

Legislative White Paper

An Executive Summary for Community Bankers

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The 2019 Legislative Session: Kumbaya in Austin



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INTRODUCTION

The 86th Texas Legislative Session began on a high note as the Big Three (Governor, Lt. Governor and Speaker of the House) figuratively held hands and agreed to work on key school finance and property tax legislation. And despite its ups and downs, the session ended with legislation passed in both of those very difficult arenas. A budget surplus contributed significantly to available options.

Speaker Bonnen gavelled in his first session, but we fearlessly predict, not his last if indeed the Republicans manage to maintain control of the Texas House. He managed the House effectively and with minimal drama and received high marks from the vast majority of members and observers.

In contrast to the near meltdown last session, contentious issues were limited and seemingly contained. “Red meat” issues included a religious freedom bill spawned from the Chick-fil-A saga in San Antonio; an initiative to raise the bar on moving or removing historical markers and statues; and a variety of pre-emption efforts to limit local ordinances championed by the business community. Additionally, the Governor’s pick for Secretary of State was not confirmed after a controversial voter investigation effort.

This session there were 7,542 bills and joint resolutions filed—a new record. House members filed 4,912 bills and JRs, of which 975 passed. Senate members filed 2,630, of which 462 passed. As is typical, right at 19 percent of the bills filed made it through the process to the Governor’s desk.

IBAT had great success on its affirmative agenda, as discussed below, with a 100 percent pass rate! However, a few bills of interest – both good and not so good – were victims of political gamesmanship or simply ran out of time as the session wound down.

PROACTIVE AGENDA

HB 1254 by Murphy/Hancock – Home Equity

[HB 1254](#) *Relating to the eligibility of land secured by a home equity loan to be designated for agricultural use for ad valorem tax purposes.*

Last session, the financial institutions industry successfully amended the Texas Constitution to delete the prohibition on the use of ag use property for a home equity loan, among other key changes. However, the Tax Code still provided that land with a home equity lien on it would not qualify for ag use. This very simple—but very important—bill simply deleted that prohibition in the Tax Code (Section 23.42(a-1)).

Effective Date: January 1, 2020

Impact. This rounds out the authority for banks to secure home equity loans with otherwise impermissible collateral. Note the effective date. Meanwhile, update your policies and procedures for this product.

SB 726 by Zaffirini/Lambert – Community Development

[SB 726](#) *Relating to investments by state banks to promote community development.*

State banks chartered in Texas are limited in the investments they can make by the Texas Finance Code with public welfare investments, inclusive of loans, capped at 10 percent of capital and surplus. This legislation bumps the cap to 15 percent to more closely match the authority of national banks and deletes the inclusion of loans. However, to avoid over-leveraging, it imposes a cap of 25 percent of capital and surplus on investments and loans to a single entity.

Effective Date: September 1, 2019

Impact. For intermediate sized state-chartered banks, this should make meeting the “investment” test of CRA a little bit less cumbersome.

Card Fraud and “Skimmers”

IBAT met with interested parties, including the representatives of the convenience store/gas station industry, law enforcement, various state agencies and other financial trade associations to work out the logistics of several bills designed to address this thorny area. See the full discussion under the “Operations” section.

FINANCE COMMISSION AGENCIES

SB 2330 by Creighton/Parker – Temporary Authority Related to a Residential Mortgage Loan Originator

[SB 2330](#) Relating to the temporary authority of certain individuals to engage in business as a residential mortgage loan originator.

S.B. 2330 amends the Finance Code to conform the Texas SAFE Act to the changes in federal law made by S 2155. Persons who had been employed by a bank or other depository institution and registered under the federal system for at least a year and persons who are licensed out of state but become employed by a Texas licensed or registered mortgage lender will be granted temporary authority to originate mortgage loans for a period of not more than 120 days while the person completes the licensing process in Texas. The Texas mortgage entity that employs these persons will be fully responsible for these persons to the same extent as if they were licensed. These individuals are also subject to all of the laws and regulations related to mortgage lending during this transitional period, just as they would be if they were licensed.

Effective Date: November 24, 2019

SB 1823 by Campbell/Murphy – State Banks, Trust Companies and Third-Party Service Providers

[SB 1823](#) Relating to the regulation of state banks, state trust companies and third-party service providers of state banks and state trust companies.

This legislation amends the banking code to specifically include credit reporting agencies under “third-party service providers” who may be examined by the DOB. It also clarifies subpoena powers. In addition, there is an exception for change in control notices for BHC acquisitions in which the holding company has already been approved.

Arguably, the DOB had this power. However, it needed clarity to assure that the department could be compensated its exam fees for exercising its oversight. Following the major Equifax breach, the Texas DOB led a multi-state examination of that entity, which resulted in a Consent Order.

Effective Date: September 1, 2019

SB 614 by Nichols/Lambert – Texas Finance Commission Sunset Legislation

[SB 614](#) *Relating to the continuation and functions of the Finance Commission of Texas, the Texas Department of Banking and the Department of Savings and Mortgage Lending, to the training requirements applicable to the agencies overseen by the Finance Commission of Texas and to the regulation of certain financial institutions and businesses.*

The Texas Finance Commission was reviewed by the Texas Sunset Commission, as were the agencies under the purview of the Finance Commission – the Texas Department of Banking, Texas Department of Savings and Mortgage Lending and Office of Consumer Credit Commissioner. IBAT participated in the Sunset Review process and supported the Sunset Commission Decisions to continue each agency for 12 years, as well as to keep the Texas Department of Banking and the Texas Department of Savings and Mortgage Lending as separate agencies.

Effective Date: September 1, 2019

Impact. This bill maintains these regulators with little change for another 12 years. There will be some updates in investigation and resolution procedures, appeal of a banking commissioner's decision or order, and the duty of a hearings officer employed by DOB. However, there are no changes to the composition of the Finance Commission.

HB 1442 by Paddie/Hall – OCCC Sunset Legislation

[HB 1442](#) *Relating to the continuation and functions of the Office of Consumer Credit Commissioner and the licensing and registration of persons regulated by that state agency.*

This legislation continues the OCCC for 12 years, updates a range of the agencies licensing and enforcement practices, allows an opt-in for individual pawnbroker licenses and would give the agency standard enforcement authority over crafted precious metal dealers.

Effective Date: September 1, 2019

SB 37 by Zaffirini/Krause – Granting or Renewal of an Occupational License

[SB 37](#) *Relating to a prohibition on the use of student loan default or breach of a student loan repayment or scholarship contract as a ground for refusal to grant or renew an occupational license or other disciplinary action in relation to an occupational license.*

Texas is one of 19 states that can bar professional license holders, including teachers, social workers, nurses, physicians and attorneys from renewing their professional licenses if they are in default on student loans. This legislation amends current law relating to a prohibition on the use of student loan default or breach of a student loan repayment or scholarship contract as a ground for refusal to grant or renew an occupational license or other disciplinary action in relation to an occupational license.

Among addressing other agencies, the legislation deletes the authority of the Commissioner of the Savings and Mortgage Lending Department to deny the renewal application for a residential mortgage

loan originator license if the person seeking the renewal of the license is in default on a student loan. The legislation also prohibits a determination by the Commissioner that an individual has not shown financial responsibility based on the individual's default on a student loan but allows the determination to include a pattern of seriously delinquent accounts (other than student loan accounts) during the three-year period preceding the date of the application.

Effective Date: Immediately

Impact. There is some concern regarding the inability to consider defaulted student loans. Note, however, that federal law will still require consideration of MLOs credit standing.

SB 646 by Birdwell/Thompson – Purchase or Construction Projects by a State Agency with Self-Directed Semi-Independent Status

[SB 646](#) relating to approval for purchases of property or construction projects by a state agency with self-directed semi-independent status.

S.B. 646 provides a uniform, systematic procedure for all Self Directed Semi-Independent (SDSI) agencies wishing to purchase property or construct projects. This legislation requires an SDSI agency to work with the Texas Facilities Commission (TFC) to properly identify both an agency's purchase or project needs and the availability of state-owned property or buildings that may satisfy those needs. Subsequently, SDSI agencies must obtain written authorization from the governor before allocating money to an agency's building reserve fund. The legislation allows the Governor to adopt rules necessary to implement this legislation.

Effective Date: September 1, 2019

Impact. The Finance Commission and its agencies need a new home! This bill will affect any plans to move.

BANK OPERATIONS

HB 2240 by Murphy/Hinojosa – Payroll Cards

[HB 2240](#) *Relating to the payment of wages by an employer through a payroll card account.*

This legislation amends the Labor Code to clarify that employers have the option to pay employees through a payroll card. Supporters of this bill noted that the payment of wages through payroll card accounts may be a beneficial option for employees without bank accounts, particularly during a natural disaster or other circumstances that make it difficult for such employees to collect physical checks. The legislation requires the disclosure of fees to employees using this option of payment. The election to use a payroll card is in the employer's hands. However, an employee may request an alternate form of payment (which could be direct deposit or paycheck).

Effective Date: September 1, 2019

Impact. This bill clears up any concerns that payroll cards may not be a valid form of wage payment. Remember that all requirements of Reg E should still be met!

HB 2706 by Capriglione/Nelson – Authorized Investments for Governmental Entities

[HB 2706](#) *Relating to authorized investments for governmental entities and a study of the investment and management of funds by public schools.*

This legislation expands the authority of entities governed by the Public Funds Investment Act (PFIA) to purchase, sell and invest public funds in certain repurchase agreements and commercial paper, and authorizes school districts to invest in corporate bonds. The bill brings investment officers of a local government that was investing bond proceeds under the authority of the PFIA. The bill also requires the Texas Education Agency to conduct a study regarding the investment and management of funds by school districts and open-enrollment charter schools. The study will look at the district's or school's investments, including asset allocations, fees, risks, cashflow, fund balances and other revenue sources.

IBAT took exception to language in the original bill allowing public entities to invest unlimited amounts in CDs of "rated" financial institutions without requiring pledging of collateral. This provision would clearly discriminate against community banks, and Representative Capriglione quickly agreed to strip this offensive language.

Effective Date: September 1, 2019

HB 2782 By Wray/Rodriguez – Probate

[HB 2782](#) *Relating to decedents' estates, transfer on death deeds and matters involving probate courts.*

This bill makes changes to the rules and procedures relating to probate and heirship proceedings. Several changes affect bank procedures.

A personal representative must be given information that the bank would have provided to the decedent as to accounts containing possible non-testamentary transfers (e.g. POD and joint accounts with rights of survivorship).

A personal representative must receive a written demand from the decedent's surviving spouse, creditor or person acting for minor children before initiating any proceeding to recover payments from the decedent's multiple-party account.

Up to \$15,000 in funeral expenses and up to \$15,000 in last illness expenses would be classified as Class I claims and have the highest priority for payment.

Effective Date: September 1, 2019

Observation. Update procedures for handling non-testamentary (multi-party) accounts.

HB 3598 by Martinez-Fischer/Zaffirini – Unclaimed Property

[HB 3598](#) *Relating to certain unclaimed property that is presumed abandoned.*

The comptroller of public accounts administers the state's unclaimed property program, which seeks to reunite owners with abandoned property. HB 3598 tweaks the current program. This legislation allows for combined reporting by a holder who is required to file a property report and who is a member of an affiliated group by requiring the holder to file one report for the affiliated group; requires reporting in successive years if one is required to file a report in any year; allows the Comptroller at any time to examine books or records of any person to determine compliance with this title; and provides for a 7 year statute of limitations for examinations. There's a presumption of avoiding compliance with delivery of property if after a corrected report the amount exceeds the initially reported amount by at least 25 percent. State agencies are required to assist the process. This change to the Property Code allows the Comptroller to issue subpoenas or enlist the AG to do so – subject to civil and criminal contempt for refusal to comply.

Effective date: September 1, 2019

Impact. IBAT complained about several aspects of this bill. We thought it was overkill to require reporting if there is nothing to report just because you filed a report the prior year. However, for banks this is likely irrelevant! They always have something to report. We are also concerned about the combined reporting. We have been assured by the Comptroller's senior staff that they can and will address this via rulemaking or procedures to allow separate reporting within a BHC and/or bank subsidiary structure.

HB 3609 By Martinez-Fischer/Hancock – Assumed Name Certificates

[HB 3609](#) *Relating to the filing of an assumed name certificate by certain business entities.*

An assumed name certificate for business entities will only need to be filed in the Secretary of State's office. The requirement for additional filings in various counties is eliminated. There is no change for unincorporated persons (proprietorships, joint ventures and general partnerships).

Effective Date: September 1, 2019

Observation. Change your account documentation procedures to note this change.

HB 3855 By Longoria/Creighton – Consumer Interest Rate Methodology

[HB 3855](#) *Relating to methods of computing interest charges on certain consumer loans.*

This bill amends section 342.201(e) by adding a new section clarifying how to calculate rates under this bracketed rate provision. Lenders must use either the true daily earnings method or scheduled installment earnings method. Then the creditor must either apply an applicable daily rate to each part of unpaid principal balance corresponding to brackets (30/24 percent rates) for actual or scheduled number of days during a payment period or apply a single equivalent daily rate for actual or scheduled number of days.

Effective: September 1, 2019

Observation. Although most banks do not use these rates, they are available!

SB 207 by Kolkhorst/Parker – Money Laundering

[SB 207](#) *Relating to the offense of money laundering.*

Under Texas' existing money laundering statute, digital currencies are not included. SB 207 adds cryptocurrencies to the definition of "funds" in the money laundering section of the Penal Code alongside money orders, stock and other negotiable instruments that law enforcement monitor. This will allow law enforcement to pursue these types of currencies in their efforts to combat money laundering.

Effective Date: September 1, 2019

SB 943 by Watson/Capriglione – Public Information Law

[SB 943](#) Relating to the disclosure of certain contracting information under the public information law.

Senator Watson feels passionately about the Texas Supreme Court case that “drove a Mack truck through” the Public Information Act provisions. His bill was amended, but it passed both chambers and the Senate concurred in the House amendments. His bill amends the exceptions for “proprietary information” in the Public Information Act so that the exception to disclosure of such will not apply to information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body. However, information submitted to a governmental body by a vendor in response to a bid would still be protected if the vendor demonstrated that disclosure of the information would give an advantage to a competitor by revealing an individual approach to work, organizational structure, staffing, internal operations, processes or pricing information. Thus, a bank apparently could still protect its bid package from competitors’ requests under open records but not the contract.

Effective date: January 1, 2020.

Impact. Obviously, this bill has bigger impact on highway construction and big projects. However, banks should be aware of this change to the public funds practices.

CREDIT AND DEBIT CARDS

HB 869 by Hefner/Hughes – Credit and Debit Card Fraud

[HB 869](#) *Relating to the prosecution of organized criminal activity involving the interception, use or disclosure of certain communications.*

The Tyler and Houston Police Departments have noted criminal rings are responsible for card skimming, and prosecuting these crimes requires contacting each card holder and asking them to come to the location where the crime occurred to testify in court. This could mean having to contact more than 100 victims. HB 869 brings the unlawful use of skimmers into the organized crime statute to provide additional tools to help make the prosecution of criminal rings committing these crimes easier.

Effective Date: September 1, 2019

HB 2624 by Perez/Zaffirini – Prosecution of Credit and Debit Card Fraud

[HB 2624](#) *Relating to the prosecution of certain criminal offenses involving fraud.*

This legislation allows the prosecution of debit and credit card abuse in any county where the offense was committed or the county of residence of any person whose debit or credit card was unlawfully used or possessed.

Effective Date: September 1, 2019

HB 2625 by Perez/Zaffirini – Mass Fraudulent Use or Possession of Debit or Credit Cards

[HB 2625](#) *Relating to creating the criminal offense of mass fraudulent use or possession of credit card or debit card information.*

This legislation makes the use or possession of a fraudulent debit or credit card or the digital data stored on a card with intent to harm or defraud another person a crime. The Tyler and Houston Police Departments have noted often when one is arrested for card skimming activities the individual is found with multiple fraudulent debit or credit cards in their possession.

The legislation increases the penalties proportionately based upon the number of debit or credit cards or the digital imprints possessed. The legislation provides protections for businesses and government agencies that may have cards or data in their possession for legitimate purposes. The legislation includes situations where a digital imprint of a debit or credit card has been placed on a counterfeit card or a card of any kind, such as a hotel key card or gift card.

Effective Date: September 1, 2019

HB 2945 by Perez/Zaffirini – Card Skimmers at the Gas Pump

[*HB 2945*](#) *Relating to payment card skimmers on motor fuel dispensers and to creating a payment fraud fusion center, imposing civil penalties and creating criminal offenses.*

This legislation creates “merchant duties” to take steps to prevent the installation of skimmers on gas pumps, inspect pumps and promptly report any discovery of skimmers. It gives the Attorney General rulemaking authority to establish “best practices,” sets up a reporting and investigation protocol, creates a “center” to serve as the state’s primary entity for coordination and integration of law enforcement agencies and others to respond to this criminal activity. It also establishes civil and criminal penalties for non-compliance. The legislation also provides language to address enhancements in payment technologies and flexibility in law enforcement duties. To our knowledge this is first law in the country creating accountability for station operators.

Effective Date: September 1, 2019

Impact. These bills addressing card fraud and skimmers were IBAT’s top priorities this session. We believe they should start the process of increasing accountability where it belongs—at the pump. Further, removing impediments to prosecution of bad actors will positively impact this ongoing costly, burdensome and aggravating problem for all financial institutions and their customers.

INSURANCE

HB 1900 by G. Bonnen/Taylor -- TWIA

[HB 1900](#) *Relating to certain operations and functions of the Texas Windstorm Insurance Association and studies relating to the Texas Windstorm Insurance Association and the Fair Access to Insurance Requirements Plan; authorizing a penalty; and authorizing an assessment.*

This bill enhances recovery under Texas Windstorm Insurance Association policies by making replacement cost more accessible. The bill also creates the Legislative Funding and Funding Structure Oversight Board composed of four members of the Senate and four members of the House. The board is tasked with examining how the association's current funding and funding structure operate; how the catastrophic risk pools of other states operate; and the sustainability of TWIA. The board must make legislative recommendations to the Governor, Lieutenant Governor and the Speaker. The board will work with TWIA, industry experts and other stakeholders. The report is due no later than November 15, 2020.

Effective Date: Immediately

SB 442 By Hancock/Perez – Flood Insurance

[SB 442](#) *Relating to a disclosure regarding flood coverage under a commercial or residential property insurance policy.*

Currently, Texas insurance companies are not required to disclose to a policyholder that their policy does not include flood insurance. A property located within a FEMA 100-year flood plain must have flood coverage in order to obtain a federally backed mortgage. However, according to the Texas Department of Insurance (TDI), more than half the homes flooded during Hurricane Harvey were outside the 100-year flood plain and most of those properties did not carry flood insurance. A lack of consumer awareness about both flood insurance and flood-prone areas has generated considerable discussion in the legislature about how to best educate consumers about flood coverage options and to encourage more participation in the National Flood Insurance Program (NFIP).

SB 442 addresses those concerns by requiring any insurer that issues a residential property insurance policy that does not provide flood coverage to provide written notice to the insured that the policy does not provide coverage against flood loss. "Residential property insurance" in this bill covers the following:

- homeowners insurance policy, including a tenants insurance policy;
- a condominium owners insurance policy;
- a residential and allied lines insurance policy;
- a farm and ranch insurance policy; and
- a farm and ranch owners insurance policy.

This bill requires the following statement to be provided in a “conspicuous manner” as defined by Section 1.201, Business and Commerce Code at the time the policy is issued or renewed.

"Flood Insurance: You may also need to consider the purchase of flood insurance. Your insurance policy does not include coverage for damage resulting from a flood even if hurricane winds and rain caused the flood to occur. Without separate flood insurance coverage, you may have uncovered losses caused by a flood. Please discuss the need to purchase separate flood insurance coverage with your insurance agent or insurance company, or visit www.floodsmart.gov."

Effective date: September 1, 2019

Impact. Hopefully, this information will encourage homeowners to obtain flood insurance in those cases where federal law does not mandate it.

PRIVACY

HB 4390 By Capriglione/Nelson – Personal Identifying Information

[HB 4390](#) Relating to the privacy of personal identifying information and the creation of the Texas Privacy Protection Advisory Council.

The legislation as originally filed would have created new protocols for keeping and processing consumer data. Although we were successful in working with Representative Capriglione to clarify an exemption for financial institutions, a number of large companies continued to express concerns about the legislation. A committee substitute was drafted to enhance existing law related to a breach of security of computerized data that includes sensitive personal information.

The legislation requires that a person who is required to disclose or provide notification of a breach of system security under this section shall notify the attorney general of that breach no later than the 60th day after the date the person determines a breach occurred if the breach involves at least 250 residents of this state. The notification under this subsection must include:

- a detailed description of the nature and circumstances of the breach or the use of sensitive personal information acquired as a result of this breach;
- the number of residents of this state affected by the breach at the time of notification;
- the measures taken by the person regarding the breach;
- any measures the person intends to take regarding the breach after the notification under this subsection; and
- information regarding whether law enforcement is engaged in investigating the breach.

The legislation also creates the Texas Privacy Protection Advisory Council to study data privacy laws in Texas, other states and relevant foreign jurisdictions. The council will be composed of members who are residents of this state and shall be appointed as follows: five members appointed by the Speaker, two of whom must be representatives of an industry listed in the paragraph below and three of whom must be members of the House of Representatives; five members appointed by the Lieutenant Governor, two of whom must be representatives of an industry listed below and three of whom must be Senators; and five members appointed by the Governor, three of whom must be representatives of an industry listed below and two of whom must be either a representative of a nonprofit organization that studies or evaluates data privacy laws from the perspective of individuals whose information is collected or processed by businesses; or a professor who teaches at a law school in this state or other institution of higher education whose books or scholarly articles on the topic of data privacy have been published.

For purposes of making appointments of members who represent industries as required by HB 4390 the Speaker, Lieutenant Governor and Governor shall appoint members from among the following industries and must coordinate their appointments to avoid overlap in representation of the following industries: medical profession, technology, Internet, retail and electronic transactions, consumer banking, telecommunications, consumer data analytics, advertising, Internet service providers, social media platforms, cloud data storage, virtual private networks and retail electric.

The council is required to make recommendations to the members of the legislature on specific statutory changes regarding the privacy and protection of information that alone or in conjunction with other information identifies or is linked or is reasonably linkable to a specific individual, technological device or household. The council must make recommendations on specific statutory changes regarding privacy and the protection of that information. The council shall report to the legislature not later than September 1, 2020.

Effective date: January 1, 2020.

Impact. Update your security breach procedures for this change in Texas law. IBAT continues to take the position that entities choosing to maintain or store personally identifiable information should be held to the same GLBA standards as banks and at least share in the financial burdens in the aftermath of a breach or compromise of sensitive information. This bill faced fierce opposition from a number of fronts, and the end result was this significantly scaled back version.

REAL PROPERTY/CONSTRUCTION

HB 3 by Huberty/Taylor - Public School Finance

[HB 3](#) *Relating to public school finance and public education.*

During the debate on the Senate floor, this bill was amended to add a section amending the Tax Code by adding a new section 26.151, dealing with escrow in home loans of property taxes. It requires a lender who escrows for taxes, or a servicer who receives the payments, to take into account the reduction in property taxes created by HB 3 and “immediately” adjust the borrower’s monthly payments.

Effective September 1, 2019; expires September 1, 2023

Recommendation. For the banks that actually escrow, follow your normal RESPA procedures. See IBAT’s Featured Resource for more details.

HB 1833 by Wray/Hughes – Transfer of Real Property

[HB 1833](#) *Relating to the authority to transfer real property in the name of an entity.*

HB 1833 will address issues that have been raised with the increasing use of online legal document services such as LegalZoom and would allow a business entity (LLC, LP, or professional entity, Sec. 301.003 Business and Commerce Code) the option to execute an affidavit identifying one or more individuals with authority to engage in a real estate transaction on the entity’s behalf. Such affidavits would be executed under penalty of perjury by an individual who swore that the individual was at least 18 years old, authorized to act on behalf of the entity and fully competent to execute the affidavit. The individual also would have to swear that the individual understood that third parties would rely on the truthfulness of the affidavit's statements and that the affidavit was made under penalty of perjury. The affidavit could be recorded in the county clerk's office in the county in which the real property was located.

The person executing the affidavit could not be the person authorized by the affidavit to transfer real property, unless the person was the sole partner in a limited partnership, sole member and manager in a limited liability company, or the sole shareholder, director and officer of a corporation, as confirmed by the business entity's most recent franchise tax public information filing. The bill also allows an entity that that executes and records an affidavit to terminate the transfer authority specified in the affidavit at any time by recording a written termination of the authority specified in the affidavit with the county clerk in the county in which the real property is located. This bill applies to properties of \$1 million or less in value, and the transfer authority (that has not been terminated) expires on the first anniversary of the date on which the affidavit was recorded.

Effective date: September 1, 2019

Impact. This bill was an initiative of the title industry and is intended to clarify who can execute documents.

SB 443 by Hancock/Murphy – Homestead Exemption for Uninhabitable Property

[SB 443](#) Relating to the period during which a property owner may receive a residence homestead exemption from ad valorem taxation for property that is rendered uninhabitable or unusable as a result of a disaster.

Under existing Texas law, property owners can qualify to continue to receive a residence homestead property tax exemption on a residential structure rendered uninhabitable or unusable by casualty, wind or water damage for two years while the owner constructs a replacement qualified residential structure on the land. However, in order to qualify the homeowner must begin construction of a replacement structure within one year of vacating the former residence. SB 443 extends this time period to five years if the property is located in an area declared to be a disaster by the governor following a disaster, and the residential structure located on the property is rendered uninhabitable or unusable as a result of the disaster.

Effective date: September 1, 2019

Observation. This is one of many initiatives that grew out of the problems arising from Hurricane Harvey.

SB 2128 by Creighton/Parker - Recording of Certain Documents Concerning Real or Personal Property

[SB 2128](#) Relating to the recording by a county clerk of certain documents concerning real or personal property.

SB 2128 provides a process for the recording of a tangible copy of an electronic document so that citizens transacting business in all 254 counties may take advantage of the convenience and security of electronic property transactions. This legislation requires a county clerk to record a paper or a tangible copy of an electronic record that is otherwise eligible under state law to be recorded in the real property records if the copy contains an image of an electronic signature or signatures that are acknowledged, sworn to with a jurat, or proved according to law and the copy has been declared by a notary public or other officer authorized to take an acknowledgment or proof to be a true and correct copy of the electronic record.

The legislation authorizes a notary public or other such officer to declare that a copy of an electronic record is a true and correct copy of that record by executing and attaching an official seal to a tangible paper declaration under penalty of perjury and affixing or attaching the declaration to the printed paper or tangible copy. The legislation requires the form of declaration to be substantially in the form prescribed by the legislation. Finally, the legislation requires the entry in the index to real property records maintained by a county clerk for a paper document that is a printed and certified paper or tangible copy of an electronic record to contain the names of the grantors and grantees.

Effective date: September 1, 2019

Impact. This bill is one more step toward truly digital mortgage transactions. Currently, the vast majority of Texans live in a county where there is electronic recordation of documents in the real property records. However, the majority of counties have not yet implemented digital filing. This “paper out” solution facilitates the perfection of a digital mortgage.

TRUSTS

HB 2245 by Wray/Rodriguez – Trusts

[HB 2245](#) *Relating to trusts.*

These amendments to the Trust Act provide additional rules for management and termination of certain court-created trusts whose beneficiaries were minors, incapacitated or disabled. In addition, provisions in trusts that were intended to take effect or become irrevocable upon the settlor's death will be interpreted under the rules applicable to trusts when the settlor died. It also provides rules relating to distribution of trust principal to a second trust, a court's power to override the terms of a trust and the effect of a court-ordered reformation of a trust. Further, there are rules for pooled trust subaccounts.

Effective date: September 1, 2019. It applies to trusts existing on or created after that date unless otherwise expressly provided in the trust, will or the bill.

Impact. Banks with a trust department should familiarize themselves with the provisions in this bill.

HB 2246 by Wray/Rodriguez - Fiduciary Status of an Advisor

[HB 2246](#) *Relating to the fiduciary status of a directed trust advisor.*

HB 2246 prevents an advisor from acting in a nonfiduciary capacity, even if the trust terms allowed the advisor to do so, unless:

- the advisor's only power was to remove and appoint trustees, advisors, trust committee members, or other protectors; and
- the advisor did not exercise that power to appoint the advisor's self to such a position.

The bill does not prohibit the exercise of a power in a nonfiduciary capacity that was necessary for a grantor or other person to be treated as the owner of any portion of a trust for federal income tax purposes.

Effective date: September 1, 2019

MISCELLANEOUS BILLS

HB 1325 by T. King/Perry – Production and Regulation of Hemp

[*HB 1325*](#) *Relating to the production and regulation of hemp, requiring occupational licenses, authorizing fees, creating criminal offenses and providing civil and administrative penalties.*

The Agriculture Improvement Act of 2018 (2018 Farm Bill, Section 10113) directs the U.S. Department of Agriculture (USDA) to issue regulations and guidance to implement a program for the commercial production of industrial hemp in the United States. HB 1325 establishes the “Hemp Farming Act” to regulate the commercial production of hemp in Texas and establishes the intent of the Legislature that the state has primary regulatory authority over the production and transportation of hemp and hemp products in Texas. The bill prohibits a city, county or other political subdivision from enacting or adopting any rules, regulations or ordinances that prohibit the cultivation, handling, transportation or sale of hemp. It requires the Texas Department of Agriculture (TDA), in consultation with the Governor and the Attorney General, to develop a state plan to monitor and regulate the production of hemp in Texas and to submit that plan to the U.S. Department of Agriculture.

This doesn’t mean that marijuana is now legalized in Texas! Hemp has lower levels of THC and higher levels of cannabidiol (CBD) that eliminates the “high.” It is used for a variety of purposes, including textiles, building materials, plastics, biofuels, herbal medicines and food.

Effective Date: Immediately

Impact. This change to Texas law is consistent with federal changes. The limitations—and anxiety—over banking marijuana businesses are not triggered by this change. At the same time, this opens up a new crop for beleaguered Texas farmers and their lenders, who should be able to profit from this new crop alternative.

HB 2779 by Wray/Rodriguez – Exemption of certain savings plans from attachment or seizure

[*HB 2779*](#) *Relating to the exemption for certain savings plans from attachment, execution or other seizure for a creditor’s claim.*

This legislation clarifies laws regarding the exemption for certain savings plans from attachment, execution, or other seizure for a creditor’s claim. The legislation defines “qualified savings plan” as any stock bonus, pension, annuity, deferred compensation, profit-sharing, health, education or similar plan or account to the extent the plan or account is exempt from federal income tax or to the extent federal income tax on a person’s interest in the plan or account is deferred until actual payment of benefits to the person; excludes from the exemption a person’s interest in a retirement plan that is solely an unfunded, unsecured promise by an employer to pay deferred compensation, unless otherwise exempt by law; makes the exemption applicable to a child support lien for the following: a plan or account established under the prepaid higher education tuition program, including a prepaid tuition contract; a plan or account established under the higher education savings plan, including a savings trust account;

and a qualified tuition program of any state that meets the requirements of the federal Internal Revenue Code of 1986.

Effective Date: September 1, 2019

Impact. This addition to exempt personal property just continues a long Texas tradition of protecting debtors!

HB 2859 by Capriglione/Fallon – Precious Metals

[HB 2859](#) *Relating to the exemption from ad valorem taxation of precious metal held in a precious metal depository located in this state.*

This legislation creates a property tax exemption for persons owning precious metals held in precious metal depositories in this state, regardless of whether the precious metals were held or used for the production of income. Precious metals would mean a metal, including gold, silver, platinum, palladium and rhodium, that bore a high value-to-weight ratio relative to common industrial metals and customarily was formed into bullion or specie. A precious metal depository would be defined as a depository that was primarily engaged in the business of providing precious metal storage to the general public and that maintained sufficient insurance to cover precious metals deposited in the depository.

Effective date: The bill would take effect January 1, 2020, but only if the constitutional amendment allowing the Legislature to exempt precious metals held in precious metal depositories in the state from property taxation is approved by voters (HJR 95). If that amendment is not approved, the bill would have no effect.

SB 1859 by Hancock/Martinez-Fischer - Business Organizations Code

[SB 1859](#) *Relating to business entities.*

The BOC has had a number of technical and substantive revisions since its enactment in 2003. This bill continues that with a number of changes including the following.

The books, records, minutes and ownership records of any domestic filing entity may be maintained in electronic format provided that they can be converted to paper within a reasonable time. This authority includes so-called “blockchain” or distributed ledger technology.

A domestic LLC that refuses to allow an assignee of a membership interest to examine and copy records or other info on written request is liable to the assignee for any cost or expense incurred in enforcing its rights.

A district court has jurisdiction to order the winding up and termination of a series of a domestic LLC on application by or for a member associated with the series if the court determines that the economic purpose of the series is likely to be unreasonably frustrated or another member has engaged in conduct making it not reasonably practicable to carry on the business.

The bill removes the authorization for a creditor to proceed against one or more partners of a general partnership under certain circumstances to satisfy a judgment based on a claim against the partnership. It makes revisions to the exception that specifies circumstances under which a creditor may proceed directly against the property of one or more partners to satisfy such a judgment without satisfying certain conditions.

Effective Date: September 1, 2019

SB 2119 by Alvarado/Goldman – Motor Fuel Metering

[SB 2119](#) Relating to the transfer of the regulation of motor fuel metering and motor fuel quality from the Department of Agriculture to the Texas Department of Licensing and Regulation; providing civil and administrative penalties; creating criminal offenses; requiring occupational licenses; and authorizing fees.

This legislation transfers the motor fuel metering and motor fuel quality program from the Texas Department of Agriculture (TDA) to the Texas Department of Licensing and Regulation (TDLR). This legislation affects HB 2945 relating to card skimmers on motor fuel dispensers, which was an IBAT legislative priority. As originally filed, HB 2945 would have required gas station owners to report card skimmers found on fuel pumps to TDA. Under the legislation, TDA would then be required to inspect the fuel pump and conduct an investigation of the card skimming. TDLR will now be in charge of these duties as required under HB 2945, as SB 2119 transfers responsibilities for the motor fuel metering and motor fuel quality to TDLR. HB 2945 was amended to address this transfer of duties.

Effective date: September 1, 2019

BILLS THAT DID NOT PASS

HB 592 by Hernandez/SB 398 by Zaffirini - Credit Unions as Public School District Depositories

[HB 592](#) *Relating to authorizing a credit union to act as a school district depository.*

While authorized in various statutes, credit unions are not specifically authorized in the Education Code to serve as school district depositories. This legislation would have allowed credit unions into this market. This legislation did not receive a hearing in either chamber and is therefore dead.

HB 589 by Deshotel and HB 3498 by Burrows - Mechanic's and Materialmen's Liens

[HB 589](#) *Relating to mechanic's, contractor's or materialman's liens; authorizing a fee; and changing the eligibility for community supervision.*

[HB 3498](#) *Relating to mechanic's, contractor's or materialman's liens.*

IBAT, along with the other financial services and construction trade groups, has been working collaboratively to address concerns raised by subcontractors in Texas regarding mechanic's and materialmen's lien law. This issue has surfaced in legislative sessions for years and has yet to be resolved. The subcontractors again pushed legislation (HB 589, Deshotel) to significantly modify the MML process and move to a "prenotification" protocol.

Our coalition made up of lenders, owners/developers, title companies, realtors and others has opted for legislation to address some of the vagaries in current law (HB 3498, Burrows). We worked diligently to try to address concerns expressed by subcontractors while also mitigating any negative impact to the interests of those industries represented by our coalition. In the end a compromise could not be reached. Both pieces of legislation received a hearing, but neither were voted out of committee.

Observation. We can expect to see this as a study item for the interim.

HB 904 by Minjarez - Cyber Attacks Against Financial Institutions

[HB 904](#) *Relating to requiring The University of Texas at San Antonio to conduct a study regarding cyber-attacks against financial institutions in this state.*

This legislation would have required the University of Texas at San Antonio (UTSA) to conduct a study of cyberattacks on financial institutions. We and others expressed a number of concerns on this proposal, and it never received a hearing.

HB 2024 by Romero/SB 2163 by Paxton – Survival of Mechanic’s Lien upon Foreclosure of a Lien

[*HB 2024*](#) *Relating to the survival of a mechanic's retainage lien after the foreclosure of a lien securing a construction loan.*

This legislation allowed a lien for retainage to survive foreclosure. The bill received a hearing but was not brought up for a vote and therefore died in committee.

HB 2346 by Darby/SB 921 by West– Mechanic’s Lien for Interior Designers

[*HB 2346*](#) *Relating to persons entitled to a mechanic's lien on real property.*

This legislation would add registered interior designers to the list of professions entitled to a mechanic’s lien for work performed. This legislation was voted out of committee in mid-April; however, it was not set on the House Calendar and therefore died.

HB 1182 by Goodwin/SB 686 by Alvarado – Financial Literacy

[*HB 1182*](#) *Relating to personal financial literacy courses for high school students in public schools.*

This legislation would have required school districts and open-enrollment charter schools that offer a high school program to provide a course in personal financial literacy. The bill would have required students to take the course to fulfill their curriculum graduation requirements under the Foundation High School Program. The bill would apply beginning with students entering the 9th grade during the 2019-2020 school year. The bill was passed by the House but was left pending in the Senate Education Committee where it died.

HB 1744 by Smithee – Limitations on Arbitration Proceedings

[*HB 1744*](#) *Relating to limitations periods in arbitration proceedings.*

This legislation would prohibit a party from asserting a claim in an arbitration proceeding that could not have been brought in court due to the expiration of the applicable limitations period unless the party had brought suit for the claim in court within the limitations period and the parties to the claim agreed or were ordered by a court to arbitrate the claim. This legislation was voted out of committee and placed on the House Calendar on the last day for the House to consider House Bills. The legislation failed to pass by the deadline for the passage of House Bills and is therefore dead.

Observation. There were numerous bills this session that attacked the use of arbitration, such as in personnel disputes. Even if they had passed, arbitration would generally still be available under the Federal Arbitration Act.

HB 3744 by Burrows – Rule Against Perpetuities

[*HB 3744*](#) *Relating to the rule against perpetuities.*

Current law specifies the requirement that an interest in a trust vest, if at all, not later than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation. This legislation would apply to trusts created on or after September 1, 2019 and authorized an interest in such a trust to vest not later than 300 years after the trust's effective date if the trust instrument provides that an interest in the trust vests under the rule against perpetuities. It was voted out of committee but was not placed on the House Calendar and is therefore dead.

Observation. If it passed, this change would enable large trust banks to capture accounts for an amazing length of time!

HB 3872 by Longoria – Data match for delinquent taxes

[*HB 3872*](#) *Relating to data matching with financial institutions to facilitate the collection of state delinquent tax liabilities.*

This legislation would have required financial institutions to conduct a data match comparison for delinquent taxpayer information provided by the Comptroller. As contemplated by the Comptroller's office, the existing data match program for child support would be utilized for this purpose, thus actually making the process less burdensome for community banks. After meeting with the Comptroller and seeing amended language, IBAT testified in support of this bill.

HB 4519 by K. King – Creating a Central Filing System for Agricultural Liens

[*HB 4519*](#) *Relating to the development of a central filing system by the secretary of state for the filing of financing statements for certain security interests; authorizing fees; providing civil penalties.*

As a result of the federal Food Security Act, discussion has circulated since the 1980s about the creation of a central location or database to make available information that allows agricultural buyers, merchants or selling agents to identify farm products that are subject to a security interest. IBAT has worked collaboratively throughout the interim with the agricultural trade associations and other interested parties to create an alternative to "central filing" that is workable for all stakeholders.

HB 4519 would have established a statewide filing system hosted by the Texas Secretary of State for effective financing statements covering farm products and to authorize related fees and establish penalties for noncompliance. This bill received a hearing but was not brought up for a vote by the committee.

SB 2037 by Hall/K. King - Central Filing Study

[SB 2037](#) Relating to a study regarding the feasibility of implementing a central filing system for the filing of financing statements for security interests in farm products.

This legislation would have required the Secretary of State to conduct a study on the feasibility of developing and implementing a central filing system to be used for the filing of all financing statements that cover farm products being sold and purchased in this state that are subject to a security interest. The bill was opposed by several ag interests and did not make it through the process.

HB 2069 by Wray – Foreclosure of a Lien on Real Property

[HB 2069](#) Relating to the foreclosure of a lien on real property of a decedent.

This bill would have added new Sec. 51.0022, Property Code (FORECLOSURE SALE OF REAL PROEPRTY OF DECEASED DEBTOR), which would apply to a foreclosure sale of real property of a debtor who is deceased and whose debt secured by the deed of trust or other contract lien is in default, regardless of whether the property is a homestead. It would have significantly changed procedures for collection that are currently found in the Estates Code.

IBAT met with Representative Wray on this legislation several times, and he agreed the legislation needed more work and needs to be reconciled with the Estates Code provisions relating to debt collection in probate. This legislation received a hearing and was voted out of committee; however, it did not make it out of the Calendars Committee.

HB 4328 by Clardy – Property Tax Loans

[HB 4328](#) Relating to certain property tax lenders, property tax loans, and tax liens.

This legislation was developed primarily by the larger property tax lenders with input from the financial institution trade associations. IBAT and TBA provided a section that would have eliminated a current bad practice by which PTLs refuse to release their lien on a tract unless the other party seeking the release pays off all of the liens on other property owned by the debtor. The bill never received a hearing.

HB 1473 by Middleton– Relationships with Local Government Officers and Vendors

[HB 1473](#) Relating to disclosure of certain relationships with local government officers and vendors.

This legislation would have required local government elected officials to file a conflicts disclosure statement with respect to a vendor entering or seeking to enter into a contract with a local governmental entity with the Texas Ethics Commission. It struck language in current law that exempts relationships with financial institutions from such disclosures. This bill received a hearing and voted out of committee, but it did not make it out of the Calendars Committee.

HB 2854 by Middleton/SB 2371 by Hughes – Judicial Deference

[*HB 2854*](#) *Relating to judicial deference regarding an interpretation of law by a state agency.*

This legislation would prohibit a court from giving deference to any construction of a statute by the state agency responsible for the statute's administration or implementation. Rather, the court, in any matter brought before it regarding judicial review of state agency actions under the Administrative Procedure Act, would decide all questions of law by trial de novo (new trial) without giving deference to any legal determination by a state agency. The House bill received a hearing and was voted out of committee. However, it did not make it out of the Calendars Committee. The Senate bill was heard in committee and left pending.

Observation. The Finance Commission includes representatives from its regulated industries. We believe that it does a good job in rule-making!

HB 4149 by Leach/SB 2259 by Hughes – Establishing a Business Court

[*HB 4149*](#) *Relating to the creation of the business court and the Court of Business Appeals to hear certain cases and authorizing fees.*

The bill would create a new court called the business court that would have concurrent jurisdiction with the state's district courts in actions involving business litigation. A business court of appeals would also be created to hear appeals from the business court. It would be composed of seven judges, and the judges would maintain chambers in their county of residence in facilities provided by the state. The business court would be required to use the most advanced technology feasible and would allow counsel and parties to appear remotely by means of Internet-based or other technological devices as determined by the court. Conceptually, this court would have potentially greater expertise in handling business disputes.

The House bill received a hearing but was not brought up for a vote by the committee, while the Senate version was never heard.

SB 860 by Paxton – Regulatory Sandbox

[*SB 860*](#) *Relating to the creation of a regulatory sandbox program administered by the attorney general for certain financial products and services; authorizing a fee.*

This legislation would create a regulatory sandbox program housed at the Attorney General's Consumer Protection Division. In consultation with other state agencies, it would allow a person limited access to the market without being licensed or registered in the state to test "innovative financial products or services" for a limited time and on a limited basis. Arizona passed a similar law creating a "FinTech Sandbox" under the purview of its Attorney General, who has much more expansive powers and responsibilities than in most states including Texas.

SB 1281 by Birdwell – Assessments for Water and Energy Improvements (PACE)

[SB 1281](#) *Relating to assessments for water and energy improvements in certain municipalities and counties.*

The legislation would require the State Energy Conservation Office (SECO) in the Office of the Comptroller of Public Accounts to administer the Property Assessed Clean Energy Act (Chapter 399 of the Local Government Code) through a third-party program administrator. SECO would be required to select the program administrator through a request for proposal (RFP) and adopt rules to administer the act. The program administrator would be authorized to collect user fees to pay the costs of administering the program. Although this bill passed the Senate, it was left pending in committee in the House.

Observation. Although this bill would provide consistency in managing the administration of PACE projects, we are concerned with any expansion of this program, which creates a superior lien over pre-existing contractual ones.

HB 2282 by Parker – Capture and Use of Biometric Identifiers

[HB 2282](#) *Relating to the applicability of certain limitations on the capture and use of biometric identifiers to financial institutions.*

Existing Texas law prohibits the capture of a biometric identifier of an individual for a commercial purpose unless the person informs the individual before capturing the biometric identifier and receives the individual's consent to capture the biometric identifier. Currently financial institutions and their affiliates are exempt from the requirements of this statute with regard only to voiceprint data retained as the terms are defined by GLBA. This legislation would have exempted financial institutions and their affiliates subject to Gramm-Leach-Bliley Act (GLBA) from all requirements in state statute related to the capture or use of a biometric identifier.

This good bill passed the House but never got a hearing in the Business & Commerce Committee in the Senate.

CONCLUSION

Community banking had some significant wins this session, including the cleanup of the home equity arena to permit ag use valuations on property with home equity liens, modest expansion of community development investment for state-chartered banks and meaningful regulation to address the scourge of skimmers and card fraud. Perhaps more significantly, we dodged significant bullets in the form of onerous privacy limitations and overhaul of mechanics and materialmen's lien law.

So, what is next? We did not get a central filing bill for ag products, but the time is ripe to press forward with this effort using advances in technology as a lever. We can expect one more study of construction lending but hopefully looking seriously at the reforms the coalition attempted to advance.

Thanks to all of our members who helped with insights on bills when called upon and to the many who attended the IBAT Community Banking Day at the Capitol.

Your relationships with your elected officials continue to play a key role in the successes we've enjoyed as community bankers. We urge you to continue your engagement and involvement in your respective communities and in the political and legislative arenas, and we offer our sincere appreciation for the privilege of representing you and your interests.