Victory and Strategy Mark PBA 2017 Legislative Year

One big victory, some small victories and strategic inroads marked the 2017 legislative year for the PBA. In the first half of this legislative session, one of the very few bills passed into law was a PBA initiative, said PBA Legislative Director Fred Cabell.

The last two weeks of 2017 were unexpectedly productive. “We have much more to tell than I thought we would at this point. There was a lull in legislation moving because of the extended budget process. Typically, the legislative process is highly cyclical, and there’s a possibility that things will pick up in mid- to late-January,” he said.

In one legislative season, legislators introduce more than 4,000 bills. Fewer than 10 percent become laws, and a large portion of those are for naming bridges and roads. Cabell said it’s a real uphill struggle to get a bill passed into law, “and we never take it for granted. Even when they pass unanimously, you still have to have a compelling reason for the bill. A lot of our legislation is technical, and there are very few practicing attorneys in the General Assembly. So we have to explain a lot.”

Much of the PBA Legislative Department’s work at the Capitol is about building relationships. “We have good relationships with various committees on the Hill. There are bills we’ve been able to stop at committee level due to these relationships. We are also contacted on a regular basis by committees about pending bills prior to consideration to provide insight,” Cabell said.

“We got one PBA initiative, SB 629, passed into law, but we had many small victories,” Cabell said. Ashley P. Murphy, PBA legislative counsel, said SB 629 was on second consideration in the Senate in June but stalled. Known as the Uniform Voidable Transactions Act, this legislation amends the Pennsylvania Uniform Fraudulent Transfers Act. It passed both chambers in late 2017 and was signed into law by Gov. Tom Wolf on Dec. 22, 2017, as Act 78.

Juliet M. Moringiello, Commonwealth Professor of Business Law and director, Business Advising Program at Widener University Commonwealth Law School, is chair of the PBA Business Law Section. She said, “SB 629 amends the existing Pennsylvania Uniform Fraudulent Transactions Act. Other than the name change, there are two significant revisions to the act, which are really additions.

“First, the new act adds a choice of law provision to the PUFTA. That’s important because the old act had no choice of law provision at all, which means that if you had a Pennsylvania creditor and a New Jersey debtor and the property that was the subject of the action was located in Delaware, it wasn’t clear which state’s law would apply. Under the new act, it’s the law of the debtor’s location,” she said.

She said the new act adds a standard of proof. “Again, the old one did not have such a standard. As a result, some courts applied the usual civil action ‘preponderance of the evidence’ standard and others applied a higher ‘clear and convincing evidence’ standard. The new act codifies the preponderance of the evidence standard,” Moringiello said.

“Both of these changes cut down on uncertainty, and that’s a good thing for a uniform law,” she said.

SB 844, a PBA priority and initiative, passed the Senate on Dec. 12 and was referred to the House Judiciary Committee. The PBA Family Law Section was involved in drafting amendments to the legislation that establishes criteria for third party standing in situations when there are no parents and amends a grandparent partial custody standing provision when the parents can’t agree. The Family Law Section presented its report and recommendation to the PBA Board of Governors last October in support of SB 844, subject to several important modifications.

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Hurvitz also wrote about objections to loosening third-party standing in custody cases in the December issue of *Pennsylvania Family Lawyer*. He said, “The principle objection to loosening the third-party standing requirements in custody proceedings has revolved around the court’s legitimate concern in protecting children from involvement in unwarranted custody litigation.”

As to a sales tax on legal services, there is a lull in that battle, Cabell said, probably because of a recent constitutional amendment permitting a 100 percent homestead exemption. “The property tax issue has some very emotional reactions. There is likely to be a change in how this issue will be approached,” he said.

However, the General Assembly is always looking at new sources of revenue during budget negotiations, so a sales tax on legal services will never be completely off the table.

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**PBA Monitored Numerous Bills During First Half of 2017-18 Legislative Session**

The following are bills the PBA has monitored during the first half of the 2017-18 legislative session:

**S.B. 76** — Proposes to eliminate all school property taxes. Among various new revenue sources, the bill would place a sales tax on most legal services. No movement, particularly in light of recent constitutional amendment permitting 100 percent homestead exemption.

**H.B. 1903/S.B. 745** — County Legal Journal Advertising — Contain a carve-out for county legal journals. There are currently no active threats, but PBA remains vigilant.

**S.B. 629** — Uniform Voidable Transaction Act. This legislation amends the Pennsylvania Uniform Fraudulent Transfer Act (PUFTA), 12 Pa. C.S. § 5101 et seq., and is based on a set of amendments to the Uniform Fraudulent Transfer Act promulgated by the Uniform Law Commission in 2014. Passed both chambers and signed into law on Dec. 22, 2017.

**S.B. 827** — Revised Uniform Fiduciary Access to Digital Assets Act. Provides people the power to plan for the management and disposition of their digital assets in the same way they can make plans for their tangible property: by providing instructions in a will, trust or power of attorney. PBA successfully secured significant amendments allowing for efficient discovery of assets. Received second consideration on Oct. 24, 2017, in the Senate.

**H.B. 1644** — Pennsylvania Collaborative Law Act. This legislation is intended to standardize and legitimize collaborative law practice and create uniform standards. It is designed to apply to disputes between family members, whether in a family law context, business or partnership arrangement, trusts and estates, etc. Passed the House on Dec. 6, 2017, and referred to Senate Judiciary Committee.

**S.B. 844** — Third Party and Grandparents Partial Physical Custody. Establishes criteria for third party standing in situations where there are no parents. Also, provides standards for grandparents’ partial physical custody when there is a custody dispute between the parents. Both changes are needed as a result of recent court decisions. PBA successfully secured significant amendments, including a PBA Family Law Section initiative. Passed the Senate on Dec. 12, 2017, and referred to House Judiciary Committee.

**H.B. 352** — Adverse Possession. Provides for the acquisition of real property by adverse possession through an action in quiet title after 10 years, rather than 21 as under current law, for properties no more than one-half acre in area. Passed the House and has had first consideration before the House Judiciary Committee.

**H.B. 45** — Right to Try Act. Allows eligible patients with a terminal illness to use investigational drugs, biological products and medical devices not yet approved by the U.S. Food and Drug Administration (FDA). PBA successfully secured amendments. Approved by the governor as Act 33 of 2017.

**H.B. 1250** — Alimony Pendente Lite. Would change the law with regard to APL, moving it from a formulaic approach to a case-by-case approach. PBA has successfully blocked this legislation for now. PBA testified at a hearing on the bill on May 23, 2017, but the bill has yet to be brought before House Judiciary Committee for a vote.

**H.B. 443** — Custody Contempt. Would permit make-up custodial time as result of contempt in custody proceeding. PBA successfully incorporated the Family Law Section’s language into the bill prior to introduction. Has not yet been brought before the House Judiciary Committee for a vote.

* These bills are PBA initiatives. PBA sections/committees were involved in drafting the legislation, and the PBA is the primary, and in some cases, the only organization pursuing passage through lobbying activity.