

BILL ANALYSIS

S.B. 302
By: Watson
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The State Bar of Texas, which oversees the legal profession in the state, is subject to the Texas Sunset Act and will be abolished on September 1, 2017, unless continued by the legislature. S.B. 302 seeks to continue the state bar with several statutory modifications.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 8 of this bill.

ANALYSIS

S.B. 302 amends the Government Code to postpone the date on which the State Bar of Texas will be abolished unless continued under the Texas Sunset Act from September 1, 2017, to September 1, 2029. The bill, with respect to the information that must be provided by the training program required for a member of the state bar's board of directors, replaces information regarding the legislation that created the board with information regarding the law governing state bar operations; adds information regarding the scope of and limitations on the state bar's rulemaking authority; and replaces information regarding the requirements of state open meetings law, state public information law, and other laws relating to public officials, including conflict of interest laws, with information regarding the requirements of laws relating to open meetings, public information, administrative procedure, and the disclosure of conflicts of interest and other laws applicable to members of a state policymaking body in performing their duties.

S.B. 302 requires the executive director of the state bar to create a training manual that includes required training program information and to distribute a copy of the training manual annually to each member of the state bar's board of directors. The bill requires each board member to sign and submit to the executive director on receipt of the training manual a statement acknowledging that receipt. The bill's provisions regarding the training program for board members apply to a member appointed before, on, or after the bill's effective date but require a board member who, before the bill's effective date, completed the training program required under applicable law, as that law existed before the bill's effective date, to complete additional training only on subjects added to the training program by the bill. The bill prohibits such a board member from voting, deliberating, or being counted as a member in attendance at a board meeting held on or after December 1, 2017, until the member completes the additional training.

S.B. 302 requires any change in a membership fee or other fee for state bar members to be clearly described and included in the proposed budget and considered by the supreme court in the state bar budget deliberations. The bill prohibits an increase in a membership fee or other fee

for state bar members from taking effect until the supreme court distributes the proposed fee change in ballot form to each member of the state bar and orders a vote, counts the returned ballots following the 30th day after the date the ballots are distributed, and promulgates the proposed fee, effective immediately, only on approval of the fee increase by a majority of the state bar members who voted on the increase. The bill authorizes the board of directors to increase a membership fee or other fee for state bar members, without distributing the proposed fee to the state bar members for a vote, on or after the sixth anniversary of the preceding fee increase provided the fee increase amount is not more than 10 percent of the previous fee amount. The bill revises the authorization for the supreme court for certain specified reasons to prepare, propose, and adopt rules or amendments to rules with respect to certain aspects of the state bar by, among other changes, replacing as one of those aspects the conduct of the state bar with the administration of the state bar. The bill specifies that the supreme court's adoption of rules for the discipline of state bar members includes the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure and is in accordance with the bill's provisions regarding the Committee on Disciplinary Rules and Referenda and the disciplinary rule proposal process.

S.B. 302 requires the state bar to require that each state bar member submit a complete and legible set of fingerprints, on a form prescribed by the state bar, to the state bar or to the Department of Public Safety (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation (FBI) but exempts from this requirement members who have previously submitted fingerprints to the Board of Law Examiners, which made the information accessible to the state bar, or the state bar or DPS under the State Bar Act. The bill authorizes the state bar to obtain the information from the Board of Law Examiners for a state bar member who has been issued an initial license. The bill requires the state bar to conduct a criminal history record check of each state bar member using information provided by the state bar member or the Board of Law Examiners or information made available to the state bar by DPS, the FBI, and any other criminal justice agency under statutory provisions relating to DPS. The bill authorizes the state bar to enter into an agreement with DPS to administer a criminal history record check and authorizes DPS to collect from each state bar member the costs incurred by DPS in conducting the check. The bill authorizes the state bar to administratively suspend the license of a state bar member who fails to assist the state bar in obtaining criminal history record information. The bill requires the state bar to obtain criminal history record information on each person who is a state bar member on the bill's effective date not later than September 1, 2019.

S.B. 302 sets the supreme court's annual budget process as the time during which the court is required to set membership fees and other fees for state bar members and removes the requirement that the supreme court set such fees in accordance with provisions relating to state bar rules. The bill replaces the requirement that the state bar establish a voluntary mediation and dispute resolution procedure to attempt to resolve each allegation of attorney misconduct that is of a certain classification with a requirement that the state bar establish such a procedure to attempt to resolve each minor grievance referred to the voluntary mediation and dispute resolution procedure by the state bar's chief disciplinary counsel. The bill requires the state bar to assist the supreme court on rule modifications to the Texas Rules of Disciplinary Procedure that are necessary to address such grievances.

S.B. 302 authorizes the chief disciplinary counsel, on approval of the presiding officer of the appropriate district grievance committee, to issue during an investigation of a grievance a subpoena that relates directly to a specific allegation of attorney misconduct and requires the chief disciplinary counsel to provide a process for a respondent to object to such a subpoena. The bill requires the chief disciplinary counsel to develop guidelines and a procedure for an attorney to self-report any criminal offense committed by the attorney and any disciplinary action taken by another state's bar against the attorney and to develop a process to identify a complaint that is appropriate for a settlement attempt or an investigatory hearing before a trial is requested or the complaint is placed on a hearing docket. The bill authorizes the chief disciplinary counsel to authorize a settlement at any time during the disciplinary process. The bill requires the chief

disciplinary counsel to develop proposed changes to the disciplinary rules regarding the time for conducting an investigation of a grievance or issuing a subpoena related to an investigation or attempting a settlement in an investigatory hearing under the bill's provisions, to propose rules necessary to implement the settlement process as added by the bill, and to propose rules to establish a grievance referral program under the Texas Rules of Disciplinary Procedure, including criteria for attorney participation and authorization for use of the program at any point in the attorney disciplinary process.

S.B. 302 requires the chief disciplinary counsel to propose and requires the supreme court to adopt by rule sanction guidelines to associate a specific rule violation or ethical misconduct with a range of appropriate sanctions, provide aggravating and mitigating factors that justify deviating from the established sanctions, and provide consistency between complaints heard by a district grievance committee and complaints heard by a district court. The bill requires the chief disciplinary counsel to ensure that interested parties are provided an opportunity to comment on the proposed sanction guidelines and establishes that such sanction guidelines do not limit the authority of a district grievance committee or of a district judge to make a finding or issue a decision. The bill authorizes the chief disciplinary counsel to hold investigatory and disciplinary hearings by teleconference.

S.B. 302 requires the supreme court to adopt, not later than March 1, 2018, the rules necessary to modify the voluntary mediation and dispute resolution procedures for grievances as required by the bill; to authorize the issuance of subpoenas under the bill's provisions; to implement the bill's provisions regarding attorney self-reporting; to revise the time provided for grievance investigations, subpoena issuance, investigatory hearings, and providing voluntary mediation and dispute resolution under the bill's provisions; to establish the process to identify complaints suitable for settlement attempts and authorize the chief disciplinary counsel to conduct investigatory and disciplinary hearings by teleconference under the bill's provisions; to establish the grievance referral program under the Texas Rules of Disciplinary Procedure as required by the bill; and to establish the sanction guidelines proposed by the counsel under the bill's provisions.

S.B. 302 requires the chief disciplinary counsel to create and maintain a grievance tracking system for grievances filed and disciplinary decisions issued under provisions relating to the discipline of state bar members and sets out requirements for the system. The bill requires the chief disciplinary counsel to periodically evaluate and report information gathered in the system to the Commission for Lawyer Discipline and district grievance committee members and to post the information on the state bar's website. The bill requires the chief disciplinary counsel to establish a process to regularly search the National Lawyer Regulatory Data Bank maintained by the American Bar Association to identify a state bar member who is disciplined in another state.

S.B. 302 establishes the Committee on Disciplinary Rules and Referenda and provides for the composition of the nine-member committee, the members' terms of service, the designation of the presiding officer, and the appointment, not later than January 1, 2018, of initial committee members by the president of the state bar and by the supreme court. The bill authorizes the state bar to hire a staff attorney to assist the committee. The bill requires the committee to regularly review the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure, to issue to the supreme court and the state bar's board of directors a report on the adequacy of such rules at least annually, and to oversee the initial process for proposing a disciplinary rule under the bill's provisions.

S.B. 302 sets out the process by which disciplinary rules for the state bar are proposed, considered, withdrawn, and recommended and the manner in which that process is initiated by the committee. The bill requires the state bar's board of directors to vote on each proposed disciplinary rule recommended by the committee not later than the 120th day after the date the rule is received and requires the board to vote for or against the rule or to return the rule to the committee for additional consideration. The bill requires the board to petition the supreme court to order a referendum on a proposed disciplinary rule by the state bar members if the rule is

approved by a majority of the directors. The bill sets out provisions relating to that referendum vote and provides for the approval or rejection of a proposed rule by the supreme court. The bill requires the committee, the board, or the supreme court to provide notice of any deliberation on a proposed disciplinary rule, requires the deliberation to be open to the public, and requires the board and the supreme court to record and make public each vote for or against a proposed disciplinary rule. The bill prohibits a proposed disciplinary rule from being adopted by the supreme court unless the rule is approved by the committee, the board, the state bar members, and the supreme court. The bill requires the supreme court, the committee, and the state bar to use technological solutions throughout the disciplinary rule proposal process to promote financial efficiency and comments from interested persons. The bill authorizes the process for initiating a proposed disciplinary rule to be reinitiated if a time limit provided by the bill expires or a disciplinary rule proposal is otherwise defeated and authorizes the supreme court to grant a petition for good cause shown to extend any such time limit until a date that is not later than the 90th day after the original deadline.

S.B. 302 requires the state bar to fund one full-time equivalent position of ombudsman for the attorney discipline system, provides for the selection of the ombudsman, who reports directly to the supreme court, and sets out the ombudsman's powers and duties. The bill requires the chief disciplinary counsel, a district grievance committee, the state bar's board of directors, the commission, and state bar members to share with the ombudsman requested information that is necessary to determine whether the state bar followed procedural rules related to a particular grievance or to evaluate the system's efficacy and adequacy. The bill provides for the confidentiality of all types of information, proceedings, hearing transcripts, and statements presented to the ombudsman, prohibits their disclosure to any person other than the chief disciplinary counsel unless disclosure is ordered by a court, and prohibits the ombudsman from accessing privileged communications and information shared between the chief disciplinary counsel and the commission.

S.B. 302, with respect to the requirement that each online attorney profile created by the state bar contain any public disciplinary sanctions issued by the state bar against the attorney, requires the inclusion of a link on the profile to the full text of the disciplinary judgment entered by a district grievance committee or district judge and removes the condition limiting the inclusion in the profile of any public disciplinary sanctions to those issued during at least the 10-year period preceding the date of the profile. The bill removes an identical condition from required inclusion in each online attorney profile of any public disciplinary sanctions issued by an entity in another state responsible for attorney discipline in that state against the attorney. The bill requires the state bar to include on attorneys' online profiles any historical information on public disciplinary sanctions as is practicable.

S.B. 302 entitles the state bar to obtain from DPS criminal history record information maintained by DPS that relates to a person who is a state bar member or to obtain criminal history record information from the Board of Law Examiners, as obtained from DPS, that relates to a person who is an applicant to take a bar examination. The bill prohibits the release or disclosure of such information, except on court order or with consent of an applicant to take a bar examination. The bill replaces the requirement that the Board of Law Examiners seal all criminal history record information obtained by that board that relates to such an applicant immediately following the decision on recommending the applicant with a requirement that the board make that information accessible to the state bar. The bill revises the provision entitling the state bar's general counsel to obtain from DPS criminal history record information maintained by DPS that relates to a person who is licensed by the state bar and who is the subject of or involved in an investigation of certain professional misconduct or of certain Penal Code offenses by instead entitling the chief disciplinary counsel to obtain the information that relates to such a person meeting either condition.

S.B. 302 repeals provisions relating to the supreme court's distribution of ballots relating to proposed state bar rules or amendments to those rules to registered members of the bar for a vote, the counting of any such votes, and promulgation of proposed state bar rules or

amendments to those rules, and provisions requiring the state bar to destroy criminal history record information obtained by the state bar from DPS promptly after a final determination is made in the matter for which the information was obtained.

S.B. 302 repeals the following provisions of the Government Code:

- Sections 81.024(c), (d), (e), (f), and (g)
- Section 411.1005(c)

EFFECTIVE DATE

September 1, 2017.