

## **BILL ANALYSIS**

Senate Research Center

S.B. 302  
By: Watson et al.  
State Affairs  
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Enrolled

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

S.B. 302 is the Sunset bill for the State Bar of Texas (state bar). The state bar is a judicial agency of the state, with statutory authority to discipline attorneys, provide continuing legal education, and aid the courts in the administration of justice. Every person who is licensed to practice law in Texas must join the state bar.

S.B. 302 continues the state bar for the standard 12-year period, moving the agency's Sunset date from September 1, 2017, to September 1, 2029. In addition, S.B. 302 includes a number of changes to make the state bar more efficient and transparent.

For example, S.B. 302 improves the rulemaking process for disciplinary rules because the most recent attempt to revise them took about six years, alienated many attorneys, and resulted in no changes. The improved rulemaking process in S.B. 302 provides specific deadlines, public input requirements, and transparency provisions that are designed to prevent past problems from reoccurring. This new process maintains attorneys' right to vote on proposed disciplinary rules because this safeguard has served the state's legal profession well for decades.

S.B. 302 also strengthens the attorney discipline system by requiring fingerprint-based criminal background checks, reinstating the chief disciplinary counsel's investigatory subpoena power, streamlining the voluntary mediation and dispute resolution procedure, and requiring improved tracking and reporting of disciplinary case outcomes. Finally, S.B. 302 also creates a new independent ombudsman's office to monitor and help the public access the attorney discipline system. (Original Author's/Sponsor's Statement of Intent)

S.B. 302 amends current law relating to the continuation and functions of the state bar.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Supreme Court (supreme court) is modified in SECTION 4 (Section 81.024, Government Code), SECTION 6 (Section 81.062, Government Code), and SECTION 14 (Section 81.024, Government Code) of this bill.

Rulemaking authority is expressly granted to the supreme court in SECTION 9 (Section 81.083, Government Code) and SECTION 15 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 81.003, Government Code, as follows:

Sec. 81.003. SUNSET PROVISION. Provides that the State Bar of Texas (state bar) is subject to Chapter 325 (Texas Sunset Act). Provides that, unless continued in existence as provided by that chapter, this chapter (State Bar) expires September 1, 2029, rather than September 1, 2017.

SECTION 2. Amends Section 81.0201, Government Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires that the training program provide the person with information regarding:

(1) the law governing state bar operations, rather than the legislation that created the state bar and the board of directors of the state bar (board of directors);

(2) through (4) makes no changes to these subdivisions;

(4-a) the scope of and limitations on the rulemaking authority of the state bar;

(5) and (6) makes no changes to these subdivisions;

(7) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and the disclosure of conflicts of interest, rather than the open meetings law, Chapter 551 (Open Meetings); the public information law, Chapter 552 (Public Information). Deletes existing designation of Paragraph (B); and

(B) other laws applicable to members of a state policymaking body in performing their duties, rather than other laws relating to public officials, including conflict-of-interest laws. Redesignates existing Paragraph (C) as Paragraph (B); and

(8) makes no change to this subdivision.

(c) Requires the executive director of the state bar (executive director) to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each member of the board of directors. Requires each member of the board, on receipt of the training manual, to sign and submit to the executive director a statement acknowledging receipt of the training manual.

SECTION 3. Amends Section 81.022, Government Code, by adding Subsection (a-2), (a-3), and (a-4), as follows:

(a-2) Requires that any change in a membership fee or other fee for state bar members be clearly described and included in the proposed budget and considered by the Texas Supreme Court (supreme court) in the state bar budget deliberations.

(a-3) Prohibits, except as provided by Subsection (a-4), 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.

(a-4) Authorizes an increase in the fee for membership in the state bar to be made by the board of directors, without a vote of the members of the state bar, provided that not more than one increase is authorized to be made by the board of directors in a six-year period and such increase is prohibited from exceeding 10 percent.

SECTION 4. Amends Sections 81.024(a) and (b), Government Code, as follows:

(a) Requires the supreme court to promulgate the rules governing the state bar. Deletes existing text authorizing the rules to be amended as provided by this section.

(b) Authorizes the supreme court to:

(1) creates this subdivision from existing text and makes nonsubstantive changes; and

(2) in accordance with Subchapter E-1, adopt rules, including the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure, for the discipline of state bar members. Makes a nonsubstantive change.

SECTION 5. Amends Section 81.054(a), Government Code, as follows:

(a) Requires the supreme court to set membership fees and other fees for members of the state bar during the court's annual budget process under Section 81.022 (Annual Budget; Public Budget Hearing). Requires that the fees, except as provided by Subsection (j) (relating to requiring the supreme court to set an additional legal services fee in an amount of \$65) and those set for associate members, be set in accordance with this section and Section 81.022, rather than this section and Section 81.024 (Rules).

SECTION 6. Amends Subchapter D, Chapter 81, Government Code, by adding Section 81.062, as follows:

Sec. 81.062. STATE BAR ADMISSION AND RELIGIOUS BELIEF. Requires the supreme court, in establishing the rules governing the admission to the practice of law under Section 81.061 (Supreme Court Jurisdiction Exclusive), to ensure that no rule violates Chapter 110 (Religious Freedom), Civil Practice and Remedies Code.

SECTION 7. Amends Section 81.072, Government Code, by adding Subsection (b-3) and amending Subsection (e), as follows:

(b-3) Requires that the supreme court, in establishing minimum standards and procedures for the attorney disciplinary and disability system under Subsection (b) (relating to requiring the supreme court to establish certain minimum standards and procedures for the attorney disciplinary and disability system), ensure that an attorney has an opportunity to respond to all allegations of alleged misconduct.

(e) Requires the state bar to establish a voluntary mediation and dispute resolution procedure to:

(1) attempt to resolve each minor grievance referred to the voluntary mediation and dispute resolution procedure by the chief disciplinary counsel, rather than attempt to resolve each allegation of attorney misconduct that meets certain criteria; and

(2) makes no change to this subdivision.

SECTION 8. Amends Section 81.076, Government Code, by amending Subsection (h) and adding Subsection (i), as follows:

(h) Requires that the Commission for Lawyer Discipline's (commission's) report provide data by race and gender and include the number and final disposition of grievances filed, dismissed, and investigated under and the disciplinary decisions issued under the Texas Disciplinary Rules of Professional Conduct relating to barratry, including the improper solicitation of clients; the chief disciplinary counsel's cooperation with local, state, or federal agencies in the investigation or prosecution of civil actions or criminal offenses related to barratry, including the number of grievances the chief disciplinary counsel referred to or received from a law enforcement agency; barriers to the investigation and prosecution of barratry-related criminal offenses or civil actions under existing criminal and civil laws or to enforcement under the Texas Disciplinary Rules of Professional Conduct; and recommendations for improving the attorney discipline system, the Texas Disciplinary Rules of Professional Conduct, or other state laws related to barratry or improper solicitation of clients.

(i) Requires the commission to prepare a summary of the information included in the report under Subsection (h) and make information available to the public regarding barratry-related grievances, including the final disposition of the grievances, to the extent allowable under, and consistent with, confidentiality laws and rules.

SECTION 9. Amends Subchapter E, Chapter 81, Government Code, by adding Sections 81.080, 81.081, 81.082, 81.083, 81.084, 81.085, and 81.086, as follows:

Sec. 81.080. ISSUANCE OF SUBPOENA; OBJECTION. (a) Authorizes the chief disciplinary counsel, on approval of the presiding officer of the appropriate district grievance committee, to, during an investigation of a grievance, issue a subpoena that relates directly to a specific allegation of attorney misconduct.

(b) Requires the chief disciplinary counsel to provide a process for a respondent to object to a subpoena issued under this section.

Sec. 81.081. ATTORNEY SELF-REPORTING. 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.

Sec. 81.082. PROCESS TO IDENTIFY COMPLAINTS SUITABLE FOR SETTLEMENT OR INVESTIGATORY HEARING. (a) Requires the chief disciplinary counsel 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.

(b) Authorizes the chief disciplinary counsel to authorize a settlement at any time during the disciplinary process.

Sec. 81.083. SANCTION GUIDELINES. (a) Requires the chief disciplinary counsel to propose, and 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.

(b) Requires the chief disciplinary counsel to ensure that interested parties are provided an opportunity to comment on the proposed sanction guidelines.

(c) Provides that the sanction guidelines adopted under this section do not limit the authority of a district grievance committee or of a district judge to make a finding or issue a decision.

Sec. 81.084. GRIEVANCE TRACKING SYSTEM. (a) Requires the chief disciplinary counsel to create and maintain a grievance tracking system for grievances filed and disciplinary decisions issued under this subchapter.

(b) Requires that the grievance tracking system include certain information.

(c) Requires the chief disciplinary counsel to periodically take certain actions with the information from the grievance tracking system.

Sec. 81.085. REGULAR SEARCH OF NATIONAL LAWYER REGULATORY DATA BANK. 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 member of the state bar who is disciplined in another state.

Sec. 81.086. TELECONFERENCE. Authorizes the chief disciplinary counsel to hold investigatory and disciplinary hearings by teleconference.

SECTION 10. Amends Chapter 81, Government Code, by adding Subchapters E-1 and E-2, as follows:

SUBCHAPTER E-1. COMMITTEE ON DISCIPLINARY RULES AND REFERENDA;  
DISCIPLINARY RULE PROPOSAL PROCESS

Sec. 81.0871. DEFINITION. Defines "committee" as the Committee on Disciplinary Rules and Referenda.

Sec. 81.0872. ESTABLISHMENT OF COMMITTEE. (a) Sets forth the composition of the committee.

(b) Requires the president of the state bar (president) and the chief justice of the supreme court to alternate designating an attorney member of the committee to serve as the presiding officer of the committee for a term of one year.

(c) Provides that committee members serve staggered three-year terms, with one-third of the members' terms expiring each year.

Sec. 81.0873. COMMITTEE DUTIES. Requires the committee to regularly review the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure, at least annually issue to the supreme court and the board of directors a report on the adequacy of the reviewed rules, and oversee the initial process for proposing a disciplinary rule under Section 81.0875.

Sec. 81.0874. STAFF ATTORNEY. Authorizes the state bar to hire a staff attorney to assist the committee.

Sec. 81.0875. INITIATION OF RULE PROPOSAL PROCESS. (a) Authorizes the committee to initiate the process for proposing a disciplinary rule for the state bar as the committee considers necessary or in conjunction with the review of the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure.

(b) Requires the committee, not later than the 60th day after the date the committee receives a request to initiate the process for proposing a disciplinary rule, to initiate the process or issue a written decision declining to initiate the process and the reasons for declining.

(c) Authorizes a request to initiate the process for proposing a disciplinary rule under Subsection (b) to be made by certain stakeholders.

Sec. 81.0876. RULE PROPOSAL. (a) Requires the committee, on initiation of the process for proposing a disciplinary rule, to study the issue to be addressed by the proposed rule; hold a public hearing on the issue; draft the proposed rule, which may not address more than one subject; and make all reasonable efforts to solicit comments from different geographic regions in this state, nonattorney members of the public, and members of the state bar.

(b) Provides that a proposed disciplinary rule is withdrawn six months after the date the rule proposal process is initiated if the proposed disciplinary rule is not published on or before that date in the Texas Register and the Texas Bar Journal.

(c) Requires the committee to give interested parties at least 30 days from the date the proposed disciplinary rule is published as required to submit comments on the rule to the committee.

(d) Requires the committee to hold a public hearing on the proposed disciplinary rule if, during the comment period, the hearing is requested by at least 25 people,

a state agency or political subdivision of this state, or an association with at least 25 members.

(e) Authorizes the committee, on conclusion of the comment period, to amend the proposed disciplinary rule in response to the comments.

(f) Requires the committee to vote on whether to recommend a proposed disciplinary rule to the board of directors not later than the 60th day after the final day of the comment period. Prohibits the committee from recommending a proposed disciplinary rule unless at least five members of the committee favor recommendation.

(g) Requires the committee to submit a proposed disciplinary rule that is recommended by the committee to the board of directors for review and consideration.

**Sec. 81.0877. APPROVAL OF PROPOSED DISCIPLINARY RULE BY BOARD OF DIRECTORS.** (a) Requires the 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 from the committee. Requires the board to vote for or against the rule or return the rule to the committee for additional consideration.

(b) Requires the board of directors, if a proposed disciplinary rule is approved by a majority of the directors, to petition the supreme court to order a referendum as provided by Section 81.0878 on the rule by the members of the state bar.

**Sec. 81.0878. REFERENDUM VOTE BY STATE BAR MEMBERS.** (a) Requires the supreme court, on receipt of a petition filed by the board of directors, to distribute a copy of the rule in ballot form to each member of the state bar and order a vote on the rule and publish the rule in the Texas Register and the Texas Bar Journal.

(b) Requires the supreme court to give state bar members at least 30 days to consider a proposed disciplinary rule before voting begins and 30 days to vote on the proposed disciplinary rule following the period for considering the proposed rule.

(c) Requires the state bar to provide proponents and opponents of the proposed disciplinary rule an equal opportunity to present their views at any bar-sponsored forum at which the rule referendum is discussed.

(d) Authorizes one or more proposed disciplinary rules to appear on a single referendum ballot. Requires state bar members to vote for or against each rule. Provides that if a majority of the members who vote on the proposed rule vote in favor of the rule, the rule is approved by the members of the state bar.

**Sec. 81.0879. SUPREME COURT APPROVAL OR REJECTION.** Authorizes the supreme court, by majority vote to approve or reject a proposed disciplinary rule in its entirety, but prohibits the supreme court from approving or rejecting only part of the rule. Provides that, if the supreme court does not vote on the rule on or before the 120th day after the date the rule is approved by state bar members under Section 81.0878, the rule is considered approved by the supreme court.

**Sec. 81.08791. RULE DELIBERATIONS.** (a) Requires the committee, the board of directors, or the supreme court to provide notice of any deliberation on a proposed disciplinary rule, and requires that the deliberation be open to the public.

(b) Requires the board of directors and the supreme court to record and make public each vote for or against a proposed disciplinary rule.

Sec. 81.08792. PROPOSED DISCIPLINARY RULE APPROVAL REQUIRED BEFORE ADOPTION. Prohibits a proposed disciplinary rule from being adopted by the supreme court unless the rule is approved by the committee, the board of directors, the members of the state bar, and the supreme court.

Sec. 81.08793. USE OF TECHNOLOGY. 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.

Sec. 81.08794. EXPIRED TIME AND DEFEATED RULE PROPOSAL. (a) Authorizes the process for initiating the proposed disciplinary rule, if a time limit provided by this subchapter expires or a disciplinary rule proposal is otherwise defeated, to again be initiated in accordance with this subchapter.

(b) Authorizes the supreme court, for good cause shown, to grant a petition to extend any time limit provided by this subchapter until a date that is not later than the 90th day after the original deadline.

#### SUBCHAPTER E-2. OMBUDSMAN FOR ATTORNEY DISCIPLINE SYSTEM

Sec. 81.0881. DEFINITIONS. Defines "ombudsman" and "system."

Sec. 81.0882. OMBUDSMAN FOR ATTORNEY DISCIPLINE SYSTEM. (a) Requires the state bar to fund one full-time equivalent position of ombudsman for the attorney discipline system (ombudsman; system).

(b) Provides that the ombudsman is selected by the members of the supreme court and is independent of the state bar, the board of directors, the commission, and the chief disciplinary counsel.

(c) Requires the ombudsman to report directly to the supreme court.

Sec. 81.0883. POWERS AND DUTIES OF OMBUDSMAN. (a) Requires the ombudsman to perform certain duties.

(b) Prohibits the ombudsman from performing certain actions.

Sec. 81.0884. ACCESS TO INFORMATION. Requires the chief disciplinary counsel, a district grievance committee, the 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 evaluate the system's efficacy and adequacy.

Sec. 81.0885. CONFIDENTIAL INFORMATION; PRIVILEGED COMMUNICATIONS. (a) Provides that all types of information, proceedings, hearing transcripts, and statements presented to the ombudsman are confidential and are prohibited from being disclosed to any person other than the chief disciplinary counsel unless disclosure is ordered by a court.

(b) Prohibits the ombudsman from accessing privileged communications and information shared between the chief disciplinary counsel and the commission.

SECTION 11. Amends Section 81.115(b), Government Code, as follows:

(b) Requires that a profile contain the following information on each attorney:

(1) through (4) makes no changes to these subdivisions;

(5) any public disciplinary sanctions issued by the state bar against the attorney, including a link on the attorney's online profile to the full text of the disciplinary

judgment entered by a district grievance committee or district judge, rather than during at least the 10-year period preceding the date of the profile; and

(6) makes a conforming change.

SECTION 12. Amends Section 411.100, Government Code, as follows:

Sec. 411.100. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: BOARD OF LAW EXAMINERS AND STATE BAR OF TEXAS. (a) Makes no change to this subsection.

(a-1) Provides that the state bar is entitled to obtain, from the Texas Department of Public Safety (DPS), criminal history record information maintained by DPS that relates to a person who is a member of the state bar, or, from the Board of Law Examiners (BLE), criminal history record information.

(b) Prohibits criminal history record information obtained under Subsection (a) (relating to entitling BLE to obtain certain information from DPS) or (a-1) from being released or disclosed to any person, except on court order or with consent of the applicant. Makes a nonsubstantive change.

(c) Requires BLE, immediately following the decision of BLE, rather than BLE's decision, on recommending an applicant, to collect and make accessible to the state bar, rather than seal, all criminal history record information obtained by BLE that relates to that applicant.

SECTION 13. Amends Section 411.1005(a), Government Code, as follows:

(a) Provides that the chief disciplinary counsel, rather than the general counsel, of the state bar is entitled to obtain from DPS criminal history record information maintained by DPS that relates to a person who is:

(1) and (2) makes nonsubstantive changes;

(3) redesignates existing Subdivision (2) as Subdivision (3) and makes no further changes to this subdivision; or

(4) redesignates existing Subdivision (3) as Subdivision (4) and makes no further changes to this subdivision.

SECTION 14. Repealers: Sections 81.024(c) (relating to requiring the supreme court, when the supreme court has prepared and proposed rules or amendments to rules, to distribute a copy of each rule or amendment in ballot form), (d) (relating to requiring the court to count the returned ballots at the end of the 30-day period), (e) (relating to requiring the supreme court to promulgate each rule and amendment that receives a majority of the votes cast in an election), (f) (relating to requiring the vote to be open to inspection), and (g) (relating to prohibiting a rule from being promulgated unless it has been approved by the members of the state bar), Government Code.

SECTION 15. (a) Requires the state bar to obtain criminal history record information on each person who is a member of the state bar and whose information is already on file with DPS or BLE on the effective date of this Act as authorized by Sections 411.100 and 411.1005, Government Code, as amended by this Act, not later than September 1, 2018.

(b) Requires the president and the supreme court, as soon as practicable after the effective date of this Act, but not later than January 1, 2018, to appoint the initial members of the committee as follows:

(1) requires the president to appoint one person to a term expiring in 2018;

(2) requires the supreme court to appoint two people to terms expiring in 2018;



- (3) requires the president to appoint two people to terms expiring in 2019;
- (4) requires the supreme court to appoint one person to a term expiring in 2019;
- (5) requires the president to appoint one person to a term expiring in 2020; and
- (6) requires the supreme court to appoint two people to terms expiring in 2020.

(c) Requires the supreme court, notwithstanding Subchapter E-1, Chapter 81, Government Code, as added by this Act, not later than March 1, 2018, to adopt certain necessary rules.

(d) 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 Section 81.082, Government Code, as added by this Act; propose rules necessary to implement the settlement process described by Section 81.082, Government Code, as added by this Act; and 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.

(e) Requires the state bar to assist the supreme court on certain rule modifications to the Texas Rules of Disciplinary Procedure that are necessary to address Section 81.072(e)(1), Government Code, as amended by this Act.

(f) Requires the state bar to include on attorneys' online profiles any historical information on public disciplinary sanctions as is practicable under Section 81.115(b), Government Code, as amended by this Act. Requires that a public disciplinary action issued on or after the effective date of this Act be included on the attorney's online profile as required by Section 81.115(b), Government Code, as amended by this Act.

(g) Requires the commission, not later than September 1, 2018, to include information regarding barratry in the report required under Section 81.076(h), Government Code, as amended by this Act.

SECTION 16. (a) Provides that, except as provided by Subsection (b) of this section, Section 81.0201, Government Code, as amended by this Act, applies to a member of the board of directors appointed before, on, or after the effective date of this Act.

(b) Requires a member of the board of directors who, before the effective date of this Act, completed the training program required by Section 81.0201, Government Code, as that law existed before the effective date of this Act, to complete additional training only on subjects added by this Act to the training program as required by Section 81.0201, Government Code, as amended by this Act. Prohibits a board member described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of the board of directors held on or after December 1, 2017, until the member completes the additional training.

SECTION 17. Effective date: September 1, 2017.