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**The 85<sup>th</sup> Legislature – Regular Session****Vouchers, Guns and Bathrooms—Where Can We  
Find Sanctuary?****Andrew Weber**

## Author Contact Information:

Andrew Weber  
Kelly Hart & Hallman LLP  
303 Colorado, Suite 2000  
Austin, Texas 78701

[andrew.weber@kellyhart.com](mailto:andrew.weber@kellyhart.com)  
512.495.6451

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## I. INTRODUCTION

The 85<sup>th</sup> Legislature officially ended its regular session on May 29, 2017. But the beginning of the end came May 11th, shortly before Mother’s Day. A handful of so-called Tea Party Republicans used a procedural maneuver to kill 100+ House bills—and the impact was to kill the “Sunset” bill. That, in turn, legally gave control to the Senate to hold its sunset bill hostage to bargain for the Lt. Governor’s demands for certain tax, school voucher, and bathroom bill legislation. But I digress. According to the Texas Legislative Reference Library, a total of 6,631 bills and joint resolutions were introduced during the session.<sup>1</sup> Over 1,200 bills and joint resolutions were passed and sent to Governor Abbott.<sup>2</sup> Of that total, some will be vetoed. The remainder will be signed by the Governor or otherwise allowed to become law.<sup>3</sup>

This paper summarizes legislative proposals that could have a noticeable impact on the practice of civil trial and appellate law in Texas. For more detailed information about each bill and additional background information about the same, please visit Texas Legislature Online at <http://www.capitol.state.tx.us> and/or subscribe to Jerry Bullard’s<sup>4</sup> e-newsletter by following the directions at the end of this article.

## II. LEGISLATION THAT PASSED

### A. Attorneys – Practice of Law

#### 1. *HB 1704 – Award of attorney's fees and court costs in actions to determine applicability of local government regulations*<sup>5</sup>

HB 1704 amends Local Government Code section 245.006 to authorize a court to award court costs and attorney’s fees to the prevailing party in a suit to enforce or determine the applicability of a local government regulation. Veto period not expired.

#### 2. *SB 302 – Continuation of the State Bar of Texas*<sup>6</sup>

SB 302 will continue the existence of the State Bar of Texas through September 1, 2029. The original version of SB 302 was based on the Sunset Advisory Commission’s recommendations and included provisions addressing concerns with the “slow and recently ineffective process” for updating rules and procedures governing attorney conduct and the disciplinary process. In its recommendations, the Commission proposed restructuring the rulemaking process under a newly created Committee on Disciplinary Rules and Referenda (CDR), while retaining the authority of State Bar members to approve rule changes through a referendum. The Commission also recommended a series of “best practices” to help improve

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<sup>1</sup> Texas Legislature Online, 85<sup>th</sup> Legislature Legislative Statistics (May 31, 2017).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Jerry Bullard of Adams, Lynch & Loftin, P.C. in Grapevine provides regular updates on legislative zaniness. The author is indebted to Jerry for permission to pilfer liberally from those updates.

<sup>5</sup> Act of May 23, 2017, 85<sup>th</sup> Leg., R.S., H.B. 1704 (to be codified as an amendment of TEX. LOC. GOV’T CODE ANN. § 245.006).

<sup>6</sup> Act of May 29, 2017, 85<sup>th</sup> Leg., R.S., S.B. 302 (to be codified as amendments of TEX. GOV’T CODE ANN. §§ 81.003, 81.021, 81.022, 81.024, 81.054, 81.062, 81.072, 81.076, 81.080–086, 81.0871–0885, 81.115, 411.100 AND 411.1005).

efficiency and responsiveness for attorneys and the public and help the Office of the Chief Disciplinary Counsel monitor and take action against unethical attorneys. The changes included, among other things, the creation of an independent ombudsman's office at the Supreme Court and ways to maximize the informal dispute resolution process.

As the bill moved through the Senate, SB 302 was amended to include, among other things, authorization for the Supreme Court to control a majority of the appointments to the CDR; clarification that, if a rule proposal fails, the process can begin again; authorization for the Supreme Court to extend rule-making deadlines up to ninety (90) days; and a prohibition against the State Bar's board of directors from increasing bar membership dues by more than 10% during a six-year period unless approved by a vote of State Bar members. The House amended SB 302 to include barratry reporting requirements in the State Bar's annual reports about the attorney discipline system, a limitation on fingerprint-based criminal background checks for Texas attorneys (fingerprints would not be required for those already licensed), and the addition of a section that, according to the amendment sponsor, is intended to protect the right of an attorney to practice law in a manner that does not violate a "sincerely held religious belief."

A conference committee was appointed to reconcile the two versions of the bill. On May 26th, the conference committee reached an agreement that adopted much of the Senate's version of SB 302 and most of the House's amendments described above. One of the more notable modifications in the conference committee report was to instruct the Supreme Court to ensure that rules governing admission to the bar do not violate Chapter 110 (Religious Freedom) of the CPRC.

*Effective date:* Unless the Governor vetoes the bill, the changes to the law addressed in SB 302 will be effective September 1, 2017.

## **B. Constitutional Challenges to Texas Statutes**

### ***SJR 6 – Constitutional Amendment Authorizing the Legislature to Require a Court to Notify the Attorney General of Constitutional Challenges to State Statutes*<sup>7</sup>**

SJR 6 would amend the Texas Constitution to specifically authorize the Legislature to (1) require a court to notify the attorney general of a challenge to the constitutionality of a Texas statute, and (2) prescribe a reasonable period after notice is provided during which the court cannot enter a judgment holding a statute unconstitutional. SJR 6 would also require the court in which the challenge is filed to notify the AG of the challenge and that the "reasonable period of notice" would not exceed 45 days. [Note: SJR 6 is the legislative response to the 2013 decision by the Court of Criminal Appeals (CCA) (*Ex parte Lo*) holding that section 402.010(a)–(b) of the Government Code, which prevents a court from entering a final judgment until the Attorney General (AG) is notified of a constitutional challenge to a statute, violated the separation-of-powers principles set forth in the Texas Constitution]. As you may recall, the Legislature passed legislation in 2011 (HB 2425) amending the Government Code to require courts to notify the AG when constitutional challenges to state statutes were raised. The law was amended in 2013 to place the burden of notifying the court of the pleading that should be served on the AG on the party raising the constitutional challenge (SB 392).]

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<sup>7</sup> Act of May 24, 2017, 85<sup>th</sup> Leg., R.S., S.J.R. 6 (proposes an amendment of TEX. CONST. ART. V § 32).



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