The 2015 Legislative Session: 
Legislature in Transition
Revised 8/7/2015

Independent Bankers Association of Texas
1700 Rio Grande Street, Suite 100
Austin, Texas 78701
www.ibat.org

©Independent Bankers Association of Texas
Austin, Texas, 2015. All Rights Reserved.
About the Author

KAREN NEELEY is a graduate of the University of Texas at Austin, receiving her B.A. with high honors and J.D. with honors. She is a member of numerous professional organizations including the State Bar of Texas, American Bar Association, and Texas Association of Bank Counsel, for which she is an advisory director. She is also a member of the Texas Society of Association Executives.

Ms. Neeley is a frequent writer and lecturer on banking topics. Her publications include the *Home Equity Handbook*, *Code of Ethics*, *Loan Policies & Procedures Manual*, and *Texas Bank Director Handbook*. She was also a contributor to the *Texas Collections Manual* for the State Bar of Texas and *The Art of Managing Your Support Staff* for the American Bar Association.

As a speaker, she presents the IBAT Operations and Lending Summits and has appeared at the Southwest Graduate School of Banking (SWGSB), Texas Tech University School of Banking, Bank Operations Institute, as well as numerous other programs.

Ms. Neeley currently works in the financial institutions practice area of the Austin office of Dykema Cox Smith. She is licensed to practice law in Federal Court for the Western District of Texas, the Fifth Circuit Court of Appeals and the U.S. Supreme Court. Ms. Neeley has served as General Counsel for the Independent Bankers Association of Texas since 1989. As IBAT’s representative, she testifies and provides comments frequently before the state legislature and various state and federal regulatory bodies.
## Table of Contents

- INTRODUCTION ....................................................................................................................... 4
- IBAT AGENDA .......................................................................................................................... 5
- OPERATIONS ........................................................................................................................... 6
- FORECLOSURE ....................................................................................................................... 14
- LIEN BILLS .............................................................................................................................. 16
- GOVERNMENT ....................................................................................................................... 19
- FINANCIAL LITERACY ............................................................................................................. 21
- CONCLUSION and COMING ATTRACTIONS ............................................................................. 22
INTRODUCTION

The 84th Legislative Session broke ground in a number of ways. It was the first session without Rick Perry as governor in 14 years. Governor Abbott proved to be a steady hand at the wheel. Dan Patrick succeeded David Dewhurst as lieutenant governor, and guided the Senate with little turbulence. Speaker Joe Straus easily won reelection to the “center chair” after the requisite opening day drama that included for the first time in years a record vote on the Speaker. The Senate and House both lost a number of very experienced members, and both chambers moved somewhat to the right on the political spectrum. The Senate changed its long-standing rules to authorize bills to be heard on a 3/5ths vote rather than 2/3rds. This marginalized the Democrats in the chamber to some extent. In the end, the process again worked, with minimal fits and starts.

As Texas continues to be a “bright red state,” with Republicans firmly in control of both chambers and all of the statewide elected offices, the drama was between the House and the Senate, or intramural squabbles between Republicans rather than partisan battles. The House and Senate had widely differing concepts of tax cuts, which threatened to create the need for a dreaded special session. Nonetheless, the chambers came to the bargaining table and were able to enact the two-year budget of $209 billion with modest tax reform. The franchise tax rate was reduced from 1% to 0.75%, the homestead exemption was raised by $10,000 and the inheritance tax was repealed. For more detailed analysis of all of the tax bills passed this session, please see James LeBas’ special report.

The session stats were very similar to those of prior years: 6,276 bills filed; 1,322 bills passed; 7 joint resolutions passed out of 200 filed; and 42 bills vetoed. In addition, Governor Abbott line-item vetoed $295 million—mostly in riders.

IBAT had mixed success on its affirmative agenda, as discussed below. Several cleanup bills made it through. However, several bills that would have addressed cyber security issues did not make it. Requiring IDs for purchase of gift cards with a debit card made it through the House with an affirmative vote of 100 members. It was killed in the Senate, with strong opposition from the card networks as well as major retailers. Requiring merchants to take on more responsibility for data security breach just wasn’t in the stars. A bill to require property tax lien borrowers to give a 10-day advance notice to their existing lienholders passed the House but not the Senate.
A special thanks to all of the IBAT members who responded to our calls to action or were otherwise engaged in this process. It makes a tremendous difference, and is very much appreciated.

**IBAT AGENDA**

**HB 2394 by Darby; Creighton**

*Relating to the compelled production of certain customer records by a financial institution.*

This amendment to the Finance Code provides that if a requesting party has not paid a bank’s cost or posted a cost bond when requesting production of customer records, the bank is not required to produce such records until paid. The bank will not be held in contempt of court. Please note that there is no change to the list of entities that do not have to pay for such records—including prosecutors and Adult Protective Services, among others.

*Effective date: September 1, 2015*

**SB 1020 by Creighton; Murr**

*Relating to the designation of the trustee of an express trust as a beneficiary of a trust account or a P.O.D. payee of a P.O.D. account.*

This is our proposed amendment to the Estates Code. It would permit the trustee of an express trust to be a beneficiary of a POD or trust account.

*Recommendation: Update new accounts training to clarify that trustees of an express trust can now be a POD beneficiary.*

*Effective date: September 1, 2015*

**SB 1457 by Nichols; Clardy**

*Relating to bad faith claims of patent infringement.*

Since only Congress can regulate patents, this bill addresses the problems created by Patent Assertion Entities (PAEs) by identifying certain acts as “bad faith” claims against end users of products, service or technology. This includes a communication that falsely states that the sender has filed a lawsuit, a claim that is objectively baseless (expired or invalid patent), or a communication that is likely to materially mislead. Enforcement is through the Attorney General, who can enjoin action and seek civil monetary penalties.
Recommendation: If your bank receives what you believe to be a “bad faith” claim, contact the Attorney General with that information. And let IBAT know so that it can track the success of this new law!

Effective date: September 1, 2015

SB 641 by Schwertner; Raney
Relating to debit card or stored value card surcharges.

Last session, IBAT obtained a provision in the Finance Code that prohibits merchants from assessing a surcharge for the use of a debit card or stored value card. The Department of Banking admonished merchants who flouted the law, but it really didn’t have effective remedies. This amendment adds enforcement language to the Business and Commerce Code, and adds a definition of surcharge, which is an increase in the price charged for goods or services. The bill provides for a civil penalty to be pursued by the Attorney General or DA. First a 30-day warning must be given of noncompliance.

Effective date: September 1, 2015

OPERATIONS

HB 705 by Farrar; Ellis
Relating to access to a financial institution account of a person who dies intestate.

This amendment to the Estates Code requires financial institutions to release information relating to balance of accounts to an heir, spouse, creditor or any other person having a property right in or claim against an estate who obtains an order. Currently, executors can get information from banks. This bill is intended to provide information where there aren’t any letters testamentary or administration granted yet. It does not apply to accounts with right of survivorship, POD or trust accounts.

Effective Date: September 1, 2015

HB 831 by Giddings; West
Relating to disclosure of home mortgage information to a surviving spouse.

This amendment to Ch. 343 of the Finance Code adds a section in the Home Loans and General part that creates a mechanism for a surviving spouse to obtain information about a home loan from the mortgage servicer. It applies to all home mortgage loans except HELOCs and Reverse Mortgages. Under this section, the survivor will have to produce a Death
Certificate and a statutory affidavit plus an affidavit signed by the surviving spouse stating that they are currently residing in the property as their primary residence. The request must include: THIS REQUEST IS MADE PURSUANT TO TEXAS FINANCE CODE SECTION 343.103. SUBSEQUENT DISCLOSURE OF INFORMATION IS NOT IN CONFLICT WITH THE GRAMM-LEACH-BLILEY ACT UNDER 15 USC SECTION 6802(e)(8). With that proof then the bank must provide current balance info (including due dates and amount of any installment), whether the loan is current and any amounts that are delinquent, loan number and amount of any escrow deposit for taxes and insurance.

Proposed amendments to RESPA will require somewhat similar disclosures. However, these are not likely to be adopted and effective until next year.

Effective date: September 1, 2015

**HB 896 by Hernandez; Huffman**
*Relating to the prosecution of the offense of breach of computer security.*

The Penal Code section dealing with breach of computer systems is amended to add another offense where a person accesses a computer, a computer network or system in violation of a clear and conspicuous prohibition of the owner or a contractual agreement to which the person has expressly agreed and to do so with the intent to obtain a file, data, or proprietary information to defraud or harm another or to alter, damage or delete property.

The bill should make it easier to prosecute computer hackers.

Effective date: September 1, 2015

**HB 910 by Phillips; Estes**
*Relating to the authority of a person who is licensed to carry a handgun to openly carry a holstered handgun.*

Open Carry (including so-called Constitutional Carry) was a hot topic this session with numerous bills filed. After much debate, the legislature basically deleted the word “concealed” from before “handgun” in various sections of the law. A license is still required for carry (whether concealed or open). Employers can still adopt policies prohibiting open or concealed carry on premises by employees.

The question for banks is whether or not to limit carrying handguns onto their premises. This creates a security concern, which can conflict with strongly held beliefs in the sanctity of the Second Amendment! For banks more concerned with the security issue, they can
communicate their prohibition of such carry. The communication can be either of the following:

- A card or other document on which is written language identical to the following: “Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.” OR

- A sign posted on the property that includes the text above in both English and Spanish, in contrasting colors with block letters at least one inch in height, and displayed in a conspicuous manner clearly visible to the public at each entrance to the property.

Recommendation: Evaluate the bank’s security procedures and determine whether or not to post the new signage.

Effective date: January 1, 2016

HB 1265 by Wu; Eltife
Relating to a deceptive act or practice related to an unsolicited advertisement of goods and services sent by mail.

This amendment to the DTPA would add several new items to the laundry list. One new deceptive act would be mailing an unrequested solicitation in connection with the good or service that simulates or resembles a check or invoice unless it includes the following notice, clearly and conspicuously printed in at least 18-point type: SPECIMEN-NON-NEGOTIABLE. This probably affects credit card companies, which transmit convenience checks in credit card statements. Probably not many community banks would be affected.

Another addition to the list of deceptive acts is delivering or distributing a solicitation in connection with a good or service that represents that it is sent on behalf of a governmental entity when it is not or which resembles a governmental notice or form that represents or implies that a criminal penalty may be imposed if the recipient does not remit payment for the good or service.

Effective date: September 1, 2015
HB 1454 by Raney; Eltife
Relating to notice, reporting, and records requirements for holders of certain personal property that is or may be presumed abandoned.

The escheat sections in the Property Code are amended to permit (but not require) a depositor or safe deposit box tenant to designate the name and mailing or email address of a representative for the purpose of receiving the abandonment notice. The purpose of the representative is to send the required abandonment notice not only to the customer but also to the representative. So if the owner has designated such a representative then the bank will be required to mail or email the written notice to both the rep and the owner. That information must also be retained for the full record retention period.

If there is such a representative that person may notify the bank that he knows the depositor’s or owner’s location, the fact that the depositor or owner still exists and has not abandoned the account or the contents of a safe deposit box. Thus, the period for escheating the property would be terminated.

The Comptroller will be responsible for a form for the designation of a representative.

Please note that the effective date was deferred until September 1, 2017 as there were some concerns expressed by several large banks and investment banks.

Effective date: September 1, 2017

HB 1626 by Johnson; West
Relating to the designation of certain areas as banking development districts to encourage the establishment of financial institution branches in those areas.

This bill has come up before. It adds Chapter 279 to the Finance Code relating to banking development districts. A local government would apply to the Finance Commission in conjunction with a bank to request a designation of a banking development district. The local governing body would deposit public funds in that institution. The banking development district would be designated as a reinvestment zone with other benefits accruing to that. The idea is to encourage banks to open up branches in underserved areas. The Finance Commission will be promulgating rules over the coming months to implement this new law.

Recommendation: Consider this option as part of the bank’s CRA program.

Effective date: September 1, 2015
HB 1629 by Johnson; West
Relating to crowdfunding portal regulation for the purpose of small business development.

This amendment to the Securities Act specifically authorizes intrastate crowdfunding for authorized small business development entities. These include nonprofit organizations authorized by an agency or authority of the federal government to distribute housing and community development block grants as well as nonprofit community development financial institutions certified by the Community Development Financial Institutions Fund.

Effective date: September 1, 2015

HB 1683 by Bohac; Huffman
Relating to an identifying number assigned to a notary public by the secretary of state.

This amendment to the Government Code requires the Secretary of State to assign each notary public an identifying number and keep a record of that number. The notary’s seal would also have to include that number.

Recommendation: Virtually every bank has notaries on staff. Once the Secretary of State issues these numbers (upon reappointment), such staff will need to obtain new notary seals.

Effective date: January 1, 2016

HB 1881 by Capriglione; Creighton
Relating to authorizing certain private schools to charge fees for processing or handling certain payments or payment transactions.

This bill adds a new Chapter 111 to the Business and Commerce Code to deal with payments to private schools. It permits the school to surcharge if payment is made by a credit card, debit card, or electronic fund transfer. This indirectly amends the laws that otherwise would prohibit surcharges and does so in a completely different area of the statutes!

Existing statute provides for such surcharges for government entities (including public schools and universities) as well as private universities.

Effective date: September 1, 2015

HB 2739 by Capriglione; Birdwell
Relating to the use of a concealed handgun license as valid proof of personal identification.

This addition to the Business and Commerce Code requires the acceptance of a concealed handgun license as valid proof of personal identification. There are some carve-outs
for driver’s license and airport security. However, this would seem to make the CHL mandatorily acceptable ID for a bank’s CIP.

Recommendation: Amend the bank’s CIP to include Concealed Handgun License as acceptable proof of personal identification.

Effective date: September 1, 2015

SB 512 by Zaffirini; Thompson
Relating to the promulgation of certain forms for use in probate matters.

The Government Code is amended to require the Supreme Court to promulgate standard forms for small estate affidavit, muniment of title and certain wills. This should be helpful to bank customers in proving who is entitled to accounts after the death of the owner.

Effective date: September 1, 2015

SB 859 by Eltife; Oliveira
Relating to partnerships and limited liability companies.

This bill amends the Business Organizations Code in several ways dealing with Partnerships and LLCs. It adds a new section dealing with the irrevocable powers of attorney which then can be used by persons seeking to become a member of an LLC or terminate an interest in an LLC. The bill also requires an annual report by limited partnerships. The amendments clarify that an LLC or a limited liability partnership is effectively registered with the Secretary of State by filing an application which is accepted by it.

These provisions are important to banks, which may need to slightly update their account opening document expectations and their CIP programs to be aware of these changes in documentation for these entities.

Effective date: September 1, 2015

SB 875 by Eltife; Flynn
Relating to the regulation of state trust companies.

This amendment of the Finance Code came from the Department of Banking and will impact only independent trust companies rather than trust departments of banks. It increases capital requirements and has expanded the exceptions for family trusts.

Effective date: September 1, 2015
SB 899 by Eltife; Stephenson  
*Relating to the regulation of money services businesses.*

This amendment to the Finance Code creates new exceptions for a person operating an armored car or courier which only transports currency from a person to a financial institution to be deposited in an account belonging to the same person or between different locations of the same person. There is some fine tuning of the security requirements for these licensees. The exemption in the law for financial institutions is not affected.

*Effective date: September 1, 2015*

SB 995 by Rodriguez; Wray  
*Relating to decedents’ estates.*

This bill amends the Estates Codes to deal with marital issues. It impacts banks in several ways. First, it would permit a guardian of an original payee to sign a written agreement or an attorney in fact to set up a written agreement for a multi-party account. Currently, that is problematic due to a Court of Appeals decision. This is a very good addition to the Estates Code!

Secondly, like other sections in law, this bill would provide that divorce of the parties automatically voids any multi-party account sharing with the spouse unless the POD designation was reinstated after divorce. However, a bank would not be held liable for paying to a divorced spouse unless they have received a written notice at the home office or principle office that the designation of the POD, payee, or beneficiary is not in effect and the payor has not interpled the account funds. So there are some protections.

*Effective date: September 1, 2015*

SB 1451 by Ellis; Huberty  
*Relating to the disputed payment by a credit card or debit card of a vehicle registration fee.*

This bill amends the Transportation Code. If a person uses a debit or credit card to pay registration and then disputes the payment, then the county tax assessor-collector can certify certain facts to law enforcement. Then the license plate and insignia can be seized.

*Effective date: September 1, 2015*
SB 1791 by Ellis; Farrar
Relating to disclosures on selection or modification of an account by a customer of a financial institution.

This amendment to the multi-party section of the Estates Code makes the description of multi-party accounts mandatory. The bank must use the statutory forms and the customer must initial to the right of each paragraph.

Disclosure has to be given separately from other account information and be provided before the customer decides on the account type. It must be in **14 point bold face type**. If discussions about the account are conducted primarily in a language other than English, then the disclosure must be in that language.

Currently, these disclosures are buried in the Deposit Account Agreement. Thus, the platform forms companies will need to develop this new form.

It applies only to an account created or modified after the Effective Date.

**Recommendation:** Be sure that your platform doc company will provide this form. Train the new accounts personnel to assure that the disclosure is given BEFORE the signature card is signed.

*Effective date: September 1, 2015*

SB 1902 by Perry; Herrero
Relating to an order of nondisclosure of certain criminal history record information.

This amendment to the Government Code makes certain criminal history record information nondisclosable. It deals with deferred adjudication and certain other procedures. It only applies as to certain crimes. IBAT worked with the sponsor to assure that there is an exception for banks and other financial institutions with regard to applicants for employment, contractors, subcontractors, interns and volunteers.

*Effective date: September 1, 2015*
FORECLOSURE

HB 2063 by Oliveira; Zaffirini
*Relating to the recording and effective date of certain documents relating to nonjudicial foreclosure sales.*

This amendment to the Property Code affects both Chapters 12 and 51. According to supporters of this bill, it is needed to deal with repeat appointments of trustees as a result of loss mitigation efforts and starts and restarts of the foreclosure process. After much negotiation among all of the stakeholders, the bill was amended so that it is permissive. It clarifies appropriate documentation of substitute trustee appointment which will be “effective.”

*Effective date: Foreclosure sales after September 1, 2015*

HB 2066 by Oliveira; Watson
*Relating to the rescission of nonjudicial foreclosure sales.*

This is another bill in the package proposed by the House Business and Industry Committee interim study. It amends Chapter 51 to permit a rescission of a nonjudicial foreclosure sale of a residential mortgage in certain specified scenarios such as a receivership or bankruptcy. These are limited to 15 calendar days after the sale, and the buyer must be repaid the bid amount within 5 calendar days.

*Effective date: September 1, 2015*

HB 2067 by Oliveira; Zaffirini
*Relating to the rescission or waiver of an acceleration of the maturity date of certain debt secured by a lien on real property.*

This is another of the bills in the interim study package. It deals with the problems large servicers have created with regard to loss mitigation. They have accelerated maturity and posted for sale, then entered into loss mitigation, and then gone back to foreclosure. The problem is that limitations may start running from the first acceleration of maturity unless it is clear that the note is reinstated. This bill is intended to deal with that problem by providing for rescission or waiver of acceleration through a written notice served on the debtor by mail. This notice does not affect the lienholder’s right to accelerate in the future nor does it waive past defaults.

*Effective date: June 17, 2015*
HB 2076 Oliveira; Nichols  
*Relating to the sale of a motor vehicle, motorboat, vessel, or outboard motor by a possessory lienholder.*

This amendment to the Property Code requires a mechanic who has worked on a boat or a car or outboard motor to file a copy of the lien notice in the county tax assessor-collector’s office. The sale could occur not earlier than 31 days after such filing.

*Effective date: September 1, 2015*

HB 2481 by Smith; Eltife  
*Relating to the licensing and regulation of auctioneers and associate auctioneers.*

This amendment to the Occupations Code adds associate auctioneers for licensing. However, it does not change the fact that there is an exemption for foreclosure of real property personally conducted by trustee under a deed of trust as well as foreclosure of personal property by a secured creditor.

*Recommendation: Check with Texas Department of Licensing and Regulation to assure that auctioneers used by the bank are duly licensed.*

*Effective date: September 1, 2015*

HB 2706 by Wray; Rodriguez  
*Relating to the value of personal property exempt from seizure by creditors.*

This amendment to Chapter 42 of the Property Code increases the amount of personal property exemption from $60,000 to $100,000 for a family and from $30,000 to $60,000 for a single person.

*Effective date: September 1, 2015*

HB 3901 by Miller; Taylor  
*Relating to the repossession of an aircraft.*

This amendment to the Property Code provides rules for writ of assistance to repossess an aircraft. The creditor would still have to comply with the FAA requirements.

*Effective date: September 1, 2015*
SB 1725 by Creighton; Parker  
 RelativeLayout of notice of excess proceeds following an ad valorem tax sale.

This amendment to the Tax Code provides that after a tax sale, excess proceeds are deposited by the clerk of the court. The clerk must notify the Attorney General of the amount of excess proceeds if the AG or a state agency represented by the AG was named as a defendant in the suit for seizure of the property or foreclosure of the tax lien.

Effective date: September 1, 2015

LIEN BILLS

HB 1062 by Lucio III; Lucio  
RelativeLayout to authorizing a fee for county records technology and infrastructure costs in certain counties.

This bill only applies to border counties. It allows for an additional recording fee of $2.00 to be used for infrastructure costs.

Effective date: September 1, 2015

HB 1681 by Bohac; Bettencourt  
RelativeLayout to the authority of a county clerk to require an individual to present photo identification to file certain documents.

This amendment to the Local Government Code allows the Harris County Clerk (and only that clerk!) to require a person presenting a document in person for filing in the real property records to present a photo I.D. (such as driver’s license, military I.D., or passport, or CHL). Information copied or recorded from the photo I.D. is confidential. A document filed with the county clerk is not invalid solely because the clerk did not copy a photo I.D. or record the information from the photo I.D.

Effective date: September 1, 2015

HB 1933 by Darby; Hinojosa  
RelativeLayout to installment payments of ad valorem taxes.

Last session, the Tax Code was amended to minimize the demand for property tax loans by authorizing installment agreements with counties. This bill clarifies the installment program requirements, including limiting them to residence homesteads.
Effective date: September 1, 2015

HB 2207 by Keffer; Eltife
Relating to the foreclosure sale of property subject to oil or gas lease.

This amendment to the Property Code is the same as one we negotiated and worked out in the last legislative session but that was vetoed by Governor Perry as not going far enough to protect the oil and gas industry. Basically, if a foreclosed property has an oil and gas lease on it, that lease will continue after foreclosure. But the purchaser at foreclosure will be entitled to the royalty payments. However, a lease that is entered into after a security interest on the real property will be extinguished by a foreclosure sale. A subordination agreement will control. Most community banks will collaborate with the mineral developers to subordinate. This has been primarily a problem in urban areas and an issue for servicers of large residential mortgage holdings.

Effective date: January 1, 2016

HB 3316 by Miller; Hancock
Relating to the provision clarifying the timing of the provision of the Texas Estates Code relating to durable power of attorney.

This bill amends the durable power of attorney rules and requires that such a power of attorney must be recorded not later than the 30th day after the date an instrument executed by an attorney in fact is filed for recording. Recording was already required. This bill merely specifies the time frame for recordation.

Effective date: September 1, 2015

HB 3002 by Martinez; Hinojosa
Relating to the fee collected for the provision of providing street lights in a subdivision in the unincorporated area of certain counties and the authority of said county to obtain a lien against property.

This amendment to the Transportation Code provides for a fee relating to streetlights to be collected and added to property tax statements. The county can obtain a lien against properties to secure payment of the fee. However, the county’s lien is inferior to a previously recorded bona fide mortgage lien. Also, the county can’t foreclose if that’s the only outstanding lien.

Effective date: September 1, 2015
SB 462 by Huffman; Farrar
Relating to authorizing a revocable deed that transfers real property at the transferor’s death.

This bill adds a new Ch. 114 to the Estates Code. It provides an alternative mechanism for transferring real property at death using a transfer on death deed. So, instead of conveying through a will, the owner could convey real property by such an instrument. It’s somewhat similar to the pay on death provisions that are in the Estates Code for accounts.

There are sections in this bill that deal with creditor’s rights. A person who has executed a transfer on death deed still has the right to transfer or encumber that real property that is subject to the deed. This is similar, again, to POD accounts. On death, the creditor’s claim will be handled in the same manner as it would be under probate.

The chapter includes standardized forms for this purpose.

Effective date: September 1, 2015

SB 900 by Taylor; Bonnen
Relating to the operation of the Texas Windstorm Insurance Association and the renaming of the Texas Windstorm Insurance Association as the Texas Coastal Insurance Association.

The Texas Windstorm Insurance Association experienced significant problems as a result of litigation arising out of storms on the coast. The purpose of this bill is to assure that TWIA is put on a more sound footing. The continuation of a strong system is important to lenders in that area who need to assure that the property is insured for all risks.

These amendments to the Insurance Code provide for an administrator to manage the association and administer the plan of operation. The composition of the association board is modified. In addition, there are changes to financing mechanisms.

Effective date: September 1, 2015

SB 1077 by Eltife; Parker
Relating to the definition of “person” under the Uniform Commercial Code.

This bill was requested by the State Bar UCC committee. The purpose is to clarify that a series in a for-profit series LLC qualifies as a person for purposes of the UCC, such as for an Article 9 security interest. A “series LLC” is a fairly new entity under the Business Organizations Code, section 101.602 et seq. A limited liability company agreement may provide for a series of members, managers, membership interests or assets with separate rights, powers and duties or separate purpose.
SB 1099 by Estes; Phillips
Relating to the operation and functions of the Texas Grain Producer Indemnity Board.

This bill amends the Agriculture Code to establish the grain producer indemnity fund as a trust fund to be held for payment of claims against a grain buyer who has experienced a financial failure. It is funded by assessments at first point of sale.

This fund should be helpful in mitigating losses to ag producers.

Effective date: September 1, 2015

SB 1339 by Perry; Kacal
Relating to the perfection and priority of an agricultural lien on an agricultural crop.

This amendment to Chapter 70 of the Property Code deals with the perfection and priority of ag liens on an agricultural crop. The lien created by this chapter attaches and continues to be perfected for a period of 90 days. At that time there needs to be a filing of a financing statement. In any event, the objective here is to make these liens have priority over a conflicting security interest other than a security interest or lien created and perfected to secure a loan directly to the ag producer. These kinds of liens typically come up through sale of seed, chemicals, or sprayers.

Effective date: September 1, 2015

GOVERNMENT

HB 483 by Capriglione; Kolkhorst
Relating to the establishment and administration of a state bullion depository.

This bill establishes a state depository agency for precious metal bullion and specie as a division of the State Comptroller’s office. The Comptroller is authorized to promulgate rules for the establishment of fees, service charges and penalties to be charged to account holders. These fees would be deposited in the general revenue fund. The Comptroller is also authorized to adopt rules establishing exchange rates, accounting procedures, and standards for acceptable form and weight of bullion and specie. The Department of Banking is required to implement a licensing and reporting regime for depository agents, perform examinations, and make rules as to licensure.
One purpose of this bill is to bring deposits of bullion back to Texas. Right now, these assets are typically held in New York banks. State agencies and private individuals would be able to store precious metals in this new Texas depository.

Effective date: September 1, 2015

HB 23 by Davis; Huffman
Relating to disclosure of certain relationships with local government officers and vendors.

This amendment to the Local Government Code amends the provisions relating to disclosures of conflicts of interest. Fortunately, in prior sessions IBAT was able to lobby for an exclusion from the disclosure requirements with regard to bank contracts. The bank account agreement is not a “business relationship” as defined for this law, so the bank is not required to complete a vendor questionnaire.

The amendment adds disclosure of a “family relationship” between a local government officer and a vendor. Bottom line: the government official would be required to make this disclosure as part of the contracting process. It doesn’t create a bar to the agreement, however.

Effective date: September 1, 2015

HB 1295 by Capriglione; Hancock
Relating to the disclosure of interested parties by persons contracting with governmental entities and state agencies.

This amendment to Chapter 2252 of the Government Code requires a conflict of interest disclosure of parties who contract with state agencies. It also includes governmental entities such as cities and school districts. It only applies to contracts with a value of $1 million or which require an action or vote by the governing body before the contract may be signed. The Ethics Commission must adopt rules to implement this.

Effective date: September 1, 2015

HB 3536 by Landgraf; Eltife
Relating to the appointment of the commissioners of certain financial regulatory agencies by the Finance Commission of Texas.

This amendment to the Finance Code requires a majority instead of five votes to appoint the banking and savings and mortgage loan commissioners. When the composition was expanded these sections relating to appointment were not updated for the correct number.

Effective date: September 1, 2015
HB 3555 by Parker; Eltife
Relating to certain administrative procedures and enforcement authority relating to state banks, state trust companies, and bank holding companies.

This amendment to the Finance Code provides for certain enforcement and removal powers expansion by the Banking Commissioner. Also, it authorizes a proposed cease and desist order to require affirmative action to correct conditions as well as restitution if appropriate. The bill includes an appeal process for rulings. It also will apply to trust companies.

Officers can be removed from a bank if they are finally convicted of certain offenses including a felony offense involving a bank or other financial institution dishonesty or breach of trust. This language is comparable to that already in the FDI Act.

Effective date: September 1, 2015

SB 1664 by Perry; Burkett
Relating to the establishment of the Texas Achieving a Better Life Experience (ABLE) Program.

This bill amends the Education Code to create the Texas Achieving a Better Life Experience (ABLE) program and to establish the Texas ABLE savings plan account as a trust fund outside of the state treasury. This is complementary to recently enacted federal legislation. It is intended to assist eligible individuals with disabilities to save earned income and plan for the future without the fear of losing eligibility for Medicaid, allowing these individuals an opportunity to live more independent, self-directed, and meaningful lives.

The ABLE board is authorized to either directly or through a contractual arrangement with a financial institution to provide for these accounts. One or more financial institution may be a plan manager.

Effective date: September 1, 2015

FINANCIAL LITERACY

HB 3987 by Farney; Garcia
Relating to programs in public schools designed to facilitate planning and saving for higher education and facilitate personal financial literacy instruction.

This amendment to the Education Code would authorize a school district to set up a school-based savings program to facilitate increased awareness of the importance of saving for
higher education and facilitating personal financial literacy instruction. It would be handled in partnership with financial institutions. This program would be different from current school savings programs in that it would also include a component for incentives through matching funds or seed funding.

*Effective date: September 1, 2015*

**CONCLUSION and COMING ATTRACTIONS**

At this time, there does not appear to be a special session in the near future. However, the Texas Supreme Court has not finally decided the school finance case. The timing of that is uncertain, but probably the court will delay the ruling so that the rewrite of school finance—if any—will be deferred to the next regular session.

Although we fearlessly predicted that this session would see mechanics’ lien reform, that did not materialize. The various stakeholders (builders, subcontractors, and lenders) expect to revisit this issue with a complete rewrite of Texas law in the future for 2017.