

INDEPENDENT BANKERS ASSOCIATION *of* TEXAS



Legislative White Paper

An Executive Summary for Community Bankers

July 2023

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Introduction

It has been frequently repeated that “all sessions are unique”, and the 88th Texas Legislative Session was certainly no exception. Starting with great promise given a roughly \$32 billion budget surplus, stability in leadership of both chambers and the Governor’s office and a return to “normal” protocol after a bizarre pandemic-impacted exercise in the prior session, it certainly provided plenty of drama and surprises as the 140 days unfolded.

The normal and anticipated tension between the House and Senate started earlier and got uglier than normally experienced. The Senate passed the majority of the priority issues important to the Governor and Lt. Governor, with a number of those bills falling victim to time constraints and pushback from the House.

The House expelled Representative Bryan Slaton for his inappropriate behavior with a young female staffer, and in a surprise move, brought impeachment proceedings at the end of the session against Attorney General Ken Paxton. A Senate trial will commence on September 5 if all goes as planned.

As this is being written, the Legislature is in the second of a yet undetermined number of special sessions, with intramural squabbling pitting the Senate position and the Governor/House solution on property tax relief front and center. IBAT is on record with a variety of business interests supporting a decrease in property tax rates (“compression”) that is evenly distributed amongst all property owners – residential and commercial - as reflected in the House-passed version of the Governor’s property tax relief plan. We are hopeful that a compromise is forthcoming on a timely basis to provide needed relief for Texas property owners.

Of the 8,530 bills, joint resolutions and concurrent resolutions introduced, 1357 or 16% of those passed both chambers and were sent to the Governor. Interestingly, 77 of those bills were vetoed by Governor Abbott, with a number of those killed to “send a message to the Legislature to focus on property tax relief”. This number is second only in Texas history to Governor Perry’s “Father’s Day Slaughter” in his first session as Governor in 2001 when he vetoed 83 bills.

The process is designed to make it hard to get bills through the process, which in our opinion is a very good thing.

While the dust is still settling, IBAT can call the 88th regular session of the Texas Legislature a success for community banking. With limited exceptions, those bills we supported made it through the process, and those we opposed did not. This outcome was due in large part to the energized participation of IBAT community bankers and their advocacy efforts.

IBAT expresses our sincere thanks to the 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.

Editor’s note – As indicated, at press time we are into the second of what promises to be several special sessions. Further, while we made every attempt to identify issues of interest to community banks, there are almost always obscure provisions found after the fact. Additionally, as you have questions on the impact of any of these new laws, we encourage you to reach out via askibat@ibat.org. We fully intend to provide updates, corrections or further clarification as needed.

Bills Strongly Supported by IBAT

[SB 761](#) Hughes/Lambert – Relating to photo identification for certain debit or credit card transactions

Effective: Immediately

An IBAT initiative to remove the sunset date from existing law allowing a merchant to request a valid ID and providing them the opportunity decline a credit or debit card transaction if not provided. Five years ago, this legislation passed with opposition from a variety of parties, including the credit card companies, whose rules allow a merchant to ask for a photo ID but prohibits the declination of a transaction. The compromise to move the bill was to sunset the law after 5 years, or September 1, 2023. Rather than just extending the sunset date, the Senate author opted to repeal the sunset provision altogether, making this provision a permanent part of Texas law.

Impact: While clearly not a panacea, providing merchants the ability to decline a transaction is another step in IBAT's longstanding quest to minimize card fraud. If applicable, consider reminding your small business customers of this opportunity to minimize fraud at point of sale.

[HB 4](#) by Capriglione/Hughes – Relating to the regulation of the collection, use, processing, and treatment of consumers' personal data by certain business entities; imposing a civil penalty

Effective: September 1, 2023

This comprehensive bill, also known as the Texas Data Privacy and Security Act (TDPSA), was finally agreed to by big tech, merchants and businesses. Texas was the 10th state to pass their own version of a data privacy initiative. IBAT and others worked to ensure the Gramm Leach Bliley exemption in prior versions stayed in place and community banks would be protected from duplicitous requirements.

Impact: While IBAT's longstanding preference was to require any entity keeping personally identifiable information to be subject to the same Gramm Leach Bliley requirements as the broadly defined "financial institutions", this bill goes a long way to protect sensitive consumer data and the privacy of said data. As more states pass similar bills, we anticipate that a federal law will be forthcoming. Banks are carved out/exempted from the requirements of this new statute.

[HB 9/HJR 125](#) by Ashby/Huffman – Relating to the development and funding of broadband and telecommunications services

Effective: Will take effect if approved by the voters in the November 7, 2023 general election

HB 9 (the enabling legislation) along with HJR 125 (the Constitutional amendment) increases broadband access and affordability across Texas by enabling the state to make major investments in broadband and telecommunications infrastructure in coordination with federal funding programs. The bill makes crucial investments in emergency response technology and connectivity in schools. Millions of Texans currently lack broadband internet, limiting their access to education, telehealth, and employment opportunities online. The

fund established by HB 9 provides resources to close the digital divide, which in turn would improve quality of life and spur significant economic growth, raise incomes, create jobs and increase state revenue.

Substantial federal funds for broadband expansion are available, however, communities with the most need will struggle to meet federal fund matching requirements. State cost-sharing ensures Texas receives the maximum benefit from these opportunities. Texas has been allocated up to \$3.3 billion in federal funding for this purpose – the most of any state in the nation.

HB 9 ensures the continuation of state support for vital telecommunications and broadband services by replacing TUSF’s current funding mechanism based on utility charges with money from the broadband infrastructure fund. A portion of the monies will fund 9-1-1 services, including the deployment of next-generation 9-1-1 technology, and help first responders provide better service while covering increased costs related to technological changes and population growth.

[HB 2127](#) by Burrows/Creighton – Relating to state preemption of and the effect of certain state or federal law on certain municipal and county regulation

Effective: September 1, 2023

This controversial new law seeks to prohibit duplicative local and state regulatory and enforcement efforts. It provides job creators with a baseline of regulatory consistency across the state that allows them to focus their resources on growing their businesses and increasing their economic impact to the betterment of their employees, their communities, and the state, rather than dealing with unnecessary regulatory compliance.

HB 2127, the Texas Regulatory Consistency Act, seeks to provide consistency and predictability by preempting local regulation of matters regulated by the state in the Agriculture Code, Business and Commerce Code, Finance Code, Insurance Code, Labor Code, Natural Resources Code, Occupations Code, or Property Code and empowering Texans to take legal action against a municipality, county, or official whose conflicting regulations adversely affected them with the possibility of recovering legal relief and associated legal costs. IBAT has historically supported similar initiatives and was asked by the House Author to both support and testify in favor of this bill.

[HB 19](#) by Murr/Hughes – Relating to the creation of a specialty trial court to hear certain cases; authorizing fees (Specialty Business Court)

Effective: September 1, 2023

HB 19 establishes a new specialty court with jurisdiction over complex business law cases with more than \$10 million in dispute. Texas already has more than 200 specialized courts dealing with probate, juvenile, family and veteran issues, but currently lacks a court that could deal specifically with complex business issues. Developing this new specialty court in Texas will strengthen the state’s legal system and create a more efficient process to address business disputes and help assist with judicial backlogs.

Complex business disputes concerning specific matters such as mergers and acquisitions, corporate governance, and securities issues are often unevenly distributed throughout the judicial system, which can lead to inconsistent decisions, varied approaches in these cases and delays. When complex business cases are heard before a Texas court, they often require intense research by both the judge and jury as well as a lengthy judicial consideration of discovery and dismissal motions, which may be more time and resource intensive. The bill requires business court judges to have ten or more years of experience in complex civil business litigation or transaction law, have taught courses in those areas or have served as a judge of a civil court in order to serve in the business court to ensure that complex business cases were heard by judges with such expertise.

Impact: IBAT has been supportive of this initiative for the past several legislative sessions. Opposition has primarily been from the plaintiff's bar. We believe this accommodation will result in a more consistent and fair system in complex business cases.

Lending, Liens and Real Property

[HB 219](#) by Noble/Johnson – Relating to the release of a deed of trust or other contract lien securing a home loan after payoff by mortgagor

Effective: September 1, 2023

HB 219 assists certain homeowners buying and selling their properties by ensuring mortgagees are required to release a lien within 60 days of the loan being paid in full. Currently, there is no timeline for when a mortgagee must release a lien. Some individuals are made aware while selling their home that the lien on their property was never released. This can lead to delays in selling a home and, in some cases, cancellation of the sale as the homeowner and title company navigate the process of obtaining proof of payoff to have the lien released. Some lenders are unresponsive during this process, and the homeowner and title company are required to file an affidavit to achieve the release of lien. HB 219 would reassure mortgagors that, once the loan was paid, the lien will be released.

Impact: While community banks are not the offenders, make sure that procedures are in place to file a release of lien for any mortgage loan within 60 days of payoff.

[HB 207](#) by Murr/Middleton – Relating to the exclusion of certain conveyances from classification as sham or pretended sales

Effective: Immediately

Rural community banks have raised concerns regarding the difficulties that rural Texans face when attempting to insure non-home equity cash-out loan liens on rural property. There have been calls to address the extreme reluctance of title insurers to provide coverage on rural properties as these borrowers and lenders face unique challenges.

HB 207 seeks to help level the playing field between rural borrowers and lenders and their urban counterparts and give title insurers a safe harbor for insuring liens on rural property by providing a method for rural borrowers to obtain cash-out financing on rural property that is not the borrower's residence or contiguous to the borrower's residence.

[HB 1382](#) by Hernandez/Bettencourt – Relating to the public sale of real property taken in execution of a judgment

Effective: September 1, 2023

HB 1382 amends the Civil Practice and Remedies Code to give a county commissioners court the option to authorize, by official action, the officer charged with conducting a public sale of real property taken in execution of a judgment to conduct a public auction using online bidding and sale as an alternative to conducting an in-person sale, subject to the same date and time requirements for in-person sales. The bill authorizes the commissioners court to adopt rules governing these online auctions and specifies that the rules take effect on the 90th day after the date the rules are published in the county's real property records. The bill exempts from an online auction a sale of real property that is under a power of sale conferred by a contract lien.

[SB 62](#) by Zaffirini/Guillen – Relating to posting certain documents and information related to certain real property sales on a county's Internet website

Effective: September 1, 2023

A county is required to post notice of a foreclosure sale on the county's website, if it maintains a website, but is not required to post crucial details such as the time and location of the sale. This lack of accessible information decreases sales prospects. Relatedly, some counties require persons interested in bidding at a tax foreclosure auction to obtain a statement of delinquent taxes from the county assessor-collector. While the comptroller of public accounts has a standardized form for this statement, some counties use their own form in lieu of the comptroller's form. Although larger counties typically post the appropriate form on their website, most smaller counties often do not, making it difficult for the public to obtain the correct form. SB 62 seeks to address these issues and improve transparency and processes relating to property sales by requiring the posting of applicable sale information and the form a person must use to request a delinquent tax statement.

[SB 1780](#) by Parker/Capriglione – Relating to online notarizations

Effective: January 1, 2024

Note – Comments below are from the [Bill Analysis](#)

SB 1780 amends the Government Code to set out provisions and to revise current law to provide for the online notarization by an online notary public of tangible instruments or electronic documents that are notarized by

the online notary public with a tangible symbol and not an electronic signature, defined by reference as an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Accordingly, the bill sets out new definitions for purposes of current law and the bill's revisions to specify the following:

- "Sign" means, with the present intent to authenticate or adopt a record, to execute or adopt a tangible symbol or execute an electronic signature; and
- "Signature" means a tangible symbol or electronic signature that evidences the signing of a record executed or adopted by a person with the intent to sign the document.

SB 1780 clarifies that the secure electronic record of electronic documents notarized by the online notary public that must be kept by the notary and that must contain, among other information, the date and time of a notarization is instead applicable to the date and time of an online notarization. The bill requires an online notary public to keep a record of documents that are tangible instruments notarized by the online notary public with a tangible symbol and requires the record for each online notarization with a tangible symbol to contain the same elements as those for the records kept by the online notary public for electronic documents notarized by the online notary public.

SB 1780 requires an online notary public to authenticate all online notarizations with the online notary public's electronic seal if the online notarization was performed with respect to an electronic document or with the online notary public's seal of office if the online notarization was performed with respect to a tangible document.

SB 1780, with respect to the requirement for an online notary public to verify the identity of a person creating an electronic signature at the time that the signature is taken by using two-way video and audio conference technology, revises that provision, as follows, by:

- replacing the authorization for the identity to be so verified by certain methods with a requirement for the identity to be so verified by those methods; and
- updating the language in current law describing those methods to reflect the bill's revisions and added definitions.

The bill requires the notarial certificate for an online notarization to indicate if the applicable signature was a tangible symbol or an electronic signature.

SB 1780 requires an online notary public, in performing an online notarization in which the principal signs a tangible document with a tangible symbol and not an electronic signature, to reasonably confirm that a document before the online notary public is the same document in which the principal made a statement or on which the principal executed a signature.

SB 1780 establishes that an online notary public satisfies such requirement to take an acknowledgment of a signature on a tangible document if the following conditions are met:

- During a recording of any video and audio conference that is the basis for satisfactory evidence of identity, the acknowledgment is displayed to and identified by the principal and the principal signs the document and a declaration, as specified by the bill, that is a part of or securely attached to the document;
- The principal sends the document and declaration to the online notary public not later than the third day after the date the online notarization was performed; and
- The online notary public in the video and audio recording records the principal signing the document and declaration, receives the document and declaration sent by the principal not later than the 10th day after the date of the online notarization, and, after receipt of the document and declaration from the principal, executes a notarial certificate that includes a statement, as specified by the bill, stating the online notary public witnessed the signing of the applicable document by means of the video and audio conference technology.

The bill establishes that an online notarization performed in compliance with these requirements complies with any requirement regarding the execution of a notarial certificate and is effective on the date the principal signed the declaration. A notarial certificate executed following a signing witnessed by video and audio conference technology may be relied on as conclusive evidence of compliance with the conditions for the timely delivery and receipt of the applicable document and declaration. These provisions expressly do not preclude use of another procedure to satisfy the bill's requirement for applicable confirmation for an online notarization performed with respect to a tangible document.

SB 1780 authorizes an online notary public to administer an oath or affirmation to a principal as an online notarization if, except as otherwise provided by other state law, the online notary public does the following:

- Identifies the principal by verifying the identity of a person signing a document at the time of the online notarization by using the applicable two-way video and audio conference technology;
- Creates or causes the creation of a video and audio recording of the principal taking the oath or affirmation; and
- Retains or causes the retention of such a recording under the bill's provisions revising current law regarding the electronic record that must be kept of online notarizations.

[HB 4635](#) by Guillen/Flores – Relating to organized crime, racketeering activities, and collection of unlawful debts; providing a civil penalty; creating criminal offenses

Effective: September 1, 2023

The legislation seeks to provide for certain legal actions, remedies, and enforcement for racketeering and unlawful debt collection to assist law enforcement in targeting organized crime and specifically cartels. IBAT worked with a variety of stakeholders to revise language problematic for banks that inadvertently created a felony offense for usury violations.

Impact: The offensive verbiage in this 48-page bill was discovered by our friend John Fleming of Texas Mortgage Bankers Association very late in the session. We are all grateful for his “eagle eye”. Special thanks as well to TBA for their engagement and fine-tuning of amendment language as well as Alex Meade and Jesse Ozuna from Texas Regional Bank for their involvement in this process. Finally, sincere thanks to

Representative Guillen and Senator Flores for the last-minute maneuvering to ensure banks were not penalized criminally for an inadvertent error.

[HB 2746](#) by Thompson/Menendez – Relating to requirements related to refunds and credit provided under terminated debt cancellation agreements

Effective: September 1, 2023

Clarifies the requirements and responsibilities of the various parties for early termination of a debt cancellation agreement. As few community banks utilize debt cancellation agreements in the automobile financing space, those interested in further details should refer to the [Bill Analysis](#).

Bank Operations

[HB 2837](#) Schaefer/Schwertner – Relating to prohibiting a person or entity from surveilling, reporting, or tracking the purchase of firearms, ammunition, and accessories through the use of certain merchant category codes; imposing a civil penalty

Effective: September 1, 2023

HB 2837 prohibits a retailer from using a specific merchant code for a firearms or related purchase in an electronic payment transaction. A general merchandise code will be used for those purposes. Any agreement or contractual provision that violates the provisions of the bill would be void. A payment card issuer would be required to notify the card holder in writing every time that a firearms code was assigned to a transaction. If the attorney general had reasonable cause to believe a person violated provisions of the bill, the attorney general would issue a civil investigative demand. A person or entity who violates the chapter and fails to cure the violation would be liable for a civil penalty of \$10,000 for each violation.

Impact: One of many “anti-ESG bills” introduced (see more under “Bills of Interest That Failed to Pass”), this solution was negotiated in conjunction with TBA and other interested parties. We appreciate the willingness of Representative Schaefer to work with stakeholders to accomplish his goals without putting undue requirements on banks.

[HB 2674](#) by Kitzman/Kolkhorst – Relating to the application submitted to the comptroller for designation as a state depository

Effective: June 11, 2023

To hold state assets, financial institutions must apply to the comptroller to be designated as a state depository. The comptroller mails eligibility letters to financial institutions eligible to hold state assets on the first business day of June of each odd-numbered year. The financial institution must complete and mail the application to the comptroller before noon on the first business day of August of the year in which the letter is

sent. HB 2674 seeks to afford eligible financial institution applicants more time to apply to be a state depository by requiring the comptroller to provide notice to eligible financial institutions in May rather than June of each odd-numbered year while also modernizing the process by allowing for the electronic submission of applications.

SB 158 by Perry/Lambert – Relating to the location of a bank eligible to be selected as a depository or subdepository of county public money, including money held by a county or district clerk

Effective: June 18, 2023

Note – Comments below are from the [Bill Analysis](#).

SB 158 amends the Local Government Code to authorize a county commissioners court, if only one bank located in the county applies to be designated as the county depository, to reject the applicant if the applicant proposes the following terms:

- Terms that are not in the county's best interest;
- Terms that are not financially competitive with the financial market outside the county; or
- Terms that impose noncompetitive fees.

The bill authorizes a commissioners court that rejects an applicant to advertise, in the applicable manner for advertising for a depository within the county, for applications from banks in an adjoining county.

SB 158 establishes the following:

- If a bank selected to be a county depository and holding county funds is sold to another bank in an adjoining county, the successor bank in the adjoining county may continue to serve as a county depository and apply and be selected as a county depository under the following conditions:
 - The successor bank continues to have an office in an adjoining county; and
 - The successor bank timely applies and is selected to be a county depository in a manner that ensures no lapse of service as a county depository; and
- If a bank selected as a county depository and holding county funds closes, a branch of the bank in an adjoining county may continue to serve as a county depository and apply to be a county depository if those same conditions are met.

Impact: This bill as originally introduced allowed county governments to contract with any bank or branch located in Texas in the event only one bank in the county bid upon their public funds relationship. IBAT wishes to express our thanks to Senator Perry and his staff for working with us to provide a reasonable and hopefully workable compromise.

SB 768 by Parker/Capriglione – Relating to the process for notifying the attorney general of a breach of security of computerized data by persons doing business in this state

Effective: September 1, 2023

SB 768 amends the Business and Commerce Code to change the deadline by which a person who conducts business in Texas and owns or licenses computerized data that includes sensitive personal information is required to disclose to or notify the attorney general of a breach of system security. If a breach involves at least 250 Texas residents, the timeframe is accelerated from not later than the 60th day after the date on which the person determines that the breach occurred to as soon as practicable and not later than the 30th day after that date. The bill requires the attorney general to post on the attorney general's publicly accessible website an electronic form for submitting the required breach of system security notification and requires the notification to be submitted electronically using that form.

Impact: Banks are obviously subject to this new timeframe for reporting any data security breaches, and your procedures should be updated to reflect this requirement.

Personnel

[HB 567](#) by Bowers/Miles – Relating to discrimination on the basis of hair texture or protective hairstyle associated with race

Effective: September 1, 2023

HB 567 implements the CROWN Act, which provides protection against discrimination based on race-based hairstyles. The bill amends the Education Code, Labor Code and Property Code to prohibit discrimination against those with a "protective hairstyle", which includes braids, locks, and twists.

The Labor Code provisions establish that an employer, labor union, or employment agency commits an unlawful employment practice if they adopt or enforce a dress or grooming policy that discriminates against such a hair texture or protective hairstyle.

Finance Commission Agencies

HB 3574 by Lambert/Parker – Relating to the regulation of state banks

Effective: September 1, 2023

A Banking Department initiative to address enforcement powers and provide assistance to investigations by other state agencies in certain investigations. If a person serving as an officer, director, employee, controlling shareholder, or other position participating in the affairs of a state bank refuses to comply with a subpoena, the Banking Commissioner may issue an order on an emergency basis removing the person from their position and prohibiting the person from participating in the affairs of the state bank or any other entity chartered, registered, permitted, or licensed by the Banking Commissioner until the person complied with the subpoena. The Banking Commissioner has authority to issue a cease-and-desist order to current or former officers, employees, or director of a state bank, or the bank itself acting through an authorized person if the Commissioner determined that entity or person had committed certain violations. The language prohibits a bank from engaging in any activity determined by the banking commissioner to threaten the safety and soundness of the bank and adds the banking commissioner to the list of entities a financial institution would be required to provide, on request, access to or copies of certain records relevant to suspected financial exploitation of a vulnerable adult.

Impact: IBAT supported this bill to provide the Commissioner appropriate tools to address unsafe and unsound banking practices, and to assist in the investigation of suspected victimization of elder Texans.

SB 1645 by Parker/Lambert – Relating to the hearings officer of the Texas Department of Banking

Effective: Immediately

Allows the Banking Department to hire, on a contract basis, a hearings officer to conduct administrative hearings.

SB 895 by Johnson/Lambert: Relating to the regulation of money services businesses; creating a criminal offense; creating administrative penalties; authorizing the imposition of a fee

Effective: September 1, 2023

A Banking Department bill, supported by IBAT, that repeals and replaces existing law regulating and licensing money services, including money transmission and currency exchange services. The legislation is model language designed to eventually align all 50 states with uniform money service business regulation. The bill provides for the regulatory authority of the Texas Department of Banking, the Finance Commission of Texas, and the Banking Commissioner; the establishment of requirements to apply for, receive, and maintain money services licenses. It provides procedures for acquiring control of a money services license and establishes reporting and record-keeping requirements and prudential standards regarding licensees' net worth, security, and permissible investments. An enforcement method is provided for the Commissioner.

Impact: While not directly impacting banks, these entities are customers and/or interact with banks in the movement of money. Interestingly, there was pushback from a group concerned that this bill facilitated the creation of a Central Bank Digital Currency. IBAT testified in support of this bill at the House hearing.

Economic Development

[HB 5](#) by Hunter/Schwertner – Relating to agreements authorizing a limitation on taxable value of certain property to provide for the creation of jobs and the generation of state and local tax revenue; authorizing fees; authorizing penalties

Effective: September 1, 2023

HB 5 (the Texas Jobs and Security Act) is a new economic development incentive tool that allows for temporary, limited property tax abatements targeted to attract large capital-intensive projects. Leadership touted the legislation as creating stronger provisions for accountability and transparency. It also provides a focus on manufacturing and supply chain security. Companies approved for tax abatement agreements are required to report total number of jobs created by the project, total wages paid and the amount of investment. School districts that enter into the agreements must report the total amount of payments and benefits received from the companies in lieu of property taxes.

Impact: This legislation replaces Texas’ previous economic incentive tool, the Texas Economic Development Act, that expired at the end of 2022. Whether in favor of tax incentives or not, this program may provide opportunities for economic development in your market(s).

Corporate and Governance

[SB 1514](#) by Schwertner/Longoria – Relating to business entities and nonprofit entities

Effective: September 1, 2023

Note – Comments below taken directly from the [Bill Analysis](#)

This package of amendments to the Business Organizations Code (BOC) is derived from working meetings conducted during the biennium by the State Bar of Texas Business Law Section Business Organizations Code Committee, in consultation with the Texas Secretary of State.

Keeping the BOC current requires ongoing technical and substantive updates and modifications. Similar amendment packages have been enacted every session since its initial adoption.

Highlights of substantive changes follow:

Certificates of Formation. Eliminates the need for repeating an 'initial mailing address' in a restated COF. Recognizes that outdated names and addresses can be omitted in a restated COF.

Names, Filings and Mergers. The definition of "assumed name" is amended to confirm that a protected series of an LLC does not have an assumed name if its name includes the name of its associated LLC. Also, the definition of "office" is amended to be, for a non-individual, that entity's principal office in Texas or outside Texas, as applicable. This eliminates the need for an entity's registered office to be listed in an assumed name certificate.

For all entities, including LLC series, improves the flexibility for filing certificates of merger, exchange, or conversion with a future effective time that is a date subsequent to the anticipated approval of the related plan or that is conditioned upon the occurrence of such subsequent approval. The approval of the plan of merger, exchange, or conversion, of course, must comply with applicable entity requirements, including certification in related filed certificates.

Meetings, Consents and Transparency. Permits alternative notice to owners of a meeting of owners, or solicitation of written consents of owners in lieu of a meeting, to approve a proposed action regarding which the owners have dissent and appraisal rights which directs the owners to a publicly available electronic resource without subscription or cost.

Eliminates the requirement that dissenting owners must surrender endorsed certificates representing ownership interests to obtain payment of a judgment resulting from an appraisal proceeding.

Eliminates for corporations the requirement to produce and keep open lists of shareholders or voting members at shareholder or voting member meetings. These lists are continually available, both physically and electronically, before meetings.

Eliminates the three-year deadline for reinstatement of a voluntarily terminated entity, which corresponds to what's applicable to an involuntarily terminated entity.

Following current law applicable to corporations, adds provisions for the ratification of void acts by or transactions by LLCs and partnerships.

Winding Up. For LLCs, adds a provision that permits a "springing member" when the member status of the last remaining member terminates, so the LLC may be responsibly closed out. Also, extends the default deadline from 90 days to one year for replacement of the last remaining member whose status terminates.

Trusts and Estate Law

[SB 1373](#) by Hughes/Smithee – Relating to decedents' estates and the delivery of certain notices or other communications in connection with those estates or multiple-party accounts

Effective: September 1, 2023

Note – Comments below are taken directly from the [Bill Analysis](#)

An initiative of the Texas Real Estate and Probate Institute, SB 1373 amends the Estates Code to revise provisions relating to decedents' estates and to authorize the delivery of certain communications in connection with those estates or multiple-party accounts to be made by a qualified delivery method as an alternative to certified or registered mail in an action filed or a proceeding commenced on or after the bill's effective date. The bill defines "qualified delivery method" as the following:

- Delivery by a courier by hand, with courier's proof of delivery receipt;
- A private delivery service designated as a designated delivery service by the U.S. Secretary of the Treasury, with proof of delivery receipt; or
- Certified or registered mail, return receipt requested, with return receipt.

SB 1373 expands the approved delivery methods for the following notices and citations to include delivery by any qualified method:

- Certain citations and required notices in probate proceedings;
- Notice of the resignation of a resident agent of a personal representative to allow service of process;
- Notice of the pledge of a security interest on a multi-party account created or existing on or after the bill's effective date sent by the applicable secured creditor to any other party to that account;
- Citation in a proceeding to declare heirship when the recipient's name and address are known or ascertainable;
- Certain notices sent by a personal representative of an estate to beneficiaries and claimants for the purposes of administering the estate;
- Notice sent by a personal representative of an estate, before the purchase of the estate by the representative, to distributees and creditors;
- Notice sent by the court to a personal representative or independent executor regarding the removal of that representative or executor;
- Citation on the presentation of an account for final settlement and the copies of that account;
- Notice of certain claims against an estate sent by creditors to the independent executor of that estate or the executor's attorney;
- Notice of the appointment of a temporary administrator of an estate sent by the appointee to the decedent's known heirs;
- Citation for an application for the ancillary probate of a certain type of foreign will to be sent to each devisee and heir identified in the application;
- Certain notices or processes relating to an action or proceeding regarding a trust, estate, fund, or other matter involving a foreign corporate fiduciary required to be forwarded by the secretary of state to the officer, agent, or other person designated by the fiduciary;
- Notice sent by a foreign executor or administrator of a person who was a nonresident at the time of their death to all creditors of that decedent in Texas who have filed a claim against the decedent's estate; and
- Notice sent by a court clerk to the comptroller of public accounts of an order for an executor or administrator to pay certain shares of an estate to the comptroller.

SB 1373, with respect to provisions governing multiple-party accounts, revises the definition of:

- "Account" to include a contract of deposit of securities between a depositor and a financial institution; and

- "Sums on deposit" to include a balance transferable on a multiple-party account, cash, and any type of securities, including stocks, bonds, and mutual funds.

This revision applies to an account established before, on, or after the bill's effective date.

SB 1373 clarifies that a surviving spouse is liable for the undivided one-half interest that the surviving spouse owned in community property that was by law under the sole management, control, and disposition of the deceased spouse during marriage and clarifies that the deceased spouse's heirs or devisees are liable for the undivided one-half interest that the deceased spouse owned in community property that was by law under the sole management, control, and disposition of the surviving spouse during marriage.

SB 1373 clarifies that a surviving spouse, as surviving partner of a marital relationship, is entitled to exercise any power authorized by applicable law over community property that was legally under the sole management of the surviving spouse during the marriage as if there is no administration pending on the deceased spouse's estate. The bill also clarifies that this entitlement, and that to retain possession and control of such property, applies during administration of the deceased spouse's estate.

SB 1373 clarifies that the requirement to report to the court a sale of estate personal property applies to a successful bid or contract for the sale.

SB 1373, with respect to a waiver of service of citation in a proceeding to declare heirship commenced on or after the bill's effective date, increases from 12 years of age to younger than 16 years of age the maximum age of a distributee for whom a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem may waive the citation required to be served on the distributee.

SB 1373 authorizes a required testimony regarding a decedent's heirs and family history, in a proceeding to declare heirship commenced on or after the bill's effective date to be taken by a recorded statement of facts contained in an affidavit or instrument or in a judgment of a court of record if the affidavit, instrument, or judgment qualifies as prima facie evidence of heirship under related statutory provisions. The bill authorizes a person interested in an estate solely because the person is a creditor or has a claim against the estate to serve as a witness in such a proceeding if the person is otherwise a credible witness.

SB 1373 authorizes the following persons to waive the citation required to be served on an heir on the filing on or after the bill's effective date of an application for the probate of a will that cannot be produced in court:

- An heir who is 16 years of age or older; and
- The parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of an heir who is younger than 16 years of age.

SB 1373 qualifies a felon who is convicted under the laws of the United States or any state in the United States to serve as an executor or administrator of an estate if all of the distributees of the decedent agree on and collectively designate the person to serve as executor or administrator and acknowledge the conviction in:

- An application for probate of the decedent's will;
- An application for letters testamentary or of administration of the decedent's estate; or
- One or more separate documents consenting to an application.

This applies to an application for letters testamentary or letters of administration filed on or after the bill's effective date.

S.B. 1373 authorizes a person to make and sign a declaration as an alternative to taking an oath to be qualified to serve as a personal representative or to be issued letters of administration to serve as an executor or administrator or temporary administrator for the estate of a deceased person. The bill sets out the form to which the declaration must substantially conform.

HB 2196 by Smithee/Parker – Relating to trusts

Effective: June 9, 2023

Note – Comments below taken directly from [Bill Analysis](#)

HB 2196 amends the Property Code to revise the definition of "qualifying trust" in provisions governing which property qualifies as the homestead of an express trust's settlor or beneficiary for purposes of certain protections available under state law and the Texas Constitution in order to align that definition with the definition of "qualifying trust" used with respect to resident homestead property tax exemptions available under the Tax Code. The bill further revises that definition to clarify the rights of a settlor or beneficiary of a qualifying trust.

HB 2196 authorizes a second trust created by distribution of principal from an existing irrevocable inter vivos or testamentary trust to retain the name used by the first trust and, subject to applicable federal law, also retain the same tax identification number. The bill establishes that the legislature intends this to be a codification of state common law in effect immediately before the bill's effective date.

HB 2196 makes the following changes with respect to the rule against perpetuities:

- Clarifies that the effective date of a trust is the date the governing instrument creating an interest in the trust becomes irrevocable;
- Specifies that if an interest in one trust is distributed to a second trust with a different effective date, the effective date of that interest in the second trust becomes the earlier of the effective dates of the two trusts; and
- For a trust that has an effective date on or after September 1, 2021, requires an interest in the trust to vest not later than the later of:
 - Three hundred (300) years after the effective date; or
 - Twenty-one (21) years after some life in being at the time of the effective date, plus a period of gestation.

HB 2196 prohibits a beneficiary of a spendthrift trust or the beneficiary's estate from being considered a settlor merely because the beneficiary, in any capacity, did any of the following:

- Held or exercised a testamentary power of appointment, other than a general power of appointment, as that power is defined in the federal Internal Revenue Code of 1986;
- Held a testamentary general power of appointment; or
- Exercised a testamentary general power of appointment in favor of or for the benefit of the takers in default of the appointive assets.

HB 2196 establishes that, if a beneficiary exercised a testamentary general power of appointment in favor of or for the benefit of any appointee other than the takers in default of the appointive assets, the appointive assets are subject to the claims of the beneficiary's creditors, but only to the extent the beneficiary's own property is insufficient to meet their debts. The assets are expressly not subject to any of the following, unless appointed to the beneficiary's estate:

- Administration as a part of the beneficiary's estate;
- Recovery by the personal representative of the beneficiary's estate, except as provided by the federal Internal Revenue Code of 1986; or
- The payment of taxes or administration expenses of the beneficiary's estate.

HB 2196 conditions a court's authority to appoint an attorney ad litem to represent any interest that the court considers necessary in a proceeding concerning a trust on the court first determining that representation of the interest otherwise would be inadequate, and applies to a trust created before, on, or after the bill's effective date, except as otherwise provided. It additionally repeals Section 112.0715(c), Property Code.

Bills of Interest That Failed to Pass

There were a number of bills introduced that failed to make it through the process. As always, a significant amount of time and energy was expended on bills that would potentially have a negative impact on community banks. This session brought more challenges than usual. The following reflect both bills of interest that simply did not finally pass and/or those upon which we engaged to amend or attempt to ensure they were defeated.

[HB 3395](#) by Capriglione/[SB 1541](#) by Parker – Relating to the charging of swipe fees on certain electronic payment transactions; authorizing a civil penalty

This bill is a manifestation of a national effort by the big box stores to exclude sales tax from the calculation of card processing fees charged to the merchant. Reported upon frequently during the session, this was an “all hands on deck” issue with numerous “Calls to Action” to which hundreds of our member bankers responded. We are grateful for the impressive grassroots outreach on this offensive bill and further grateful that it was killed early in the process. Special thanks to Representative Frazier and Lambert for voting “no” in

Committee and to Senator Parker for announcing that he did not intend to attempt to move this bill through the Senate.

[HB 264](#) and [HJR 20](#) by Toth – Relating to requirements for the physical presence of a borrower for signing certain documents related to a home equity loan

Loosened the stringent requirements in Texas Home Equity law to allow for remote closings for extenuating circumstances including military duty, verified disabilities, quarantine needs, and incarceration. The bill and joint resolution passed the House but stalled in the Senate.

[HB 2845](#) by Thierry – Relating to reporting requirements for bank loans made to African American-owned businesses

Would only apply to state-chartered banks, and under the pending implementation of Section 1071 would have created a redundant system.

[HB 3200](#) by Leach – Relating to the collection of certain judgments

Eased requirements on the already problematic turnover receivership process.

[HB 3412](#) by Lujan – Relating to the release of a motor vehicle title to a dealer after the discharge of a lien

Reportedly an initiative of Carvana to expedite the release of title if a lienholder or owner fails to do so on a timely basis.

[HB 3481](#) by Meyer/[SB 775](#) by Zaffirini – Relating to the exemption of certain personal property from seizure under a court order to collect a judgment on a consumer debt

A multiple session initiative in which IBAT has worked with various consumer groups to craft a workable option to provide for a modest “set-aside” exemption from seizure to cover basic expenses.

[HB 3615](#) by Lambert – Relating to surcharges imposed for the use of a credit card

IBAT supported this bill as an alternative to HB 3395, the “swipe fee” bill. In the end, it fell victim to numerous attempts to amend the language to provide for additional disclosures. Importantly, it did not include the IBAT initiative to ban surcharges on the use of debit cards as passed in a previous session.

[HB 5011](#) by Capriglione/[SB 2075](#) by Paxton – Relating to amendments to the Uniform Commercial Code, including amendments concerning certain intangible assets and the perfection of security interests in those assets

A substantial and significant update of the Uniform Commercial Code and an initiative of the Business Law Foundation. The bill was over 600 pages and brought concerns especially from those concerned about digital currencies.

[HB 4306](#) by Dorazio – Relating to a study by the attorney general on the feasibility of linking debit card transactions to bullion in the Texas Bullion Depository

Required a study to be conducted by the Attorney General regarding the feasibility of a program providing for debit cards to be used in transactions linked to the value of an individual's stored bullion in the Texas Bullion Depository. There is reportedly a similar debit card product available in Europe which was touted by the proponents.

[HB 4903](#) by Dorazio/[SB 2334](#) by Hughes – Relating to the establishment of a digital currency backed by gold; authorizing a fee

An interesting bill that would create a state-issued digital currency with debit card access backed by gold deposited in the Texas Bullion Depository. IBAT was the only witness to testify against this bill in the Senate Finance Committee and urged caution and extensive study prior to implementing this or any similar “sea change” currency and payments option.

[SB 1613](#) by Perry/[HB 3600](#) by Price – Relating to the establishment of the Texas Multimedia Production Program; providing tax credits; authorizing fees

IBAT supported this initiative to provide economic incentives to promote production of movies and other multimedia targeted primarily to rural areas.

[SB 1979](#) by Hughes/Harris – Relating to an annual study by the Texas A&M University Texas Real Estate Research Center of the purchase and sale of single-family homes by certain institutional buyers
Passed, but vetoed by the Governor to encourage passage of property tax reform.

This bill as introduced would have, among other stipulations, required banks to report ownership of single-family properties acquired in foreclosure and created additional regulatory and reporting burden. The bill was designed to provide accurate information regarding the proliferation of purchases of single-family properties in Texas by institutional investors such as BlackRock and others. A meeting in the Lt. Governor's office with a variety of stakeholders resulted in a compromise to require an annual study by the Texas A&M Real Estate Research Center to provide this data.

[SB 2137](#) by Creighton – Relating to requiring public institutions of higher education to offer an undergraduate course in financial literacy and soft skills

IBAT has long supported financial literacy through educational institutions and community outreach. This bill went further to require a college-level course also including instruction on “being an adult in the professional world”. A worthwhile initiative that failed to make it through the process.

Several bills were filed to provide debt relief for victims of coerced debt, identity theft, human trafficking and other abuses. IBAT worked with the Authors and staff to attempt to bring some appropriate protections to creditors, and we appreciate their willingness to recognize a variety of challenges on these difficult and sensitive issues.

[HB 4641](#) by Meyer – Relating to the collection of consumer debt incurred by certain individuals as a result of identity theft

[SB 836](#) by Zaffirini – Relating to the collection of consumer debt incurred as a result of identity theft

A significant amount of time and energy was expended by IBAT and associations representing financial interests, builders, title insurers, realtors, apartments and others on a variety of bills limiting the sale of Texas property to citizens, businesses or governments of hostile nations. IBAT provided testimony on virtually all of these bills at a variety of hearings. We anticipate that this issue will return to the forefront at one of the special sessions and/or at the next regular session of the Texas Legislature. Here are several examples of proposed legislation, none of which passed at the 88th Regular Session:

[HB 1075](#) by Harris – Relating to certain property interests of a foreign government in agricultural land

[HB 4006](#) by Spiller – Relating to the purchase of or acquisition of title to real property by certain foreign entities

This bill was supported by IBAT and the coalition as an acceptable compromise.

[SB 147](#) by Kolkhorst – Relating to the purchase of or acquisition of title to real property by certain aliens or foreign entities

[SB 552](#) by Campbell – Relating to prohibiting contracts or other agreements with certain foreign-owned companies in connection with agricultural land

[SB 711](#) by Perry – Relating to the purchase of or other acquisition of title to real property by prohibited foreign actors

[SB 1441](#) by Springer/[HB 3470](#) by Spiller – Relating to the authority of the attorney general to acquire by eminent domain certain real property owned by aliens or foreign entities

This session saw a number of “anti-ESG” bills aimed at prohibiting discrimination based upon “values”, “social credit scores”, firearms and associated industries and anything related to energy production. In most cases these bills were squarely directed at banks. Many contained causes of action and other penalties up to and including loss of charter. Other than an appropriately amended HB 2837 (reflected elsewhere in this document), all these initiatives failed to pass. Further, we are pleased to report that virtually all the Authors and staff understood that these initiatives were simply not workable and that state-chartered community banks would likely bear the brunt of additional regulatory burden and potential litigation and other penalties. While not an all-inclusive list, here are some of the bills that caused concern:

[HB 645](#) by Toth – Related to prohibiting financial institutions and other businesses from using value-based criteria

[HB 709](#) by Harris – Relating to prohibiting the use of certain credit scores, including environmental, social, or governance scores and social credit scores, by certain financial institutions and other lenders in this state; providing a civil penalty

[HB 982](#) by Toth – Relating to a prohibition on contracts with certain companies that use certain environmental, social, and governance criteria

[HB 3036](#) by Toth – Relating to prohibiting discrimination by financial institutions against lawful companies and businesses in the firearms and ammunition industry

HB 3661 by Leo-Wilson – Relating to the collection and publication of information regarding the use of environmental, social, or governance scores by certain financial institutions

SB 1683 by Hughes – Relating to the prohibition on certain discrimination in the extension of credit based on social credit or value-based standards

After some ten years of attempting to reach a compromise on various M&M lien issues with the subcontractors, a comprehensive bill was finally agreed to in the 2021 session. IBAT and the building trades coalition opted to oppose any changes in retainage practices until sufficient time has passed to allow the new statutory revisions to take effect.

HB 1963 by Leach – Relating to construction contract trust funds

SB 2113 by Johnson/**HB 4308** by Schofield – Relating to deadlines and time of inception for mechanic's and materialman's liens

As indicated earlier, please feel free to contact us at askibat@ibat.org if you wish to discuss or desire additional insights into any of the information presented in this document. Thank you for your engagement and support of IBAT and our efforts in the Legislative process.