conduct or  
11 participate in, or authorize any committee, agency,  
12 employee, or commission of the State Bar to conduct or  
13 participate in any evaluation, review, or report on the  
14 qualifications, integrity, diligence, or judicial ability of  
15 any specific justice of a court provided for in Section 2 or  
16 3 of Article VI of the California Constitution without prior  
17 review and statutory authorization by the Legislature.

18 The provisions of this subdivision shall not be construed  
19 to prohibit a member of the State Bar from conducting or  
20 participating in ~~such~~ an evaluation, review, or report in  
21 his or her individual capacity.

22 The provisions of this subdivision shall not be construed  
23 to prohibit an evaluation of potential judicial appointees  
24 or nominees as authorized by Section 12011.5 of the  
25 Government Code.

26 ~~(f) This section shall remain in effect only until~~  
27 ~~January 1, 1999, and as of that date is repealed, unless a~~  
28 ~~later enacted statute, which is chaptered before January~~  
29 ~~1, 1999, deletes or extends that date.~~

30 SEC. 6. Section 6086.65 of the Business and  
31 Professions Code is amended to read:

32 6086.65. (a) There is a Review Department of the  
33 State Bar Court, which consists of the Presiding Judge of  
34 the State Bar Court, one Lay Judge, and one Review  
35 Department Judge. The judges of the Review  
36 Department shall be nominated, appointed, and subject  
37 to discipline as provided by subdivision (a) of Section  
38 6079.1, shall be qualified as provided by subdivision (b) of  
39 Section 6079.1, and shall be compensated as provided for  
40 the Presiding Judge by subdivision (d) of Section 6079.1.



1 However, the Lay Judge, who shall be a person who has  
2 never been a member of the State Bar or admitted to  
3 practice law before any court in the United States, and  
4 the Review Department Judge may be appointed to, and  
5 paid as, positions occupying one-half the time and pay of  
6 the Presiding Judge. Candidates shall be rated and  
7 screened by the board as provided in subdivision (c) of  
8 Section 6079.1.

9 (b) The board may fix a date no later than September  
10 1, 1989, on which all proceedings pending before the  
11 Review Department shall be decided by judges of the  
12 Review Department appointed under this section. The  
13 Review Department in existence on June 30, 1989, may  
14 continue on and after July 1, 1989, to exercise the duties  
15 and powers under prior Section 6086.6 as to any matter  
16 assigned to it prior to the date set by the board pursuant  
17 to this section.

18 (c) The Presiding Judge of the State Bar Court shall  
19 appoint an Executive Committee of the State Bar Court  
20 of no fewer than seven persons, including one person who  
21 has never been a member of the State Bar or admitted to  
22 practice law before any court in the United States. The  
23 Executive Committee may adopt rules of practice for the  
24 operation of the State Bar Court as provided in Section  
25 6086.5.

26 (d) Any decision or order reviewable by the Review  
27 Department and issued by a judge of the State Bar Court  
28 appointed pursuant to Section 6079.1 may be reviewed  
29 only upon timely request of a party to the proceeding and  
30 not on the Review Department's own motion. Unless  
31 otherwise provided by a rule of practice or procedure  
32 approved by the Supreme Court, the party requesting  
33 review shall have the burden of showing one of the  
34 following:

35 (1) The Hearing Department did not proceed in the  
36 manner required by law.

37 (2) The findings of the Hearing Department are not  
38 supported by substantial evidence.

39 (3) The decision or recommendation of the Hearing  
40 Department is clearly erroneous.



1 SEC. 7. Section 6140 is added to the Business and  
2 Professions Code, to read:

3 6140. (a) The board shall fix the annual membership  
4 fee as follows:

5 (1) For active members who have been admitted to  
6 the practice of law in this state for three years or longer  
7 preceding the first day of February of the year for which  
8 the fee is payable, at the sum of three hundred forty-two  
9 dollars (\$342).

10 (2) For active members who have been admitted to  
11 the practice of law in this state for less than three years  
12 but more than one year preceding the first day of  
13 February of the year for which the fee is payable, at the  
14 sum of two hundred eighty-four dollars (\$284).

15 (3) For active members who have been admitted to  
16 the practice of law in this state for one year or less  
17 preceding the first day of February of the year for which  
18 the fee is payable, at a sum not exceeding two hundred  
19 forty-three dollars (\$243).

20 (b) Notwithstanding any other provision of law, the  
21 State Bar, at its discretion, may collect funds for support  
22 of the Conference of Delegates identified in subdivision  
23 (c) of Section 6031, the sections identified in subdivision  
24 (d) of Section 6031, and any voluntary association or  
25 associations established consistent with Section 6001.5,  
26 through the statement for the annual membership fee, or  
27 through any other legal means pursuant to Section 6001.

28 (c) The fees authorized by this section are due and  
29 payable 60 days from the date this section takes effect.  
30 Any active member failing to pay the applicable fee  
31 identified under subdivision (a), plus the fees established  
32 in Sections 6140.3, 6140.55, 6140.6, and 6140.9, shall be  
33 suspended from the practice of law pursuant to Section  
34 6143.

35 (d) Any member who has previously paid a fee in  
36 excess of the aggregate fees established under this  
37 chapter for 1998 shall be given the election to:

38 (1) Receive a full refund of the excess within 60 days  
39 of the effective date of this chapter.



1 (2) Credit the excess towards his or her membership  
2 fees for 1999.

3 (3) Contribute the excess to the State Bar.

4 (e) If the board finds it appropriate and feasible, it may  
5 provide by rule for payment of fees on an installment  
6 basis with interest, by credit card, or other means, and  
7 may charge members choosing any alternative method of  
8 payment an additional fee to defray costs incurred by that  
9 election.

10 (f) This section shall remain in effect only until  
11 January 1, 1999, and as of that date is repealed, unless a  
12 later enacted statute, which is chaptered before January  
13 1, 1999, deletes or extends that date.

14 SEC. 8. Section 6140 is added to the Business and  
15 Professions Code, to read:

16 6140. (a) The board shall fix the annual membership  
17 fee as follows:

18 (1) For active members who have been admitted to  
19 the practice of law in this state for three years or longer  
20 preceding the first day of February of the year for which  
21 the fee is payable, at the sum of three hundred  
22 twenty-two dollars (\$322).

23 (2) For active members who have been admitted to  
24 the practice of law in this state for less than three years  
25 but more than one year preceding the first day of  
26 February of the year for which the fee is payable, at the  
27 sum of two hundred sixty-four dollars (\$264).

28 (3) For active members who have been admitted to  
29 the practice of law in this state for one year or less  
30 preceding the first day of February of the year for which  
31 the fee is payable, at a sum not exceeding two hundred  
32 twenty-three dollars (\$223).

33 (b) Notwithstanding any other provision of law, the  
34 State Bar may, at its discretion, collect funds for support  
35 of any voluntary association or associations established  
36 consistent with Section 6001.5 through the statement for  
37 the annual membership fee, or through any other legal  
38 means pursuant to Section 6001.

39 (c) The annual membership fee for active members is  
40 payable on or before the first day of February of each



1 year. If the board finds it appropriate and feasible, it may  
2 provide by rule for payment of fees on an installment  
3 basis with interest, by credit card, or other means, and  
4 may charge members choosing any alternative method of  
5 payment an additional fee to defray costs incurred by that  
6 election.

7 (d) This section shall become operative on January 1,  
8 1999.

9 SEC. 9. Section 6145 of the Business and Professions  
10 Code is amended to read:

11 6145. The State Bar annually shall prepare a  
12 statement showing the total amount of all receipts and  
13 expenditures for the twelve months preceding. The  
14 statement shall be promptly certified by an independent  
15 auditor, and a copy of the audit shall be submitted within  
16 120 days of the close of the fiscal year to the board, the  
17 Chief Justice of the Supreme Court, and to the  
18 Committees on Judiciary of the Senate and the Assembly.

19 SEC. 10. This act is an urgency statute necessary for  
20 the immediate preservation of the public peace, health,  
21 or safety within the meaning of Article IV of the  
22 Constitution and shall go into immediate effect. The facts  
23 constituting the necessity are:

24 In order for the State Bar of California to continue to  
25 perform its constitutional and governmental functions in  
26 1998, it is necessary that this bill take effect immediately.

