

## **Assembly Bill No. 3362**

### **CHAPTER 360**

An act to amend Sections 6026.7, 6060, 6086.10, 6090.5, 6140, 6140.5, and 6141 of, to amend, repeal, and add Section 6140.03 of, and to add Section 6140.8 to, the Business and Professions Code, and to amend Section 19280 of the Revenue and Taxation Code, relating to the State Bar of California.

[Approved by Governor September 30, 2020. Filed with Secretary of State September 30, 2020.]

### **LEGISLATIVE COUNSEL'S DIGEST**

AB 3362, Committee on Judiciary. State Bar: open meetings: discipline: attorneys: foreign legal consultants: annual license fees.

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

The State Bar Act, with specified exceptions, subjects the State Bar to the Bagley-Keene Open Meeting Act. The Bagley-Keene Open Meeting Act requires, with specified exceptions for authorized closed sessions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The Bagley-Keene Open Meeting Act requires a state body to provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item, unless a specific exemption applies. The State Bar Act, in addition to the grounds authorized in the Bagley-Keene Open Meeting Act, authorizes closed sessions for meetings, or portions thereof, relating to, among other things, the preparation, approval, grading, or administration of the California Bar Examination, the First-Year Law Students' Examination, or examinations for certification of a specialist.

This bill would restrict the State Bar Act closed-session exemptions relating to examinations to the preparation of examination materials, the approval, the grading, or the security of test administration of those examinations. The bill would require the State Bar to accept public comment in open session on all matters that are agendaized for discussion or decision by the board of trustees, whether in an open or a closed session.

The State Bar Act provides for the creation of an examining committee within the State Bar with specified powers, which include the power to examine applicants for admission to practice law. The act imposes specified requirements for a person to be certified to the Supreme Court for admission and a license to practice law, including a requirement that, with specified exceptions, the person have passed a law students' examination administered by the examining committee after completion of their first year of law study. Under the State Bar Act, those who pass the examination within its first 3 administrations upon becoming eligible to take the examination receive credit for all law studies completed to the time the examination is passed. The State Bar Act requires those who do not pass

the examination within its first 3 administrations upon becoming eligible to take the examination, but who subsequently pass the examination, to receive credit for one year of legal study.

This bill would require, if any of those first 3 administrations includes the June 2020 administration, that an applicant be permitted an additional 4th administration of the examination to pass to receive credit for all law studies completed to the time the examination is passed. The bill would require those who do not pass the examination within the allowed number of administrations upon becoming eligible to take the examination, but who subsequently pass the examination, to receive the credit for one year of legal study.

The State Bar Act provides for the investigation and discipline of licensees, as prescribed.

The State Bar Act requires that any order imposing a public reproof on a licensee include a direction that the licensee pay costs and, in any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court include a direction that the licensee pay costs. Such an order is enforceable both as payment as part of the license fee or as a condition of an application for reinstatement and as a money judgment.

This bill would authorize the State Bar to collect these costs through any means provided by law.

Under the State Bar Act, it is cause for suspension, disbarment, or other discipline for any licensee, whether as a party or as an attorney for a party, to make or seek certain agreements relating to discipline.

This bill would revise those agreements and make it a cause for discipline for a licensee, whether acting on their own behalf or on behalf of someone else, whether or not in the context of litigation, to solicit, agree, or seek those agreements.

The State Bar Act, until January 1, 2021, requires the board to charge an annual license fee for active licensees of up to \$438 for 2020. Existing law also requires the board to charge an annual license fee for inactive licensees of up to \$108 on and after January 1, 2020. The State Bar Act requires the board to increase each of the annual license fees by an additional \$40, to be allocated only to support nonprofit organizations that provide free legal services to persons of limited means, except to the extent that a licensee elects not to support those activities. The State Bar Act requires that the invoice provided to licensees for payment of the annual license fee provide each licensee the option of deducting \$40 from the annual license fee if the licensee elects not to have this amount allocated for these purposes (opt out).

This bill, until January 1, 2022, would require the board to charge an annual license fee of up to \$395 for active licensees for 2021. The bill would also require the board to charge an annual license fee for inactive licensees of up to \$97.40 for inactive licensees on and after January 1, 2021. The bill would, until January 1, 2023, increase the additional voluntary \$40 amount to \$45 and require \$5 of the \$45 to be allocated, pursuant to a competitive grant process, to qualified legal services projects or qualified support centers to hire law school graduates with a temporary provisional license issued by the State Bar. The bill would prohibit the State Bar from making any deductions from the \$5. The bill would require any allocated funds remaining after the termination of the temporary provisional license program to be reallocated only to support nonprofit organizations that provide free legal services to persons of limited means. The bill would make a conforming change to the invoice provision to increase the amount of the opt out for licensees.

The State Bar Act requires the board to establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of active licensees, registered foreign legal consultants, and certain other attorneys, arising from or connected with the practice of law.

Payments from the fund are discretionary and subject to regulation and conditions prescribed by the board. The act requires reimbursement of the fund by an attorney whose actions have caused payment from the fund and provides for collection as specified. The act also authorizes any order of the Supreme Court imposing suspension or disbarment of a licensee of the State Bar, or accepting a resignation with a disciplinary matter pending to include an order that the licensee pay a monetary sanction not to exceed \$5,000 for each violation, up to \$50,000, to be deposited into the Client Security Fund.

Existing law authorizes, among other amounts, reimbursements to the Client Security Fund by an attorney who has caused payment from the fund and specified costs ordered by the Supreme Court on a licensee of the State Bar, no sooner than 90 days after payment of that amount becomes delinquent, to be referred to the Franchise Tax Board for collection, as specified, in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under the Wage Garnishment Law in the manner provided for earnings withholding orders for taxes.

This bill would expand the purpose of the fund to include the relief or mitigation of pecuniary losses caused by the dishonest conduct of licensees, without regard to their active or inactive status. The bill would revise those reimbursement provisions. The bill would amend the act to revise existing board collections powers and to establish specific provisions for obtaining and enforcing a money judgment. The bill would require that a publicly reprovved or suspended licensee pay the reimbursed amount as a condition of continued practice. The bill would prohibit the defense of laches from being raised by the licensee whose actions have caused the payment of funds to an applicant from the fund with respect to any payment owed to the State Bar, or with respect to any collections efforts by the State Bar for those payments. The bill would provide that certain provisions have, and shall have, retroactive application, as well as prospective application. The bill would specifically include registered foreign legal consultants in the licensees subject to the fund reimbursement provisions.

The bill would authorize any payments from the State Bar of California's Client Security Fund that is a part of a final determination from the Client Security Fund and those penalties imposed in an order imposing suspension or disbarment of a licensee of the State Bar to be referred for collection by the Franchise Tax Board 90 days after payment of the amount becomes delinquent, as specified.