

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 3279 (Committee on Judiciary)

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Fiscal: No

Urgency: No

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**SUBJECT**

State Bar of California

**DIGEST**

This bill authorizes the State Bar of California (State Bar) to collect \$553 in annual license fees for active licensees for 2024 and \$161 in fees from inactive licensees for 2024, an increase of \$88 and \$23.60, respectively, from 2023. The bill makes various other changes to the State Bar Act, as provided.

**EXECUTIVE SUMMARY**

The State Bar of California (State Bar) is a public corporation and the largest state bar in the country. Attorneys who wish to practice law in California generally must be admitted and licensed by the State Bar. (Cal. Const., art. VI, § 9.) This bill is the annual State Bar licensing fee bill. Last year, the Legislature asked the State Bar to submit a report providing written justification for how it would use revenue generated by an increase in the mandatory annual license fee. The State Bar submitted the report and requested a \$125 active licensee fee increase. This bill provides an \$88 active license fee increase. The bill also makes various other changes to the State Bar Act, including requiring a report on complaints received regarding access issues related to the biannual bar exam. The bill is author sponsored. No timely support or opposition was received by this Committee.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Requires all attorneys who practice law in California to be licensed by the State Bar and establishes the State Bar, within the judicial branch of state government, for the purpose of regulating the legal profession. (Cal. const., art. VI, § 9; Bus. & Prof. Code § 6000 et seq.)

- a) The Legislature sets the annual fees. (Bus. & Prof. Code § 6140, 6141.)
  - b) The State Bar is governed by the Board of Trustees of the State Bar (Board). (Bus. & Prof. Code § 6010 et seq.; § 6016.)
- 2) Establishes that protection of the public, which includes support for greater access to, and inclusion in, the legal system, is the highest priority for the State Bar in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public is to be paramount. (Bus. & Prof. Code § 6001.1.)
- 3) Authorizes the State Bar to collect \$465 in fees from active licensees for the year 2024 as follows:
- a) \$390 annual license fee. (Bus. & Prof. Code § 6140.)
  - b) \$40 fee for the Client Security Fund. (Bus. & Prof. Code § 6140.55.)
  - c) \$25 fee for the costs of the disciplinary system. (Bus. & Prof. Code § 6140.6.)
  - d) \$10 fee for the attorney diversion and assistance program. (Bus. & Prof. Code § 6140.9.)
- 4) Authorizes the State Bar to collect \$137.40 in fees from inactive licensees for the year 2024 as follows:
- a) \$97.40 annual license fee. (Bus. & Prof. Code § 6141(a).)
  - b) \$10 fee for the Client Security Fund. (Bus. & Prof. Code § 6140.55.)
  - c) \$25 fee for the costs of the disciplinary system. (Bus. & Prof. Code § 6140.6.)
  - d) \$5 fee for the attorney diversion and assistance program. (Bus. & Prof. Code § 6140.9.)
  - e) An inactive licensee who is 70 years old or older is not required to pay an annual license fee. (Bus. & Prof. Code § 6141(b).)
- 5) Specifies that the license fee is payable on or before the first day of February of each year. (Bus. & Prof. Code § 6140 & 6141.)
- a) Authorizes the State Bar Board of Trustees to waive the fee by rule, and specifies that an active licensee who can demonstrate total gross annual individual income from all sources of less than \$60,478.35 presumptively qualifies for a waiver of 25 percent of the annual license fee. (Bus. & Prof. Code § 6141.1.)
- 6) Requires the State Bar to charge a \$45 fee in addition to the annual license fee for active and inactive licensees for the purposes of funding legal services for persons of limited means, as provided, unless a licensee elects not to support those activities in which case the licensee can deduct the amount from the annual license fee.
- a) Requires \$5 of the \$45 fee to be allocated to qualified legal services projects or qualified support centers, as defined, to hire law school graduates with

a temporary provisional license issued by the State Bar, as provided. (Bus. & Prof. Code § 6140.03.)

- 7) Requires the State Bar to contract with the California State Auditor's Office to conduct a performance audit of the State Bar's operations every two years. (Bus. & Prof. Code § 6145(b).)
- 8) Provides that the Chief Trial Counsel (CTC), with or without the filing or presentation of any complaint, may initiate and conduct investigations of all matters affecting or relating to: the discipline of the licensees of the State Bar; the acts or practices of a person whom the CTC has reason to believe has violated or is about to violate any provision of law related to the unlawful practice of law and unlawful solicitation; and any other matter within the jurisdiction of the State Bar. (Bus. & Prof. Code § 6044.)
- 9) Requires the State Bar to report to the Board of Trustees and Legislature on an annual basis regarding the implementation and operation of the Attorney Diversion and Assistance Program. (Bus. & Prof. Code § 6238.)
- 10) Provides that officers and elected officials of the State of California, and full-time professors at law schools accredited by the State Bar, the American Bar Association, or both, and full-time employees of the State of California, acting within the scope of their employment, are exempt from mandatory continuing legal education. (Bus. & Prof. Code § 6070(c).)
- 11) Requires an attorney or law firm that, in the course of the practice of law, receives or disburses trust funds to establish and maintain an Interest on Lawyers' Trust Account (IOLTA) in which the attorney or law firm deposits or invests all client deposits or funds that are nominal in amount or are on deposit or invested for a short period of time, and that all such client funds may be deposited or invested in a single unsegregated account. (Bus. & Prof. Code § 6211(a).)
- 12) Requires the interest and dividends earned on all those accounts described in 9) to be paid to the State Bar of California to be used for funding specified legal services for indigent litigants. (*Ibid.*)

This bill:

- 1) Authorizes the State Bar to collect \$553 in fees from active licensees for the year 2025 as follows:
  - a) \$478 annual license fee.
  - b) \$40 fee for the Client Security Fund.
  - c) \$25 fee for the costs of the disciplinary system.
  - d) \$10 fee for the attorney diversion and assistance program.

- 2) Authorizes the State Bar to collect \$161 in fees from inactive licensees, except for those 70 years old or older, for the year 2025 as follows:
  - a) \$121 annual license fee.
  - b) \$10 fee for the Client Security Fund.
  - c) \$25 fee for the costs of the disciplinary system.
  - d) \$5 fee for the attorney diversion and assistance program.
  - e) An inactive licensee who is 70 years old or older is not required to pay an annual license fee. (Bus. & Prof. Code § 6141(b).)
  
- 3) Revises when the licensee fees are payable to a date set by the State Bar, which is not to be less than 12 months from the prior year's due date.
  - a) Individuals who qualify for a waiver are permitted to pay fees on an installment basis, with interest, in the manner determined by the State Bar.
  
- 4) Requires the State Bar to transmit to the Legislature a report detailing potential options for lowering the costs associated with leasing the property at 180 Howard Street, San Francisco, as provided.
  
- 5) Requires the State Bar, on or before April 1, 2027, to transmit to the Legislature a report detailing all of the following:
  - a) the number of attorneys referred to the diversion program;
  - b) the number of complaints resulting in a referral to the diversion program;
  - c) the rate of reoffending by attorneys referred to the diversion program; and
  - d) the total reduction in caseload for the Office of Chief Trial Counsel (OCTC) resulting from the pilot disciplinary diversion program.
  
- 6) Requires the State Bar to seek to achieve, through employee attrition only, a 15 percent vacancy rate by April 1, 2027, and prohibits the State Bar from terminating an employee solely for the purpose of meeting the target vacancy rate.
  
- 7) Specifies that each appointing authority may remove from office at any time any member of the board appointed by that authority for continued neglect of duties required by law, or for incompetence or unprofessional or dishonorable conduct.
  
- 8) Authorizes judicial review of a decision to approve or deny, in whole or in part, an application for reimbursement from the Client Security Fund to be had by filing a petition for a writ of administrative mandamus within 90 days after the date the decision was served. States that this provision is declaratory of existing law.

- 9) The bill provides that the Examining Committee is responsible for the approval, regulation, and oversight of degree-granting unaccredited law schools that meet both of the following:
  - a) award the juris doctor (J.D.) professional degree in California; and
  - b) are not approved by the American Bar Association or the Committee of Bar Examiners.
  
- 10) Requires, commencing July 1, 2026, and annually thereafter, the State Bar to transmit to the Legislature a report detailing the number of complaints regarding access issues related to the biannual state bar exam detailed as follows:
  - a) the testing location in which the complaints occurred;
  - b) the nature of the access related complaints;
  - c) accommodations provided to persons levying access related complaints;
  - d) any additional information the State Bar determines to be relevant and necessary for the assessment of the existing programs for addressing access issues related to the biannual state bar exam.
  
- 11) Specifies that full-time employees of the State of California includes all licensees of the State Bar employed by the California State Legislature, regardless of the licensee's official position classification, for purposes of mandatory continuing legal education exemptions. States this is declaratory of existing law.
  
- 12) Provides that a presiding state court judge is to be paid the same salary as a justice of the court of appeal.
  - a) Specifies that any compensation increase for State Bar Court judges on or after January 1, 2025, that is attributable to increases in the salary of a superior court judge or a justice of the court of appeal is only to be funded by license fees up to the amount of the increase that would have occurred in the absence of the changes made by 7) above.
  
- 13) Requires, on and after January 1, 2026, a financial institution to furnish on an annual basis a statement of account for every client trust account actually known to the financial institution based on its books and records that are associated with an attorney licensed to practice in California in a format mutually acceptable by the financial institution and the State Bar.
  - a) The statement of account is to include, but not be limited to, the name and address of the account holder, other information necessary to identify the account holder, and the account balance as of December 31 of the prior year.
  - b) Requires the State Bar to furnish to a financial institution the name, address, and attorney license number for client trust accounts reported from the statement of accounts provided pursuant to a), above, and by attorneys licensed to practice in California to the State Bar that are not included within the statement of accounts furnished by the financial

- institution. The State Bar is only to furnish information to the financial institution where the account holder is a customer of the same financial institution as reported by the attorney licensed to practice in California.
- c) Requires financial institutions to cooperate with the State Bar to assist in identifying the license number of any remaining client trust account holders that are not identified pursuant to the process identified in b), above.
  - d) Requires a financial institution receiving information pursuant to c), above, to incorporate into its books and records the attorney license number for client trust accounts where such information was previously not collected, after validating the accuracy of the information furnished by the State Bar.
  - e) Requires a financial institution, commencing January 1, 2027, to furnish to the State Bar on an annual basis a report for every client trust account actually known to the financial institution based on its books and records that are associated with an attorney licensed to practice in California. The report is to include, but not be limited to, the name and address of the account holder, the attorney license number, and the account balance as of December 31 of the prior year

### COMMENTS

#### 1. Stated need for the bill

The author writes:

AB 3279 is the annual bill to authorize the collection of a fee from licensed attorneys in California to fund the operations of the State Bar of California, the regulator of attorneys in this state.

Unfortunately, due to growing cost pressures, and, at times, questionable budgetary practices at the State Bar the agency now needs an increase of the annual fee to fund its operations. These fee increases reflect the Committee's primary objectives for the State Bar. Those objectives include protecting all staff from layoffs and guaranteeing all salaries and benefits promised by the State Bar. The fee also seeks to stabilize the State Bar's budget and encourage the State Bar to become more efficient through the development of a diversionary program in lieu of strict discipline for attorneys who commit minor violations of the Rules of Professional conduct for the first time. This diversion program should reduce disciplinary workloads and ensure attorneys are better trained to avoid mistakes. This fee also provides for the deployment of the State Bar's proactive measures to better police client trust accounts to ensure that would-be fraud and malfeasance are detected before clients can ever be harmed.

Although the [Assembly Judiciary] Committee rarely supports any increases in licensing fees for attorneys, a reluctance based on the State Bar's many prior missteps, this year's fee increase is the result of careful deliberations and reflects the funding priorities of this Committee and the need to support the State Bar's new and innovative programs that will ensure the agency functions and a modern and efficient regulatory body.

2. State Bar of California functions as the administrative arm of the Supreme Court for the purpose of assisting in attorney admissions and discipline

As a constitutional matter, the judicial power of California is vested in the Supreme Court, Courts of Appeal, and superior courts. (Cal. Const., art. VI, Sec. 1.) (*In re Attorney Discipline System* (1998) 19 Cal.4th 582, 592; *Obrien v. Jones* (2000) 23 Cal.4th 40, 48.) In addressing this inherent authority to regulate the practice of law, the Supreme Court has explained: "The important difference between regulation of the legal profession and regulation of other professions is this: Admission to the bar is a *judicial function*, and members of the bar are *officers of the court*, subject to discipline by the court. Hence, under the constitutional doctrine of separation of powers, the court has inherent and *primary regulatory power*.'" (*In re Attorney Discipline System, supra*, 19 Cal.4th at 593.) The State Bar functions as the administrative arm of the Supreme Court for the purpose of assisting in attorney admissions and discipline, with the court retaining its inherent judicial authority to disbar or suspend attorneys. (*In re Attorney Discipline System, supra*, 19 Cal.4th at 599-600; see *Keller v. State Bar of California* (1990) 496 U.S. 1, 11.)

Attorneys who wish to practice law in California generally must be admitted and licensed by the State Bar. (Cal. Const., art. VI, Sec. 9.) The State Bar of California is a public corporation. Although originally a creature of statute, the State Bar is now "a constitutional entity within the judicial article of the California Constitution." (*Obrien, supra*, 23 Cal.4th at 48; see Cal. Const., art. VI, § 9; Bus. & Prof. Code, Sec. 6001.) The State Bar's regulatory assistance is an integral part of the judicial function. (*Obrien, supra*, 23 Cal.4th at 48.) Emphasizing the *sui generis* nature of the State Bar as its administrative arm, the Supreme Court has made clear that "express legislative recognition of reserved judicial power over admission and discipline is critical to the constitutionality of the State Bar Act." (*In re Attorney Discipline System, supra*, 19 Cal.4th at 600, citing Bus. & Prof. Code Sec. 6087.)

At the same time, the Legislature's exercise, under the police power, of a reasonable degree of regulation and control over the profession and practice of law in California, is well established. (*Obrien, supra*, 23 Cal.4th at 48.) The Legislature exercises regulatory authority pursuant to the State Bar Act and has authority to set the amount of license fees necessary to fund the disciplinary system. The Legislature has enacted statutes making protection of the public the highest priority of the State Bar (Bus. & Prof. Code § 6001.1) and subjecting the CTC of the State Bar to Senate confirmation (Bus. & Prof. Code § 6079.5).

The State Bar of California is the largest state bar in the country. As of April 22, 2023, the total State Bar membership is 293,304, which includes 197,479 active licensees, 2,267 judge members, 17,851 licensees who are “Not Eligible to Practice Law,” and approximately 75,707 inactive members.<sup>1</sup> The State Bar’s programs are financed mostly by annual license fees paid by attorneys as well as other fees paid by applicants seeking to practice law. The State Bar is governed by a Board of Trustees (Board). Pursuant to SB 36 (Jackson, Ch. 422, Stats. 2017), the Board was required to transition to a 13 member board comprised of Governor, Supreme Court, Assembly, and Senate appointees.

### 3. Attorney licensee fees

In 2019, based largely on recommendations from the California State Auditor and the Legislative Analyst’s Office, the 2020 annual license fee was increased to \$438 for active licensees and \$108 for inactive licensees. This fee increase consisted of a \$71 increase on an ongoing basis and a onetime fee increase of \$52 for active licensees, and a \$20 increase on an ongoing basis and a onetime fee increase of \$13 for inactive licensees. The 2021 annual license fee was decreased to \$395 for active licensees and \$97.40 for inactive licensees through AB 3362 (Committee on Judiciary, Ch. 360, Stats. 2020). The decrease included the cessation of several of the onetime fee increases imposed in 2020. When all fees were added together, excluding the optional legal services fee, the total license fee for 2021 was \$470 for active licensees and \$137.40 for inactive licensees.<sup>2</sup> The 2022 annual license fee was the same as the license fee for 2021. (SB 211 (Umberg, Ch. 723, Stats. 2021).) The 2023 annual license fees were the same as 2022, except it provided that the active license fee is to be reduced by \$4 and the inactive licensee fee by \$1 if the State Bar has entered into a contract to sell its San Francisco office building by October 31, 2022. The State Bar sold its building November 2023 for \$54 million. Leah Wilson, Executive Director of the State Bar stated “the sale of 180 Howard was a prudent and necessary action on our part in these post-pandemic and precarious financial times. This deal helps our finances by allowing us to remain whole through 2024. It also allows us to remain in the building we have called home for 25 years.”<sup>3</sup>

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<sup>1</sup> *Attorney Status*, State Bar of Cal. (current as of June 17, 2024), available at <https://members.calbar.ca.gov/search/demographics.aspx>.

<sup>2</sup> This amount includes the fee for the Attorney Diversion and Assistance Program of \$10 for active licensees and \$5 for inactive licensees, which last year was only \$1 and \$0, respectively. (Bus. & Prof. Code § 6140.9(a).)

<sup>3</sup> *State Bar of California Sells 180 Howard Building in San Francisco*, State Bar of Cal., (Nov. 14, 2023), available at <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-of-california-sells-180-howard-building-in-san-francisco>.



4. The State Bar requests a licensing fee increase of \$125

Last year, the Legislature asked the State Bar to submit a report providing written justification for how it would use revenue generated by an increase in the mandatory annual license fee. (Bus. & Prof. Code § 6145.1.) The State Bar submitted this report and requested a \$125 increase in the active license fee stating it is faced with a structural operating deficit and shrinking reserves and need this fee to maintain and increase public protection.<sup>4</sup> They point to the fact that the licensing fee has only been increased once in the last 25 years and that had the fee increased with inflation it would be over \$700 today. They state that \$95 of the requested fee is to maintain existing programs and staff and fulfill contractual obligations. The other \$30 would be used to support new staff and programs.

The State Bar provides several justifications and arguments for why the fee increase should be granted. They note that for the last several years, the number of active attorneys has grown more slowly than the number of inactive attorneys and that the proportion of the inactive population age 70 and older, who therefore pay no licensing fees, is growing. They point to the fact that the State Bar has been tasked by the California Supreme Court with enforcing the Client Trust Account Program and enforcing new Rule of Professional Conduct 8.3 on mandatory reporting of attorney misconduct.<sup>5</sup> The State Bar reports that from “August 1, 2023, to March 1, 2024, nearly 300 complaints were filed by California attorneys pursuant to rule 8.3, comprising 60 percent of all complaints filed by California attorneys during the period.” The State Bar notes that they process complaints at a lower cost-per-complaint ratio than its peers, while it receives more complaints per capita, on average, than other states, including states with the largest number of attorneys. They also point out that California’s current license fee is lower than that of 17 other states.

5. The State Bar has a troubled history prioritizing protection of the public and making imprudent financial decisions

a. *Girardi scandal*

The State Bar’s highest priority is the protection of the public, which includes quickly finding and disciplining dishonest or incompetent attorneys. (Bus. & Prof. Code § 6001.1.) The ability of the State Bar to meet this priority was seriously called into question over the past several years due to the Thomas Girardi scandal. The Senate and Assembly Judiciary Committees held a joint oversight hearing of the State Bar in May

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<sup>4</sup> *Justification for a Fee Increase*, State Bar of Cal. (Apr. 1, 2024), available at <https://www.calbar.ca.gov/Portals/0/documents/reports/Justification-for-a-Licensing-Fee-Increase.pdf>.

<sup>5</sup> These State Bar proposals were both approved by the California Supreme Court. The mandatory reporting rule was only proposed by the State Bar after the introduction of SB 42 (Umberg, 2023).

2023 and provided an in-depth analysis of the scandal in their background paper.<sup>6</sup> In summary, in 2021, Girardi was accused of stealing millions of dollars from his injured clients over many years. The State Bar did not take action against Girardi until 2021 when he was disbarred by the California Supreme Court after a disciplinary hearing, even though serious and repeated allegations of misconduct against Girardi were reported to the State Bar. This disciplinary action only occurred after a federal court found that he had misappropriated \$2 million that was awarded to victims' families in the Lion Air flight 610 plane crash of 2018, and referred the matter to federal prosecutors for further investigation. Documentation eventually released by the State Bar detailed roughly 40 years of disciplinary records that showed Girardi had over 200 complaints filed against him since 1983, many of which alleged misappropriation of client funds. Further investigations detailed an alarming history of weak internal enforcement of conflict of interests and troubling relationships between employees of the State Bar and Girardi. The Senate and Assembly Judiciary Committees concluded that the State Bar has quite a long way to go to gain back public trust and correct issues with its disciplinary system. As such, last year's state bar fee bill SB 40 (Umberg, Ch. 697, Stats. 2023) did not provide a fee increase for the State Bar.

*b. Imprudent spending and questionable decisions that impact protection of the public*

In 2012, the State Bar purchased a building in Los Angeles. However, according to the State Auditor, the State Bar did not perform a cost-benefit analysis to determine if the purchase was appropriate and warranted before receiving approval from its Board to purchase the building, did not fully inform the Legislature of its plans, and potentially risked public safety by doing so and not prioritizing other areas, such as attorney discipline. The Auditor found that the decision to purchase the Los Angeles building jeopardized the State Bar's core function to protect public safety: "Rather than using its financial resources to improve its attorney discipline system, the State Bar dedicated a significant portion of its funds to purchase and renovate a building in Los Angeles in 2012."<sup>7</sup> Even more troubling, the State Bar chose to secure the additional funding for the Los Angeles building, in part, through a loan that required the State Bar to use \$4.6 million of its Public Protection Fund as collateral for the loan. The sole purpose of the Public Protection Fund is to protect the public in the event of a financial emergency. However, without any notification to its members or the Legislature, the State Bar decided, unilaterally, to tie up over 70 percent of its Public Protection Fund – \$4.6 million of the \$6.5 million fund – for the 15-year life of the loan. The State Auditor noted that the use of money in the Public Protection Fund was part of a larger pattern in which the State Bar had been transferring money

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<sup>6</sup> See *The California State Bar - Administrative Arm of the Supreme Court: Disconcerting Revelations Raise Questions About its Ability to Protect the Public*, Oversight Hearing of the Ass. & Sen. Jud. Comm., (May 23, 2023), available at [https://jud.senate.ca.gov/sites/jud.senate.ca.gov/files/background\\_paper\\_final\\_letterhead.pdf](https://jud.senate.ca.gov/sites/jud.senate.ca.gov/files/background_paper_final_letterhead.pdf).

<sup>7</sup> Cal. State Auditor, *State Bar of California: It Has Not Consistently Protected the Public Through its Attorney Discipline Process and Lacks Accountability* (June 2015) at 43.

between its various funds and using the money on unrelated items. The Auditor found that the State Bar made 50 transfers between funds involving a total of \$64.2 million from 2009 through 2012.<sup>8</sup>

Several years later, in 2016, the State Bar took out a \$10 million loan to make upgrades and tenant improvements on its San Francisco building at 180 Howard Street. The State Bar did this without any input or approval from the Legislature. In order to use some of the loan as security for repayment, the State Bar chose to secure the loan through a security interest in future member dues, again without consulting the Legislature. The loan was secured on future license fees and was entered on March 1, 2016 for a term of ten years. Before receiving approval from the Board to take out the loan, the State Bar requested an opinion from its staff on the legality of the revenue pledge. Though staff found the loan to be legally permitted, legal staff suitably warned that the pledge has the:

[P]otential to impact the Bar's regulatory functions, could additionally be deemed inconsistent with the later adoption of Business & Professions Code, section 6001.1, which provides that the Bar must place public protection as its highest priority and additionally states, “[w]henever the protection of the public is inconsistent with other interest sought to be promoted, the protection of the public shall be paramount.” ... [S]uch a pledge could subject the Bar to criticism on the basis that it could place funds that govern its core regulatory activities at what may be deemed to be unnecessary risk.<sup>9</sup>

When the proposal was presented to the Board for approval, these risks were not included in the materials presented to the Board. Furthermore, this decision was taken just one year after the Auditor questioned the State Bar's decision to purchase its Los Angeles building on the basis that the State Bar had not considered whether the resources to repay the loan might be better spent on improving the discipline system and had noted that not doing so posed a potential risk to public protection.

The State Bar also had a pattern of disconcerting spending on various expenses as identified in the 2017 audit by the State Auditor.<sup>10</sup> For example, the State Bar spent \$156,900 on alcohol between January 2015 and September 2016, and paid \$768,000 for lobbying activities between 2014 and 2016. Further reports showed that the State Bar paid for various trips to El Salvador, Mexico, Guatemala, Nicaragua, Peru, and Mongolia according to documents compiled by The Recorder.<sup>11</sup> In response to these reports and deunification, the State Bar reduced its expenses in many of these areas and prohibited the purchase of alcohol for its events and meetings.

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<sup>8</sup> *Id* at 13.

<sup>9</sup> Asm. Com. on Jud. Analysis of S.B. 36 (2017-18 reg. session) as amended Apr. 6, 2017 at p. 8.

<sup>10</sup> Cal. State Auditor, *The State Bar of California: It Needs Additional Revisions to its Expense Policies to Ensure That It Uses Funds Prudently* (June 2017).

<sup>11</sup> Cheryl Miller, *Joe Dunn, Bar Officials Spent Freely on Foreign Travel*, *The Recorder* (Jan. 25, 2016).

Committee staff does not mention the above to rehash the past but to demonstrate why the Senate and Assembly Judiciary Committees have been so resistant to authorizing a fee increase for the State Bar. In its report requesting a fee increase, the State Bar noted:

Over the course of this last quarter century, the amount of pressure and attention on the State Bar to effectively and responsibly fulfill its mission has grown – rightfully so – while resources have stagnated. Although the organization has been able to prudently manage its resources for these last two-plus decades, time has effectively run out on the State Bar’s ability to remain solvent, let alone meet the public’s expectations of performance and accountability.<sup>12</sup>

6. This bill increases the active license fee by \$88 and the inactive license fee by \$23.60

In 2024, the State Auditor confirmed that the State Bar’s is facing significant and legitimate financial hardships.<sup>13</sup> The Assembly Judiciary Committee analysis of this bill states that “the State Bar’s budget situation has become more precarious [since last year]. Due to contractually obligated staff salary and benefit increases, and the State Bar’s remarkable success in recent hiring, the agency now faces a budget deficit of several million dollars.”<sup>14</sup> Furthermore, the Assembly Judiciary Committee analysis highlights that “thanks to the dedication of the State Bar’s line prosecutors and support staff, it appears that meaningful improvements in the quality and efficiency of the State Bar’s disciplinary system have been achieved. The Office of the Chief Trial Counsel (OCTC) deserves significant credit for the efficiencies realized as a result of the Office’s reorganization.”<sup>15</sup> After taking into account all of the above and after thorough review of the report submitted by the State Bar, this bill raises the active license fee by \$88 and the inactive license fee by \$23.60.

The fee increase for active licensees can be broken down as follows:

- a \$10 increase in the base active license fee;
- a \$15 increase to pay for lease costs associated with leasing space in the building located at 180 Howard Street, San Francisco;
- a \$52 increase to fund the salaries and benefits of employees of the State Bar, including benefits identified in the applicable memorandums of understandings with the bargaining units of State Bar employees;
- a \$5.50 increase to fund the actual cost of administering compliance reviews and audits of client trust accounts; and
- a \$5.50 increase to fund the disciplinary diversion pilot program.

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<sup>12</sup> *Justification for a Fee Increase*, supra at fn. 4 at p. 4.

<sup>13</sup> Cal. State Auditor, *The State Bar of California: It Will Need a Mandatory Licensing Fee Increase in 2024 to Support Its Operations* (Apr. 2023) available at: <https://information.auditor.ca.gov/reports/2022-031/index.html#section1>.

<sup>14</sup> Asm. Jud. Comm. analysis AB 3279 (2023-24 reg. sess.) as amended Feb. 9, 2024 at p. 6.

<sup>15</sup> *Ibid.*

The fee increase for inactive licensees can be broken down as follows:

- a \$3.60 increase in the base inactive license fee;
  - a \$3.50 increase to pay for lease costs associated with leasing space in the building located at 180 Howard Street, San Francisco;
  - a \$14 increase to fund the salaries and benefits of employees of the State Bar, including benefits identified in the applicable memorandums of understandings with the bargaining units of State Bar employees;
  - a \$1.25 increase to fund the actual cost of administering compliance reviews and audits of client trust accounts; and
  - a \$1.50 increase to fund the disciplinary diversion pilot program.
- a. *A major part of the fee increase is to protect State Bar employees from layoffs and benefit reductions*

The Assembly Judiciary Committee analysis of this bill highlights one of the main drivers behind authorizing a fee increase – to protect State Bar employees from layoffs and benefit reductions:

The State Bar employs over 650 persons working in a range of functions from attorneys investigating and prosecuting complaints against attorneys, to those who proctor the biannual bar exam, to IT and other support staff. In 2023, the State Bar and the Service Employees International Union negotiated a new salary and benefits agreement. While there is little question the State Bar’s employees deserved their new contract, unfortunately the employees’ raises and benefits were agreed to without the State Bar having previously secured the funding necessary to meet their obligations to their employees.

As a result of the State Bar agreeing to raises before securing the funding necessary to provide increased employee compensation, the State Bar has now placed this Committee in an untenable position. This Committee must now retroactively approve the funding needed to meet the State Bar’s contractual obligation to its employees or risk these employees facing layoffs. As noted above, a primary object of this measure is to protect the State Bar’s employees from layoffs or benefit cuts.

However, when reviewing the State Bar’s request for a fee increase to fund employee salaries and benefits, several concerns arose. First, the State Bar proposed two separate categories of a fee increase to fund employee salaries and benefits. The first request was for \$39 for active licensees and \$10 for inactive licensees. The second request merged some aspects of employee compensation into a request for IT services and contracts. As a result, it was very difficult for this Committee to clearly parse which aspects of the fee increase request would go to funding employee salaries and benefits and which aspect would fund IT services. Additionally, the State Bar is currently operating with a vacancy rate of 7.5 percent. In consulting with

the Legislature's own budget experts, it has been suggested to this Committee that the typical state agency operates with a vacancy rate of 15 to 20 percent. The larger vacancy rate at most state agencies is intentional, as these vacancies permit the agencies to promote high achieving employees in place or fund merit raises. Because the State Bar is operating with such a low vacancy rate, it has virtually no flexibility to promote employees or offer merit increases without seeking funding from the Legislature. It also appears that the State Bar can meet its operational goals with a vacancy rate in excess of the current 7.5 percent. Indeed, the State Bar's own report seeking a fee increase noted that the Office of the General Counsel was meeting its case review targets with a 12 percent vacancy rate.<sup>16</sup>

*b. Lease payments for San Francisco office*

The State Bar requested an increase in license fees to cover the full \$4.4 million in annual lease payments to the new owner of the Howard Street building. That total would amount to a fee increase of \$21 for active licensees and \$5 for inactive licensees. The Assembly Judiciary Committee notes that:

[...] the State Bar's report also suggested that the State Bar is now saving approximately \$1.36 million as a result of selling the [San Francisco] building. These savings take into account the loss of lease revenue associated with owning the building. This Committee believes that attorneys should benefit from these cost savings. Accordingly, the Committee is proposing to reduce the fee increase request to reflect the State Bar's savings related to the sale of the building. Thus, the Committee is proposing a fee increase of \$15 for active licensees and \$3.50 for inactive licensees. The Committee is also proposing that the State Bar study how to further reduce the costs associated with leasing office space, including moving out of the Howard Street building early or seeking subleases.<sup>17</sup>

*c. License fee increase will fund two new programs to bolster regulatory efficiencies and hopefully lessen the need for additional or future fee increases*

In addition to funding core operating expenses, the State Bar requested substantial additional funding for the creation or expansion of various programs within the agency. Some of these new programs present an opportunity for the State Bar to achieve operational efficiencies and regulatory innovation. The first program proposed by the State Bar that this bill funds is a program to more efficiently monitor attorneys with client trust accounts. The essence of the Girardi scandal involved misappropriation of client funds. In order to prevent such a situation from ever happening again, the State Bar is now proposing a trust account monitoring program. This program will alert the State Bar to potential client fund issues long before a consumer can be defrauded by

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<sup>16</sup> *Id.* at 8-9.

<sup>17</sup> *Id.* at 10.

their attorney. Both the statutory approval for the program and corresponding fee increase to fund the program are included in this statute. The inclusion of these provisions was based on significant negotiations with banking industry stakeholders and their agreement that the provisions were operationally feasible. To the extent that stakeholders have concerns, these provisions may need to be changed as the bill continues to move through the legislative process.

The second new program involves adoption of a diversion program for low-level, first time offenders caught in the attorney discipline process. Many complaints against attorneys are the result of inexperience or poor training and not malfeasance, and therefore can be addressed through additional training and mentoring and not formal discipline. The State Bar states that a diversion program could redirect up to 20 percent of all cases currently prosecuted by the OCTC. In addition to funding the program, the bill requires a report on the progress of the program be submitted to the Legislature.

## 7. Other changes in the bill

This bill makes several other changes to the State Bar Act.

- a. *Ensures State Bar judges are compensated in a manner to attract the best talent to the organization*

Judges of the State Bar Court have to act very similar to trial court judges in that they hear evidence, rule on objections, and manage State Bar Court trials; however, they are paid less than their peers on the superior court. According to the State Bar Court judges, this is causing a recruitment and retention issue. Accordingly, the State Bar Court judges now seek pay parity with their superior court peers. Notably, due to vacancy rates on the State Bar bench, the Court can absorb these raises in their existing budget without impacting licensing fees. Given that increasing State Bar Court judges' salaries will be revenue neutral, the Assembly Judiciary Committee sought fit to approve their request; however, to ensure that future pay does not place upward pressure on the licensing fee, language limiting the future use of fees to pay for State Bar Court salaries is included in the bill.

- b. *Complaints about bar exam testing accommodations*

The Assembly Judiciary Committee states that “[s]ince the COVID-19 pandemic, and the temporary use of online technology to administer the biannual bar exam, this Committee has noticed an uptick in complaints from test takers contending that disability accommodations have not been adequately provided by the State Bar.”<sup>18</sup> This Committee has observed a similar uptick in complaints being reported as well. Complaints received have varied from inadequate venues, proctors that are distracting,

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<sup>18</sup> *Id.* at 13.

failure to respond to accommodation requests in a timely manner, asking for too much evidence, and not following the provisions of the federal American with Disabilities Act. There have been several suits against the State Bar alleging failure to provide accommodations in accordance with the American with Disabilities Act that are in varying stages of litigation. The State Bar reviewed its rules and has a proposal of revised rules regarding testing accommodations that have yet been presented to the California Supreme Court for approval, though the State Bar may submit them for approval this year.<sup>19</sup> Many individuals who have made complaints to this Committee and the Assembly Judiciary Committee regarding exam accommodations are requesting that this Committee waive sovereign immunity (for the State Bar) so they can seek damages and other remedies. This approach seems heavy-handed and would require in-depth research into the constitutional implications, such as separation of powers. In order to monitor this issue and receive more data, the bill requires the State Bar to submit specified data regarding access-related complaints to the Committee.

*c. Various other changes in the bill*

This bill makes several other minor statutory changes to assist in the State Bar's governance. First, the bill clarifies the State Bar's duties as it pertains to regulating legal education programs not accredited by the American Bar Association and eliminates the need for the State Bar to oversee non-degree granting institutions. Secondly, the bill clarifies long-standing ambiguity as to which state employees are exempt from mandatory continuing legal education requirements. Further, the bill clarifies what seals must be placed on the documents attesting that a new lawyer has been properly sworn into practice. The bill clarifies that the entity that appointed a member of the State Bar's Board of Trustees may remove that member if the member is derelict in their duties or commits ethical violations. Finally, the bill revises when the licensee fees are payable to a date set by the State Bar, which is not to be less than 12 months from the prior year's due date, and specifies that individuals who qualify for a waiver are permitted to pay fees on an installment basis, with interest.

8. Statements in support

The State Bar writes in support of the bill but notes that they have not received the identified \$95 to maintain existing operations and programs:

the State Bar identified the need for a \$95 increase in attorney licensing fees to maintain existing operations and services or "keep the lights on." AB 3279 goes a long way toward achieving that goal, providing \$77 to support existing

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<sup>19</sup> *Revised Amendments to Testing Accommodations Rules*, Cal. State Bar, (Oct. 7, 2023), available at <https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Public-Comment/Public-Comment-Archives/2023-Public-Comment/Revised-Amendments-to-Testing-Accommodations-Rules#:~:text=The%20proposed%20rules%20provide%20for,permanent%20physical%20or%20mental%20disability.>



operations. The primary difference between the \$95 need identified by the State Bar and the \$77 reflected in the bill relates to staffing levels; AB 3279 anticipates the Bar doubling its vacancy rate by an additional 45 – 50 positions by April 2027. Despite the Legislature’s significant commitment to supporting existing operations, a doubling of the State Bar’s vacancy rate, particularly absent the ability to make necessary investments in technology to support this type of headcount reduction, will necessarily impact our ability to protect the public.

The State Bar has proposed using just over \$5 million of the \$9.3 million of reserves set aside in the Client Security Fund to fund immediate information technology (IT) needs, as well as the authority to use a portion of future revenue generated by enhanced collections activity to support additional IT investment. The committee’s support of this request, which would not further impact the licensing fee, would go a long way to ensuring the State Bar’s ability to address the requested funding not provided in the bill.

### **SUPPORT**

California State Bar

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

#### **Pending Legislation:**

SB 940 (Umberg, 2024), among other things, authorizes the State Bar to create a program to certify alternative dispute resolution firms or providers, as specified. SB 940 is currently pending on the Assembly Floor.

AB 2505 (Gabriel, 2024) requires every active licensee of the California State Bar, except as specified, to report whether they have provided pro bono legal services during the calendar year, as specified. AB 2505 is currently pending in the Senate Floor.

#### **Prior Legislation:**

SB 40 (Umberg, Ch. 697, Stats. 2023) authorized the State Bar to collect annual licensing fees in the same amount as 2022 and made other changes, including strengthen conflict of interest statutes and require Senate confirmation of the executive director and general counsel of the State Bar.

AB 2958 (Committee on Judiciary, Ch. 419, Stats. 2022) authorized the State Bar to collect annual licensing fees of \$395 for active licensees and \$97.40 for inactive licensees and enacted other reforms.

SB 211 (Umberg, 2021, Ch. 723, Stats. 2021) authorized the State Bar to collect annual licensing fees of \$395 for active licensees and \$97.40 for inactive licensees and enacted other reforms. The bill required the Auditor's Office to conduct an independent audit to determine if the discipline process adequately protects the public from misconduct by licensed attorneys or those who wrongfully hold themselves out as licensed attorneys.

AB 3362 (Committee on Judiciary, Ch. 360, Stats. 2020) authorized the State Bar to collect annual licensing fees of \$395 for active licensees and \$97.40 for inactive licensees and enacted other reforms.

SB 176 (Jackson, Ch. 698, Stats. 2019) authorized the State Bar to collect annual licensing fees of \$438 for 2020 and enacted other reforms.

AB 3249 (Committee on Judiciary, Ch. 659, Stats. 2018) authorized the State Bar to collect annual licensing fees of \$390 for 2019 and enacted other reforms, including a strengthening of the attorney discipline system.

SB 36 (Jackson, 2017, Ch. 422, Stats. 2017) authorized the State Bar to collect active membership dues of up to \$390 for the year 2018; reformed the State Bar Act by separating the sections from the State Bar and creating what is now the California Lawyers Association; changed the composition of the State Bar Board; and enacted various reforms to remove politics from the Board.

**PRIOR VOTES**

Assembly Floor (Ayes 55, Noes 14)  
Assembly Judiciary Committee (Ayes 7, Noes 3)

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