

LEGISLATIVE WHITE PAPER

An Executive Summary for Community Bankers

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The 2021 Legislative Session
“You Can’t Make This Stuff Up”



**Independent
Bankers
Association
of Texas**

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INTRODUCTION

The 87th Texas Legislative Session was perhaps one of the most unusual sessions ever, and certainly was for your IBAT Government Relations staff. It started with a virtual lockdown due to the COVID pandemic, with restricted access to the Capitol complex and most offices. A new Speaker of the House always brings changes, especially in the makeup of the various committees and chairs. Winter Storm Uri was a significant game-changer, creating new priorities and a focus on fixing some real and serious issues for millions of Texans. Tensions between the two chambers were more tenuous than normal, and only went downhill as the session progressed. The session ended with the Democrats walking out to break quorum and stop an elections bill – either an “election integrity” or “voter suppression” initiative depending upon your perspective - from passing. A special session will be necessary to address redistricting, but additional special sessions have been threatened to take up items that didn’t make it through the process for whatever reason.

Even with all this drama, this session there were 7,148 bills and joint resolutions filed. When both chambers gaveled out, there were 1,080 bills finally passed, or 15.1% of those filed. This total is normally closer to 20%, but given the challenges of this session, it is somewhat surprising to see this level of success in a process designed to make it hard to pass legislation.

While always hard to measure success, we were pleased with the results of the session for community banking. Those bills we supported made it through the process, and perhaps as importantly, several really bad proposals did not.

All in all, we believe that the best news is that we all survived a bizarre five months and community banking will be well-served by a number of positive changes to Texas law.

As always, IBAT expresses our thanks to community bankers across the state who are engaged in the legislative and political process, have close relationships with their elected officials and who do so much to benefit their communities. It is a privilege to represent this wonderful industry and the amazing people who do so much good for so many.

BILLS STRONGLY SUPPORTED BY IBAT

In “normal” legislative years, IBAT has historically pushed a broad array of proactive legislative initiatives. Given the uncertainty of the 87th Texas Legislature, we focused on a limited number of proactive bills and engaged heavily on a variety – both good and bad – of others. The following bills are those we publicly supported and, in most cases, worked closely with stakeholders and legislators and staff to ensure passage.

HB 2106 by Perez/Zaffirini – Card Skimmers at the Gas Pump

[HB 2106](#) Relating to the prevention, identification, investigation, and enforcement of payment card fraud; providing a civil penalty.

Compromised debit and credit cards create significant losses for financial institutions and multiple headaches for consumers. One of the most common sources of breaches and compromised card information is through skimming devices installed on gasoline pumps. Last Session, IBAT worked with interested parties, including Representative Mary Ann Perez and her staff, 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. IBAT continued to work with these stakeholders in the interim to implement the legislation. However, we ran into many hurdles related to getting the Payment Fraud Fusion Center (Fusion Center) up and running. The stakeholders regrouped to explore options for the Fusion Center. It was agreed the Fusion Center and all responsibilities related to the Fusion Center should be moved from the Attorney General’s office to the Texas Department of Licensing and Regulation (TDLR) as TDLR received responsibilities for the weights and measures duties related to gas pumps across the state of Texas in the 86th Legislative Session. HB 2106 was filed in the 87th Legislative Session.

HB 2106/SB 964 are companion clean-up bills designed to enhance the effectiveness and efficiency of the program and consolidate oversight under the Texas Department of Licensing and Regulation (TDLR). TDLR is granted rulemaking authority regarding security standards and best practices for merchants, reporting and standards required upon the discovery of a skimmer, investigations and other necessary clarifications and directives to implement and carry out the oversight responsibilities of this program.

A “Financial Crimes Intelligence Center” (Center) is established within the TDLR, which is authorized to enter into agreements with law enforcement or other governmental agencies for the operation of the unit. The unit will serve as a centralized “clearing house” for the coordination and sharing of information (as appropriate) with law enforcement and other stakeholders related to payment fraud. The bill would require the Center to assist law enforcement agencies, other governmental agencies, financial institutions, credit card issuers, debit card networks, and merchants in efforts to detect skimmers, ensure an effective response if a skimmer is found, and prevent card fraud. Further, the unit is charged with training law enforcement agencies, public educational outreach and maximizing the effectiveness of combating the criminal activities related to payment fraud.

The bill would require the chief intelligence coordinator of the Center to file an annual report with TDLR. The report would include a plan of operation for the center and an estimate of the cost to implement the plan, an assessment of the current state of card fraud, a plan of operation for combatting card fraud, a communications plan for outreach, and a list of expenditures made by the Center since the last report was filed.

The bill would authorize TDLR to solicit and accept gifts, grants, and other donations to fund, administer, and carry out the purposes of the Center.

Effective Date: September 1, 2021

Impact. This legislation addressing payment card fraud and skimmers at the gas pump was IBAT's top priority this session. We believe this law should start the process of increasing accountability for fraud where it belongs—at the pump. Further, removing impediments to prosecution of bad actors passed at the last session has had a positive impact on this ongoing costly, burdensome, and aggravating problem for all financial institutions and their customers.

HB 2533 by Darby/Nichols - Authorization for Real Property Evaluations

[HB 2533](#) *Relating to the performance of a real property evaluation for use by certain financial institutions.*

A recent AG opinion pointed out that certified appraisers may not perform real property evaluations but rather must always follow Uniform Standards of Professional Appraisal Practice (USPAP) guidelines. HB 2533/SB 996 are companion bills negotiated by and agreed to by both the appraisal and financial services industries (including IBAT). The legislation clarifies that both certified appraisers and financial institution employees may perform evaluations in circumstances where a certified appraisal is not required by law. This fix to an inadvertent glitch in Texas law ultimately benefits consumers as it would permit lower cost evaluations where appropriate.

Effective Date: Immediately

Impact: Federal law permits the use of evaluations in certain circumstances. Access to both certified appraisers and, where appropriate, bank employees to perform these provides banks and their loan customers with a cost-effective and timely alternative.

SB 6 by Hancock/Leach – COVID-19 Business Liability

[SB 6](#) *Relating to liability for certain claims arising during a pandemic or disaster related to a pandemic.*

Several pieces of legislation were introduced that would limit a business's liability created by exposure to COVID-19. SB 6/HB 3659 are companion bills that provide liability protection for those entities which attempted to follow applicable government guidelines and provides more specific protections for health care providers, manufacturers, and higher educational institutions. IBAT supported these reasonable

provisions as our bankers took appropriate precautions to prevent the spread of COVID-19 to employees and bank customers.

Effective Date: Immediately

Impact: Numerous lawsuits have already been filed against businesses relating to COVID. This legislation protects entities following reasonable business practices.

HB 654 by Lucio III/Johnson - Rule Against Perpetuities

[HB 654](#) *Relating to the rule against perpetuities.*

(HB 654, Lucio III/SB 1377, Johnson) These companion bills, supported by a number of Texas community banks that are operating active trust departments, extends the vesting period for trusts to 300 years for those trusts created after September 1, 2021. Currently, a trust must terminate (allowing the beneficiary to become absolutely entitled to the trust assets) not later than 21 years after some “life in being” at the beginning of the trust. In essence, a trust must vest – if at all – no later than 21 years after the death of the last potential beneficiary alive at the time the trust was written.

Texas trust departments and companies are losing business to out-of-state competitors who have more flexibility in this area. IBAT supported this legislation as it will allow more flexibility for trust and estate planning, will make Texas banks more competitive with out-of-state trust service providers and will help keep trust business in Texas. The legislation passed the House very easily but ran into some opposition in the Senate and was in danger of not passing. A compromise was reached by adding an amendment that prohibits a trust from tying up land for more than 100 years.

Effective: September 1, 2021

Impact: Banks with trust departments need to familiarize themselves with this change.

HB 653 by Lucio III - Trustee Accounting (*Failed to pass*)

[HB 653](#) *Relating to a trust beneficiary's approval of a trustee's accounting.* Current law provides for a four year “window” for a beneficiary to challenge a trust “accounting” (statement of account) sent to the last known address of the beneficiary. This bill shortens that timeframe to six months, and would not apply in the case of fraud, intentional misrepresentation, or material omission.

HB 1258 by Ashby/Schwertner – Data Match

[HB 1258](#) *Relating to data matching with financial institutions to facilitate the collection of certain delinquent tax liabilities.*

The Texas Comptroller of Public Accounts’ (comptroller) office is tasked with enforcing the collection of state taxes. If a taxpayer fails to properly collect, report, and remit tax to the state, certain enforcement actions may be taken to collect past-due taxes. Following attempts to resolve a tax delinquency by mail, phone, or field visits, the agency may seek to freeze bank accounts associated with the taxpayer. If no

bank account is known, the agency sends freeze requests to financial institutions in proximity to the taxpayer's location. This is a waste of agency resources and burdensome to financial institutions. For example, in fiscal year 2019 the agency issued over 67,000 freeze requests and the agency was successful in freezing accounts and levying delinquent taxes only 31 percent of the time. HB 1258 streamlines the process by which the comptroller's office issues freeze and levy requests by establishing a data matching system.

HB 1258 requires a financial institution to, each calendar quarter, exchange data with the comptroller (or its agent) to match names of delinquent taxpayers with names of account holders either through an all-accounts method or a matched accounts method that matches information in an inquiry file. The system will significantly increase efficiency by accurately targeting accounts and improve the use of agency resources for the enforcement and collection of delinquent taxes.

Effective: September 1, 2021

Impact: IBAT believes that this data match system will be consistent with the current data match in place for child support, with the goal of utilizing one process for both systems. It should actually reduce the number of irrelevant levies and freeze orders and thereby minimize compliance costs for banks. IBAT was pleased to work closely with the comptroller's office over the past two sessions to craft a workable framework for this process and to provide invited testimony at the hearing.

HB 5 by Ashby/Nichols - Broadband Access

[HB 5](#) *Relating to the expansion of broadband services to certain areas.*

This bill is one of the Governor's "emergency issues." We have all seen firsthand the importance of reliable internet access on so many levels over the past year. COVID-19 was clearly a "game-changer" as internet access became indispensable for businesses, the education community, commerce of all kinds and even as an entertainment option for Texans. Most of our banks transitioned a significant portion of their employees to a work from home environment with limited staff in their offices and branches. Many of our community banks and branches are located in rural areas where access to a reliable broadband connection is an ongoing issue. Safe, secure, and reliable access to reliable internet is critical for all Texans. IBAT supported the efforts of Representative Ashby and Senator Nichols in this important initiative.

As amended, HB 5 establishes a broadband development office within the office of the Comptroller of Public Accounts and authorizes the comptroller to employ additional staff necessary for the discharge of the broadband office's duties. The bill requires the broadband office to promote certain specified policies and authorizes the broadband office to perform any action authorized by state or federal law. The bill grants the broadband office the powers necessary to carry out its duties under the bill, including the power to enter into contracts and other necessary instruments. The bill expressly does not grant the comptroller authority to regulate broadband services or broadband service providers.

Effective: Immediately

Impact: Expansion of broadband access is also a part of the President's infrastructure proposals. Assuming those proposals pass, this Texas bill will provide a critical head start for Texans. Access to broadband will further facilitate bank customers' access to online banking services.

HB 3741 by Capriglione - Privacy (Failed to pass)

[HB 3741](#) *Relating to the personal identifying information collected, processed, or maintained by certain businesses; imposing a civil penalty.*

Representative Capriglione again introduced legislation to address the protection of personal identifying information (PII) held by for-profit businesses. The bill only applies to larger businesses with 50 or more employees who collect information on 5,000 or more individuals, households, or devices and either have gross revenues of \$25 million or more or derive over half of their revenue from the processing of PII. Importantly, banks are already required to comply with the privacy provisions of Gramm-Leach-Bliley (GLBA) and are among those entities that are exempt.

IBAT has long taken the stance that any entity retaining PII should be subject to the same requirements as financial institutions under GLBA. While there is significant opposition from retailers and technology companies, we believe that those entities not subject to and maintaining appropriate security standards should be responsible for losses sustained subsequent to a data breach.

SB 516 by Huffman/Murr -- ATM "Smash and Grab"

[SB 516](#) *Relating to increasing the criminal penalty for the offense of criminal mischief involving impairment or interruption of access to an automated teller machine.*

Texas banks have reported hundreds of smash and grab incidents involving ATMs that resulted in millions of dollars of cash losses, tens of thousands to repair or replace, and an inconvenience to customers. SB 516 and its companion HB 3323 establish a third-degree felony offense for criminal mischief if a person caused whole or partial impairment or interruption of access to an automated teller machine, regardless of the amount of the pecuniary loss. A third-degree felony is punishable by 2-10 years in jail. IBAT extends our thanks to the Texas Bankers Association for their efforts to get this bill introduced and through the process.

Effective: September 1, 2021

Impact: The increased penalty reflects the seriousness of this crime and hopefully will result in more aggressive law enforcement activity.

FINANCE COMMISSION AGENCIES

HB 2629 By Thompson – White-Label ATMs (Failed to pass)

[HB 2629](#) *Relating to the establishment of a registry for and requiring the registration of certain unmanned teller machines; imposing a fee; providing a civil penalty.*

ATMs fall largely into two categories: the ATMs operated by financial institutions, which are marketed and clearly branded by a financial institution, and the largely unregulated ATMs, often referred to as "white-label ATMs" or WATMs, which are oftentimes owned by a business but may be owned and

operated by anyone. While WATMs are a valuable part of the state's financial system, particularly in rural areas where there are fewer brick-and-mortar banks, WATMs are also linked to vice crimes and human trafficking. Criminals often exploit the lack of WATM regulation to transfer illicit profits and cater to cautious clients. For instance, by some estimates, there are more than 900 illicit massage businesses in Texas that use the cover of the legitimate massage industry to engage in storefront prostitution and human trafficking.

In an effort to provide additional tools for disrupting crimes such as human trafficking and the profits gained by those engaged in such crimes, HB 2629 requires the Finance Commission to issue rules for the registration of these WATMs and the display of a state-issued registration sticker on each registered ATM in order for the ATM to be legally placed into businesses in Texas.

SB 1900 by Zaffirini/Anchia – Department of Savings and Mortgage Lending

[SB 1900](#) *Relating to the regulatory authority of the savings and mortgage lending commissioner; authorizing fees.*

This agency bill amends the Finance Code to give the Savings and Mortgage Lending Commissioner the option to publish certain change in control application information in a newspaper of general circulation as an alternative to submitting it to the Texas Register.

It authorizes the commissioner to regulate and examine the activities of a savings bank affiliate and the services or activities of a third-party service provider to the same extent as if they were performed by a state savings bank. Similarly, the Commissioner is authorized to examine a savings bank holding company to the same extent as a state savings bank and bring enforcement actions.

The requirement for a residential mortgage loan company to maintain a physical office in Texas is removed.

Effective: September 1, 2021

Impact: These powers are comparable to those already granted to the Banking Commissioner.

CREDIT AND DEBIT CARDS AND CONSUMER CREDIT

HB 3529 by Meyer/Zaffirini – Identity Theft

[HB 3529](#) *Relating to consent for the use or possession of personal identifying information under the Identity Theft Enforcement and Protection Act.*

Coerced debt is an increasingly common form of domestic abuse affecting both married and unmarried couples and includes all nonconsensual, credit-related transactions that occur in a violent relationship. This form of financial abuse can have devastating effects for victims, substantially limiting their economic self-sufficiency or preventing them from leaving an abusive relationship in the first place. Even if a victim

manages to overcome the barriers (including financial) to escape from an abusive situation, his or her low credit score could affect employment, housing, insurance, and future credit opportunities.

HB 2697 (2019) amended the Penal Code definition of identity theft to include coerced debt, allowing for this form of family violence to be prosecuted and providing survivors access to Fair Credit Reporting Act (FCRA) protections. While these provisions have proven effective, experts warn that allowing a single pathway for recourse—filing a police report—inhibits many victims and survivors of family violence from successfully escaping abusive situations. Accordingly, HB 3529 amends the definition of identity theft in the Business and Commerce Code to include coerced debt, thereby allowing victims and survivors an alternative means of long-term recovery within the civil legal system via damages from identity theft, FCRA protections, or both.

Effective: September 1, 2021

Impact: Note the effect of this change on claims relating to FCRA errors.

HB 3941 by Guillen – Credit Card Surcharge (*Failed to pass*)

[HB 3941](#) *Relating to surcharges imposed for the use of a credit card and to certain reimbursements and discounts allowed for the collection and payment of sales and use taxes.*

In 2018, a federal district court held the state's anti-surcharge law for credit card purchases, as applied to certain merchants, is an unconstitutional violation of commercial free speech rights. Accordingly, HB 3941 seeks to repeal this law. The Texas Business and Commerce Code sec. 604.0021 prohibits a person selling goods or services from imposing a surcharge on a buyer who uses a credit card for an extension of credit instead of cash, a check, or a similar means of payment. HB 3941 would repeal the prohibition on a seller from imposing a surcharge on a buyer who uses a credit card for an extension of credit instead of cash, a check, or similar means of payment.

Impact: A federal court ruling on Texas law effectively nullifies this section and allows for surcharges on credit cards. IBAT was successful several sessions ago in getting legislation passed to prohibit surcharges on debit cards, and neither the court nor this bill have impacted that important protection for community banks.

BANK OPERATIONS

SB 968 by Kolkhorst/Klick – COVID Response: No vaccine passports!

[SB 968](#) *Relating to public health disaster and public health emergency preparedness and response; providing a civil penalty.*

This bill deals with public health disasters and provides a framework for response. But for our purposes, the significant point is that it prohibits a business in the state from requiring a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery to enter, access, or receive service from the business. A business that failed to comply would not be eligible to

receive a grant or enter into a contract payable with state funds. Businesses may still implement appropriate screening and infection control protocols.

Effective: June 7, 2021

Impact: Don't require customers to show their COVID 19 vaccination card in order to enter the bank or receive services! Candidly, we haven't heard of any bank that has done this. Remember that you can still require masking—if so desired.

HB 876 by Craddick/Perry – Payment by Check

[HB 876](#) Relating to fees charged by certain persons for the method used for payments made under an agreement.

Although online banking has become pervasive in recent years, many Texans still wish to receive payment by paper check for various reasons, including personal privacy issues. Concerns have been raised over reports of payors in Texas imposing extra fees on individuals who request payment by paper check, thus potentially dissuading Texans from receiving payment in their preferred form. HB 876 preserves Texans' fundamental right to choose the way in which they receive payment by prohibiting the imposition of these fees. The legislation prohibits an individual, corporation, trust, partnership, association, or other private legal entity that makes a payment to a payee from charging an additional fee to the payee for electing to receive the payment by paper check instead of by an automated clearinghouse transaction (ACH) or other electronic funds transfer (ETF). The bill renders void and unenforceable any contract provision permitting a person to charge or collect such a fee from a payee. The legislation is not retroactive.

Effective: September 1, 2021

Impact: It will be interesting to note whether volume of checks increases with passage of this bill.

HB 1514 by Landgraf/Zaffirini – Unclaimed Property

[HB 1514](#) Relating to the administration of unclaimed property.

This bill makes numerous changes to unclaimed property laws. Many of them relate to insurance and other businesses. It also makes changes to the claims process.

Tangible or intangible personal property is not subject to escheat if it is a worthless or non-freely transferable security. Otherwise a security listed on an established stock exchange may not be sold for less than the prevailing exchange price. A security not listed on an established exchange may be sold by any commercially reasonable method.

One procedural change requires the holder of property valued at more than \$250 that was presumed abandoned to send notice to the last known address of the property owner by 60 days before the property was delivered to the comptroller rather than the following May 1. The holder could send the notice by email.

The comptroller may waive penalty or interest on delinquent property for good cause.

Effective: May 18, 2021

Impact: Update escheat procedures to implement the change in notice to customers on abandoned property valued at more than \$250. Consider using email notice instead of snail mail.

If an audit of the bank reveals deficiencies, consider requesting waiver of penalty or interest by demonstrating “good cause” for the failure to report.

HB 1576 by Parker/Paxton – Work Group on Blockchain Matters

[HB 1576](#) *Relating to the creation of a work group on blockchain matters concerning this state.*

This legislation creates a work group on blockchain matters. The work group will be composed of one House member, one Senate member, 2 members representing higher education appointed by the Governor, one ex-officio member representing the Secretary of State appointed by the Governor, 10 public members - 5 appointed by the Speaker and 5 appointed by the Lt. Governor who either have knowledge and experience in blockchain technology or represent an industry that would benefit from its use. The Governor designates a chair of the workgroup and the House and Senate Members will be co-vice chairs.

The work group is tasked with developing a master plan for the expansion of the blockchain industry in this state and recommending policies and state investments in connection with blockchain technology. The work group must issue a report to the legislature by 10/31/22 with the master plan and recommendations/findings. The work group will be abolished 6/30/23 and must be appointed by 10/1/21 and hold its first meeting by 11/1/21.

Effective: September 1, 2021

Impact: This work is critical to the development of alternative filing systems using blockchain. It may also facilitate the creation of safe digital currency. IBAT is supportive of studying the implications and implementation of this system rather than “being first”.

SB 692 by Zaffirini/Smithee – Access to Financial Records

[SB 692](#) *Relating to access to certain financial records by the guardianship abuse, fraud, and exploitation deterrence program.*

This bill amends the Government Code to require a financial institution or other person, as applicable and to the extent allowed and in the manner required by federal law, to provide the guardianship abuse, fraud, and exploitation deterrence program on request with access to financial institution records, accounting records, and other financial records concerning a ward or the ward's estate, including receipts, records of deposits and withdrawals, invoices, bills, and any other records of transactions involving the money or assets of a ward or the ward's estate, for purposes of conducting reviews and audits under the program. The bill authorizes the program to request the court in which the guardianship is pending to order a

financial institution or other person who possesses the records to provide the records to the program. The bill authorizes the court, after notice and a hearing, to issue an order requiring the financial institution or person to provide the records to the program under the conditions the court prescribes.

Effective: May 30, 2021

Impact: Add this discovery authority to the bank's procedures relating to delivery of bank records.

HB 4474 by Parker/Paxton – Virtual Currency

[HB 4474](#) *Relating to the control of virtual currency and the rights of purchasers who obtain control of virtual currency for purposes of the Uniform Commercial Code.*

This bill proposed crypto-currency related amendments to UCC Chapters 1 and 9 to enhance Texas as an attractive state for crypto industry development. Texas A&M law Professor Bill Henning, who serves on certain uniform laws entities (NCCUSL & ALI) weighed-in on the blockchain and cryptocurrency debate as it relates to the UCC, along with Texas banking groups, to urge restraint so as to not inadvertently impact general financial application of the UCC. The result is a new chapter 12 added to the Texas Business & Commerce Code, which is consistent with the latest “uniform” draft. An updated, proposed new UCC chapter governing the subject will be released within the next year. Meanwhile, Texas law will be consistent with the most current thinking on this topic.

Chapter 12 outlines the rights in virtual currency and the methods for control. Chapter 9 is amended to make the Secured Transactions law consistent with this new chapter as it relates to security interests.

Effective: September 1, 2021

HB 4477 by Thompson/Zaffirini – Financial Exploitation of Vulnerable Adults

[HB 4477](#) *Relating to the financial exploitation of certain vulnerable adults.*

This bill amends the Finance Code, the Government Code, and the Securities Act to change the date a hold expires on certain transactions involving suspected exploitation of a vulnerable adult to the tenth business day after the date the hold is placed. Current law is the tenth day after a report is submitted under this section.

Effective: September 1, 2021

Impact: Update your procedures for financial abuse of elders and other vulnerable adults for this change in timing.

HB 1156 by Thierry/Menendez – Financial Abuse of an Elderly Individual

[HB 1156](#) *Relating to creating the criminal offense of financial abuse of an elderly individual.*

HB 1156 amends the Penal Code to create the offense of financial abuse of an elderly individual for a person who knowingly engages in the wrongful taking, appropriation, obtaining, retention, or use of money or other property of an elderly person or for a person who knowingly assists in such conduct, by any means, including by exerting undue influence and by financial exploitation. The bill establishes penalties for the offense ranging from a Class B misdemeanor to a first degree felony depending on the value of the property taken, appropriated, obtained, retained, or used. If the conduct constituting the offense also constitutes another Penal Code offense, the actor may be prosecuted for either offense or both offenses.

Effective: September 1, 2021

Impact: This bill does not directly impact the duties of banks with regard to elder financial exploitation. However, be sure that employee training covers this offense.

HB 3746 by Capriglione/Nelson – Computer Breach Notices

[HB 3746](#) *Relating to certain notifications required following a breach of security of computerized data.*

This bill amends the notice law to require the notification sent to the attorney general following a breach of security of computerized data to include the number of affected residents that have been sent a disclosure of the breach by mail or other direct method of communication at the time of notification. It also requires the attorney general to post on the attorney general's publicly accessible website a comprehensive listing of the notifications received by the attorney general, excluding any sensitive personal or confidential information that may have been reported. The listing must be updated not later than the 30th day after the date the attorney general receives notification of a new breach of system security.

Effective: September 1, 2021

Impact: Update the bank's cybersecurity procedures to include this change in the Texas notice.

SB 1523 by Hancock/Turner, Chris

[SB 1523](#) *Relating to registered and protected series of domestic limited liability companies; authorizing fees.*

This bill provides rules to register a series LLC with the Secretary of State. It includes numerous provisions relating to the organization, merger, and termination of these entities. For banking purposes, the following sections are important to note:

The Business and Commerce Code is amended to provide for the application of the Assumed Business or Professional Name Act to registered series. A registered series or its members is not required to file a certificate to conduct business or render a professional service in Texas under the name of the registered series as stated in the series' certificate of registered series. However, a registered series is required to file an assumed name certificate with the secretary of state under certain circumstances. The bill specifies the names that must be stated on an assumed name certificate if the registrant is a registered series or if

the registrant is a limited liability company that is filing under an assumed name used by a protected series of the company.

The definition of "person" under the Business and Commerce Code is amended to specify that the series included under that definition are protected or registered series. For secured transactions purposes, a "registered organization" includes a series of a registered organization if it is formed or organized under the laws of a single state and the state of the state governing the series requires that the public organic record of the series be filed with the state.

Effective: June 1, 2022

Impact: Update CIP procedures for these tweaks relating to series LLCs.

FINANCIAL LITERACY

SB 1063 by Alvarado/K. King - Financial Literacy and Economics for High School Students

[SB 1063](#) *Relating to courses in personal financial literacy and economics for high school students in public schools.*

The bill would add one-half credit in personal financial literacy and economics as an option under the foundation high school program. The bill requires the Texas Education Agency to develop a list of free, open-source, and publicly available curricula that could be used for a personal financial literacy and economics course. This will be applicable for school year 2022/2023.

Effective: Immediately

Impact: IBAT and the IBAT Foundation support and facilitate financial literacy. Hopefully, this requirement will result in better consumers of financial services.

FIREARMS

SB 19 by Schwertner/Capriglione - Gun Industry Discrimination – Government Contracting Disclosure and Restrictions

[SB 19 \(Schwertner\)](#)/ HB 2558 (Capriglione) -- *Relating to prohibited contracts with companies that discriminate against the firearm or ammunition industries.*

This bill is a response to the policies of certain large banks to allegedly discriminate against the firearms industry. It amends the Government Code to prohibit a state agency or political subdivision from entering into a public funds or other contract unless the contract contains a written verification from the company that it does not have a practice policy, guidance, or directive that discriminates against a firearm entity or

trade association solely based on that status and that it won't engage in any such discrimination during the contract term. A critical amendment was made to the definition of "discrimination" to exclude the following:

- (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or
- (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

Effective: September 1, 2021

Impact: This amendment strengthens the "solely based" language, and should avoid the possible interpretation that risk assessments for regulatory or risk management purposes or requirements for specific amounts of liability insurance would trigger a penalty.

It applies to all contracts between government entities and companies with at least 10 full-time employees and a value of at least \$100,000.

HB 1927 by Schaefer/Schwertner - Constitutional Carry

[HB 1927](#) *Relating to provisions governing the carrying of a firearm by a person who is 21 years of age or older and not otherwise prohibited by state or federal law from possessing the firearm and to other provisions related to the carrying, possessing, transporting, or storing of a firearm or other weapon; creating criminal offenses.*

The bill creates the Firearm Carry Act of 2021 and makes it legal for a person who is at least 21 years old to carry a firearm while not on the person's own premises or premises the person controlled or while not inside of or directly enroute to a motor vehicle or watercraft that was owned or controlled by the person. There are still a number of premises that are restricted.

For banks, it is critical to note that they may still post a sign at each entrance that contains specific language:

"PURSUANT TO SECTION 30.05, PENAL CODE (CRIMINAL TRESPASS), A PERSON MAY NOT ENTER THIS PROPERTY WITH A FIREARM."

This must be in both English and Spanish, be in contrasting colors with block letters at least one inch in height and displayed in a conspicuous manner clearly visible to the public. Failure to depart is a Class A misdemeanor only if the person carrying a weapon is personally given notice from the owner's agent that entry with a firearm is forbidden. The notice can be oral or written.

The bill did not repeal the existing signage rules for 30.06 and 30.07, which apply to concealed handguns and open carry of handguns respectively. It appears that a business could choose to post one or more of

the signs. Arguably, a business could post the universal circle with a slash across the handgun and then hand the specific notice to anyone who enters the premises in violation of the sign and at the same time provides oral notice of the prohibition.

Employers still have the right to prohibit persons who are licensed from carrying a handgun on the business premises. However, they cannot prevent the employee from storing the firearm or ammunition in their vehicle, even while it is on bank premises (parking lot or garage, for example).

Effective: September 1, 2021

Impact: Bank boards should determine whether they wish to prohibit firearms on bank premises. If so, the appropriate signage must be in place. Further, presumably a security guard or designated officer(s) should be instructed to provide oral notice of the prohibition if someone enters with a firearm. Note that the new law applies to “firearms” and not just to “handguns.” In addition, boards should determine whether the bank’s personnel policies should prohibit employees from carrying a handgun on premises.

LENDING

SB 43 by Zaffirini/ Ortega – Wrap Mortgage

[SB 43](#) Relating to residential mortgage loans, including the financing of residential real estate purchases by means of a wrap mortgage loan; providing licensing and registration requirements; authorizing an administrative penalty.

Third time is the charm for this legislation. It subjects wrap loans to regulation like other mortgage loan products and provides certain protections for buyers and sellers, including written disclosures, a statute of limitations, closing requirements, and the establishment of fiduciary responsibilities to assure that wrap payments are used to pay the underlying mortgage that has been “wrapped” around. However, these new Finance Code provisions do not apply to banks, their subs, and regulated residential mortgage bankers.

Persons making more than three wrap mortgage loans per year must become licensed by the Savings and Mortgage Loan Commissioner and comply with the requirements of this law.

Effective: January 1, 2022

HB 3271 by Ordaz Perez/Blanco – Loans to Micro-Businesses by CDFIs

[HB 3271](#) Relating to establishing loan programs to assist certain micro-businesses by increasing access to capital; authorizing fees.

The COVID-19 pandemic hit small businesses across the world very hard, and many small businesses in Texas are struggling with the economic impact of the pandemic and need financial assistance. This bill also addresses future pandemics or declared disasters as well. A declaration of a disaster is defined as a

statewide or local state of disaster or a disaster declared by the U.S. president. HB 3271 creates a program for community development financial institutions (CDFIs) to make loans to micro-businesses for disaster recovery and a program for the Texas Economic Development Bank (TEDB) to assist participating financial institutions in making such loans. The program would be administered by a CDFI and financed through zero interest loans provided by the TEDB which is housed in the Office of the Governor. The bill would also establish the micro-business recovery fund as a dedicated account in the General Revenue Fund, and the TEDB would have administrative powers over the account. The program would be funded by direct appropriation and revenue generated by the program.

A participating CDFI would submit quarterly and annual reports to TEDB, which would issue annual reports on the program to the Governor, Lt. Governor, and the Speaker. The bill would require a participating CDFI to maintain a loan default reserve fund consisting of borrower fees and deposits from TEDB. The state would earn interest on reserve fund deposits. The legislation defines “micro-business” as a corporation, partnership, sole proprietorship, or other legal entity that was domiciled in Texas and had at least 95 percent of its employees located in the state, was formed to make a profit, and employed no more than 20 employees. A loan made under the program would have to be made to a microbusiness that was in good standing under state law and did not owe delinquent taxes before the disaster declaration. A loan could not be made to a micro-business that: had total revenue that exceeded the amount for which no franchise tax was due (\$1 million); was a franchise; was a national chain; was a lobbying firm; or was a private equity firm or was backed by a private equity firm. Payments on disaster recovery loans would have to be made directly to the lender, which would use the money to make new loans. All income received on a loan would be the property of the financial institution, including interest and administrative fees.

Effective: Immediately

Impact: The loan program is only accessible by a CDFI...not a commercial bank. When the next disaster strikes, be aware of this program for your microbusiness borrowers who may qualify for assistance.

SB 678 by Alvarado/Button - Small Business Disaster Recovery Loan Program

[SB 678](#) Relating to the creation of the small business disaster recovery loan program.

The recent struggles small businesses faced during the pandemic and significant delays and burdensome requirements in receiving financial assistance to keep their businesses open have led the state to establish a revolving fund and loan program for small businesses adversely impacted by disasters. SB 678 would establish the small business disaster recovery revolving fund and require the Texas Economic Development and Tourism Office (TEDTO) housed within the Governor’s Office to establish a loan program to use money from the fund to provide financial assistance to small businesses affected by a disaster. TEDTO could provide financial assistance from the fund only in the form of a loan to an eligible small business located in an area under a disaster declaration issued by the governor and during the period for which the disaster declaration was in effect. The office would have to credit to the fund all principal and interest payments on a loan from the fund.

The legislation defines “small business” as a corporation, partnership, sole proprietorship, or other legal entity that employs fewer than 100 full-time employees and is domiciled in Texas or has at least 51 percent

of its employees located in the state, formed to make a profit, and independently owned and operated. TEDTO by rule would have to establish eligibility requirements for a loan to a small business under the program. The requirements would have to include that the small business: was in good standing under the laws of the state; did not owe delinquent taxes to a taxing unit in Texas; had suffered physical damage or economic injury as a result of the event leading to a disaster declaration; and had paid in full any previous loans received under the program. An eligible small business could only use a loan received under the program to pay the business' payroll costs, including costs related to the continuation of health care benefits for the business' employees. The trust company annually would have to report to TEDTO with respect to the fund's investment. The trust company would have to contract with a certified public accountant to conduct an annual independent audit of the fund and present the results of each audit to the office.

Effective: September 1, 2021

Impact: Again, in disaster scenarios there may be situations in which your small business borrowers could benefit from this and other state programs.

LIENS AND SECURITY INTERESTS

HB 2237 by Burrows/Johnson – Mechanics and Materialman's Liens

[HB 2237](#) *Relating to mechanic's, contractor's, or materialman's liens.*

HB 2237 cleans up Texas lien laws to allow general contractors and subcontractors to comply with the law more easily. The bill does not make substantial alterations to the current process but rather simplifies statutes and eases confusing deadlines for filing affidavits and notices related to mechanic's, contractor's, or materialman's liens. The bill also provides for a one-year statute of limitations for bringing a suit to foreclose a lien, provides specific forms for notices of claims, updates definitions, and makes several other conforming changes to the law. The one-year statute of limitations could be extended to the second anniversary of that date if, before the period expired, the claimant entered into a written agreement with the then current owner of the property to extend the limitations period.

Effective: January 1, 2022

Impact: Applies to contracts entered into on or after the effective date. Hopefully this bill, which was agreed upon by all stakeholders and has been an almost decade long process, will put M&M lien issues to bed!

HB 3794 by Geren/Hinojosa – Oil and Gas Liens

[HB 3794](#) *Relating to oil and gas liens.*

A recent court case, *In re First River Energy, LLC*, resulted in a decision unfavorable to Texas oil and gas interest owners because the court held the jurisdiction where the first purchaser (as debtor) is located, governs the applicable Uniform Commercial Code (UCC), rather than where the oil and gas (as collateral) is produced. Because Texas law, commonly known as the “first purchaser statute,” establishes these owners' security interests under the state's UCC Article 9, Texas interest owners cannot take advantage of nonstandard Texas provisions when the debtor is organized outside of Texas. Concerns were raised that unless the first purchaser statute was amended, the security interests of Texas oil and gas interest owners are likely to continue to be interpreted as unsecured and subordinate to other perfected security interests in cases where the first purchaser is organized or incorporated outside Texas. HB 3794 addresses this issue by repealing the present first purchaser statute and replacing it with Property Code chapter 67, establishing oil and gas liens based on real property for applicable interest owners.

Effective: September 1, 2021

Impact: HB 3794 does not affect the rights of any interest owner that accrued before the bill's effective date to the extent those rights are not in conflict with the bill's provisions. The bill specifies that, for purposes of priority of liens and liens in commingled products, a permitted lien includes certain mortgage liens or security interests in oil or gas predating the bill's effective date.

HB 3115 by Shine/Buckingham – Release of Judgment Lien

[*HB 3115*](#) *Relating to the release of a judgment lien on homestead property.*

The Texas Constitution protects a person's homestead from being foreclosed on by a judgment lien. However, there can be difficulty in identifying what property is a person's homestead and whether a judgment lien attaches against said property. In 2007, the 80th Legislature created Section 52.0012, Property Code, to address this problem. The statute succeeded in creating a method of communication and provided a means for evidence for all parties with potential interest in the property. However, it did not establish a period during which parties can rely on the homestead affidavit with certainty. HB 3115 seeks to create a limited period of time in which parties with an interest in the transaction can rely on the affidavit with certainty, while protecting the interests of creditors and their ability to challenge the affidavit both after filing and after the expiration of the reliance period.

HB 3115 provides that a judgment debtor filing an affidavit to release a judgment lien on homestead property also could file a certificate of mailing. The certificate would have to be substantially in the same form as established by the legislation. The legislation also establishes a 30-day deadline after the date the certificate was filed for a judgment creditor to file a contradicting affidavit in the county's real property records in order for the debtor's affidavit to no longer serve as release of record of the judgment lien. A creditor could make an assertion that the certificate was untrue in their contradicting affidavit.

Effective: September 1, 2021

HB 692 by Shine/Creighton – Retainage for certain Public Works Construction Projects

[*HB 692*](#) *Relating to retainage requirements for certain public works construction projects*

This bill revises the retainage requirements for public works contracts to prevent the withholding of excessive retainage and to prohibit the misuse of retainage to confer additional liability or free warranty work while also providing for the partial release of retainage to incentivize project completion.

Effective: September 1, 2021

PERSONNEL

SB 45 by Zaffirini/Zwiener – Sexual Harassment

[SB 45](#) *Relating to the prohibition against sexual harassment in the workplace.*

This bill amends the Labor Code to establish that an employer commits an unlawful employment practice if sexual harassment of an employee occurs and the employer or the employer's agents or supervisors know or should have known that the conduct constituting sexual harassment was occurring and fail to take immediate and appropriate corrective action. The bill provides an extensive definition of "sexual harassment" and defines "employer," for purposes of this unlawful employment practice, as a person who employs one or more employees or acts directly in the interests of an employer in relation to an employee.

Effective: September 1, 2021

Impact: Note that this effectively applies to ALL employers. The Equal Employment Opportunity Act, which also addresses sexual harassment, only applies if there are 15 or more employees.

REAL PROPERTY

SB 30 by Leach/Cole – Redaction of Racial Covenant Language in Property Records

[SB 30](#) *Relating to the removal of certain discriminatory provisions from a recorded conveyance instrument.*

The Texas Property Code at sec. 5.026(a) specifies that certain discriminatory restrictions in deeds which prohibit use, sale, lease, or transfer to a person because of race, color, religion, or national origin, are void. Removal of such provisions were very arduous.

SB 30 provides a process whereby an owner can file a motion, requesting a judge to make a legal determination as to whether the provision is subject to removal. The bill includes a form for the motion which would have to be verified by affidavit. The bill also includes a form for the court to use in its finding of fact and conclusion of law. This would then become a part of the title to the property.

Effective: September 1, 2021

Impact: This bill simply creates a process that effectively implements the existing law to address this disturbing issue. As filed, county clerks would have been tasked with “correcting” the record. This was troubling as it could have led to all sorts of inadvertent impacts. The final result is clean, retains historical deed records as filed and has no direct impact on lenders.

HB 3415 by Goldman/Hancock – Photo ID for Filing in Real Property Records

[HB 3415](#) *Relating to the authority of a county to require photo identification to file certain documents with the county clerk.*

There were two different bills that affected presentation of photo ID to a county clerk to file real property records in person. Current law only applies to Harris County. Other counties were concerned about the potential for fraudulent document filings. Texas Land Title Association was worried that such a statewide requirement would be burdensome to title agents in rural counties and suggested that it should only apply to counties with electronic filing. After much discussion and drama, HB 3415 was passed to require a presentation of photo ID in order to file in real property records only in a county with a population of 800,000 or more. Based on 2021 population charts, that would be 10 counties. The clerk may copy the ID or record info from the photo ID.

Effective: September 1, 2021

Impact: In those most populous counties, there is also electronic filing. Presumably, there is little in-person presentation of documents. This requirement should help to reduce the potential for fraud through filings by *Posse Comitatus* and the like.

HB 2240/SB 1958 by Smithee/Creighton – Good Funds at Closing (*Failed to pass*)

[HB 2240](#) *Relating to the disbursement of funds from a trust fund account by a title insurance company, title insurance agent, or escrow officer.*

These bills would have added certain ACH consumer transfers as “good funds” for real estate closings. It was proposed by an ACH vendor. There were concerns about adding this particular product without appropriate safeguards. Ultimately it died along with a number of other bills in the Senate’s last calendar.

HB 2803 by Thompson – Landlord Duties (*Vetoed*)

[HB 2803](#) *Relating to a commercial landlord's or tenant's remedies regarding certain unlawful activities in a multiunit commercial property.*

A landlord of a multiunit commercial property would be in breach of a lease with a tenant under certain circumstances relating primarily to criminal activities in that property.

A tenant whose landlord is in breach of the lease under those circumstances may terminate its lease, vacate the premises and avoid liability for future rent. However, if the tenant’s belief that there were illegal activities was not reasonable, the landlord may pursue a civil action against the tenant.

Effective: In his veto message, the governor noted that although the bill seeks to prevent human trafficking, it would have unforeseen substantial negative consequences.

TAXATION

HB 1195 by Geren/Hancock – Franchise Tax Exclusion for PPP Loan Forgiveness

[HB 1195](#) Relating to the franchise tax treatment of certain loans and grants made under the federal Coronavirus Aid, Relief, and Economic Security Act.

While forgiven PPP loans and payments made by SBA on existing loans not subject to federal income taxes, the business receiving the forgiveness or grants would still be taxed on the amount of money received as part of its total revenue subject to the state franchise tax.

This bill amends the Tax Code to require a taxable entity to exclude from its total revenue in computing taxable margin for franchise tax liability purposes the amount of money received by the entity in loans or grants under the paycheck protection program and that is not included in the entity's gross income for federal income tax purposes on the basis of guidance under the federal Consolidated Appropriations Act, 2021, providing for the exclusion of an amount forgiven under the program from a borrower's gross income. The bill authorizes a taxable entity to include in the determination of cost of goods sold or in the determination of compensation when calculating its gross margin any allowable expense paid using that amount of money. These provisions apply only to a franchise tax report originally due on or after January 1, 2021.

Effective: May 8, 2021

Impact: This important tax relief will help commercial customers struggling with the economic impact of the coronavirus pandemic. IBAT was pleased to support this initiative and work with NFIB for this important relief to small businesses.

SB 153 by Perry/Sanford – Definition of “Data Processing Services” for Sales and Use Taxes

SB 153 Relating to the exclusion of certain payment processing services from the definition of "data processing service" for purposes of sales and use taxes.

In recent sales and use tax audits, the Comptroller's office has raised the specter of taxing card processing fees as “data processing” – which is a taxable service. This bill clarifies that debit and credit card processing services are not included as a taxable service.

Effective: September 1, 2021

Impact: This bill eliminates a significant potentially costly tax to collect, and is one that will have a significant positive impact on community banks and their customers.

ELECTRICITY

While not directly impacting the business of banking, there were numerous questions from the membership regarding initiatives to address the multiple issues arising from the failure of the power grid during Winter Storm Uri. The following is a recap of the major bills passed to address this issue.

SB 2 by Hancock/Paddie – Governance of the PUC

[SB 2](#) Relating to the governance of the Public Utility Commission of Texas, the Office of Public Utility Counsel, and an independent organization certified to manage a power region.

- ERCOT Board makeup:
 - Eight **voting** members with executive-level experience in any of the following professions: finance, business, engineering, including electrical engineering, trading, risk management, law, or electric market design; Reduces the size of the ERCOT board to 11 from 16.
 - The OPUC counsellor as an ex officio **voting** member representing residential and small commercial consumer interests;
 - The chairman of the commission as an ex officio **nonvoting** member; and
 - The chief executive officer of the independent organization as an ex officio **nonvoting** member.
 - Board members must be Texas residents.
- ERCOT Board Selection Committee makeup:
 - One member appointed by the governor;
 - One member appointed by the lieutenant governor; and
 - One member appointed by the speaker of the house.
- The ERCOT board selection committee shall retain an outside consulting firm to select the eight voting members.
- ERCOT Board members shall not lobby for two years after leaving the board.

Effective: Immediately

SB 3 by Schwertner/Paddie

[SB 3](#) Relating to preparing for, preventing, and responding to weather emergencies and power outages; increasing the amount of administrative and civil penalties.

- Creates a power outage emergency alert system to alert the public during weather-related emergencies.
- Creates the “Texas Energy Reliability Council,” a 25-member group that will submit a report to the legislature every other year regarding the reliability and stability of the electricity supply chain and recommendations to strengthen the electricity supply chain and decrease the length of power outages during emergencies.
- Requires the Public Utility Commission (PUC) and Railroad Commission (RRC) to coordinate to designate as “critical,” natural gas facilities. These facilities will be required to weatherize.
- Requires weather preparedness for gas facilities serving natural gas generation; directs RRC to create classification system for fines/penalties for those who violate an adopted rule.
- Defines “critical care residential customer” and “critical load industrial customer.”
- Electric generation weatherization program, overseen by PUC, including ERCOT inspections and PUC-administered penalties.
- PUC will work with ERCOT to prioritize load shed for designated critical natural gas facilities.
- Utility weatherization program, including ERCOT inspection and fines for reliability violations.
- Load shedding framework, developed with PUC to include a plan, strategy and semiannual exercises.
- Includes Supply Chain Security and Mapping Committee, comprised of PUC, RRC, ERCOT and TDEM.
- PUC shall establish a wholesale emergency pricing program.

Effective: Immediately

SB 2154 by Schwertner/Paddie – PUC Membership Changes

[SB 2154](#) *Relating to the membership of the Public Utility Commission of Texas.*

The legislation increases the number of commissioners from three to five and requires each commissioner to be a resident of Texas. The legislation also adds that at least two commissioners must be well informed and qualified in the field of public utilities and utility regulation. The commissioners will still be appointed by the Governor with the consent of the Senate. Commissioners are prohibited from practicing before the PUC for one year after leaving the commission, and former commissioners are prohibited from lobbying in Texas for one year from the date they cease to be a member of the commission.

Effective: Immediately

HB 4492 by Paddie/Hancock

[HB 4492](#) *Relating to financing certain costs associated with electric markets; granting authority to issue bonds; authorizing fees.*

HB 4492 establishes a loan of \$800 million to ERCOT through the State's Economic Stabilization fund, known as the “Rainy Day Fund,” to pay for debts to the grid operator. The term is 30 years, and the rate is Municipal Market Data Municipal Electric Index plus 2.5%.

Currently, if a short-paid invoice remains in the market as a result of a market participant's inability to pay, there is an uplift mechanism that distributes the short-paid amount to all market participants to pay off those debts. The uplift is limited to \$2.5 million per month. Many wholesale market participants incurred extraordinary costs in attempting to restore service during the winter storm, and the current short-pay amount would not allow the ERCOT organization to uplift the costs to the market in a reasonable amount of time due to the limitation on monthly uplift. The state's rainy day fund ended 2020 with a balance of nearly \$10 billion. The legislation also seeks to ease the financial burden on market participants who received huge bills during the power outages by imposing fees on all electric companies that ultimately would be paid by customers through their power bills for the next several years.

Effective: Immediately