

# Measure: K340

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## **INSTRUCTIONS:**

Please carefully read the following description of a ballot measure that was written by a disinterested expert. Feel free to take notes or outline passages as you read.

This should take approximately 10 minutes.

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## **BALLOT MEASURE K340**

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### **BACKGROUND**

***Attorneys' Fees.*** In general, existing law requires that attorneys enter into written fee agreements with their clients. These agreements must specify, among other things, the fee to be paid to the attorney and the manner in which the fee will be determined.

In general, attorney fees are billed to clients on either an hourly basis or a “contingent fee” basis. In contingent fee agreements, the attorney is paid a percentage of the settlement or judgment only if the case is won or settled in favor of the attorney's client. Generally, these hourly and contingent fees are negotiated between the client and the attorney. Current law limits contingent fee rates in certain cases, such as medical malpractice cases.

***"Excessive" Attorneys' Fees.*** The State Bar regulates attorneys in California, including developing and enforcing rules of professional conduct. The State Bar and the California Supreme Court have the power to discipline attorneys, including suspending an attorney from practice for a violation of the rules of professional conduct. One of these rules prohibits attorneys from collecting “excessive” fees, as defined in State Bar rules.

***"Frivolous" Legal Actions.*** Existing law allows courts to determine whether an attorney has filed a lawsuit or legal action that is “frivolous.” Frivolous actions are defined as either (1) totally and completely without merit or (2) filed for the sole purpose of harassing an opposing party. If the court determines that an action is frivolous, it may impose sanctions upon the attorney, including monetary penalties. If a court imposes a penalty of \$1,000 or more, it must notify the State Bar. A court is not required to notify the State Bar if the sanction is less than \$1,000.

### **PROPOSAL**

***Attorneys' Fees.*** Under the measure, attorney fees for any legal matter would be subject to the laws in effect on January 1, 1995. Any changes to these state laws by the Legislature would also require a vote of the electorate, unless the changes further the purposes of the measure, in which case they could be enacted by a two-thirds vote of each house.

***Excessive Attorneys' Fees.*** The measure enacts into law existing State Bar rules prohibiting attorneys from collecting excessive fees, and provides that clients can sue attorneys to recover fees that have been found to be excessive by the court. The measure enacts into law criteria for determining whether a fee is excessive. The criteria are similar to those currently used by the State Bar.

***Attorney Discipline for Frivolous Legal Actions.*** The measure requires that a court impose sanctions against an attorney if the court determines that the attorney has filed a frivolous legal action. Attorneys may appeal the proposed sanctions. Once the appeals are final, the court is required to notify the State Bar if sanctions have been imposed on an attorney, regardless of the amount of the sanction. The sanctioned attorney is required to reimburse the court for all expenses incurred in reporting sanctions to the State Bar. If the State Bar receives three notifications of court sanctions against the same attorney within a five-year period, the State Bar is required to recommend appropriate disciplinary action to the Supreme Court, including but not limited to, suspension or disbarment.

The measure also requires that the sanctioned attorney must notify the client that sanctions had been imposed due to the attorney's conduct in the case. Additionally, the measure prohibits attorneys from collecting fees for services performed in connection with a lawsuit in which the court had imposed sanctions.



**STOP!**

Please go to the online survey, enter the 4-character code for this ballot measure (printed at the top and bottom of this page) and answer the survey questions.