

PRESENTED AT

41st Annual Page Keeton Civil Litigation Conference

November 2-3, 2017

Austin, TX

Texas Legislative Update

David E. Chamberlain

Author Contact Information:

David E. Chamberlain
Chamberlain & McHaney
Austin, TX

dchamberlain@chmc-law.com

512.474.9124

Table of Contents

I.	Introduction.....	1
II.	Legislation That Passed	1
A.	Attorneys – Practice of Law	1
1.	SB 302 – Continuation of the State Bar of Texas.....	1
2.	HB 1704 – Award of Attorney’s Fees and Court Costs in Actions to Determine Applicability of Local Government Regulations.....	2
B.	Constitutional Challenges to Texas Statutes.....	2
	SJR 6 – Constitutional Amendment Authorizing the Legislature to Require a Court to Notify the Attorney General of Constitutional Challenges to State Statutes.....	2
C.	Decisions Based on Foreign Laws (Family Law Cases)	3
	HB 45 – Application of Foreign Laws and Foreign Forum Selection in Texas	3
D.	Elections.....	4
	HB 25 – Elimination of Straight-Ticket Voting	4
E.	Foster Care Placements.....	4
	HB 3859 – Foster Care Placements Based on Sincerely Held Religious Beliefs.....	4
F.	Frivolous State Agency Regulatory Actions.....	5
	SB 813 – Recovery of Damages, Attorney’s Fees, and Costs Related to a Frivolous Regulatory Action.....	5
G.	Health Care Liability.....	5
	HB 2891 – Medical Authorizations for Health Care Liability Claims	5
H.	Immigration/Governmental Immunity.....	6
	SB 4 – State and Local Governmental Entity Enforcement of State and Federal Laws Governing Immigration.....	6

I.	Insurance	6
	HB 1774 – Insurance Claims and Prohibited Acts in the Business of Insurance (aka the Hailstorm Bill).....	6
J.	Intellectual Property/Trade Secrets.....	7
	HB 1995 – Amendments to the Texas Uniform Trade Secrets Act.....	7
K.	Judiciary/Court Administration	7
	1. SB 42 – Judge Julie Kocurek Judicial and Courthouse Security Act of 2017	7
	2. SB 44 – Filing Requirements for Candidates for Certain Judicial Offices	8
	3. HB 1761 – Supreme Court Jurisdiction	8
	4. SB 1233/HB 1480 – Writs of Mandamus against Certain Judges	9
	5. SB 1893 – Redistricting of Administration Judicial Regions.....	9
	6. HB 214 – Recording of Certain Supreme Court and Court of Criminal Appeals Proceedings.....	9
	7. HB 2776 – Superseding a Judgment or Order on Appeal.....	10
L.	Notaries/Powers of Attorney/Estate Planning	10
	1. HB 1974 – Amendments to the Texas Durable Power of Attorney Act....	10
	2. HB 995 – Medical Powers of Attorney.....	15
	3. HB 2271 – Decedents’ Estates and Certain Posthumous Gifts (Nearest or Next of Kin)	15
	4. HB 1217 – Online Notarizations.....	16
M.	Settlement Agreements with Governmental Units	16
	HB 53 – Limitations on Settlement Agreements with Governmental Units	16
N.	Texting/Use of Wireless Devices While Operating a Motor Vehicle.....	17
	HB 62 – Use of Wireless Communication Devices while Operating a Motor Vehicle	17

III.	Legislation That Failed	17
A.	Attorney’s Fees/Other Attorney-Related Bills.....	17
1.	SB 949 – Limitation on Attorney’s Fees Awarded in Cases Assigned to Special Three-Judge District Courts (Companion: HB 2221).....	17
2.	HB 744 – Recovery of Attorney’s Fees in Certain Civil Cases (Similar Bill: HB 2457)	18
3.	HB 1951 – Firm Names Used by Attorneys	18
B.	Conflicts between State and Federal Law	18
	SB 89 – Execution or Enforcement of Federal Laws that Violate the Texas Constitution/SJR 7.....	18
C.	Construction Law	19
1.	SB 621 – Liability of Employees of Real Property Owners Arising from Construction Activities (Companion: HB 1315).....	19
2.	HB 1053 – Amendment to the Statute of Repose	19
3.	HB 2422 – Certificates of Merit in Certain Proceedings.....	19
4.	HB 2343 – Prerequisites for Asserting Construction Defect Claims.....	19
D.	Damages.....	20
1.	HB 2300 – Recovery of Medical/Health Care Expenses as Damages in Civil Actions	20
2.	HB 2301 – Affidavits Concerning the Cost and Necessity of Services.....	21
E.	Dram Shop Act	21
	SB 875 – Civil Liability under the Dram Shop Act.....	21
F.	Family Law	22
1.	HB 498 – Application of Foreign Laws and Foreign Forum Selection in Certain Family Law Proceedings.....	22
2.	HB 687 – Motion for a New Trial and Appeal Following a Final Order in Suits Affecting the Parent-Child Relationship	22

3.	HB 730 – Disclosure by an Attorney before Accepting Representation in a Marriage Dissolution Proceeding.....	23
G.	Handgun Liability	23
1.	SB 1736 – Business Owner Liability for Prohibiting License Holders from Carrying Handguns	23
2.	HB 606 – Limited Immunity for Claims Based on a Business Owner’s Failure to Forbid Handguns (Similar Bill: SB 86).....	23
H.	Health Care Liability.....	24
	HB 719 – Liability Limits in a Health Care Liability Claim.....	24
I.	Judiciary/Court Administration	24
1.	SB 409 – County and Justice Court Jurisdiction in Civil Matters	24
2.	SB 525 – Review of State Laws Requiring an Action or Proceeding to be Brought in Travis County or a Travis County Court	24
3.	SB 985 – Abolishment of County Court at Law Nos. 3 through 5 of Dallas County	24
4.	SB 1307 – Authority of Statement Commission on Judicial Conduct to Discipline Judges (Companion: HB 3135).....	25
5.	SJR 12 – Constitutional Amendment to Limit the Number of Terms that Judges and Justices May Serve on Texas Courts (Related Bill: SB 109).....	25
6.	HB 369 / HJR 32 – Creation of Texas Redistricting Commission	25
7.	HB 474 – Creation of Fifteenth District Court of Appeals.....	25
8.	HB 887 – Judicial Recusal Based on Political Contributions.....	25
9.	HB 958 – Interim Study Regarding the Method by Which Judges and Justices are Selected.....	26
10.	HB 1038 – Award of Costs and Attorney’s Fees in a Motion to Dismiss Actions that Have No Basis in Law or Fact (Similar Bill: SB 1946).....	26
11.	HB 1058 – Prohibition of Sale of Court Records Filed Through Statewide Electronic Filing System.....	26

12.	HB 1258 – Availability of Information in Electronic Court Records.....	27
13.	HB 1465 – Prohibition on Judge’s Imposition of Court Costs on Indigent Parties	27
14.	HB 1652 – Study of Pending Court Matters.....	27
15.	HB 2574 – Rules Adopted by Supreme Court to Promote Expedited Resolution Civil Actions.....	27
16.	HB 2594 – Creation of the Chancery Court and Court of Chancery Appeals	28
17.	HB 3971 – Method of Calculating Judicial Salaries (Companion: SB 1938)	28
18.	HRJ 10 – Eligibility Requirements and Terms of Office for Judiciary (Similar Resolutions: HJR 11; HJR 117).....	29
J.	Jury Charge	30
	HB 3911 – Trial Court Instructions to Jury	30
K.	Lawsuit Financing.....	30
	HB 584 – Litigation Finance Agreements	30
L.	Real Estate Litigation.....	31
	SB 1894 – Suits Involving Real Property	31
M.	Sovereign/Governmental Immunity.....	31
	HB 2260 – Discovery Procedures for Claims against Governmental Entities under the Tort Claims Act.....	31
N.	Texas Citizens Participation Act.....	31
	HB 3811 – Actions Involving the Exercise of Constitutional Rights.....	31
O.	Wrongful Birth Cause of Action.....	32
	SB 25 – Elimination of Wrongful Birth Cause of Action (Companion: HB 434).....	32
IV.	Note.....	32

I. INTRODUCTION

The 85th Legislature ended its regular session on May 30, 2017. According to the Texas Legislative Reference Library, a total of 6,631 bills and joint resolutions were introduced during the session.¹ Over 1,200 bills and joint resolutions were passed and sent to Governor Abbott.² Of that total, 52 were vetoed.³ The remainder were either signed by the Governor or otherwise allowed to become law.⁴

This paper summarizes selected 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 the author's e-newsletter by following the directions at the end of this article.

II. LEGISLATION THAT PASSED

A. Attorneys – Practice of Law

1. *SB 302 - Continuation of the State Bar of Texas*⁵

SB 302 continues the existence of the State Bar of Texas through September 1, 2029. Other notable provisions of the bill include the following:

- Retaining the right of State Bar members to vote on disciplinary rules;
- Prohibiting an increase in bar membership dues by more than 10% during a six-year period unless approved by a vote of State Bar members;
- Requiring barratry reporting in the State Bar's annual reports about the attorney discipline system;
- Giving the State Bar access to fingerprint-based criminal history data for bar examinees and new State bar members (fingerprints would not be required for those already licensed);
- Maximizing the use of an informal dispute resolution program in the grievance system;

¹ Legislative Reference Library of Texas, 85th Legislature (Regular Session) Legislative Statistics (July 15, 2017).

² *Id.*

³ *Id.*

⁴ *Id.*; See also TEX. CONST. ART. IV, §14 (As a general rule, the governor has ten (10) days upon receipt of a bill to sign it, veto it, or allow the bill to become law without a signature. However, if a bill is sent to the governor within ten (10) days of final adjournment, he has until twenty (20) days after adjournment to act on the bill. If the governor neither signs nor vetoes the bill within the allotted time, the bill becomes law.)

⁵ Act of May 29, 2017, 85th Leg., R.S., S.B. 302 (to be codified as amendments to TEX. GOV'T CODE ANN. §§ 81.003, 81.021, 81.022, 81.024, 81.054, 81.062, 81.072, 81.080-086, 81.0871-0885, 81.115, 411.100 and 411.1005).

- Creating an independent ombudsman to answer questions regarding the grievance process; and
- Instructing the Supreme Court to ensure that rules governing admission to the bar do not violate Chapter 110 (Religious Freedom) of the Civil Practice & Remedies Code (CPRC).

Effective date: September 1, 2017.

2. *HB 1704 - Award of Attorney's Fees and Court Costs in Actions to Determine Applicability of Local Government Regulations*⁶

HB 1704 amends section 245.006 of the Local Government Code 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.

Effective date: May 29, 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*⁷**

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 may not 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).]

Effective date: January 1, 2018, if the proposed constitutional amendment is approved by voters at an election to be held on November 7, 2017.

⁶ Act of May 23, 2017, 85th Leg., R.S., H.B. 1704 (to be codified as an amendment to TEX. LOC. GOV'T CODE ANN. § 245.006).

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

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Texas Legislative Update

Also available as part of the eCourse

[2017 Page Keeton Civil Litigation eConference](#)

First appeared as part of the conference materials for the
41st Annual Page Keeton Civil Litigation Conference session
"Texas Legislative Update"