

**PRESENTED AT**

27<sup>th</sup> Annual Conference on State and Federal Appeals

June 1 –2, 2017  
Austin, Texas

**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

## Table of Contents

	Page
I. Introduction.....	1
II. Legislation That Passed .....	1
A. Attorneys – Practice of Law .....	1
1. HB 1704 – Award of attorney's fees and court costs in actions to determine applicability of local government regulations .....	1
2. SB 302 – Continuation of the State Bar of Texas .....	1
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–Party Voting.....	4
E. Frivolous State Agency Regulatory Actions.....	4
SB 813 – Recovery of Damages, Attorney’s Fees, and Costs Related to a Frivolous Regulatory Action.....	4
F. Health Care Liability.....	5
1. HB 2891 – Health Care Liability Claim for Purposes of Certain CPS Cases.....	5
2. HB 3859 – Foster Care Placements Based on Sincerely Held Religious Beliefs.....	5
G. Immigration/Governmental Immunity .....	5
SB 4 – State and Local Government Entity Enforcement of State and Federal Laws Governing Immigration .....	5
H. Insurance .....	6
HB 1774 – Insurance Claims and Prohibited Acts in the Business of Insurance—aka, the Hail Bill.....	6

I.	Intellectual Property .....	7
	HB 1995 – Amendments to the Texas Uniform Trade Secrets Act.....	7
J.	Judiciary/Court Administration .....	7
1.	SB 44 – Filing Requirements for Candidates for Certain Judicial Offices.....	7
2.	HB 1761 – Supreme Court Jurisdiction .....	8
3.	SB 1233 – Writs of Mandamus Against Certain Judges (Companion HB 1480).....	8
4.	SB 1893 – Redistricting of Administrative Judicial Regions .....	9
5.	HB 214 – Recording of Certain Supreme Court and Court of Criminal Appeals Proceedings .....	9
6.	HB 2776 – Superseding a Judgment or Order on Appeal.....	9
K.	Settlement Agreements with Governmental Units .....	10
	HB 53 – Limitations on Settlement Agreements with Governmental Units .....	10
III.	Legislation that Failed.....	10
A.	Attorney’s Fees/Other Attorney–Related Bills.....	10
1.	SB 949 – Limitation on Attorney’s Fees Awarded in Cases Assigned to Special Three–Judge District Courts (Companion: HB 221).....	10
2.	HB 744 – Recovery of Attorney’s Fees in Certain Civil Cases (Similar Bill: HB 2457).....	10
3.	HB 1951 – Firm Names Used by Attorneys .....	11
B.	Conflicts Between State and Federal Law .....	11
	SB 89 – Execution or Enforcement of Federal Laws that Violate the Texas Constitution/SJR 7 .....	11
C.	Construction Law .....	11
1.	SB 621 – Liability of Employees of Real Property Owners Arising from Construction Activities (Companion: HB 1315).....	11
2.	HB 1053 – Amendment to the Statute of Repose .....	12
3.	HB 2422 – Certificates of Merit in Certain Proceedings.....	12
4.	HB 2343 – Prerequisites for Asserting Construction Defect Claims.....	12

D.	Damages.....	13
1.	HB 2300 – Recovery of Medical/Health Care Expenses as Damages Civil Actions.....	13
2.	HB 2301 – Affidavits Concerning the Cost and Necessity of Services.....	13
E.	Dram Shop Act .....	14
	SB 875 – Civil Liability under the Dram Shop Act.....	14
F.	Family Law .....	15
1.	HB 498 – Application of Foreign Laws and Foreign Forum Selection in Certain Family Law Proceedings .....	15
2.	HB 687 – Motion for a New Trial and Appeal Following a Final Order in Suits Affecting the Parent–Child Relationship .....	15
3.	HB 730 – Disclosure by an Attorney Before Accepting Representation in a Marriage Dissolution Proceeding.....	15
G.	Handgun Liability .....	15
1.	SB 1736 – Business Owner Liability for Prohibiting License Holders from Carrying Handguns.....	15
2.	HB 606 – Limited Immunity for Claims Based on a Business Owner’s Failure to Forbid Handguns (Similar Bill: SB 86) .....	16
H.	Health Care Liability.....	16
	HB 719 – Liability Limits in a Health Care Liability Claim .....	16
I.	Judiciary/Court Administration .....	16
1.	SB 409 – County and Justice Court Jurisdiction in Civil Matters .....	16
2.	SB 525 – Review of State Laws Requiring an Action or Proceeding to be Brought in Travis County or a Travis County Court.....	17
3.	SB 985 – Abolishment of County Court at Law Nos. 3 through 5 of Dallas County .....	17
4.	SB 1307 – Authority of State Commission on Judicial Conduct to Discipline Judges (Companion HB 3135) .....	17
5.	SJR 12 – Constitutional Amendment to Limit the Number of Terms that Judges and Justices May Serve on Texas Courts (Related Bill: SB 109) .....	17

6.	HB 369/HJR 32 – Creation of Texas Redistricting Commission .....	17
7.	HB 474 – Creating of Fifteenth District Court of Appeals .....	18
8.	HB 887 – Judicial Recusal Based on Political Contributions.....	18
9.	HB 958 – Interim Study Regarding the Method by Which Judges and Justices are Selected.....	18
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) .....	18
11.	HB 1058 – Prohibition of Sale of Court Records Filed Through Statewide Electronic Filing System .....	19
12.	HB 1258 – Availability of Information in Electronic Court Records.....	19
13.	HB 1465 – Prohibition on Judge’s Imposition of Court Costs on Indigent Parties .....	19
14.	HB 1652 – Study of Pending Court Matters.....	19
15.	HB 2574 – Rules adopted by Supreme Court to Promoted Expedited Resolution Civil Actions.....	20
16.	HB 2594 – Creating of the Chancery Court and Court of Chancery Appeals.....	20
17.	HB 3971 – Method of Calculating Judicial Salaries (Companion: SB 1938) .....	21
18.	HJR 10 – Eligibility Requirements and Terms of Office for Judiciary (Similar Resolutions: HJR 11; HJR 117) .....	22
J.	Jury Charge .....	22
	HB 3911 – Trial Court Instructions to Jury .....	22
K.	Lawsuit Financing.....	22
	HB 584 – Litigation Finance Agreements .....	22
L.	Real Estate Litigation.....	23
	SB 1894 – Suits Involving Real Property .....	23
M.	Sovereign/Governmental Immunity.....	23
	HB 2260 – Discovery Procedures for Claims against Governmental Entities under the Tort Claims Act.....	23
N.	Texas Citizens Participation Act.....	23

	HB 3811 – Actions Involving the Exercise of Constitutional Rights.....	23
O.	Wrongful Birth Cause of Action.....	24
	SB 25 – Elimination of Wrongful Birth Cause of Action (Companion: HB 434).....	24
IV.	Note.....	24

## 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

---

<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).]

---

<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).



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: The 85th Legislature – Regular Session: Vouchers, Guns and Bathrooms—Where Can We Find Sanctuary?

Also available as part of the eCourse

[2017 eConference on State and Federal Appeals](#)

First appeared as part of the conference materials for the  
27<sup>th</sup> Annual Conference on State and Federal Appeals session  
"Legislative Update"