CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL   No. 2811

Introduced by Assembly Member Lowenthal

February 15, 2024

An act to ~~relating to artificial intelligence.~~ *add Section 6068.1 to the Business and Professions Code, relating to artificial intelligence.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2811, as amended, Lowenthal. ~~Artificial intelligence: legal professionals.~~ *Attorneys: court filings: artificial intelligence.*

Existing law, the State Bar Act, regulates the conduct of attorneys. Existing law provides that it is the duty of an attorney to, among other things, support the Constitution and laws of the United States and this state, and to maintain inviolate the confidence, and at every peril to the attorney to preserve the secrets, of the attorney's client.

This bill would additionally require an attorney to execute and maintain, for a period of 7 years, an affidavit certifying whether generative artificial intelligence, as defined, was used in the drafting of each document that the attorney files, or intends to file, in a state or federal court within this state. The bill would require an attorney to, upon request or demand by a state or federal court within this state, file the affidavit with the court, provided that the 7-year retention period has not yet expired.

~~Existing law regulates the conduct of attorneys, legal document assistants, unlawful detainer assistants, and paralegals. Existing law establishes procedural rules governing pleadings, motions, notices, and other filings in civil and criminal actions and proceedings in trial and appellate courts in this state.~~

~~This bill would express the intent of the Legislature to enact legislation~~
~~that would require legal professionals to disclose to the court whether~~
~~they have used artificial intelligence or machine learning to prepare any~~
~~pleadings, motions, or other documents filed with any court in this state.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*.
State-mandated local program: no.

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

1   *SECTION 1.   Section 6068.1 is added to the Business and*
2 *Professions Code, to read:*
3   *6068.1.   (a)   For each document that an attorney files, or intends*
4 *to file, in a court of appropriate jurisdiction of this state or federal*
5 *court within this state, the attorney shall execute and maintain,*
6 *for a period of seven years beginning on the date the document*
7 *was created, an affidavit certifying whether a generative artificial*
8 *intelligence program was used in the drafting of the document.*
9 *The affidavit shall be substantially in the following form:*
10
11   *ARTIFICIAL INTELLIGENCE COMPLIANCE AFFIDAVIT*
12   *The attached document, titled " __ ," complies with the artificial*
13 *intelligence (AI) usage reporting requirement set forth in the State*
14 *Bar Act because [check only ONE of the following options]:*
15   *_____ No generative artificial intelligence program was used in*
16 *the drafting of this document.*
17   *_____ A generative artificial intelligence program was used in*
18 *the drafting of this document, and all generated text, including all*
19 *citations and legal analysis, has been reviewed for accuracy and*
20 *approved by a human.*
21
22   *(Signed) _____*
23   *Attorney for:_____*
24   *Date:_____ _____*
25
26   *(b)   Upon request or order by a court of appropriate jurisdiction*
27 *of this state or federal court within this state, the attorney shall*
28 *file the affidavit with the court, provided that the retention period*
29 *described in subdivision (a) has not yet expired.*
30   *(c)   For purposes of this section, "generative artificial*
31 *intelligence" means a machine-based system that can, for a given*

1 *set of human-defined objectives, make predictions,*
2 *recommendations, or decisions influencing real or virtual*
3 *environments, and that uses machine- and human-based inputs to*
4 *do all of the following:*
5 *(1) Perceive real and virtual environments.*
6 *(2) Abstract such perceptions into models through analysis in*
7 *an automated manner.*
8 *(3) Use model inference to formulate options for information*
9 *or action.*
10 ~~SECTION 1. It is the intent of the Legislature to enact~~
11 ~~legislation that would protect the public and improve candor in~~
12 ~~legal proceedings by requiring legal professionals to disclose to~~
13 ~~the court whether they have used artificial intelligence or machine~~
14 ~~learning to prepare any pleadings, motions, or other documents~~
15 ~~filed with any trial or appellate court in this state. It is further the~~
16 ~~intent of the Legislature to require legal professionals who have~~
17 ~~used artificial intelligence or machine learning to prepare any~~
18 ~~documents filed with any court to ensure that citations contained~~
19 ~~within those documents conform to required ethical and~~
20 ~~professional standards.~~

O