

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 47 (Umberg)
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SUBJECT

February 2025 bar exam: audit

DIGEST

This bill requires the California State Auditor to conduct an audit of the February 2025 bar exam to evaluate its administration and how the problems with the exam occurred, as specified.

EXECUTIVE SUMMARY

The State Bar of California (State Bar) is a public corporation and the largest state bar in the country. The State Bar has two core functions – oversee admissions of applicants for licensure to practice in this state and discipline licensees for violating the law and rules of professional conduct. Every person seeking to be licensed to practice law in this state must pass the bar exam. The State Bar administers the bar exam twice a year – in February and July. The State Bar used a new exam format and platform for the first time in decades for the February 2025 exam that allowed for both in-person and remote test taking.¹ The administration of the new exam was an unmitigated disaster. Testimonies from examinees to the Board and to the Senate Judiciary Committee detailed technical glitches and platform freezes, delayed start times and loss of time during the exam, rude proctors, factual errors in questions, cheating, approved testing accommodations not being met, and various distractions during the exam, including screaming out of frustration by examinees and proctors arguing with each other. Additionally, concerns were raised about the multiple-choice questions on the exam. These concerns have only been exacerbated by the State Bar’s recent revelation that artificial intelligence (AI) was used to design some of the questions on the exam. This bill will require an audit of the February 2025 bar exam to provide understanding into what went so spectacularly wrong, so the Legislature can ensure that it never happens again. This bill is author sponsored. The Committee received no timely support or opposition.

¹ Olivia Hebert, SF Gate, *California's new bar exam launch was a 'disaster.'* Now test takers are suing. (Feb. 28, 2025), available at <https://www.sfgate.com/california/article/california-bar-exam-march-retakes-20192958.php>.

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.)
 - c) Establishes the State Bar Act as the statutory requirements regulating the practice of law in this state. (Bus. & Prof. Code §§ 6000 et seq.)
- 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) Provides the Executive Director, General Counsel, and Chief Trial Counsel (CTC) of the State Bar are subject to Senate Confirmation. (Gov. Code §§ 6011; 6012; & 6079.5.)
- 4) Authorizes the Board to establish an examining committee (hereafter the Committee of Bar Examiners or CBE) having the power to:
 - a) examine all applicants for admission to practice law;
 - b) administer the requirements for admission to practice law; and
 - c) certify to the Supreme Court for admission those applicants who fulfill the requirements provided in Chapter 4 of the State Bar Act. (Bus. & Prof. Code § 6046.)
- 5) Provides that the Committee of Bar Examiners is comprised of 19 members, 10 of whom are licensees of the State Bar or judges of courts of record in this state and nine of whom shall be public members who have never been licensees of the State Bar or admitted to practice before any court in the United States. (*Ibid.*)
 - a) Three of the public members are appointed by the Senate Rules Committee, three of the public members are appointed by the Speaker of the Assembly, and three of the public members are appointed by the Governor. (Bus. & Prof. Code § 6046.5.)
 - b) Provides that the public members have the same rights, powers, and privileges as any attorney member except that such a member cannot participate in the drafting of questions submitted to applicants on the California bar examination. (*Ibid.*)

- 6) Provides various requirements a person must meet to be certified to the California Supreme Court for admission to practice law in this state, including passing the general bar examination given by the Committee of Bar Examiners. (Bus. & Prof. Code § 6060(g).) The Supreme Court admits persons to practice law in this state.
- 7) Requires applicants for admission to practice to pay such reasonable fees, fixed by the Board, as may be necessary to defray the expense of administering the provisions of the State Bar Act relating to admission to practice. These fees are to be collected by the State Bar and paid into the treasury of the State Bar. (Bus. & Prof. Code § 6063.)
- 8) Authorizes any person refused certification to the Supreme Court for admission to practice to have the action of the Board, or of any committee authorized by the Board to make a determination on its behalf, reviewed by the Supreme Court, in accordance with the procedure prescribed by the court. (Bus. & Prof. Code § 6066.)

This bill:

- 1) Requires the California State Auditor to conduct an audit of the February 2025 bar exam to evaluate the administration of the exam and how the problems with that exam occurred.
- 2) Requires the audit to evaluate the bidding and contracting process that the State Bar engaged in that led to awarding the contract to Proctor U, Inc., doing business as Meazure Learning, as well as the final terms of the contract, and determine the following:
 - a) whether the process was conducted according to existing laws, regulations, and policies;
 - b) what evaluation criteria were used to determine whether Meazure Learning had experience with, and was capable of, conducting an examination similar to the State Bar examination;
 - c) whether the State Bar appropriately evaluated and authorized any changes, including cost changes, to the executed contract; and
 - d) whether there were appropriate protections from, and evaluations of, any potential conflicts of interest that may have existed between relevant staff at the State Bar and Meazure Learning.
- 3) Requires the audit to evaluate the bidding and contracting process that the State Bar engaged in that led to awarding the contract to Kaplan, Inc. for administration of the State Bar examination multiple choice questions, as well as the final terms of the contract for those services, and determine all of the following:
 - a) whether the processes were conducted according to existing laws, regulations, and policies;

- b) what evaluation criteria was used to determine whether Kaplan, Inc. had experience with, and was capable of, creating relevant and appropriate questions similar to existing comparable entities like the National Conference of Bar Examiners; and
 - c) whether the terms of the contract allowed for oversight and monitoring of the question development process, and whether the State Bar appropriately utilized its oversight and monitoring to ensure that sufficient processes were engaged in to develop questions, ensure accuracy, and ensure fairness in the question development.
- 4) Requires the audit to evaluate the process that the State Bar engaged in leading up to the administration of the February 2025 State Bar examination to ensure that the examination was conducted in a way that allowed participants to engage fairly in the examination process, and determine all of the following:
- a) when and how the State Bar became aware of any potential problems with the administration of the examination, including limits or problems with examination locations, and how those potential problems were addressed;
 - b) how the process for remote examination employed for the February 2025 State Bar examination differed from the processes used for remote examination during the COVID-19 pandemic, and the reasons for those differences;
 - c) the process and reasoning for determining that a makeup examination date should be offered, and the timeline for making that determination; and
 - d) the process for determining what specific equipment would be permitted for test-takers, such as white boards, and the reasoning and processes utilized to make any changes to those requirements leading up to the examination date.
- 5) Requires the audit to be submitted as soon as possible to the Board, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.
- 6) Requires the State Bar to use existing resources to provide the California State Auditor with the funding necessary to cover the costs of the audit.

COMMENTS

1. Stated need for the bill

The author writes:

The failure of the State Bar in administering the February 2025 Bar Exam is unacceptable and unprecedented. Taking the bar exam is one of the most stressful times in a law school graduate's life. It entails an enormous investment financially, emotionally, and in time - often for both the test taker and their family. I am extremely sympathetic to the plight of examinees affected by this debacle and the

real world consequences, including loss of job offers, delay in starting one's career, the financial effect, and extreme stress this entire situation has caused. Admitting persons to practice law in this state is a core responsibility of the State Bar. This includes administration of the Bar Examination.

I am also deeply troubled by the recent revelations from the State Bar that AI was used to draft certain multiple-choice questions on the February bar exam. This information was not disclosed to anyone – including, most astonishingly, the California Supreme Court. The entire roll out of the February bar exam, from its creation to administration, has proven to be an unmitigated disaster. Each new revelation raises more concerning questions. Questions about the decision-making process of the State Bar; questions about the performance of current leadership; and questions about if the State Bar acted within its authority as granted by the California Supreme Court when designing the February bar exam.

I introduced SB 47 to require an audit of the February bar exam by the California State Auditor because it is imperative that an independent audit is conducted to provide oversight of this fiasco. While the California Supreme Court has plenary power over the State Bar in terms of admissions, the Legislature has regulatory oversight over the State Bar as well. There has been no need for the Legislature to exercise oversight over the Bar Exam in the past, but that is clearly not the case now. It is vital that we understand what went wrong and how it occurred in order to ensure that nothing like this ever happens again.

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.” (*O'Brien, 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. (*O'Brien, 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. (*O'Brien, 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, the Executive Director, and the General Counsel of the State Bar to Senate confirmation (Bus. & Prof. Code §§ 6011; 6012; & 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.² 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. Background on bar exam

a. *New bar exam format and platform used for February 2025 bar exam*

The bar exam is comprised of three components: five one-hour essay questions, one 90-minute performance test, and 200 multiple-choice questions. The State Bar used a new exam format and platform for the first time in decades for the February 2025 exam that allowed for both in-person and remote test taking.³ The State Bar stated that the new exam platform and format “will enable the State Bar to utilize multiple-choice questions developed by Kaplan Exam Services, LLC (Kaplan) rather than purchase the MBE from the [NCBE] and to engage ProctorU, Inc. d/b/a/ Meazure Learning (Meazure

² *Attorney Status*, State Bar of Cal. (current as of June 17, 2024), available at <https://members.calbar.ca.gov/search/demographics.aspx>.

³ Olivia Hebert, SF Gate, *California's new bar exam launch was a 'disaster.' Now test takers are suing.* (Feb. 28, 2025), available at <https://www.sfgate.com/california/article/california-bar-exam-march-retakes-20192958.php>.

Learning) to administer the examination remotely or at Meazure Learning's test centers."⁴ Prior to 2025, the bar exam was always administered in-person at various locations throughout the state by the State Bar with the exception of during the COVID-19 pandemic.

The State Bar's rationale for moving to the new exam platform and format was predominantly a cost saving measure. The State Bar stated:

The agreement will help the State Bar transition to remote and test center-based exam administration, both of which test takers prefer. These test administration changes will also help the State Bar close a significant gap in its Admissions Fund, which is projected to reach insolvency in 2026, absent further efforts to reduce costs. The State Bar projects that the new arrangement will result in annual cost savings of up to \$3.8 million in exam-related expenses – enough to significantly reduce if not fill the gap.⁵

The State Bar told to the Supreme Court that these changes to the bar exam “will allow the State Bar to efficiently administer the bar examination while ensuring examination security and integrity and eliminating unnecessary barriers to accessing the examination”⁶ – tragically, none of these things came to fruition. The Supreme Court approved the State Bar's request for modification to the bar exam on October 22, 2024 in an en banc order.⁷

b. Contract with Kaplan for multiple-choice questions

The State Bar traditionally used multiple-choice questions designed by the NCBE, which are known as the multi-state bar exam (MBE). The NCBE requires that the MBE be given at in-person sites that are overseen by the jurisdiction administering the exam.⁸ In order to administer a remote exam, the State Bar would have to stop using the MBE, which it had used for over 30 years, and find a different vendor to design the multiple-

⁴ *Renewed Request that the Supreme Court Approve Proposed Modifications to the California Bar Examination*, (Cal. Supreme Court (Oct. 2024) S287231) at p. 4, available at <https://www.calbar.ca.gov/portals/0/documents/admissions/examinations/Renewed-Request-to-Approve-Proposed-Modifications-to-the-CA-Bar-Examination.pdf>.

⁵ *State Bar, Kaplan, Sign Five-Year California Bar Exam Development Contract*, Cal. State Bar, (Aug. 13, 2024), available at <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-kaplan-sign-five-year-california-bar-exam-development-contract>.

⁶ *Renewed Request that the Supreme Court Approve Proposed Modifications to the California Bar Examination*, *supra* fn. 4 at p. 6.

⁷ *Order Approving Modifications to the California bar Examination* (Cal. Sup. Court, Admin. Order 2024-10-21-01, (Oct. 22, 2024) (en banc)).

⁸ *Renewed Request that the Supreme Court Approve Proposed Modifications to the California Bar Examination*, *supra* fn. 4 at p. 23.

choice question portion of the bar exam.⁹ In August 2024, the State Bar entered into an \$8.25 million five-year contract with Kaplan to create multiple-choice questions, essay questions, and performance test questions for the bar exam.¹⁰ As part of this agreement, Kaplan agreed to end offering bar preparation services specific to California.

Specifically, the contract provided that the multiple-choice questions created by Kaplan would replace the MBE for the February and July 2025 exams.¹¹ In July 2024, the Board authorized, by vote, the Board Chair and Executive Director to negotiate the terms of the contract.¹² Included in the contract was a “cost-sharing provision whereby the State Bar and Kaplan will share potential copyright infringement litigation costs. The State Bar’s cost is capped at \$6.75 million over the life of the contract, which amounts to the lower end of net projected cost savings over the five-year term. The parties also agreed to a mutual indemnification provision with a \$1.65 million cap.”¹³

c. Contract with Meazure Learning for administration of the bar exam

The modified bar exam was administered by Meazure Learning, for both remote and in-person examinees. The State Bar wrote in its petition to the California Supreme Court seeking approval to use Meazure Learning to administer the bar exam that:

- State Bar staff identified Meazure Learning as the most suitable vendor to administer an examination remotely and/or at vendor-run test centers based on its experience, technological capability, and relative affordability;
- the Board approved a contract amount of \$4,108,500 for Meazure Learning, subject to negotiation of appropriate contractual terms and action by the CBE, to provide a test administration platform, remote and in-person proctoring, and vendor-run test centers for the 2025 bar examination administrations; and
- the CBE unanimously passed a resolution to approve Meazure Learning as the vendor to provide a secure examination on September 30, 2024.¹⁴

The Board of Trustees authorized \$2.4 million for Meazure Learning to proctor the July 2025 exam in September of 2024.¹⁵ However, by January of 2025 the cost of the contract

⁹ Maia Spoto, Bloomberg Law, *California Bar Calls \$2 Million Exam Price Jump a ‘Big Mistake’*, (Jan. 7, 2025), available at <https://news.bloomberglaw.com/litigation/california-bar-calls-2-million-exam-price-jump-a-big-mistake>.

¹⁰ *State Bar, Kaplan, Sign Five-Year California Bar Exam Development Contract*, Cal. State Bar, (Aug. 13, 2024), available at <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-kaplan-sign-five-year-california-bar-exam-development-contract>.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Renewed Request that the Supreme Court Approve Proposed Modifications to the California Bar Examination*, *supra* fn. 4 at pp. 24 & 27.

¹⁵ Maria Spoto, *California Bar Calls \$2 Million Exam Price Jump a ‘Big Mistake’*, (Jan. 7, 2025), available at <https://news.bloomberglaw.com/litigation/california-bar-calls-2-million-exam-price-jump-a-big-mistake>.

with Meazure Learning for the July 2025 bar exam had risen to \$4.4 million. This was \$2 million more than expected by State Bar staff who told the board that it was not “bad faith” but “a very big mistake.”¹⁶ Executive Director Leah Wilson noted that there “are many moving parts all happening at the same time around this bar exam,” and the State Bar is “transitioning to a new multiple choice vendor for the first time, I believe, in 30 or 30-plus years.”¹⁷

4. The administration of the February 2025 bar exam – “stunning incompetence from an entity that exists to measure competence”

According to widespread reports outlined in news articles, a letter signed by California’s law school deans, and numerous phone calls and emails received by the Committee and author of this bill, the February administration of the State Bar Exam was an utter failure. Reports of difficulties included: inability to log in or access the test, unstable servers, issues with proctors, lost time, delayed prompts, factual errors in questions, and the inability to start or finish exam components. Of the 5,600 people registered for the exam, more than 964 withdrew before the day of the exam, after the bar offered unprecedented refunds in the face of technological problems that rose during pre-mock exams and issues with scheduling locations to take the exam. As noted by Dean Erwin Chemerinsky of the UC Berkeley School of Law this 2025 bar exam was “stunning incompetence from an entity that exists to measure competence.”¹⁸ In conversations with the State Bar and Committee staff, it was indicated that virtually every examinee experienced some issue on the bar exam.

The California Supreme Court released a statement following the bar exam debacle:

The court is deeply concerned by the troubling reports of technical failures, delays, and other irregularities in last week’s administration of the February 2025 California Bar Examination. The court regrets this situation and apologizes for the disappointment, stress, and frustration experienced by some applicants. At present, the complete scope and causes of the problems are still being determined. Last week, the court asked the State Bar, in conjunction with the vendor responsible for administering the exam, to provide an expedited, detailed report regarding the problems encountered by applicants. This information is crucial in informing how the court will provide appropriate remedies for affected applicants who deserved and expected better. In the interim, the court directs the State Bar to plan on

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Malcolm Maclachlan, Daily Journal, *California Bar exam failure sparks lawsuit, legislative inquiry*, (mar. 3, 2025), available at https://www.dailyjournal.com/articles/383949-california-bar-exam-failure-sparks-lawsuit-legislative-inquiry?utm_source=ActiveCampaign&utm_medium=email&utm_content=Legal%20battle%20over%20Point%20Reyes%20ranching%20deal%20escalates&utm_campaign=Legal%20News%203%2F3&vgo_ee=cUekTHCZPyLa0dLz%2FgoXbTrxWqEMTgXT%2BgyPjC3Mn6xwO1644QLwGw%3D%3D%3ATT7IZwFcfYgN%2B46NDnKPDsLFczdr1him.

administering the July 2025 California Bar Examination in the traditional in-person format.¹⁹

After the first day of the February Bar Exam, the State Bar released a statement to all examinees, stating that “[i]n advance of the exam, the State Bar took measures to ensure that a makeup opportunity would be available, if needed, for applicants who experienced significant technical issues. As such, we had already planned to offer a makeup opportunity[...].”²⁰ However, the State Bar criteria for a makeup exam was so limited that only about 91 examinees were eligible for the makeup exam. Two class action lawsuits have been filed against Measure Learning in the wake of this fiasco.²¹

The State Bar approved a proposal to allow test takers who withdraw from the February 2025 exam or fail the exam to take a bar exam within the next year for free.²² The Board approved \$3.1 million in the budget to support these fee waivers.²³ Additionally, the State Bar:

- offered reimbursement of nonreimbursable travel expenses for out-of-state, in-person test takers who moved to more local sites in the Central and Eastern time zones;
- extended similar reimbursement offers to those who have had their location changed after registering, or those who changed sites because of the late opening of new locations;
- offered stipends for applicants with testing accommodations (TA) who were moved at the last minute to the State Bar’s Los Angeles office or to other TA testing locations; and
- offered full refunds to applicants affected by the Los Angeles wildfires if they chose to withdraw, and on February 13, extended the offer of full refunds to any applicant who decided to withdraw before the exam.²⁴

The Board has initiated an independent investigation of the 2025 bar exam. Even though the State Bar has initiated their own investigation, it is imperative the Legislature conduct their own independent investigation.

¹⁹ *California Supreme Court Issues Statement on February Bar Exam*, Cal. Sup. Court, (Mar. 4, 2025), available at <https://newsroom.courts.ca.gov/news/california-supreme-court-issues-statement-february-bar-exam>.

²⁰ *Olivia Hebert, DF Gate, California's new bar exam launch was a 'disaster.' Now test takers are suing.* (Feb. 28, 2025), available at <https://www.sfgate.com/california/article/california-bar-exam-march-retakes-20192958.php>.

²¹ *Ibid.*

²² *Board Offers Free July Bar Exam to Applicants Who Withdraw or Fail February Bar Exam*, Cal. State Bar, (Feb. 21, 2025), available at <https://www.calbar.ca.gov/About-Us/News/News-Releases/board-offers-free-july-bar-exam-to-applicants-who-withdraw-or-fail-february-bar-exam>.

²³ *Ibid.*

²⁴ *Ibid.*

5. Concerns regarding modified bar exam expressed prior to adoption by the Supreme Court

Concerns about the State Bar's move to the modified bar exam were expressed from the outset. In April of 2024, Deans of California-accredited law schools sent a letter to the State Bar expressing serious concerns with the aggressive timeline for Kaplan to create multiple-choice questions for the February 2025 bar exam. They wrote that:

In just over six months, the State Bar has proposed that it can hire a vendor; confirm an exam blueprint; review existing questions; develop new questions; review questions for content, cognitive complexity, bias, diversity, inclusiveness, and appropriate level to meet the minimum competence standard; construct exam forms; complete an operational pretest; evaluate technical quality to remove questions that do not function properly; and determine a raw passing score. This proposal does not appear to be practical or realistic. In contrast, the National Conference of Bar Examiners (NCBE), an organization with more than 90 years of expertise in exam development and implementation, dedicated over three years to creating a new exam, including conducting field testing, publishing exam design and content specifications, administering a prototype exam, and performing a standard-setting exercise before the first administration of the exam. [...] ²⁵

The letter highlighted additional concerns, including: invalid assertions from the State Bar that no substantial modification of the training or preparation for passage of the examination is needed by examinees; questions regarding the validity, reliability, and fairness of the multiple-choice exam; and the a lack of understanding about what raw score would be required to pass the exam since it would not be decided until after the exam was administered.²⁶ The letter concluded:

While we understand that the State Bar may not want to wait nearly four years to launch its alternative to the MBE, cost consideration alone is not a compelling argument or justification for the State Bar to rush toward a hasty, risky, and poorly planned 10-month implementation of such a critical public protection process for professional licensure.²⁷

The Deans of ABA-accredited law schools wrote a letter to the Supreme Court in September 2024 expressing concerns with the transition to Kaplan for the multiple-choice questions. They noted that they had reservations about the State Bar's choice to

²⁵ Letter to the State Bar from California Accredited Law Schools re: Stakeholder Forum on Bar Exam Question Development, (Apr. 12, 2024), available at <https://www.calbar.ca.gov/portals/0/documents/admissions/examinations/Renewed-Request-to-Approve-Proposed-Modifications-to-the-CA-Bar-Examination.pdf>.

²⁶ *Id.*

²⁷ *Id.*

use Kaplan as a vendor, and expressed grave concerns if the transition could be completed responsibly in the timeline provided.²⁸ The Deans wrote:

[...] [W]e write to express our concerns about the planned approach to the California Bar Exam experiment Phase 1 and urge the Court to pause implementation of the transition to Kaplan. At the very least, we request that the Court not use Kaplan for the February 2025 Bar administration (and ideally extend the timeline for implementation beyond July 2025) to afford Kaplan additional time to develop materials and address concerns.²⁹

In November 2024, the State Bar provided a test exam to try out the new vendor and multiple-choice questions. Some examinees who took this test exam reported technological issues and concerns with the questions at this time.³⁰ The State Bar noted that “[f]eedback in open-ended comments indicated that there were problems and negative experiences in the November session that align with user experiences in February, however these issues were not reported by the majority of survey respondents.”³¹

6. Nondisclosure agreements

Committee staff has been informed that volunteers who agreed to review bar exam questions were required to sign a nondisclosure agreement (NDA) that contains a provision prohibiting any public announcement or statements concerning the volunteer’s involvement with the State Bar’s review of multiple-choice questions without obtaining written prior consent of the State Bar. It has been communicated to Committee staff that individuals involved in this process would like to provide comment on the process, but fear the NDA prevents them from providing such public comment.

7. Disconcerting revelation that AI was used to create some of the multiple choice questions on the February 2025 bar exam

The State Bar recently revealed that it employed a company to have non-lawyers use AI to create some of the questions for the multiple-choice portion of the exam. According to the State Bar, 100 of the 171 scored multiple-choice questions were made by Kaplan, 48 were taken from a first-year law students’ examination (FYLSX), and 23 questions

²⁸ Letter to Cal. Supreme Court from ABA-Accredited Law Schools re: The California Bar Exam, (Sept. 17, 2024), available at <https://s3.documentcloud.org/documents/25166138/letter-to-ca-sct-cc-state-bar-09-17-24.pdf>.

²⁹ *Id.*

³⁰ *Board of Trustees Orders Independent Investigation into February 2025 Bar Exam Issues*, Cal. State Bar, (Mar. 6, 2025), available at <https://www.calbar.ca.gov/About-Us/News/board-of-trustees-orders-independent-investigation-into-february-2025-bar-exam-issues>.

³¹ *Ibid.*

that were scored on the exam were made by ACS Ventures, the State Bar's psychometrician, and developed with artificial intelligence.³² ACS Ventures is the same company that the State Bar uses to assess and approve the questions on the bar exam. The Executive Director of the State Bar stated that "[w]e have confidence in the validity of the [multiple-choice questions] to accurately and fairly assess the legal competence of test-takers." The State Bar's General Counsel Ellin Davtyan stated that "regardless of [the questions] origins" the exam questions were reviewed and found appropriate by "content validation panels and subject-matter experts."³³

This revelation in itself was alarming, but what was truly shocking was that the neither the Committee of Bar Examiners nor the Supreme Court had been informed of this fact.³⁴ This incident raises troubling questions about the State Bar; questions about the decision-making process of the State Bar and its leadership, and questions about whether the State Bar acted outside of its delegated authority from the Supreme Court. The Supreme Court directed the State Bar to provide an explanation regarding the use of AI on the exam in its petition to the Court requesting approval for the raw score of the February 2025 bar exam.

The State Bar submitted its petition to the Supreme Court on April 29, 2025, and admitted that its original petition to the Court seeking approval of modification to the bar exam "did not contemplate the use of multiple-choice questions drafted by other sources on the bar examination" except for Kaplan.³⁵ The State Bar provided the following explanation regarding the use of AI to create exam questions:

The State Bar expected that, after entering into a contract with Kaplan, the multiple-choice questions for future bar examinations, including the February 2025 bar examination, would consist of Kaplan-drafted questions, as well as FYLSX questions that were provided to Kaplan as source materials. However, in late October 2024, Office of Admissions' staff determined that there were not enough multiple-choice questions for each of the subtopics of the seven subject areas tested. As such, staff requested that ACS Ventures, LLC (ACS) – the psychometric and test development consulting company with which the State Bar contracts to assist with examination analysis, grading, and related services – draft additional questions for the February 2025 bar examination.

³² Jenny Jarvie, Los Angeles Times, *State Bar of California admits it used AI to develop exam questions, triggering new furor*, (Apr. 23, 2025), available at <https://www.latimes.com/california/story/2025-04-23/state-bar-of-california-used-ai-for-exam-questions>.

³³ Cheryl Miller, The Recorder, *State Bar Defends AI Use on Bar Exam, Asks Calif. Supreme Court to Lower Passing Score*, (Apr. 20, 2025).

³⁴ *Ibid.*

³⁵ *Request that the Supreme Court Approve Proposed Raw Passing Score and Scoring Adjustments for the February 2025 California Bar*, (petition to Cal. Supr. Court (Apr. 29, 2025) at p. 7.

Regardless of their origins, all multiple-choice questions went through both the content validation process and review by a subject-matter expert before the commencement of the February 2025 examination. Following the examination, the questions that appeared on the examination were subject to a psychometric analysis and reviewed by standard validation panels. [...]

On or around October 30, 2024, State Bar Admissions' staff requested that ACS draft additional questions for the February 2025 bar examination to ensure that there were a sufficient number of questions in all subtopics of the subject areas of items needed.[fn. omitted] ACS drafted prompts to yield multiple-choice questions that aligned with the topic areas identified by Admissions' staff and ran the prompts through OpenAI ChatGPT. ACS performed an initial edit on each draft item to ensure the questions had a standardized structure, but did not review for content accuracy, bias, or to determine whether the question was appropriate for entry-level attorneys. ACS sent the questions to the State Bar and the questions were reviewed by the content validation panels described below. [parenthetical omitted] Ultimately, there were 29 ACS-developed questions on the February 2025 bar examination, of which 23 were included as part of the scored items.³⁶

In a footnote in the petition, the State Bar further elaborated that:

[...] [I]n late September 2024, Admissions staff requested that ACS draft two questions per subject area for inclusion in the November bar examination study, so that the November study would test a total of 49 questions. ACS drafted 14 questions for the November bar examination study using OpenAI ChatGPT, and the remaining 35 questions were drafted by Kaplan. Of the 14 ACS-drafted questions, 11 were carried over and used on the February 2025 bar examination because they were among the top performing questions from the November study. The decisions by Admissions staff to request that ACS develop questions for the November bar examination study and for use on the February 2025 bar examination were not clearly communicated to State Bar leadership. Structural changes within Admissions have been made to address this issue.³⁷

This explanation fails to provide answers to several important questions, including why Kaplan did not or could not provide 200 multiple-choice questions as per the \$8.25 million contract between the parties and how such a decision was made without State Bar leadership clearly being aware of the decision.

³⁶ *Id.* at pp. 9-12.

³⁷ *Id.* fn. 2 at p. 12.

8. The Supreme Court has ordered the State Bar to use the MBE for the July 2025 bar exam and approved a raw score for the February 2025 bar exam

The State Bar submitted a petition to the Supreme Court to approve the raw score for the February 2025 bar exam on April 29, 2025, and stated that:

the [Committee of Bar Examiners] adopted a resolution recommending, as remediation measures, psychometrically imputing scores for eligible test takers and setting a raw passing score of 534 for the February 2025 bar examination. This raw passing score factors in that 171 of the 200 multiple-choice questions would be scored.

The State Bar is not using Measure Learning for the July 2025 exam and has returned to an in-person examination format after the Supreme Court ordered the State Bar to plan to return to an in-person administration for July 2025. The State Bar is returning to using Examsoft for the July 2025 exam, which it had used prior to the July 2025 exam. The Deans of the ABA-accredited law schools have called on the Supreme Court to require the State Bar to return to the MBE. The NCBE has said that it could accommodate a request from the State Bar to use the MBE for July 2025 through early June.³⁸

In a footnote in the petition to the Court, the State Bar noted the cost of using the MBE for July 2025 would cost an estimated \$720,000 in NCBE fees. The State Bar wrote:

If directed to utilize the MBE in July 2025, the State Bar would be required to purchase the MBE, which has a per applicant price of \$72. The State Bar currently estimates approximately 10,000 applicants will sit for the July 2025 examination, and thus estimates the cost of utilizing the MBE as \$720,000. The State Bar anticipates contracting with Examsoft to administer the multiple-choice and written portions of the July 2025 bar examination. If the State Bar is directed to utilize the MBE, which is not administered via Examsoft, the per-applicant Examsoft fee may be reduced by \$10 per applicant.³⁹

On May 2, 2025, the Supreme Court issued an order in response to the petition setting the raw score at 534 as approved by the Committee of Bar Examiners. The order also requires the State Bar to return to the MBE, stating:

Although the State Bar's petition indicates that the February 2025 examination contained a sufficient number of reliable multiple-choice questions, the Court remains concerned over the processes used to draft those questions, including the

³⁸ Cheryl Miller, The Recorder, *State Bar Defends AI Use on Bar Exam, Asks Calif. Supreme Court to Lower Passing Score*, (Apr. 20, 2025).

³⁹ *Request that the Supreme Court Approve Proposed Raw Passing Score and Scoring Adjustments for the February 2025 California Bar*, (petition to Cal. Supr. Court (Apr. 29, 2025) Fn. 22 a pp. 60-61).

previously undisclosed use of artificial intelligence, and will await the results of the impending audits of the examination. At this time, the Court orders that the Multistate Bar Examination be used for the multiple-choice portion of the July 2025 California Bar Examination.

SUPPORT

None received

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: SB 253 (Umberg, 2025) authorizes the State Bar to charge an active licensee fee in an unspecified amount for 2026. SB 253 is pending before this Committee and is set to be heard on the same day as this bill.

Prior Legislation:

AB 3279 (Committee on Judiciary, Ch. 227, Stats. 2024) among other things increased active licensee fees by \$88.

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 requiring 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.
