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Texas Legislative Update

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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).

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