

## **BILL ANALYSIS**

Senate Research Center  
84R1180 AJA-F

S.J.R. 8  
By: Zaffirini  
State Affairs  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Government Code currently provides that, in an action in which a party to the litigation challenges the constitutionality of a Texas statute, the court shall serve notice to the attorney general and that the court may not enter a final judgment holding the statute unconstitutional before the 45th day after the notice is served. This straightforward provision, patterned after an uncontroversial federal law and similar to laws in 14 other states, was passed by the legislature in 2011 without a single no vote. The Texas Court of Criminal Appeals, however, recently held that this provision violates Article II, Section 1, of the Texas Constitution, the separation-of-powers clause.

This joint resolution would amend the Texas Constitution to make clear that the attorney general notice provision does not violate the separation of powers provision. This ensures that laws duly enacted by the Texas Legislature could not be struck down by a judge without the State—through its attorney general—having the opportunity to appear and defend the constitutionality of those enactments.

S.J.R. 8 proposes a constitutional amendment authorizing the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizing the legislature to prescribe a waiting period before the court may enter a judgment holding the statute unconstitutional.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article V, Texas Constitution, by adding Section 32, as follows:

Sec. 32. Authorizes the legislature, notwithstanding Section 1, Article II, to:

- (1) require a court to provide notice to the attorney general of a challenge to the constitutionality of a statute of this state; and
- (2) prescribe a reasonable period after the provision of that notice during which the court is prohibited from entering enter a judgment holding the statute unconstitutional.

SECTION 2. Provides that the following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) Provides that this temporary provision applies with respect to the constitutional amendment proposed by the 84th Legislature, Regular Session, 2015, authorizing the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizing the legislature to prescribe a waiting period before the court is authorized to enter a judgment holding the statute unconstitutional.

(b) Provides that Section 402.010 (Legal Challenges to Constitutionality of State Statutes), Government Code, as added by Chapter 808 (H.B. 2425), Acts of the 82nd Legislature, Regular Session, 2011, and amended by Chapter 1162 (S.B. 392) and Chapter 1276 (H.B. 1435), Acts of the 83rd Legislature, Regular Session, 2013, is validated and effective on approval of the constitutional amendment described by Subsection (a) of this temporary provision and applies only to a petition, motion, or other pleading filed on or after January 1, 2016.

(c) Provides that this temporary provision expires January 2, 2016.

SECTION 3. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held on November 3, 2015. Sets forth the required language for the ballot.