



2019 Legislative Issues

Volume 86.17

May 26, 2019

It's Finally Here!

Tomorrow, May 27 is the 140th day of the 86th Legislature. Today is the last day for the House to adopt conference committee reports or discharge House conferees and concur in Senate amendments; it's also the last day for the Senate to concur in House amendments or adopt conference committee reports. The conference committee report for [HB 1](#), the general appropriations bill (aka, the only bill that must pass in any legislative session), is scheduled to be adopted later this evening. The conference committee reports for the session's two other headlining bills – property tax reform ([SB 2](#)) and school finance reform ([HB 3](#)) – were adopted Saturday, May 25. As of now, there is no talk of special session, which means when the Legislature adjourns *sine die* tomorrow, legislators should return home until January 12, 2021 when the 87th Legislature convenes.

If you haven't registered for our [2019 Texas Tour](#), there's still time to do so! We'll be kicking the Tour off in Austin with a reception here at TBA's headquarters on Thursday, June 6, and we'll wrap up our 17-stop Tour with a reception in El Paso on Tuesday, July 30.

We'll talk about the legislative progress TBA made on your behalf at the capitol this session. Our legislative wins include: the reauthorization of the Texas Finance Commission, Department of Banking, and Department of Savings & Mortgage Lending; addressing credit and debit card skimming; a fix to the Tax Code to allow properties designated for ag use to be eligible for home equity loans; and legislation increasing the ability of state banks to make community development investments.

We'll also talk about regulatory relief efforts at the federal level and discuss our prospects for success. Registration information, along with locations, dates, and times, is all available [here](#). One hour of CLE credit is offered.

Thanks for spending part of your Sunday afternoons/evenings with me this session. If you have any questions, please don't hesitate to [let me know](#)!

Happy *Sine Die*!

Volume 86.16

May 21, 2019

The Final Countdown

Today is the 134th day of the 86th Session of the Texas Legislature. It's the last day for the House to consider 2nd reading senate bills and senate joint resolutions. Tomorrow is the last day for the House to consider local and consent senate bills on 2nd reading and 3rd reading, and it's also the last day for the Senate to consider all bills and joint resolutions on 2nd or 3rd reading. What does this mean? Practically speaking, if a bill (or an amendment) hasn't been debated in either chamber by today or tomorrow, the chances of it becoming law are infinitesimally small.

You may wonder how there could still be a chance for something to become law if it hasn't been debated as a bill or an amendment to a bill. The answer is that it could be added in a conference committee. A [conference committee](#) is a committee composed of five members from each chamber appointed by the respective presiding officers to resolve differences between the house and senate versions of a bill when the originating chamber refuses to concur in the changes made by the opposite chamber. When the work of the conference committee is done, it issues a report to both chambers that includes the final text of the measure as agreed upon by the conference committee. Each chamber then votes to accept or reject the conference committee report.

Periodically, a conference committee will seek permission to address items in the conference committee report that are outside the scope (the bounds) of the underlying legislation. Because the work being conducted by conference committees is being done at a breakneck pace (all conference committee reports must be distributed before midnight Saturday), it's possible that the first time anyone outside of the conferees sees language in a bill is after the conference committee report is adopted by both chambers and the legislation is headed to the governor's desk.

Dates of Interest and TBA Tracking List

Tuesday, May 21, 2019 (134th day)

Last day for the House to consider 2nd reading senate bills and senate joint resolutions on the daily or supplemental calendar

Wednesday, May 22, 2019 (135th day)

Last day for the House to consider local and consent senate bills on 2nd and 3rd reading and all 3rd reading senate bills and senate joint resolutions on the supplemental calendar

Last day for Senate to consider all bills and joint resolutions on 2nd or 3rd reading

Thursday, May 23, 2019, before midnight (136th day)

Deadline for the House to distribute senate amendments

Friday, May 24, 2019 (137th day)

Last day for the House to act on senate amendments (concur or request a conference committee)

Saturday, May 25, 2019, before midnight (138th day)

Deadline for the House to distribute house copies of all conference committee reports

Deadline for the Senate to print and distribute senate copies of all conference committee reports on bills other than tax, general appropriations, and reapportionment bills and all house amendments to senate bills and joint resolutions that did not go to a conference committee

Sunday, May 26, 2019 (139th day)

Last day for the House to adopt conference committee reports or discharge house conferees and concur in senate amendments

Last day for the Senate to concur in house amendments or adopt conference committee reports

Monday, May 27, 2019 (140th day)

Last day of 86th Regular Session (*sine die*); only corrections may be considered in the House and Senate

Sunday, June 16, 2019 (20th day following final adjournment)

Last day the governor can sign or veto bills passed during the regular session

Monday, August 26, 2019 (91st day following final adjournment)

Date that bills without specific effective dates, other than bills with immediate effect, become law

TBA's Bill Tracking List can be found [here](#).

Noteworthy Bill Updates

Since the last State Issues Update was published, the following actions have been taken on bills we're tracking.

[SB 2037](#) by Hall, relating to a study regarding the feasibility of implementing a central filing system for the filing of financing statements for agriculture liens. SB 2307 was unanimously voted out of House PIFS and sent to the Local & Consent Calendars Committee. Unfortunately, the bill was not placed on tomorrow's last House Local & Consent Calendar, which means the bill is dead. It's unfortunate that detractors of central filing killed this study bill, but TBA is committed to bringing the filing of agriculture liens into the 21st century, and we'll continue to work towards a technology-based solution that will benefit all parties involved with agriculture liens – buyers, sellers, and lenders.

[HB 1992](#) by Leman, relating to prohibiting telemarketers from transmitting misleading caller identification information or otherwise misrepresenting the origin of a telemarketing call. HB 1992 amends existing Texas law that prohibits the interference with caller ID services or devices by adding language prohibiting a telemarketer from causing misleading information to be transmitted to a recipient's caller ID service or device. HB 1992 was sent to the Senate Local Calendar; however, Senate Administration has yet to set the final local calendar for the Senate.

[HB 2625](#) by Perez, relating to creating the criminal offense of fraudulent use or possession of credit card or debit card information. HB 2625 adds new Sec. 32.315, Penal Code (MASS FRAUDULENT USE OR POSSESSION OF CREDIT CARD OR DEBIT CARD INFORMATION), and provides that a person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses: five or more counterfeit credit cards or debit cards; the numbers and expiration dates of five or more credit cards or debit cards without the consent of the account holder; AND the data stored on the digital imprint of five or more credit cards or debit cards without the consent of the account holder. An offense under this section is a third degree felony if the number of items obtained, possessed, transferred, or used is five or more but less than 10; a second degree felony if 10 or more but less than 50; or a first degree felony if the number of items obtained, possessed, transferred, or used is 50 or more.

[SB 1281](#) by Birdwell, relating to assessments for water and energy improvements in certain municipalities and counties. SB 1281 sought to create one statewide Property Assessed Clean Energy (PACE) program as opposed to different programs being offered in different jurisdictions. As a reminder, Texas currently only allows PACE loans on commercial properties with prior lender notice and consent. SB 1281 did not seek to alter this system, rather, it sought to ensure the PACE programs being offered across the state are uniform. Due to opposition from within the PACE industry, SB 1281 died in the House Energy Resources Committee.

What's Next?

TBA's Texas Tour will kick off in Austin the afternoon of Thursday, June 6. We'll update our members on actions taken by 86th Legislature that will require policy and procedure changes within our member banks. The full schedule can be found [here](#). Space is limited, so be sure to register today!

Two Weeks Until the 8th Session *Sine Dies*

Last week, the Texas House had two major deadlines. Thursday was the last day for the House to consider 2nd reading house bills and house joint resolutions on the daily or supplemental calendar. Friday was the last day for the House to consider consent house bills on 2nd or 3rd reading and all 3rd reading house bills and house joint resolutions on the supplemental calendar. (A [consent bill](#) is a noncontroversial bill.) Friday, May 17 is the last day for the House to consider local house bills on 2nd and 3rd reading. Friday is also the first day the Senate can consider bills and resolutions the first day they are posted on the Notice of Intent (until this point in session, Senate bills must be on the Notice of Intent two days before they can be considered.)

Dates of Interest & Noteworthy Bills

Wednesday, May 15, 2019 (128th day)

Deadline for House to distribute last local and consent calendar with local house bills

Friday, May 17, 2019 (130th) day

Last day for House to consider local house bills on 2nd and 3rd reading

First day the Senate can consider bills and resolutions the first day they are posted on the Senate Notice of Intent

Saturday, May 18, 2019 (131st day)

Last day for house committees to report senate bills and senate joint resolutions

Monday, May 27, 2019 (140th day)

Last day of 86th Legislature (sine die)

Sunday, June 16, 2019

20th day following final adjournment of 86th, Regular Session, which is the last day the governor may sign or veto bills passed during the regular session

TBA's Bill Tracking List can be found [here](#).

What We're Watching This Week

[HB 996](#) by Collier, relating to the collection of consumer debt by debt buyers, is being heard in Senate B&C first thing Tuesday morning. HB 996 is designed to target debt buyers and debt collectors threatening litigation against a consumer for the purpose of collecting a debt for which the statute of limitations has expired. Because of the definition of "debt buyer", a number of our members expressed concern that wholesale debt purchases of debt that is not yet in default could be captured by the bill. As such, we have worked with the Senate Sponsor of the bill, Senator Paxton, on substitute language clarifying that "debt buyer" as defined in the bill does not include a person who acquires a charged-off or in default debt incidental to the purchase of a portfolio that predominantly consists of consumer debt that has not been charged off.

There are a number of bills we're following that are in the House Calendars Committee waiting to be set on the House Calendar. These include:

SB 1823 by Campbell, relating to the regulation of state banks, state trust companies, and third-party service providers of state banks and state trust companies. SB 1823 is TBA-supported legislation, the introduction of which was necessitated after the Equifax data breach in 2017. Under existing Texas law, the Department of Banking has authority over third-party service providers to Texas banks. However, the scale of the Equifax breach revealed that the Department's ability to examine and issue subpoenas for these third-party processors is not as broad as it needs to be to protect Texas consumers and Texas banks. SB 1823 seeks to clarify the law relating to third-party service providers.

SB 443 by Hancock, relating to the period for which a property owner may receive a residence homestead exemption from ad valorem taxation for property that is rendered uninhabitable or unusable as a result of a disaster. Under existing Texas law, property owners can qualify to continue to receive a residence homestead property tax exemption on a residential structure rendered uninhabitable or unusable by casualty, wind, or water damage for two years while the owner constructs a replacement qualified residential structure on the land. SB 443 extends this time period to five years if the property is located in an area declared to be a disaster by the governor following a disaster, and the residential structure located on the property is rendered uninhabitable or unusable as a result of the disaster.

Signed by the Governor This Week

SB 614 by Nichols, relating to the continuation and functions of the Finance Commission of Texas, the Texas Department of Banking, and the Texas Department of Savings and Mortgage Lending. **Effective date:** September 2, 2019

HB 1254 by Murphy, relating to the eligibility of land secured by a home equity loan to be designated for agricultural use for ad valorem tax purposes. **Effective date:** January 1, 2020

Looking Ahead

The 2019 Texas Tour is on the calendar and registration is open! We'll begin our 18 city tour in Austin the afternoon of June 6, and we'll conclude the Tour with a reception on July 30 in El Paso. Registration information can be found [here](#) – make your plans to attend today!

Volume 86.14

May 2, 2019

Twenty-two Days Until *Sine Die*

Today, Sunday, May 5, is the 118th day of the 86th Session of the Texas Legislature. It's also the first day of the [Deadlines for Action Under House and Senate Rules](#) calendar that will govern the next three weeks. It's a great feeling when we finally get to that point of the legislative session when we're marking days off of this calendar because it means there's truly light at the end of the tunnel. The downside, of course, is that there aren't many legislative days left, so for those bills that must pass, much work has to be done in a very short period of time. The month of May in odd years is not for the legislative faint of heart!

Dates of Interest & Noteworthy Bills

Monday, May 6, 2019 (119th day)

Last day for House committees to report House Bills and House Joint Resolutions

Tuesday, May 7 (120th day)

Deadline for the House to distribute its last house daily calendar with house bills and house joint resolutions

Thursday, May 9, 2019 (122nd day)

Last day for House to consider second reading house Bills and House Joint Resolutions on daily or supplemental calendar

Monday, May 27, 2019 (140th day)

Last day of 86th Legislature (*sine die*)

Sunday, June 16, 2019

20th day following final adjournment of 86th, Regular Session, which is the last day the governor may sign or veto bills passed during the regular session

TBA's Bill Tracking List can be found [here](#).

What's New This Week

[HB 1254](#) by Murphy, relating to the eligibility of land secured by a home loan to be designated for ag use for ad valorem tax purposes. HB 1254 is the clean up legislation needed after 2017's [constitutional amendment](#) allowing ag use designated properties to be eligible for home equity loans. HB 1254 makes a conforming change to the Tax Code to clarify home equity loans on ag use designated properties are allowable. HB 1254 was sent to the Governor on April 29.

[SB 726](#) by Zaffirini, relating to investments by state banks to promote community development. SB 726 raises the cap on the aggregate of community development investments state banks can make to 15 percent of a state bank's unimpaired capital and surplus. By raising the cap to 15 percent, SB 726 gives our state chartered banks the same CDI capabilities national banks have. SB 726 was signed by the Governor on April 25 and becomes effective September 1, 2019.

[SB 207](#) by Kolkhorst, relating to the offense of money laundering. Under Texas' existing money laundering statute, digital currencies are not contemplated. SB 207 adds crypto currencies to the definition of "funds" in the money laundering section of the Penal Code alongside money orders, stock, and other negotiable instruments that law enforcement monitor. This will allow law enforcement to pursue these types of currencies in their efforts to combat money laundering. SB 207 was voted out of the Senate Criminal Justice Committee on May 1 and was sent to the Senate Local & Uncontested Calendar.

[HB 869](#) by Hefner, relating to the prosecution of organized criminal activity involving the interception, use, or disclosure of certain communications. HB 869 amends Sec. 71.02, Penal Code (ENGAGING IN ORGANIZED CRIMINAL ACTIVITY), to include the unlawful interception, use, or disclosure of wire, oral, or electronic communications. HB 869 is aimed at credit and debit card skimming, due to its link to organized crime. Law enforcement reports it would be much easier to effectively prosecute card skimming if they were able to charge skimmers for the offense of engaging in organized criminal activity. HB 869 seeks to do just that. The bill passed the House on April 9 and is awaiting a hearing in the Senate Criminal Justice Committee.

Questions? Comments?

As always, please do not hesitate to [let me know](#) if you have any questions or comments. Have a great week!

29 Days Until *Sine Die*

Legislators are barreling towards May 27, *sine die* for the 86th Legislature Regular Session. With just four weeks to go, the pace of the session is about to enter frenzied mode because there is much to be accomplished and not a whole lot of time within which to accomplish it. As we head into the home stretch, you TBA Advocacy Team shifts to defensive mode – now is the time of the legislative session when bad legislative proposals are attached to moving bills, so vigilance is key as we work to protect your interests for the next 29 days.

Dates of Interest & Noteworthy Bills

Monday, May 6, 2019 (119th day)

Last day for House committees to report house bills and house joint resolutions

Tuesday, May 7 (120th day)

Deadline for the House to distribute its last house daily calendar with house bills and house joint resolutions

Thursday, May 9, 2019 (122nd day)

Last day for House to consider second reading house bills and house joint resolutions on daily or supplemental calendar

Monday, May 27, 2019 (140th day)

Last day of 86th Legislature (*sine die*)

Sunday, June 16, 2019

20th day following final adjournment of 86th, Regular Session, which is the last day the governor may sign or veto bills passed during the regular session

TBA's Bill Tracking List can be found [here](#).

Legislative Work Since April 14 Update

It's always wise to lead with good news, so I'm happy to report that [SB 614](#), Senator Nichols' Sunset legislation for the Finance Commission, Department of Banking, and Department of Savings and Mortgage Lending [unanimously passed](#) on third reading in the House on Friday, April 26. SB 614 is now awaiting Governor's action.

The governor has 10 days in which to sign the bill, veto it, or allow it to become law without a signature. If the governor neither vetoes nor signs the bill within the allotted time, SB 614 will become law. There is no indication that the governor intends to veto this legislation, so we are optimistic SB 614 will become law!

Senate B&C heard [SB 1648](#), Zaffirini's card skimming bill on Tuesday, April 16. SB 1648's House companion, [HB 2945](#) by Perez is on tomorrow's General State Calendar in the House. There are now 85 joint or coauthors of this bill, which means all indications are that it will pass the House and be received in the Senate by Wednesday or Thursday of this week.

A heavily substituted version of [HB 4390](#), Representative Capriglione's data security bill, was passed by House B&I April 18. Rather than creating a new regime for the protection of consumer privacy and data as originally envisioned, CSHB 4390 seeks to strengthen Texas' existing data breach notification statute. The bill amends Sec. 521.053, Business & Commerce Code (NOTIFICATION REQUIRED FOLLOWING BREACH OF SECURITY OF COMPUTERIZED DATA), by adding new subsection (i) to provide that a person who is required to disclose or provide notification of a breach of system security under this section shall notify the attorney general of that breach if the breach involves at least 250 residents of this state. The notification under this subsection must include: a detailed description of the nature and circumstances of the breach or the use of sensitive personal information acquired as a result of this breach; the number of residents of this state affected by the breach at the time of notification; the measures taken by the person regarding the breach; any measures the person intends to take regarding the breach after the notification under this subsection; and information regarding whether law enforcement is engaged in investigating the breach.

CSSB 4390 also creates the Texas Privacy Protection Advisory Council to study data privacy laws in Texas, other states, and relevant foreign jurisdictions. The council will be composed of five members of the House, five members of the Senate, five members of industry who are residents of this state appointed by the governor as follows: one member from the retail and electronic transaction industry; one member representing the telecommunications industry; one member representing the consumer data analytics industry; one member representing the advertising industry; and one member representing the Internet service provider industry.

The council shall make recommendations to the members of the legislature on specific statutory changes regarding the privacy and protection of information that alone or in conjunction with other information identifies or is linked or is reasonably linkable to a specific individual, technological device, or household. The council shall report to the legislature not later than December 1, 2020. TBA has asked Representative Capriglione to consider adding a member representing the banking industry to the Texas Privacy Protection Advisory Council. As the gold standard for the protection of customer privacy and data, we believe a banker's insight would be very helpful to the council. However, at 15 members already, the council's size could become so large as to be prohibit the conduction of substantive work, so it will be understandable if a banker is not included.

[HB 4519](#), Ken King's bill creating a central filing system for agriculture liens, was heard in House PIFS Thursday, April 18. TBA Past Chairman Mike Schnell testified in support of the bill on behalf of himself and the Association. Schnell's testimony focused on the fact that enacting HB 4519 will provide for more accurate and timely information to all parties involved with agriculture liens. The current system is paper based and was designed before the widespread adoption of the Internet; final passage of HB 4519 would bring Texas' system into the 21st century.

IBAT and the Texas Cattle Feeders Association also testified in support of the bill. The Livestock Marketing Association and a representative of the Texas Grain and Feed Association testified against the bill. Members of the Texas and Southwestern Cattle Raisers Association actively worked against the bill, reaching out to committee members to let them know that every banker who is a member of TSCRA opposes the legislation. This final piece was very discouraging because TBA certainly has bankers who are members of TSCRA who support central filing. We will continue to work on this concept, but its chances for further action this session look bleak.

What to Expect in the Week to Come

TBA is tracking approximately 275 bills and joint resolutions this session. Of the priority bills we're tracking (i.e., those that would truly impact the day to day operations of our member banks, either positively or negatively), none have been set for public hearings in the week to come. As the House starts passing more bills, this will certainly

change over the course of the next few weeks because the Senate will start setting more House bills for public hearing.

The House Calendars for Monday and Tuesday have been set. These Calendars contain the bills that will be debated on the floor of the House on these days. Looking over Monday and Tuesday's House Calendars, the bills that TBA is tracking that will be considered on the House floor include:

[HB 2282](#), Tan Parker's biometric identifier bill. Existing Texas law provides that a person may not capture a biometric identifier of an individual for a commercial purpose unless the person informs the individual before capturing the biometric identifier; and receives the individual's consent to capture the biometric identifier. However, this section does not apply to voiceprint data retained by a financial institution or an affiliate of a financial institution, as those terms are defined by the Gramm Leach Bliley Act. HB 2282 expands this exemption by striking the reference to voiceprint data, meaning that if finally passed, this section will not apply to any biometric information captured by a financial institution or an affiliate of a financial institution subject to Title V of the Gramm Leach Bliley Act.

[HB 2245](#) and [HB 2246](#), both by Wray. These bills were both filed at the request of the Real Estate, Probate, and Trust Law Section of the State Bar and have been reviewed by TBA's Wealth Management and Trust Division's Government Relations Council. HB 2245 relates to trusts, and HB 2246 relates to the fiduciary status of a directed trust adviser.

Speaking of trusts, Wray also has [HB 2780](#) on Tuesday's House Calendar. HB 2780 seeks to remove obsolete references to the Texas Probate Code

Tuesday's House Calendar also includes [HB 2625](#) by Perez. HB 2625 is TBA-supported legislation that creates the offense of mass fraudulent use or possession of credit card or debit card information.

The Senate only sets one Calendar at a time, and tomorrow's Senate Calendar includes [SB 1281](#) by Birdwell, relating to assessments for water and energy improvements in certain municipalities and counties. SB 1281 relates to Property Assessed Clean Energy (PACE) loans and seeks to administer various county PACE programs as one statewide program government by best practices. The bill establishes oversight of the program by the State Energy Conservation Office (SECO) in the Comptroller's office using its existing authority. Because SB 1281 does not jeopardize existing notice and consent requirements for commercial PACE loans, and because it does not extend Texas' PACE program to residential projects, TBA supports SB 1281 in its current form.

Questions?

As always, please don't hesitate to [let me know](#) if you have any questions. Have a great week!

Volume 86.12

April 14, 2019

Six More Weeks to Go

Generally speaking, if a bill hasn't had a public hearing in its house of origin by the end of April, for all and intents and purposes, that bill has little chance of becoming law on its own. Over 700 bills have been set for hearing in the House and Senate in the coming week – the authors and sponsors of these bills are rushing to get their bills out of committee so they can work to get them to the Floor for debate and an affirmative vote. Because legislative debate in both the House and Senate is getting longer each legislative day, and committees don't meet while the House or the

Senate is in session, this means late nights are in store at the Capitol. For legislative junkies, this is when the Session really gets interesting.

Dates of Interest & Noteworthy Bills

Friday, March 8, 2019 (60th day)

Deadline for the unrestricted filing of bills and joint resolutions other than local bills, emergency appropriations, and emergency matters submitted by the governor

Monday, May 6, 2019 (119th day)

Last day for House committees to report House Bills and House Joint Resolutions

Thursday, May 9, 2019 (122nd day)

Last day for House to consider second reading House Bills and House Joint Resolutions on daily or supplemental calendar

Monday, May 27, 2019 (140th day)

Last day of 86th Legislature (sine die)

Sunday, June 16, 2019

20th day following final adjournment of 86th, Regular Session, which is the last day the governor may sign or veto bills passed during the regular session

TBA's Bill Tracking List can be found [here](#).

Committee Work the Week of April 8

The Senate Education Committee heard Alvarado's [SB 686](#) at its Thursday hearing. SB 686 relates to personal financial literacy courses for public high school students and would swap half of an elective credit with half of a credit for personal financial literacy. Interestingly, the Texas Association of School Administrators testified "on" this bill (rather than in support of), arguing that requiring half a credit in financial literacy takes class choices away from students and suggesting, instead, that financial literacy be offered within an economics class. TBA is very supportive of this bill because we know that student financial literacy is critically important to students' future economic success, and we encourage our members to contact their legislators and ask them to vote for SB 686 when it gets to the Floor of the Texas Senate.

SB 686's House Companion, [HB 1182](#) by Goodwin, is on tomorrow's General State Calendar in the House. Now is the time to express your support of HB 1182 with your member of the Texas House! Don't know who your House member is? [Here's](#) how to find out. Time is of the essence, so make sure to call Monday!!

[HB 2945](#), Perez's card skimming bill, was heard Thursday in House Pensions, Investments and Financial Services. As expected, the bill received a very favorable hearing, and over the past week, nine additional joint authors and coauthors have signed onto the bill, meaning over half of the Texas House, and the Chairman of the House Calendars Committee, are on record as not only supporting the legislation, they're also shown as authors. While the bill was left pending in Committee, we anticipate this bill will be voted out of PIFS in the coming days and sent to the Calendars Committee.

Committee Work the Week of April 15

SB 1643, Zaffirini's companion to HB 2945 will be heard in Senate B&C Tuesday, April 16.

House JCJ will hear [HB 4122](#) by Jarvis Johnson tomorrow. HB 4122 relates to the award of attorney's fees to a financial institution that answers a writ of garnishment and provides that if a financial institution timely files an answer to a writ of garnishment, a court may not award attorney's fees to the financial institution unless the garnishor unsuccessfully contests the answer. TBA will testify against this bill because we are hard-pressed to understand why a financial institution that is simply complying with a court order should be statutorily prevented from recouping the costs associated with that compliance. As an unrelated party to the case that resulted in the judgment, it does not make sense to only allow a bank to recover attorney's fees if the garnishor successfully contests the writ. Stay tuned as we continue to try to understand the impetus for this bill.

At its Wednesday hearing, House Ways & Means will hear [HB 4295](#) by Julie Johnson, relating to a default under a deed of trust or contract lien on certain residential property for the delinquent payment of ad valorem taxes. HB 4295 amends Sec. 51.0011, Property Code (DEFAULT ARISING FROM DELINQUENT AD VALOREM TAXES: INSTALLMENT AGREEMENTS), which was enacted in 2013 to provide Texas homeowners struggling to pay their ad valorem taxes with the option of entering into installment agreements with taxing entities. Under the 2013 law, a debtor is not in default under a deed of trust or other contract lien on real property used as the debtor's residence for the delinquent payment of ad valorem taxes if the debtor gives notice to the mortgage servicer of the intent to enter into an installment agreement with the taxing unit for the payment of taxes at least 10 days before the debtor enters into the agreement; and the property is protected from seizure and sale and a suit may not be filed to collect a delinquent tax on the property. A mortgage servicer who receives this notice may pay the taxes subject to the installment agreement at any time. A mortgage servicer who receives this notice and gives the debtor notice that the servicer intends to accelerate the note securing the deed of trust as a result of the delinquency of the taxes that are the subject of the installment agreement must rescind the notice if the debtor enters into the agreement not later than the 30th day after the date the debtor delivers the notice.

HB 4295 upends the 2013 law and provides that: a debtor is not in default under a deed of trust if the debtor has entered into an installment agreement with the taxing unit for the payment of taxes; and the property is protected from seizure and sale and a suit may not be filed to collect a delinquent tax on the property; and a debtor is not in default under a deed of trust if the debtor has obtained a deferral or abatement of the collection of the ad valorem taxes on the property and the deferral or abatement remains in effect. Furthermore, HB 4295 repeals the existing language authorizing a mortgage servicer to pay the taxes subject to the installment agreement. TBA will testify against HB 4295 at Wednesday's hearing because we believe a mortgage servicer should have the ability to pay off a borrower's delinquent taxes if that borrower is in violation of his deed of trust.

Thursday morning, House PIFS will hear TBA-supported [HB 4519](#) by Ken King. HB 4519 creates a central filing system for agriculture liens. The bill:

- Adds new Chapter 607, Business & Commerce Code, CENTRAL FILING SYSTEM AND NOTICE REQUIREMENTS FOR FARM PRODUCTS, and requires the secretary of state to adopt rules necessary to implement the chapter.
- "Central filing system" means a statewide system that is developed by the secretary of state and certified by the USDA to be used for the filing of an effective financing statement that covers farm products.
- Requires the secretary of state (SOS) to develop and implement a central filing system. Directs the SOS to work with the Department of Information Resources (DIR).

- HB 4519 defines “writing” or “written” to mean information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. This means that an effective financing statement for farm products may be electronically filed with the SOS.
- An effective financing statement must: be signed by the secured party and filed by the secured party with the SOS; be signed by the debtor and provide the following information: the name and address of the secured party; the name and address of the debtor; and one of the following: the SSN of the debtor, if the debtor is not an individual, the taxpayer ID number of the debtor, or another unique identifier established by rule by the SOS; the farm product covered by the effective financing statement; each county where the farm product is produced or will be produced; a description of the farm product that is subject to the security interest only if a description is needed to distinguish the farm product; and the crop year.
- The SOS may collect a fee for each effective financing statement filed.
- New Sec. 604.005 governs the protection of buyers, commission merchants, and selling agents and provides:
 - A buyer (a person who in the ordinary course of business buys farm products from another person who is engaged in farming operations and who is in the business of selling farm products),
 - a commission merchant (a person engaged in the business of receiving a farm product for the purpose of selling the farm product on commission or on behalf of another person), or
 - a selling agent (a person, other than a commission merchant, who is engaged in the business of negotiating the sale or purchase of a farm product on behalf of a person engaged in farming operations)
 - who, in the ordinary course of business, purchases a farm product from a person engaged in farming operations takes the farm product subject to a security interest in the farm product if:
 - either:
 - the buyer, commission merchant, or selling agent fails to register with the SOS and the secured party has filed an effective financing statement in the central filing system; or the buyer, commission merchant, or selling agent receives notice from the SOS and does not secure a waiver or release from the secured party of the security interest specified in an effective financing statement; or
 - the secured party or the seller of the farm product provides written notice of the security interest to the buyer, commission merchant, or selling agent.
- Under the central filing system, the secured party shall file a termination statement not later than the 20th day after the date there are no outstanding secured obligations or commitments to make advances, incur obligations, or otherwise give value. If the affected secured party does not file a termination statement as required by Chapter 607, the secured party is liable to the state for a civil penalty of \$500 and to the debtor for any loss caused to the debtor by the secured party’s failure to terminate the effective financing statement.

TBA continues to work with interested stakeholders to ensure the central filing program being designed for Texas works for all Texans involved in agriculture – buyers, sellers, and lenders.

PIFS will also hear [HB 3872](#) by Longoria. We wrote about this bill back on March 10, but as a reminder, HB 3872 relates to data matching with financial institutions to facilitate the collection of state delinquent tax liabilities. The bill adds new Sec. 111.025, Tax Code (DELINQUENT TAXPAYER FINANCIAL RECORDS), and provides that the comptroller may request a financial institution to perform a match that compares account holders’ names, SSNs, or federal EINs to delinquent taxpayer information provided by the comptroller. Within 90 days of receiving the match request, the financial institution shall file a report with the comptroller containing the following information for each account containing matching information: the account holder’s name; the account holder’s address; the account

holder's SSN or federal EIN; the financial institution account number; and the amount of all funds contained in the account, or any other account holder asset being held by the financial institution. New Sec. 111.025(d) requires the comptroller to make the match request compatible with the data processing system of the financial institution, and new Sec. 111.025(e) provides the comptroller may not request a financial institution to perform a match under this section more than once each calendar quarter. Importantly, proposed Sec. 111.025(h) provides that a financial institution is not liable to any person for disclosing information to the comptroller under this section or for any other action that the financial institution takes in good faith to comply with this section.

HB 3872 was filed at the request of the comptroller's office, which worked to ensure the bill's requirements are aligned with established procedures for Texas' child support data match program. The agency currently uses a manual process for attempting to locate delinquent tax payers when no known levy sources exist; this process includes sending freeze notices to multiple banks in the area of the known business address of the delinquent taxpayer. The comptroller's office reports the agency mailed out more than 65,000 freeze notices during FY18, yet only 21,000 notices resulted in the freezing of active bank accounts. HB 3872 is designed to increase delinquent sales tax collections while systematizing the way it sends data match requests to financial institutions. We solicited input on this bill last month, but did not receive any. If you have concerns about HB 3872, now is the time to let us know!

Questions?

As always, if you have any questions, please do not hesitate to [let us know](#).

Volume 86.11

April 7, 2019

50 Days until *Sine Die*

Wow, time sure does fly when you're having fun. After a 21 day respite, your State Issues Update is back with a vengeance. Since our last publication, committee season has entered full swing. Wondering what this means? The short answer is that 769 bills have been scheduled to be heard in House and Senate Committees the week of April 8. Couple this with the 693 bills that were scheduled to be heard the Week of April 1, and you should begin to see a pattern.

April is the time of the legislative session when committees in both the House and Senate work into the wee hours of the night to hold public hearings for the thousands of bills that have been filed. While the numbers are daunting, don't forget that there are 52 committees in the Texas Legislature, so while the numbers of bills set for hearing are high, the average number of bills heard in each committee each hearing can be manageable.

Dates of Interest & Noteworthy Bills

Friday, March 8, 2019 (60th day)

Deadline for the unrestricted filing of bills and joint resolutions other than local bills, emergency appropriations, and emergency matters submitted by the governor

Monday, May 27, 2019 (140th day)

Last day of 86th Legislature (*sine die*)

Sunday, June 16, 2019

20th day following final adjournment of 86th, Regular Session, which is the last day the governor may sign or veto bills passed during the regular session

TBA's Bill Tracking List can be found [here](#). Also, in case you were wondering, 190 bills and joint resolutions have been filed since the March 8 bill filing deadline, which means that a total of 7,471 bills and joint resolutions have been filed this session. This is the highest number of bills we've seen introduced since 2009. Local bills continue to be filed, though, so watch for this number to continue to climb before May 27.

Committee Work March 18 - April 5



On March 25, TBA CEO Chris Furlow testified in the Senate Committee on Agriculture in support of [SB 2037](#) by Ag Committee Chairman Bob Hall. SB 2037 directs the Secretary of State to study whether a central filing system for agriculture liens is warranted in the State of Texas. In his testimony, Furlow pointed out that a digitally based, centralized filing system for agriculture liens would enable all parties involved with Texas agriculture -- buyers, sellers, and lenders -- to take advantage of 21st century technology to more efficiently manage sales and

purchases. SB 2037 was favorably voted out of the Ag Committee on April 2 and is on its way to the Senate Floor.

House PIFS heard [HB 1569](#), Lambert's DOB and SML Sunset Bill on March 21. The Senate passed HB 1569's companion, Nichols' [SB 614](#) on March 27. On April 1, SB 614 was referred to House PIFS, and on April 4, the Committee favorably voted the bill out of PIFS and sent it to the House Calendars Committee. This is a huge amount of forward progress for a must-pass bill! There are more than 250 bills pending in House Calendars, and the overwhelming majority of these are House bills, so it may be a couple of weeks before this bill makes it the House Calendar. I'm happy to be wrong about this, though, so stay tuned.

House Criminal Jurisprudence heard Representative Tan Parker's [HB 981](#) Monday, April 1. HB 981 seeks to close a loophole in Chapter 34 of the Penal Code (MONEY LAUNDERING) by including digital currency in the definition of "funds" found in Texas' money laundering statute.

House B&I heard both [HB 4390](#) by Capriglione and [HB 4518](#) by Martinez Fischer on Tuesday, April 2. These two bills relate to the privacy of a personal identifying information, and the impetus for the bills can be found in both the GDPR (the EU's General Data Protection Regulation) and the California Consumer Privacy Act of 2018. We wrote about

these bills in our last publication, and at last Tuesday's hearing, TBA's John Heasley testified in support of the HB 3590 because the bill contains Gramm Leach Bliley exemption language for financial institutions. While the exemption is not complete, Heasley thanked Capriglione for taking the banking industry's concerns into consideration, and pledged to continue to work with Capriglione on language that will more fully cover the activities of TBA's member banks.

Committee Work April 8 - 12

A number of flood-related bills will be heard in the coming week. House Insurance will hear [HB 283](#) by Perez at its Tuesday morning hearing. HB 283 provides that an insurer that issues a commercial or residential property insurance policy that does not provide coverage against loss caused by flooding shall include at the top of the policy's declaration page the following statement: "WARNING: THIS POLICY DOES NOT PROVIDE COVERAGE AGAINST LOSS CAUSED BY FLOODING."

House B&I will hear Morrison's [HB 3815](#) on Tuesday. HB 3815 provides, in relevant part for TBA's purposes, that the Seller's Disclosure found in Sec. 5.008, Property Code (SELLER'S DISCLOSURE OF PROPERTY CONDITION), be amended by striking existing references to a property's being located in the 100-Year Floodplain and adding new Sec. 5.020, Property Code (NOTICE OF FLOODPLAIN, FLOOD POOL, OR RESERVOIR), to provide that on or before the date a seller of real property and a purchaser enter into a contract binding the purchaser to purchase the property, the seller shall give to the purchaser a signed, written notice disclosing that the property is located either wholly or partly in a 100-year flood plain, 500-year floodplain, flood pool, or reservoir. If this information is not disclosed, the purchaser may terminate the contract for any reason within seven days after the date the purchaser receives the notice from the seller; or information described by the notice from any other person. The bill also provides that after the date of the conveyance, the purchaser may bring an action for misrepresentation against the seller if the seller failed to provide the notice before the date of the conveyance and had actual knowledge that the property was located in a 100-year flood plain, 500-year floodplain, flood pool, or reservoir.

Senate B&C will hear Senator Huffman's [SB 339](#) Tuesday morning. SB 339 also adds new Sec. 5.020, Property Code (SELLER'S DISCLOSURE NOTICE OF FLOODPLAIN, FLOOD POOL, OR RESERVOIR), and mirrors the language in Morrison's HB 3815 outlined above.

House PIFS will hear two of Representative Perez's card skimming bills on April 11. We wrote about these bills back on March 3, but as a refresher, [HB 2625](#) creates the criminal offense of mass fraudulent use or possession of credit card or debit card information. HB 2625 adds new Sec. 32.315, Penal Code (MASS FRAUDULENT USE OR POSSESSION OF CREDIT CARD OR DEBIT CARD INFORMATION), and defines "counterfeit credit card or debit card" to mean a credit card or debit card that: purports on its face to have been issued by an issuer that did not issue the card; has been altered to contain a digital imprint other than that which was placed on the card by the issuer; contains a digital imprint with account information or account holder information differing from that which is printed or embossed on the card; or has been altered to change the account information on the face of the card from that which was printed or embossed on the card by the issuer. "Digital imprint" is defined to mean the digital data placed on a credit card or debit card by the issuer.

New Sec. 32.315(b) provides that a person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses: five or more counterfeit credit cards or debit cards; the numbers and expiration dates of five or more credit cards or debit cards without the consent of the account holder; AND the data stored on the digital imprint of five or more credit cards or debit cards without the consent of the account holder. An offense under this section is a third degree felony if the number of items obtained, possessed, transferred, or used is

five or more but less than 10; a second degree felony if 10 or more but less than 50; or a first degree felony if the number of items obtained, possessed, transferred, or used is 50 or more.

The Committee will also hear Perez' [HB 2945](#), relating to payment card skimmers on motor fuel dispensers; imposing a civil penalty; creating criminal offenses. HB 2945 adds new Chapter 607 to the Business & Commerce Code to govern Payment Card Skimmers on Motor Fuel Dispensers. New Sec. 607.051 (MERCHANT DUTIES REGARDING UNATTENDED PAYMENT TERMINALS ON MOTOR FUEL DISPENSERS) provides that a merchant (defined to mean a person whose business includes the sale of motor fuel through motor fuel dispensers to retail customers) that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business shall implement procedures to prevent the installation of a skimmer on the payment terminal; find and remove a skimmer placed on the payment terminal; and report the discovery of a skimmer to the Texas Department of Agriculture (TDA.) This bill requires the attorney general to establish reasonable policies and procedures that identify best practices for merchants to comply with new Sec. 607.051.

If a service technician (licensed by TDA) discovers a skimmer on an unattended payment terminal of a motor fuel dispenser, the service technician shall immediately notify the merchant of the skimmer. If the merchant discovers the skimmer or is notified of the skimmer by a service technician, the merchant shall immediately disable the motor fuel dispenser and notify local law enforcement that a skimmer has been detected; take appropriate measures to protect from tampering with the motor fuel dispenser until local law enforcement arrives; and within 24 hours of the discovery of the skimmer or after a report of the discovery is made to the merchant, report the discovery to TDA.

HB 2945 defines "interested person" to include local law enforcement; a merchant; a financial institution; a credit card issuer (a lender, including a financial institution, or a merchant that receives applications and issues credit cards to individuals) a service technician; a member of the public; or any other person, and provides that an interested person may submit a report of the discovery of a skimmer on an unattended payment terminal of a motor fuel dispenser at a merchant's place of business to TDA.

New Sec. 607.055 (INVESTIGATION OF SKIMMER REPORTS) provides that on receipt of a report of the discovery of a skimmer, TDA shall conduct an investigation and share its report with the Payment Card Fraud Center (described below.) TDA may: coordinate with local law enforcement agencies in conducting its investigation; and inspect the motor fuel dispenser that is the subject of the report.

Importantly, HB 2945 adds new Chapter 424, Government Code (PAYMENT CARD FRAUD CENTER), and creates the Payment Card Fraud Center. Payment card is defined in existing law to mean a credit card, debit card, check card, or other card that is issued to an authorized user to purchase or obtain goods, services, money, or any other thing of value. HB 2945 enables DPS, TDA, and other state or local agencies designated by the attorney general to collaborate with the attorney general to establish a payment card fraud center in the City of Tyler. The center is designed to serve as the state's primary entity for the planning, coordination, and integration of the capabilities of law enforcement agencies and other agencies to respond to criminal activity that is related to payment card fraud, including through the use of skimmers. The purpose of the center is to maximize the ability of state agencies and local law enforcement agencies to detect, prevent, and respond to criminal activities related to payment card fraud.

A committee substitute to the bill will be offered at Thursday's hearing that addresses a number of issues raised by interested stakeholders. Rest assured, though, with over 70 joint and coauthors, HB 2945 has legs and will make it to the Floor of the Texas House.

Questions?

As always, if you have any questions, please do not hesitate to [let me know](#).

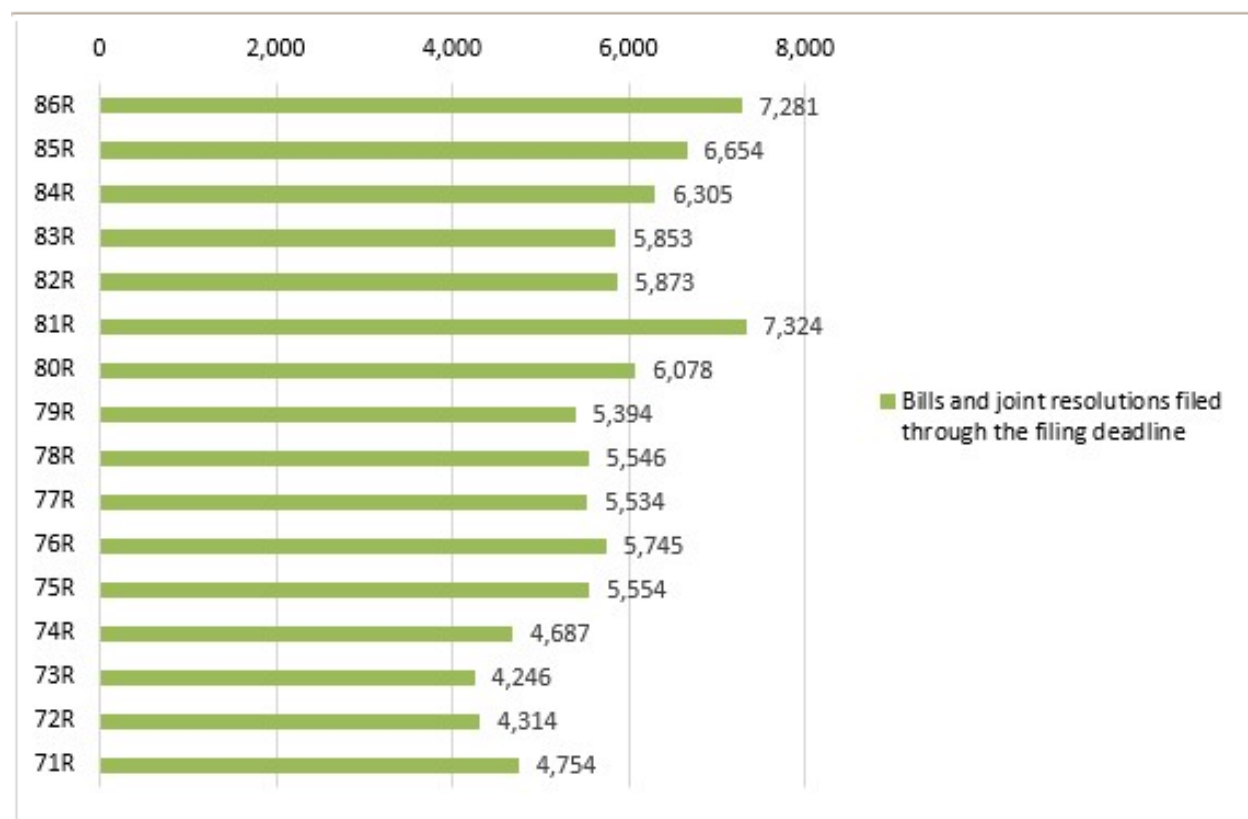
Volume 86.10

March 17, 2019

71 Days Remain, But Who's Counting?

Monday, March 18 marks the official halfway point of the 86th Regular Session of the Texas Legislature. One day last week, a lobby colleague remarked that we're 50% through the calendar, but only 20% through with the work of the session. This sounds just about right. The next six weeks will be dominated by committee hearings on the thousands of bills that have been filed (7,281 bills to be exact.) As we pivot to this point in the session, Sunday updates will begin to focus on bills that are scheduled for public hearings in the coming week.

Before turning to dates of interest, though, here's a graphic highlighting how many bills and joint resolutions were filed by the bill filing deadline for the past 16 sessions. (Source: [Legislative Reference Library](#))



Dates of Interest & Noteworthy Bills

Friday, March 8, 2019 (60th day)

Deadline for the unrestricted filing of bills and joint resolutions other than local bills, emergency appropriations, and emergency matters submitted by the governor

Monday, May 27, 2019 (140th day)

Last day of 86th Legislature (sine die)

Sunday, June 16, 2019

20th day following final adjournment of 86th, Regular Session, which is the last day the governor may sign or veto bills passed during the regular session

TBA's Bill Tracking List can be found [here](#). Banking-related bills filed the week of the deadline include:

HB 4390 by Capriglione, relating to the privacy of personal identifying information. HB 4390 is Capriglione's expected Texas Privacy Protection Act, which is designed to give Texans the ability to protect their private digital information from sale and resale without their knowledge and consent. The bill:

- Applies to a Texas business: with more than 50 employees; that collects the personal identifying information (PII) of more than 5,000 individuals, households, or devices; and has annual gross revenue that exceeds \$25 million or derives 50 percent or more of the business's annual revenue by processing PII.
- "Processing" defined to mean any operation or set of operations that are performed on PII or on sets of PII, including collection, creation, generation, recording, organization, structuring, storage, adaptation, alteration, retrieval, consultation, use, disclosure, transfer, or dissemination of the information or otherwise making the information available.
- Texas Privacy Protection Act applies only to PII that is collected over the Internet or any other digital network or through a computing device that is associated with or routinely used by an end user and linked or reasonably linked to a specific end user.
- Texas Privacy Protection Act does not apply to PII processed in accordance with the Gramm Leach Bliley Act and its implementing regulations.
- Prohibits a business from collecting PII unless the collection of the information is relevant and necessary to accomplish the purpose for which the information was collected and that purpose is specifically disclosed by the business.
- Provides a business may only process PII if: the information is relevant to accomplish the purposes for which the information is to be processed; those purposes are specifically disclosed; and the information is processed only to the extent necessary to achieve one or more of those purposes.
- Requires businesses to develop, implement, and maintain a comprehensive data security program that contains administrative, technical, and physical safeguards for PII.

HB 4519 by Ken King and **SB 2033** by Bob Hall address an item on TBA's 2019 Legislative Agenda. Namely, these bills create a central filing system for agriculture liens. TBA is very supportive of these bills, and we will work hard with King and Chairman Hall, and their staffs, to see that they make it to the governor's desk. The bills:

- Add new Chapter 607, Business & Commerce Code, CENTRAL FILING SYSTEM AND NOTICE REQUIREMENTS FOR FARM PRODUCTS, and requires the secretary of state to adopt rules necessary to implement the chapter.
- "Central filing system" means a statewide system that is developed by the secretary of state and certified by the USDA to be used for the filing of an effective financing statement that covers farm products.
- Require the secretary of state (SOS) to develop and implement a central filing system. Directs the SOS to work with the Department of Information Resources (DIR).
- Defines "writing" or "written" to mean information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. This means that an effective financing statement for farm products may be electronically filed with the SOS.
- An effective financing statement must: be signed by the secured party and filed by the secured party with the SOS; be signed by the debtor and provide the following information: the name and address of the secured party; the name and address of the debtor; and one of the following: the SSN of the debtor, if the debtor is not an individual, the taxpayer ID number of the debtor, or another unique identifier established by rule by the SOS; the farm product

covered by the effective financing statement; each county where the farm product is produced or will be produced; a description of the farm product that is subject to the security interest only if a description is needed to distinguish the farm product; and the crop year.

- The SOS may collect a fee for each effective financing statement filed.

- New Sec. 604.005 governs the protection of buyers, commission merchants, and selling agents and provides:

A **buyer** (a person who in the ordinary course of business buys farm products from another person who is engaged in farming operations and who is in the business of selling farm products),

a **commission merchant** (a person engaged in the business of receiving a farm product for the purpose of selling the farm product on commission or on behalf of another person), or

a **selling agent** (a person, other than a commission merchant, who is engaged in the business of negotiating the sale or purchase of a farm product on behalf of a person engaged in farming operations)

who, in the ordinary course of business, purchases a farm product from a person engaged in farming operations takes the farm product subject to a security interest in the farm product if:

either:

the buyer, commission merchant, or selling agent fails to register with the SOS and the secured party has filed an effective financing statement in the central filing system; or the buyer, commission merchant, or selling agent receives notice from the SOS and does not secure a waiver or release from the secured party of the security interest specified in an effective financing statement;

or

the secured party or the seller of the farm product provides written notice of the security interest to the buyer, commission merchant, or selling agent.

- Under the central filing system, the secured party shall file a termination statement not later than the 20th day after the date there are no outstanding secured obligations or commitments to make advances, incur obligations, or otherwise give value. If the affected secured party does not file a termination statement as required by Chapter 607, the secured party is liable to the state for a civil penalty of \$500 and to the debtor for any loss caused to the debtor by the secured party's failure to terminate the effective financing statement.

Committee Work for the Week of March 18

[Senate Finance](#) meets at 10:00 a.m. Monday morning, and the committee's Agenda includes taking public testimony on [SB 890](#) by Nelson, relating to the administration and collection of sales and use taxes applicable to sales involving marketplace providers. SB 890 is in response to a US Supreme Court opinion allowing states to require sellers who are not physically located in the state to collect use tax for that state (this is the [Wayfair](#) case.) Currently, the Tax Code does not require a marketplace provider (defined to mean a person who owns or operates a marketplace and directly or indirectly processes sales or payments for marketplace sellers) to collect and remit state and local sales and use tax on sales made on its marketplace by third party sellers. SB 890 amends current law relating to the administration and collection of sales and use taxes applicable to sales involving marketplace providers.

[House Public Education](#) convenes at 8:00 a.m. Tuesday and will hear Vikki Goodwin's [HB 1182](#), relating to personal financial literacy courses for high school students in public schools. Under existing Texas law, each school district and open-enrollment charter school that offers a high school program must provide an elective course in personal financial literacy that meets the requirements for one-half elective credit. HB 1182 requires that a course in personal financial literacy that qualifies for one-half credit shall be provided (i.e., the bills remove the elective nature of the course offering.) TBA will register our support for this bill at Tuesday's hearing.

[House PIFS](#) is scheduled to meet at 8:00 a.m. Thursday, and at that time, the Committee's Agenda includes [HB 1175](#), relating to investments by state banks to promote community development, and [HB 1569](#), Lambert's Sunset bill

for the Finance Commission, Department of Banking, and Department of Savings and Mortgage Lending. The Senate companions for both of these bills were heard last week in Senate B&C and were highlighted in [last week's publication](#). Regarding HB 1569, interested trade groups circulated a [letter supporting](#) both HB 1569 and SB 614 in advance of the B&C hearing. We have sent Representative Lambert his [letter of support](#), and the remaining members of the PIFS committee will receive their letters tomorrow.

Questions?

As always, if you have any questions, please do not hesitate to [let me know](#).

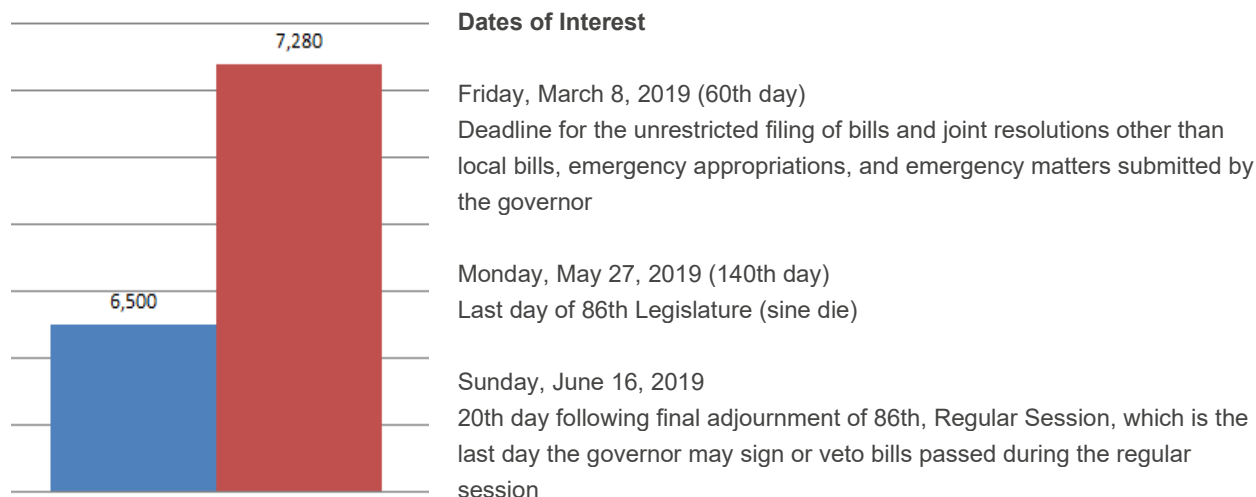
Volume 86.9

March 10, 2019

Wait, What?

As of Friday, March 8 at 6:00 p.m., 7,281 bills and joint resolutions have been filed for consideration in the 86th Session of the Texas Legislature. Earlier this session, I forecast there would be approximately 6,500 bills filed, and even that number seemed in doubt last Sunday when I sent this publication. However, legislators filed 2,862 bills and joint resolutions last week, and left that 6,500 guesstimate in the dust. 7,281 bills represent an increase of 12% over my prediction.

Dates of Interest and Noteworthy Legislation



Noteworthy Bills

TBA's Bill Tracking List can be found [here](#). Additional bills will certainly be added as we continue to digest the more than 2,800 bills that were filed last week. Interesting new bills include:

HB 2928 by Phil King relates to the jurisdiction of contested probate proceedings in counties without a statutory probate court or statutory county court and amends Sec. 32.03, Estates Code (JURISDICTION OF CONTESTED PROBATE PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT OR STATUTORY COUNTY COURT) to provide that if more than one party to a probate proceeding files a motion to request the assignment of a statutory probate court judge to hear the contested motion or to transfer the contested matter to the district court, the judge of the county court shall grant the motion that was filed first unless the party that was the first to file withdraws

the motion. HB 2928 also provides that a party to a probate proceeding may, concurrently with the party's initial filing in the proceeding, file an anticipatory motion for the transfer of all contested matters in the proceeding to the district court, and the motion is given effect as a motion for the transfer of all contested matters to the district court.

[HB 3872](#) by Longoria relates to data matching with financial institutions to facilitate the collection of state delinquent tax liabilities, and adds new Sec. 111.025, Tax Code (DELINQUENT TAXPAYER FINANCIAL RECORDS.) HB 3872 provides that the comptroller may request a financial institution to perform a match that compares account holders' names, SSNs, or federal EINs to delinquent taxpayer information provided by the comptroller. Within 90 days of receiving the match request, the financial institution shall file a report with the comptroller containing the following information for each account containing matching information: the account holder's name; the account holder's address; the account holder's SSN or federal EIN; the financial institution account number; and the amount of all funds contained in the account, or any other account holder asset being held by the financial institution. New Sec. 111.025(d) requires the comptroller to make the match request compatible with the data processing system of the financial institution, and new Sec. 111.025(e) provides the comptroller may not request a financial institution to perform a match under this section more than once each calendar quarter. Importantly, proposed Sec. 111.025(h) provides that a financial institution is not liable to any person for disclosing information to the comptroller under this section or for any other action that the financial institution takes in good faith to comply with this section.

HB 3872 was filed at the request of the comptroller's office, which worked to ensure the bill's requirements are aligned with established procedures for Texas' child support data match program. The agency currently uses a manual process for attempting to locate delinquent taxpayers when no known levy sources exist; this process includes sending freeze notices to multiple banks in the area of the known business address of the delinquent taxpayer. The comptroller's office reports the agency mailed out more than 65,000 freeze notices during FY18, yet only 21,000 notices resulted in the freezing of active bank accounts. HB 3872 is designed to increase delinquent sales tax collections while systematizing the way it sends data match requests to financial institutions. Please take a look at HB 3872 and provide feedback on where you see potential problems. We like to be good partners to the comptroller's office, but not at the expense of our members' interests, so let us know what you think!

Committee Work for the Week of 3/11

With the 60th day now in the rearview mirror, committees in both the House and Senate will start the yeoman's work of holding public hearings for each of the bills filed (whose authors/sponsors request hearings.) Beginning this week, we'll start focusing on bills that have been set for hearing.

[Senate Business & Commerce](#) will meet at 8:00 a.m. Tuesday morning, and the committee's agenda includes a number of bills we're watching very closely. These include [SB 614](#) by Nichols, the TBA-supported Sunset bill for the finance regulatory agencies, [SB 42](#), Senator Zaffirini's bill relating to wrap mortgages, and [SB 726](#), also by Zaffirini. SB 726 would create parity between state and national banks by raising the state's cap on CRA investments to 15% of the bank's unimpaired capital and surplus and excluding loans from that calculation.

Wednesday morning at 8:00 a.m., the [House Ways & Means Committee](#) will hear [HB 1254](#) by Murphy. If you'll remember, HB 1254 is the needed repeal of that section of the Tax Code that prohibits home equity loans on properties designated for agriculture use.

Questions?

With only 78 days until *sine die*, now is the time to ask questions about what's going on at the Capitol. I'm always happy to try to answer any questions you may have, so [let me know](#) what's on your mind!

Volume 86.8

March 3, 2019

The Filing Frenzy Has Begun

1046 bills and joint resolutions were filed last week, bringing the total number of bills and joint resolutions filed to 4,418. At the beginning of the session, I estimated there would be 6,500 bills filed this session. This estimate was based on the fact that the average number of bills and joint resolutions filed for the past five sessions (2009-2017) was 6,574. Even though more than 1,000 bills were filed last week, and legislators still have until 6:00 CST Friday, March 8 to file bills, I will happily eat crow if fewer than 6,500 bills are filed this session. Stay tuned until next week to see what the (somewhat final) numbers are . . .

Why “somewhat final”? Because under the rules in both the House and Senate, after the first 60 calendar days of a regular session, any bill or joint resolution, except local bills, emergency appropriations, and all emergency matters submitted by the governor in special messages to the legislature, shall require an affirmative vote of four-fifths of those members present and voting to be introduced. So, even though the vast majority of bills will be filed by Friday, additional ones will be introduced between now and *sine die*.

Dates of Interest & Noteworthy Legislation

Dates of Interest

Friday, March 8, 2019 (60th day)

Deadline for the unrestricted filing of bills and joint resolutions other than local bills, emergency appropriations, and emergency matters submitted by the governor

Monday, May 27, 2019 (140th day)

Last day of 86th Legislature (*sine die*)

Sunday, June 16, 2019

20th day following final adjournment of 86th, Regular Session, which is the last day the governor may sign or veto bills passed during the regular session

You'll notice there's no fancy pie chart this week. Even this lawyer knows that 4,418 is 67.9 percent of 6,500; sadly, the pie chart I have does not. So, rather than sending out something wrong (embarrassing!), I'll admit I don't know how to make pie charts in Excel (less embarrassing!). Rest assured, graphic flair will return next week.

Noteworthy Bills

TBA's Bill Tracking List can be found [here](#). This week's notable filings include:

[HB 2282](#) by Parker relates to certain limitations on the capture and use of biometric identifiers to financial institutions and provides that existing statutory limitations on the capture or use of biometric identifiers does not apply to a financial institution or an affiliate of a financial institution subject to the requirements of Title V of the Gramm-Leach-Bliley Act. Reminder #1: Existing Texas law (Sec. [503.001](#), Business & Commerce Code) prohibits the capture of a biometric identifier of an individual for a commercial purpose unless the person informs the individual before

capturing the biometric identifier and receives the individual's consent to capture the biometric identifier. Reminder #2: [Title V of GLBA](#) governs the treatment of nonpublic personal information about consumers by financial institutions.

[HB 2375](#) by J. Johnson of Dallas relates to the enforcement of certain arbitration agreements, and amends the Civil Practice and Remedies Code to provide that a court may not enforce an agreement to arbitrate a dispute that had not yet arisen at the time the agreement was made if the agreement would require arbitration of an employment dispute, consumer dispute, antitrust dispute, or civil rights dispute or would have the effect of waiving the right of an employee to seek judicial enforcement of a right arising under federal or state law. The changes made by HB 2375 do not apply to an agreement to arbitrate between an employer and a labor union or between labor unions.

[HB 2603](#) by Gutierrez, relating to requiring regional education service centers to provide information to school district employees regarding health and retirement benefits and financial literacy, adds new Sec. 8.059, Education Code (INFORMATION REGARDING EMPLOYEE BENEFITS) and requires each ESC, in cooperation with the Teacher Retirement System of Texas, to collaborate with school district's in the center's region to: organize an educational workshop to provide information to district employees regarding: health benefits; retirement benefits; and personal financial literacy regarding health care and retirement planning.

Representative Mary Ann Perez has two bills aimed at cracking down on credit and debit card fraud. The first, [HB 2625](#), creates the criminal offense of mass fraudulent use or possession of credit card or debit card information. HB 2625 adds new Sec. 32.315, Penal Code (MASS FRAUDULENT USE OR POSSESSION OF CREDIT CARD OR DEBIT CARD INFORMATION), and defines "counterfeit credit card or debit card" to mean a credit card or debit card that: purports on its face to have been issued by an issuer that did not issue the card; has been altered to contain a digital imprint other than that which was placed on the card by the issuer; contains a digital imprint with account information or account holder information differing from that which is printed or embossed on the card; or has been altered to change the account information on the face of the card from that which was printed or embossed on the card by the issuer. "Digital imprint" is defined to mean the digital data placed on a credit card or debit card by the issuer.

New Sec. 32.315(b) provides that a person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses: five or more counterfeit credit cards or debit cards; the numbers and expiration dates of five or more credit cards or debit cards without the consent of the account holder; and the data stored on the digital imprint of five or more credit cards or debit cards without the consent of the account holder. An offense under this section is a third degree felony if the number of items obtain, possessed, transferred, or used is five or more but less than 10; a second degree felony if 10 or more but less than 50; or a first degree felony if the number of items obtained, possessed, transferred, or used is 50 or more.

The second Perez bill aimed at cracking down on credit or debit card fraud is [HB 2526](#), and it relates to the offense of credit card or debit card abuse; creating a criminal offense. HB 2526 amends Sec. 32.31, Penal Code (CREDIT CARD OR DEBIT CARD ABUSE), by adding new subdivisions (8) and (9) which are the definitions of "counterfeit credit card or debit card" and "digital imprint" described above. New Sec. 32.31(b-1) provides that a person commits an offense if the person knowingly possesses, uses, transfers, or receives a counterfeit credit card or debit card. We applaud Representative Perez' commitment to trying to address the growing problem of payments fraud, and we look forward to working with her to ensure her legislation addresses all kinds of payments fraud and does not unwittingly leave a method of payment fraud unaddressed.

Almost Halfway There

We're eight weeks into a 20-week legislative session. It's nice to see the light of the halfway point in the tunnel. The reality, of course, is that the first half of the legislative session is the easiest, so buckle your seatbelts for an exciting ride the next 12 weeks!

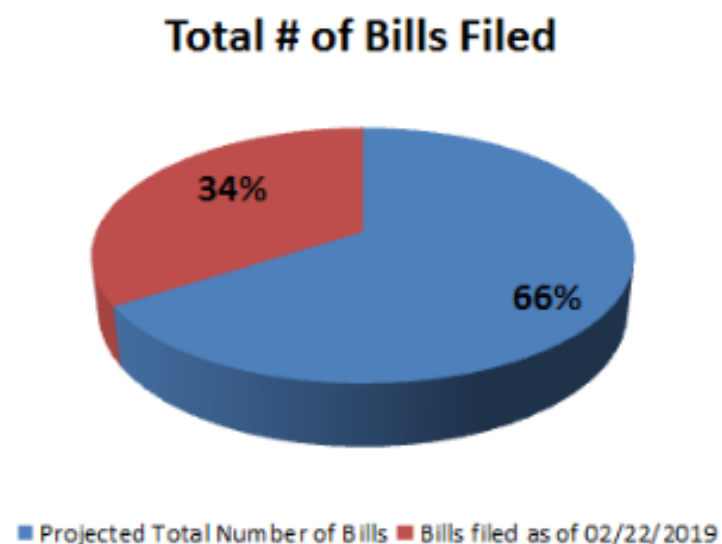
Volume 86.7

February 24, 2019

Major Legislative Deadline Approaching

As we barrel toward the March 8 bill filing deadline, the pace of bill introductions is certainly picking up. 565 bills were filed this week, bringing the total number of bills and joint resolutions filed to 3,372. Two years ago, 3,663 bills had been filed two weeks before the bill filing deadline, and the total number of bills filed was 6,800. Roughly approximating this means that there will likely be 2,000 - 2,500 bills filed over the course of the next 10 days. TBA's Bill Tracking List as of Friday, February 22 can be found [here](#).

Dates of Interest & Noteworthy Bills



Dates of Interest

Friday, March 8, 2019 (60th day)

Deadline for the unrestricted filing of bills and joint resolutions other than local bills, emergency appropriations, and emergency matters submitted by the governor

Monday, May 27, 2019 (140th day)

Last day of 86th Legislature (sine die)

Sunday, June 16, 2019

20th day following final adjournment of 86th, Regular Session, the last day the governor may sign or veto bills passed during the regular session

Noteworthy Bills

[HB 2024](#) by Romero relates to the survival of a mechanic's retainage lien after the foreclosure of a lien securing a construction loan, and adds new Sec. 53.125, Property Code (SURVIVAL OF RETAINAGE LIEN AFTER CERTAIN FORECLOSURES), to provide that a person who purchases property that is sold due to the foreclosure of a lien that secures a financing agreement or loan to pay for the construction or repair of an improvement to real property takes the property subject to an unreleased retainage lien.

[HB 2069](#) by Wray relates to the foreclosure of a lien on real property of a decedent and adds new Sec. 51.0022, Property Code (FORECLOSURE SALE OF REAL PROEPRTY OF DECEASED DEBTOR), which applies to a foreclosure sale of real property of a debtor who is deceased and whose debt secured by the deed of trust or other contract lien is in default, regardless of whether the property is a homestead.

51.0022(b) provides that if an independent administration of the deceased debtor's estate is pending, the mortgage servicer shall send the notice of sale to the independent personal representative of the debtor's estate. 51.0022(c) provides that the mortgage servicer of the debt is not required to send notice of default under Sec. 51.002, Property Code, to any person if the debtor is deceased and is the sole obligor of the debt. If there is a surviving spouse, Sec. 51.0022(d) provides the surviving spouse must be sent, not later than the 45th day before the date of sale, the notice of sale if an administration of the debtor's estate was not opened or is not pending and the sale will be held before the fourth anniversary of the debtor's date of death. If no administration of the deceased debtor's estate was opened before the fourth anniversary after the debtor's date of death, 51.0022(e) provides that the servicer shall, not later than the 45th day before the foreclosure sale date: address the notice of sale to the deceased debtor and unknown heirs of the debtor and post the notice on the outside of any main entry door of the debtor's real property if the property is a residence; send the notice by certified mail to the last known address of the person who paid the most recent debt service installment that was accepted by the mortgage servicer; or send the notice by certified mail to the debtor's last known address; and file in the office of the county clerk of each county in which the property is located an affidavit stating the method used to provide the notice and the reason that method was used. Finally, 51.0022(f) provides that if notice is given in accordance with this section, a subsequent opening of an administration of the debtor's estate, whether dependent or independent, does not affect the validity of a completed Sec. 51.002 foreclosure sale.

[HB 2268](#) by Senfronia Thompson relates to a provision in a construction contract that incorporates the terms and conditions of another document, and amends Sec. 272.001, Business & Commerce Code (VOIDABLE CONTRACT PROVISIONS), by adding new subsections (c), (d), (e), and (f). New 272.001(c) provides that a provision in a construction contract between an original contractor and owner that incorporates the terms and conditions of another document is voidable by the original contractor if the owner does not provide a copy of the incorporated document to the original contractor before the contract is executed. New 272.001(d) provides that a provision in a construction contract between a subcontractor and an original contractor that incorporates the terms and conditions of another document is voidable by the subcontractor if the original contractor does not provide a copy of the incorporated document to the subcontractor before the contract is executed. New 272.001(e) provides that a provision in a construction contract made void by a party to the contract under Subsection (c) or (d) is void only to the extent of the provision's applicability to the incorporated document not provided to the party. Finally, new (f) provides that (c) and (d) do not apply to the incorporation of a publicly available document.

[SB 614](#) by Nichols is the Finance Commission, Department of Banking, and Department of Savings and Mortgage Lending Sunset bill. It is the identical companion to [HB 1569](#) by Lambert, which was covered in this publication last week.

Finally, [SB 921](#) by West relates to persons entitled to a mechanic's lien on real property and amends Sec. 53.021, Property Code (PERSONS ENTITLED TO A LIEN), to add registered interior designers to those building professionals who are entitled to a mechanic's lien on the property if they aren't paid for their services.

Texas Bankers Blitz is Next Week!

Texas Bankers Blitz is March 5-6 here in Austin, and there's still time to [register](#)! The Blitz is the perfect opportunity for Texas bankers to call on their legislators and talk to them about the issues impacting their customers, their employees, and their shareholders. Space is still available, so register today!

Getting Organized

Committees in both the House and Senate have started holding organizational hearings in the past week. The purpose of the organizational committee hearing is to allow the chairman to set forth his or her intentions for the work the committee will do during the session. This includes both the administrative (i.e., when the committee will meet, when votes will be taken, etc.) and the substantive (i.e., the issues and agencies within the committee's jurisdiction.) The heads of the agencies under the committee's purview are invited to give committee members an overview of their agencies, as are various industry stakeholders. At its most basic, the organizational hearing is an introductory hearing for the members of the committee, especially freshmen and those who haven't previously served on the committee, to begin to familiarize them with the issues, agencies, and stakeholders that will come before the committee during the session.

Committee Schedules

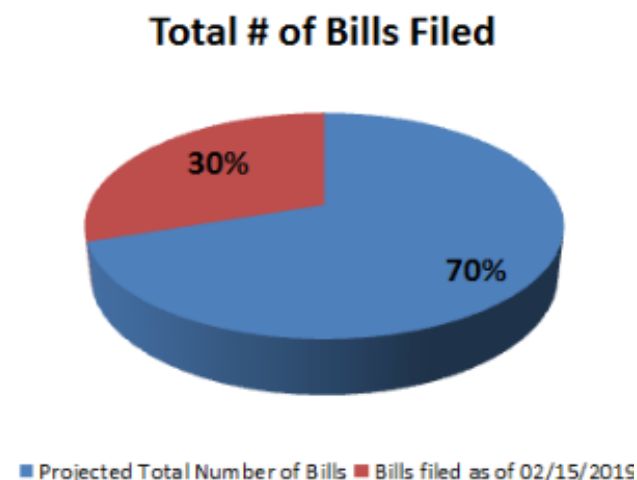
For future reference sake, TBA's main committees are and will meet as follows:

House Business & Industry (B&I) – Tuesdays at 10:30 a.m. or upon final adjournment/recess

House Pensions, Investments & Financial Services (PIFS) – Thursdays at 8:00 a.m.

Senate Business & Commerce (B&C) – Tuesdays at 8:00 a.m.

Dates of Interest & Noteworthy Bills



Friday, March 8, 2019 (60th day)

Deadline for the unrestricted filing of bills and joint resolutions other than local bills, emergency appropriations, and emergency matters submitted by the governor

Monday, May 27, 2019 (140th day)

Last day of 86th Legislature (sine die)

Sunday, June 16, 2019

20th day following final adjournment of 86th, Regular Session, which is the last day the governor may sign or veto bills passed during the regular session

491 bills were filed this week, bringing the total number of bills and joint resolutions filed to 2807. TBA's Bill

Tracking List as of Friday, February 15 can be found [here](#).

On Monday, Representative Lambert filed [HB 1569](#), relating to the continuation and functions of the Finance Commission of Texas, the Texas Department of Banking, and the Department of Savings and Mortgage Lending and to the regulation of certain financial institutions and businesses. This is the House version of the Finance Commission, DOB, and SML Sunset bill. Senator Nichols has not filed the Senate companion bill, but we expect him to do so any day now. The filed bill recommends continuing DOB and SML under the continued oversight of the Finance Commission for 12 years, until 2031. The language in HB 1569 tracks the [Sunset Commission's Report to the 86th Legislature](#) as it relates to the financial regulatory agencies and contains a number of expected accountability and transparency sections. It is our understanding that Chairman Birdwell, the Chairman of the Sunset Commission, has asked each of the Sunset bill authors to keep their bills clean (because Sunset bills are must-pass legislation, they often get overloaded with amendments). Furthermore, at last Thursday's inaugural PIFS hearing,

Chairman Murphy said he'd like to get the finance agencies' Sunset bills through his committee sooner rather than later. We hope this is the case as TBA is supportive of HB 1569 in its current form.

On Tuesday, Senator Alvarado filed two Harvey related bills. The first, [SB 796](#), relates to a disclosure regarding flood coverage under a residential property insurance policy for areas susceptible to flooding. SB 796 adds new Sec. 2002.103, Insurance Code (FLOOD COVERAGE DISCLOSURE REQUIRED FOR FLOOD-PRONE AREAS), to provide that on May 1 of each year, an insurer that issues a residential property insurance policy covering property in an area susceptible to flooding as designated by (Insurance) commissioner rule shall provide written notice to the insured: indicating whether the policy provides coverage against loss caused by flooding; and explaining the importance of flood coverage.

The second, [SB 799](#), creates a business advisory council to provide advice on economic recovery following a disaster. The 12-member council, consisting of four members appointed by each the governor, lieutenant governor, and the speaker of the house, shall advise the Texas Division of Emergency Management on policies, rules, and program operations to assist businesses recovering from a disaster; and propose solutions to address inefficiencies or problems in the state or local governmental disaster response with respect to impact on businesses and the economy.

[HB 1658](#) by Cecil Bell was also filed Tuesday and is also Hurricane Harvey related. HB 1658 relates to the seller's disclosure of certain residential real property conditions and related property insurance issues. The bill amends the seller's disclosure found in Sec 5.008, Property Code (SELLER'S DISCLOSURE OF PROPERTY CONDITION) by taking the existing flood language found in the disclosure and creating new section 4-a for this information to be disclosed more prominently. New Section 4-a on the form asks whether the seller is aware of: Previous Flooding, Improper Drainage, Water Penetration, Located in 100-Year Floodplain, Present Flood Insurance Coverage, Located in a Flood Pool, Located in a Flood Reservoir. Space for explanation is provided if the answer to any of these is yes. HB 1658 also adds new sections 9 and 10 to the seller's disclosure form. Section 9 advises purchasers that they may want to consider purchasing a separate flood insurance policy, and Section 10 provides that if the property is located in an area eligible for windstorm insurance coverage provided by TWIA, construction, repairs, and other structural changes to the property may require a certificate of compliance before TWIA can issue that coverage.

Registration Still Open for Texas Bankers Blitz!

Join the more than 100 Texas bankers who've already registered to participate in the Texas Bankers Blitz by registering today – your presence and participation are needed to show our legislators that the Texas banking industry is engaged in the legislative process! More information on the Blitz can be found [here](#).

Volume 86.5

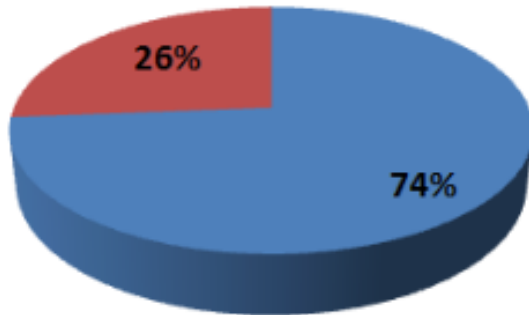
February 10, 2019

State of the State

Last Tuesday, February 5, Governor Abbott gave his third [State of the State address](#) to a joint session of the Texas Legislature. As expected, the governor declared a number of items emergency items, which means legislators can immediately get to work on the issues. The emergency items are: school finance reform; increasing teacher pay; school safety; mental health needs; property tax reform; and disaster response.

Dates of Interest & Noteworthy Bills

Total # of Bills Filed



■ Projected Total Number of Bills ■ Bills filed as of 02/08/2019

Friday, March 8, 2019 (60th day)

Deadline for the unrestricted filing of bills and joint resolutions other than local bills, emergency appropriations, and emergency matters submitted by the governor

Monday, May 27th, 2019 (140th day)

Last day of the 86th Legislature (sine die)

Sunday, June 16, 2019

20th day following final adjournment of 86th, Regular Session, which is the last day the governor may sign or veto bills passed during the regular session

379 bills were filed this week, bringing the total number of bills and joint resolutions filed to 2,316. TBA's Bill Tracking List can be found [here](#).

Harvey-related legislation continues to be filed. This week, Representative Oliverson filed [HB 1382](#), relating to a disclosure regarding flood coverage under a residential property insurance policy. HB 1382 provides that an insurer that issues or renews a residential property insurance policy that does not provide coverage against loss caused by flood shall include with the policy documents the following statement in at least 18-point bold type: "FLOOD INSURANCE: YOU MAY NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR RESIDENTIAL PROPERTY INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT."

[HB 1142](#) by Paddie and [SB 603](#) by Hall relate to the continuation and functions of the Office of Consumer Credit Commissioner and the licensing and registration of persons regulated by that state agency. HB 1142 and SB 302 are the OCC's Sunset bills that continue the agency for 12 more years and propose the changes adopted by the Texas Sunset Commission. The Sunset bill(s) for the Finance Commission, the Department of Banking, and the Department of Savings and Mortgage Lending should be filed within the next week or so.

[HB 1473](#) by Middleton relates to the disclosure of certain relationships with local government officers and vendors. For background purposes, in 2015, legislators enacted [HB 23](#) relating to the disclosure of certain relationships with local government officers and vendors. HB 23 amended Chapter 176, Local Government Code (DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION), and required local government officers to file conflicts disclosure statements in a number of situations. HB 1473 seeks to expand the number of situations in which Conflict of Interest Forms must be filed by local government officers. This expansion is both in the form of an expanded definition of "business relationship", which is defined to mean a connection between two or more parties based on commercial activity of one of the parties, and in the form of expanding the coverage of Chapter 176 to include a vendors' subsidiary business entities. There was a great deal of confusion and uncertainty with the implementation of HB 23 four years ago; it will be interesting to watch whether HB 1473, if finally passed, clarifies or confounds compliance for local governments and the vendors who work with them.

[HB 1182](#) by Goodwin and [SB 686](#) by Alvarado relate to personal financial literacy courses for high school students in public schools. Under existing Texas law, each school district and open-enrollment charter school that offers a high school program must provide an elective course in personal financial literacy that meets the requirements for one-half elective credit. HB 1182 and SB 686 require that a course in personal financial literacy that qualifies for one-half credit shall be provided (i.e., the bills remove the elective nature of the course offering.)

Texas Bankers Blitz Right Around the Corner

[Texas Bankers Blitz](#) kicks off three weeks from Tuesday, and if you haven't registered yet, we'd love for you to join us! We have a record number of bankers participating next month, but we can always use more. It is vitally important that we show our legislators that bankers back home are paying attention, so make your plans to attend today!

Volume 86.4

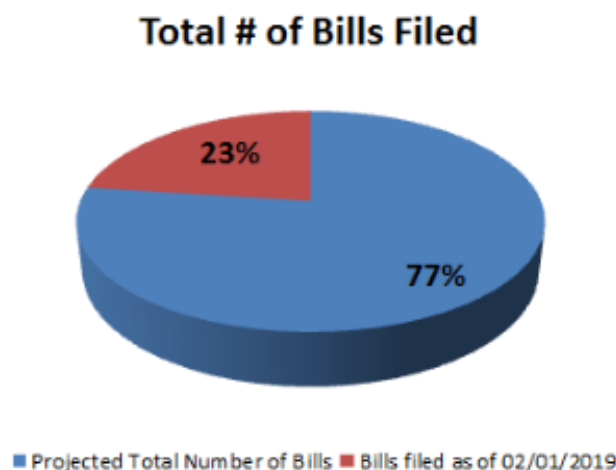
February 3, 2019

What to Expect in Week Five

Now that committees in the House and Senate have been named, committees in both chambers have started holding hearings. House Appropriations and Senate Finance have already started meeting daily, and a number of other committees have posted to hold hearings this week as well. The committees we follow – [Senate B&C](#), [House B&I](#), and [PIFS](#) – have not posted yet; however, once they do, we anticipate the first hearings will be organizational meetings that focus on the mechanics of the committees' work with invited testimony from the regulators who oversee the industries within the committees' jurisdiction.

On Tuesday, February 5, Governor Abbott will give his State of the State address to the 86th Legislature. The State of the State is required by [Article IV, Section 9](#) of the Texas Constitution. It is widely expected that the Governor will announce a number of emergency items during Tuesday's State of the State. Designating items as emergency items means legislators may begin debating the items before the 60th day of session.

Dates of Interest & Noteworthy Bills



Friday, March 8, 2019 (60th day)

Deadline for the unrestricted filing of bills and joint resolutions other than local bills, emergency appropriations, and emergency matters submitted by the governor

Monday, May 27, 2019 (140th day)

Last day of 86th Legislature (*sine die*)

Sunday, June 16, 2019

20th day following final adjournment of 86th, Regular Session, which is the last day the governor may sign or veto bills passed during the regular session

333 bills were filed this week, bringing the total number of bills and joint resolutions filed to 1,937. (TBA's tracking list can be found [here](#).)

Hurricane Harvey-related legislation continues to be filed. This week, Houston Representative Sarah Davis filed [HB 1296](#), relating to the creation of a disaster case management system by the General Land Office (GLO). HB 1296 requires the GLO to develop and maintain an electronic disaster case management system. The system must collect all information needed to obtain disaster assistance from an individual who needs housing-related assistance as a result of a disaster; and allow the individual to designate the entities to which an application for assistance and other information may be sent, including the GLO, organized volunteer groups, and local nonprofit organizations. HB 1296 authorizes the GLO to coordinate with the Federal Emergency Management Agency for use of the system and to share information between state and federal agencies relating to disaster assistance.

[HB 1307](#) by Hinojosa also relates to the creation of a disaster management system, however, it requires the Texas Division of Emergency Management (Division) to create the system. HB 1307 requires the Division, subject to the availability of funds, to contract with a vendor to develop and maintain an electronic disaster case management system. The system may be used for case management during and after a disaster and may include capability for persons affected by a disaster to apply for assistance from multiple sources.

[SB 594](#) by Kolkhorst also relates to disaster recovery and mitigation; the bill creates a business advisory council to provide the Land Commissioner advice and expertise on disaster recovery and mitigation. The advisory council will be composed on six representatives appointed by the Commissioner, and, importantly for TBA's purposes, one of the council members is to represent banking and insurance entities that provide mortgage lending and insurance for homeowners and businesses. The advisory council shall: provide advice on disaster recovery mitigation and resilience, specifically relating to housing; provide information on advanced technological systems for disaster construction engineering and other innovative solutions for addressing infrastructure risks; provide banking and insurance requirements imposed following a disaster that may affect housing construction and recovery in areas affected by the disaster; provide advice during disaster recovery on issues faced by state and local governments; and propose solutions to address inefficiencies or problems in the state or local governmental disaster response with respect to any of the above.

Last week we wrote about Senator Hancock's [SB 474](#), legislation relating to the eligibility of land secured by a home equity loan to be designated for agricultural use for ad valorem tax purposes. PIFS Chairman Jim Murphy filed the companion bill, [HB 1254](#), Thursday, January 31.

On the employer-employee relations front, [SB 589](#) by Watson relates to the prohibition of certain required nondisclosure and arbitration agreements. The bill adds new Sec. 21.0605, Labor Code (REQUIRING NONDISCLOSURE OR ARBITRATION AGREEMENTS), to provide an employer commits an unlawful employment practice if the employer fails or refuses to hire, discharges, harasses, or in any other manner discriminates against an individual in connection with compensation, terms, conditions, or privileges of employment because the individual refuses to sign an agreement prohibited under Chapter 25. The bill also adds Chapter 25, Labor Code (CERTAIN NONDISCLOSURE AND ARBITRATION AGREEMENTS PROHIBITED), which renders nondisclosure or confidentiality agreements between an employer and an employee void and unenforceable to the extent the agreements prohibit the employee from reporting sexual assault or sexual harassment. Senator Rodriguez's [SB 159](#) and Representative Neave's [HB 618](#) also prohibit nondisclosure or confidentiality agreements between employers and employees to the extent those agreements prohibit the employee from reporting sexual assault or sexual harassment.

Countdown to Texas Bankers Blitz

Texas Bankers Blitz, TBA's biennial bankers at the Capitol event, kicks off in just four short weeks! This event not only updates participants on the banking-related bills being debated, it also provides bankers with the opportunity to see their legislators to talk about the issues impacting their banks and their customers. It is critically important for bankers to attend so their legislators know they're engaged in the process! Registration information is available [here](#), and if you have specific questions, please don't hesitate to contact celeste@texasbankers.com. We look forward to your participation!

Volume 86.3

January 27, 2019

Week Three Excitement

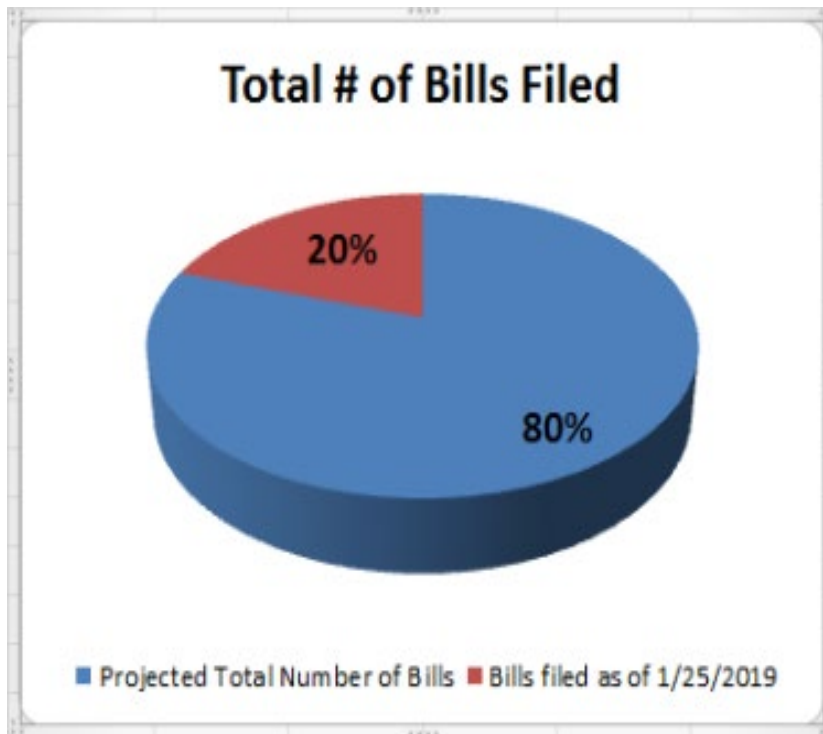
Speaker Bonnen released House Committee assignments Wednesday, January 23. We expected a number of changes in committee chairmen, and because the jurisdiction and size of committee are set by the House Rules, which were adopted January 9, we already knew the committees we'll be working with this session will look different. We found out just how different on Wednesday.

As you'll remember, TBA's two main committees in the House are Business & Industry and Pensions, Investments, & Financial Services. The Business & Industry Committee will now have nine members (instead of the seven it had last session), and its jurisdiction was expanded to include unemployment compensation and labor unions. House B&I will be chaired by Trey Martinez Fischer; Drew Darby will serve as B&I's vice chair. Other committee members include: Michelle Beckley, Nicole Collier, Brooks Landgraf, Joe Moody, Tan Parker, Jared Patterson, and Hugh Shine. Only two of the members of B&I served on the committee last session, which means we have a lot of work to do introducing TBA to these legislators and educating them on our issues.

For the past few sessions, Investment & Financial Services (IFS) was our second main House committee. IFS has rejoined the House Pensions Committee, which means our second main House committee is Pensions, Investments & Financial Services (PIFS). The committee's jurisdiction has been expanded to cover public retirement system benefits and financial obligations (i.e., pensions.) Last session IFS had seven members; this session PIFS has 11 members. Jim Murphy is the chairman of PIFS; Hubert Vo is the vice chair. The remaining committee members are: Gio Capriglione, Dan Flynn, Barbara Gervin-Hawkins, Roland Gutierrez, Stan Lambert, Jeff Leach, Oscar Longoria, Phil Stephenson, and Gene Wu. Only two members of PIFS served on IFS last session, so, again, TBA, and our member bankers, have our work cut out educating these legislators about the issues impacting the Texas banking industry and the customers we serve.

TBA maintains a database of the relationships our members have with their legislators, so if you know any of these committee members, or any legislator for that matter, make sure to let us know by submitting the [Who Do You Know?](#) form on our website!

Noteworthy Bills



The pace of bill filings remained strong last week, with over 260 bills being filed. Of those, the following are worth a mention.

[HB 977](#) by Thierry relates to creating the criminal offense of financial abuse of an elderly individual. HB 977 adds new Sec. 32.55, Penal Code (FINANCIAL ABUSE OF ELDERLY INDIVIDUAL), and creates a felony offense for the knowing engagement in the financial abuse of an elderly person. Financial abuse is defined to mean the wrongful taking, appropriation, obtaining, retention, or use of, or assisting in the wrongful taking, appropriation, obtaining, retention, or use of, money or other property of another person by any means, including by exerting undue influence. While HB 977 defines

financial abuse to include financial exploitation, it is troubling that the bill's definition of financial exploitation does not mirror that definition of financial exploitation found in Chapter 280 of the Finance Code. We will work with Representative Thierry and her staff to ensure that her legislation complements existing law regarding the exploitation of the elderly and vulnerable adults.

[HB 1036](#) by Beckley relates to mandatory sales price disclosure in real property sales and adds new Sec. 12.0013, Property Code (MANDATORY SALES PRICES DISCLOSURE), to provide that a person may not file for record or have recorded in the county clerk's office an instrument conveying real property under a contract for sale unless the instrument discloses the sales price of the property. Failure to include the sales price information in the record subjects the purchaser to a civil penalty in an amount equal to five percent of the sales price of the property.

[HB 1061](#) by Minjarez relates to mandatory arbitration as a condition of employment and adds new Sec. 26.001, Labor Code (MANDATORY ARBITRATION AS CONDITION OF EMPLOYMENT), to provide that an employer may not require an employee to sign a mandatory arbitration agreement as a condition of employment unless, on hiring the employee: 1) the employer verbally reviews the agreement with the employee; and 2) the employer and employee sign an acknowledgment that the employer has reviewed the agreement with the employee, answered the employee's questions and concerns relating to the agreement, and both parties understand their rights and responsibilities under the agreement. Both the arbitration agreement and the acknowledgment must be provided to the employee in the employee's native language.

[SB 398](#) by Zaffirini is the companion legislation to [HB 592](#) and authorizes credit unions to act as school district depositories. TBA opposes this legislation, and we encourage each of our readers to reach out to your legislators and voice your opposition to these bills as well.

[SB 474](#) by Hancock relates to the eligibility of land secured by a home equity loan to be designated for agricultural use for ad valorem purposes, and is clean up legislation to last session's [SJR 60](#), the TBA-supported home equity reform constitutional amendment. SJR 60 repealed the constitutional prohibition on home equity loans on homestead property designated for agricultural use. While the constitution no longer prohibits a property owner whose homestead has an ag use designation from securing a home equity loan on that homestead, Sec. 23.42(a-1) of the Tax Code still provides that an individual is not entitled to have land designated for agricultural use if the land secures a home equity loan. SB 474 repeals Sec. 23.42(a-1) of the Tax Code.

Texas Bankers Blitz is Right Around the Corner

If you haven't registered to attend the Texas Bankers Blitz, held in Austin March 5-6, what are you waiting for? Information and registration details are all available [here](#). This biennial event is right around the corner, and our hotel block is filling up fast, so make your plans today!

Volume 86.2

January 21, 2019

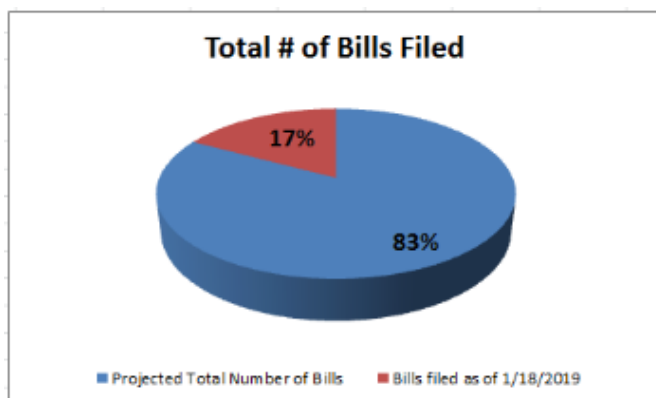
Week Two Excitement

Lieutenant Governor Dan Patrick released Senate committee assignments Friday, January 18. Looking back two years ago, it appears as though Governor Patrick announced the Senate Committees on the exact same date. Helmed by Governor Patrick, the Texas Senate is definitely ready to get down to business!

The bulk of banking-related legislation goes through the Senate Business & Commerce Committee, which will continue to be chaired by Senator Kelly Hancock. The majority of the members on the committee served last session as well; however, they will be joined by Jose Menendez and Freshman Angela Paxton. The full B&C committee membership can be found [here](#).

The 86th session is the second session TBA has advocated for legislation creating a central database for the filing of agriculture liens. To this end, we are delighted the new Senate Committee on Agriculture will be chaired by Senator Kel Seliger. The full Ag Committee membership can be found [here](#).

Noteworthy Bills



Right at two hundred bills were filed last week, which means if around 6,500 total bills get filed this session, legislators are about 17% of the way to that number. TBA's [Bill Tracking List](#) has all of the bills we're following to date.

While we wrote about a couple of cyber bills in the [January 6 publication](#), a handful of additional cyber/personal information bills have been filed in this space that are worth taking a look at.

[HB 869](#) by Hefner and [SB 315](#) by Hughes relate to the prosecution of organized criminal activity involving the interception, use, or disclosure of certain communications. These companion bills are designed to

address card skimming operations, and they add the unlawful interception, use, or disclosure of wire, oral, or electronic communications to Texas' organized criminal activity statute. Card skimming rings have been especially prevalent in the East Texas region represented by Hefner and Hughes, so these bills are clearly aimed at assisting the efforts of law enforcement to bring these criminals to justice.

[SB 64](#) by Nelson relates to cybersecurity and requires the Higher Education Coordinating Board to work with the Department of Information Resources (DIR) to identify and develop strategies to incentivize higher education institutions to develop degree programs in cybersecurity. The bill amends the definition of "disaster" in the Government Code to include cybersecurity events, which means the governor could declare a state of disaster following a cyber attack. Finally, under existing Texas law, a state agency that experiences a security breach must comply with the breach notification requirements imposed on private businesses and, within 48 hours of discovering the breach, suspected breach, or unauthorized exposure, notify the Department of Information Resources, including the chief information security officer, of the breach. SB 64 amends this section of the Government Code to also require the state agency, not later than the 10th business day after the date of the eradication, closure, and recovery from a breach, suspected breach, or unauthorized exposure, to notify DIR, and the chief information security officer, of the details of the event.

[HB 904](#) by Minjarez relates to requiring the University of Texas at San Antonio to conduct a study regarding cyber attacks against financial institutions in this state. The study must include an evaluation of:

- 1) the prevalence and impact of breaches of system security resulting from cyber attacks on financial institutions; and the vulnerability of financial institutions to cyber attacks and the security risks cyber attacks present to those institutions;
- 2) the identification of any projects necessary to modernize the security systems of financial institutions; any recommendations to improve the cybersecurity infrastructure of financial institutions; and best practices to prevent or lessen the impact of cyber attacks on financial institutions; and
- 3) an examination of any other aspect of cyber attacks on the operation of financial institutions as considered appropriate.

In conducting the study, UTSA is to consult with DIR, the Department of Banking, the Department of Savings and Mortgage Lending, the Credit Union Department, community stakeholders, and other interested parties, and present its written report to the Executive and Legislative branches not later than December 1, 2020.

Finally, [SB 73](#) by Nelson relates to personal information that may be omitted from certain property records and expands the definition of "instrument" found in Section 11.08, Property Code (PERSONAL INFORMATION IN REAL PROPERTY RECORDS), to include not just deeds and deeds of trust, but also any other record recorded by a county clerk related to real property, including a mineral lease, a mechanic's lien, and the release of a mechanic's lien. This change means that any real property record recorded by a county clerk is not required to contain an individual's SSN and the preparer of a document may not include an individual's SSN in a document that is presented for recording in the office of the county clerk.

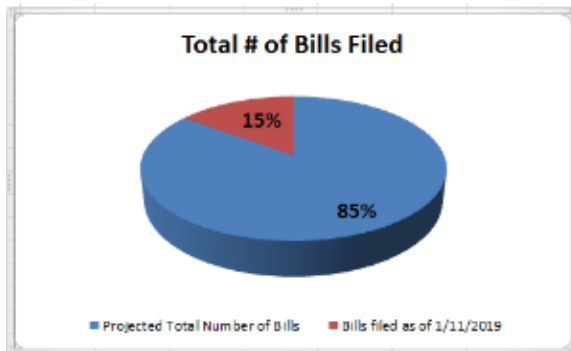
2019 TBA Legislative Events

[Texas Bankers Blitz](#) is six weeks from tomorrow, and the [Washington Summit](#), TBA's annual trip to Washington, DC to visit with the Texas Congressional Delegation, is just 10 weeks away. Registration for both events is open, so make your plans to attend today!

One Down, 19 To Go . . .

The first week of the 86th Session is officially in the rearview mirror. The opening of the legislature was filled with the expected pomp and circumstance and the predicted election of Speaker Dennis Bonnen to lead the Texas House this session. Lieutenant Governor Dan Patrick was unexpectedly called to Washington, D.C. for the first day of the session, but he was back on the dais leading the Senate the next morning. The second week of the 86th will be filled with inaugural festivities for Governor Abbott and Lieutenant Governor Patrick, whose Oath of Office Ceremony is scheduled for 11:00 a.m. Tuesday, January 15.

Noteworthy Bills



Until committees are named, the weekly State Legislative Update will be dominated by bills filed. The bills highlighted in this week's edition focus on disaster-related legislation filed in the wake of Hurricane Harvey. The [TBA Bill Tracking List](#) with all of the bills we're tracking can be found here.

[HB 283](#) by Perez, relating to a disclosure regarding flood coverage under a commercial or residential property insurance policy. HB 283 amends the Insurance Code to provide that an insurer that issues a commercial or residential insurance policy that does not provide coverage

against loss caused by flooding must include at the top of the policy's declarations page the following statement: "WARNING: THIS POLICY DOES NOT PROVIDE COVERAGE AGAINST LOSS CAUSED BY FLOODING."

[HB 668](#) by Ken King, relating to the regulation of property and casualty insurance rates in certain areas after a disaster declaration. HB 668 amends the Insurance Code to provide that if the governor designates a disaster area, an insurer may not consider loss and expense experience caused by the disaster in the designated area to set rates for risks outside of the designated area.

[HB 622](#) and [HJR 41](#) by Neave. HB 622, relating to a temporary limitation on the total amount of ad valorem taxes that may be imposed by a taxing unit on a residence homestead rendered uninhabitable or unusable as a result of a natural disaster, is the enabling legislation for [HJR 41](#), which proposes a constitutional amendment authorizing the legislature to limit for a temporary period the total amount of ad valorem taxes that may be imposed by a political subdivision on a residence homestead rendered uninhabitable or unusable as a result of a natural disaster. Importantly, [HJR 41](#) proposes a constitutional amendment that authorizes the legislature by general law to provide that for a temporary period following a natural disaster the total amount of ad valorem taxes imposed on a residence homestead may not exceed the amount of taxes imposed on the property in the year in which the property was rendered uninhabitable or unusable as a result of the disaster.

[SB 186](#) by Miles, relating to the maximum permitted rate of interest, sum of fees, and other amounts due during a natural disaster declaration. SB 186 adds Sec. 342.651, Finance Code (MAXIMUM INTEREST RATES DURING NATURAL DISASTER), to provide that the maximum rate of interest that can be charged is 36 percent for a consumer loan entered into in an area subject to a disaster declaration. Similarly, the bill adds Sec. 393.629,

Finance Code (MAXIMUM PERMITTED FEES, INTEREST, AND OTHER AMOUNTS DUE UNDER EXTENSION OF CONSUMER CREDIT DURING NATURAL DISASTER), to provide that the sum of all fees, interest, and other amounts in excess of principal due under an extension of credit in the form of a deferred presentment transaction or motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining, entered in an area subject to a disaster declaration, may not exceed 36 percent of the principal of that extension of credit.

[SB 285](#) by Miles, relating to information and outreach regarding hurricane preparedness and mitigation. SB 285 requires the governor to issue a proclamation each year before hurricane season instructing: individuals to prepare their property and communities for the upcoming hurricane season; state agencies to review and update their hurricane preparedness plans; and municipalities, the Texas Education Agency, the office of the comptroller, and the Department of Insurance to conduct community outreach and education activities on hurricane preparedness the last week of May of each year. The bill also requires the General Land Office to conduct an annual public information campaign before and during hurricane season to provide local officials and the public with information regarding housing assistance that may be available under state and federal law in the event of a major hurricane or flooding event.

[SB 339](#) by Huffman, relating to a seller's disclosure notice for a residential property regarding floodplains, flood pools, or reservoirs. Currently, Sec. 5.008, Property Code (SELLER'S DISCLOSURE OF PROPERTY CONDITION), requires a seller of residential real property to give the purchaser of the property the Seller's Disclosure Notice of the condition of the property being sold. This notice requires the disclosure of whether the property is located in the 100-Year Floodplain; however, this disclosure is simply a check-the-box type of item buried within the disclosure of a number of other conditions. SB 339 removes this disclosure and creates a new standalone disclosure for residential real properties located within areas prone to flooding.

Specifically, SB 339 creates new Sec. 5.020, Property Code (SELLER'S DISCLOSURE NOTICE OF FLOODPLAIN, FLOOD POOL, OR RESERVOIR), to require sellers of residential real property to give to the purchaser notice that the property is located: wholly or partly in a 100-year floodplain; wholly or partly in a 500-year floodplain; wholly or partly in a flood pool; wholly or partly in a reservoir; within five miles downstream of a reservoir and the property may flood under catastrophic circumstance or has flooded in a flood event. The notice requires a description of what each of these means, and if the sales contract is entered into without this notice being given, the purchaser may terminate the contract for any reason within seven days after the date the purchaser receives the notice from the seller or from any other person. After the date of the conveyance, the purchaser may bring an action for misrepresentation against the seller if this newly required notice was not given.

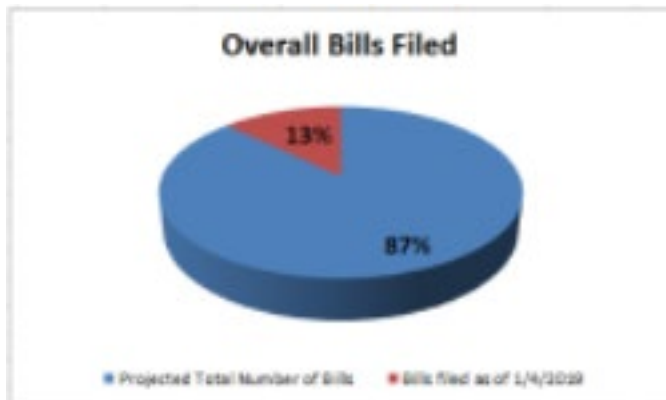
Texas Bankers Blitz

TBA's biennial legislative event, the [Texas Bankers Blitz](#), is scheduled for March 5-6 in Austin. TBA staff will provide an issue briefing the afternoon of March 5, we'll have breakfast with our legislators the morning of March 6, and then, following breakfast, bankers will venture to the Capitol to sit down with their representatives and senators to discuss the banking issues impacting their customers and communities. If you haven't made plans to attend yet, please do so today!

The Eve Before the Eve Before Session

Well, it's finally here! The 86th Session of the Texas Legislature convenes at noon on Tuesday, January 8. Legislators in both the House and Senate will take the oath of office Tuesday, and then House members will officially elect one of their own to serve as the Speaker of the Texas House. We are thrilled the presumptive Speaker of the House will be Dennis Bonnen, Chairman of the Board, President, and CEO of Heritage Bank, a TBA member bank located in Pearland.

Noteworthy Bills



We anticipate approximately 6,500 bills will be filed in the 86th Session. As of Friday, 951 bills and joint resolutions have been filed, representing 13% of the anticipated total number of bills. About 40 of these are on the [TBA Tracking List](#), and the noteworthy bills thus far include:

[HB 592](#) by Hernandez, relating to authorizing a credit union to act as a school district depository. Under current Texas law, only banks are authorized to serve as school depositories. HB 592 amends the Education Code to enable National Credit Union Share Insurance Fund-insured credit unions to

serve as depositories for charter schools and school districts.

[SB 37](#) by Zaffirini, [HB 218](#) by Krause, [HB 258](#) by Blanco, and [HB 466](#) by Hernandez are identical bills relating to the abolition of student loan default or breach of a student loan repayment or scholarship contract as a ground for nonrenewal of professional license. Currently, Sec. 157.015(g)(3) of the Texas Finance Code provides that the Savings and Mortgage Lending Commissioner may deny the renewal application of a residential mortgage loan originator license if the person seeking the renewal is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation. SB 37/HB 218/HB 258/HB 466 would repeal this section of the Finance Code, meaning the default on a student loan would not render a licensed residential mortgage loan originator ineligible to renew his professional license.

While not an identical bill, [SB 296](#) by Buckingham similarly repeals Sec. 157.015(g)(3), Finance Code, and goes one step further to provide that if during the term of the residential mortgage loan originator's license the Savings and Mortgage Lending Commissioner becomes aware of the licensee's default on a student loan administered by the Texas Guaranteed Student Loan Corporation, the Commissioner may not deny the residential mortgage loan originator's license renewal application based on this default.

[SB 207](#) by Kolkhorst, relating to the offense of money laundering, is interesting because it adds digital currency to the types of funds covered by Texas' money laundering statute, which is found in Chapter 34 of the Penal Code.

[HB 351](#) by Blanco, relating to emergency management for cyber attacks against this state, adds cyber attacks to the Texas Disaster Act of 1975. HB 351 defines "cyber attack" to mean an attempt to damage, disrupt, or gain unauthorized access to a computer, computer network, or computer system.

Finally, [HB 589](#) by Deshotel, relating to mechanic's, contractor's, or materialman's liens; authorizing a fee; changing the eligibility for community supervision, is the rewrite of Chapter 53 of the Property Code, which governs Mechanic's, Contractor's, or Materialman's Liens. TBA, along with our friends in other building trade groups (i.e., homebuilders, building owners and managers, apartments, mortgage bankers, independent bankers, and title), have opposed this legislation for the past three sessions because we are hard pressed to understand the problem this legislation is designed to fix. We continue to work with stakeholders to understand why this complex bill is needed and will certainly reach out to our construction law working group with detailed questions as they arise.

Questions? Comments?

As always, if you have any questions or comments about any of the above, please don't hesitate to let us know at grassroots@texasbankers.com.

Volume 86.i

November 12, 2018

[Forward to a Friend](#)

Here we go!

Now that last week's elections are behind us, your TBA Advocacy Team turns our attention to the 86th Session of the Texas Legislature, which is slated to begin at noon on Tuesday, January 8, 2019. Under the Rules of both the House and the Senate, legislators and legislators-elect can begin prefiling bills for consideration during the 86th Session the Monday after the general election preceding the next regular legislative session. That Monday is today, November 12, and as of 11:30 this morning, 393 bills and joint resolutions have been filed. We expect to see around 6,000 bills filed before the bill filing deadline in March, so these first bills are small drops in a very deep bucket.

For first time readers, here's a reminder about the Texas Legislature. Legislators meet for 140 days in odd-numbered years. There are 150 members of the Texas House of Representatives, and 31 members of the Texas Senate. The Lieutenant Governor presides over the Texas Senate; Dan Patrick is the Lieutenant Governor and was reelected last week to another four-year term. On the first day of Session, House members officially elect one of their own to serve as Speaker of the House. The Speaker is the presiding officer of the Texas House of Representatives. The current Speaker of the House, Joe Straus, did not run for reelection, so there will be a new Speaker next session.

Since prefiling has begun, now is a good time to highlight a number of terms that will regularly be used in this publication. This is certainly not an exhaustive list; it's simply to lay the groundwork for what to expect in the initial weeks of session.

Prefiling or Prefiled.

Prefiling or prefiled. As mentioned above, prefiling is the time between the election and the first day of Session when Representatives and Senators (and those elected but not yet sworn in) can begin filing bills. With the exception of the first 20 House bills and the first 30 Senate bills, all bills are filed in numerical order. (The 20 House bills and 30 Senate bills are reserved by leadership for major legislation.) A bill with a lower number has no more chance of passing than a bill with a higher number. After the Clerk's office in the House and the Secretary of Senate's office in the Senate assign bill numbers, it is up to the author of the bill to do all he or she can to ensure the bill's final passage.

House Bills are designated as H.B. XXX, with the XXXs representing the bill number. So, when you read 86R H.B. 233, this refers to a bill filed by a member of the Texas House of Representatives for consideration in the 86th Regular Session of the Texas Legislature. Senate bills are designated by S.B. Often, 86R will be omitted, but don't let that confuse you. Unless otherwise indicated, all bills discussed in this publication will be for the 86th Regular Session.

Referred to committee.

Referred to committee. After filing, and once the session convenes, all bills must be read into the record and referred to a committee before any substantive work on the legislation can begin. In the House, the Speaker of the House and his staff decide the committee to which a bill should be referred. In the Senate, this job belongs to the Lieutenant Governor and his staff. Again, bill referral cannot take place until the legislature convenes. Bill referral continues until the bill filing deadline. The bill filing deadline for the 86th Session (i.e., the last day bills can be filed) is Friday, March 8, 2019. This is the 60th day of the legislative session. This day will be discussed in more detail as it draws near.

A bill is referred to the committee that has subject matter jurisdiction over the issues being proposed in the bill. For TBA's purposes, our main committees are Senate Business & Commerce (B&C), House Investments and Financial Services (IFS), and House Business & Industry (B&I) because these are the committees that have subject matter jurisdiction over banking issues. This is where the majority of the bills we follow and track will go, and you'll see many, many banking related bills being referred to each of these committees.

Set for hearing.

Set for hearing. When a bill is set for hearing, it means the author of the legislation has requested a hearing for the bill, and the chairman of the committee to which the bill is referred has scheduled the bill for a public hearing. Generally, bills aren't set for hearing until the end of February, at the earliest.

All legislation must have a public hearing in order to advance in the legislative process. Usually, a bill set for hearing will be heard on its first hearing date. However, this is not always the case, and should a hearing for a bill be postponed, it doesn't necessarily mean the legislation is dead. There are so many moving parts in the legislative process, a postponed hearing could simply mean that the author of the bill had a scheduling conflict and was unable to attend the hearing (lots of committees meet at the same time, and legislators generally serve on at least committees each session.)

Lay a bill out.

Lay a bill out. When a legislator arrives at the public hearing to present his bill to the full committee, legislative vernacular says that legislator is laying his bill out to be heard. This is when the Representative or Senator gives the committee background on the issue(s) being addressed in the bill, explains the problem(s) the bill is seeking to fix, and contains the legislator's proposed change(s) to Texas law that will provide that fix.

In order to pass out of the committee and move to the next step of the legislative process, a bill must receive the affirmative vote of a majority of the members of the committee.

What next?

The next steps of the legislative process are trickier because there are a number of legislative hurdles that have to be cleared before a bill actually makes it to the floor of either chamber. However, for our purposes, and so as not to burden you with any more legislative minutiae than is completely necessary, the important thing to remember is that after a bill passes out of committee, it must be considered and passed by a majority in the full House (76 of 150 members) if it is a House bill or a majority of the full Senate (16 of 31 members) if it is a Senate bill. Proposed constitutional amendments in the form of joint resolutions require the affirmative vote of two-thirds of the membership of each house for adoption (so, 100 affirmative votes in the House and 21 votes in the Senate.)

Because nothing is ever as easy as it needs to be, a bill actually has to pass twice in each house before it can go any farther in the legislative process. The Texas Constitution requires a bill to be read on "three several days" in each house before it can have the force of law. The first reading is when the bill is introduced and read into the record. The second reading is the first time the bill is considered by the full chamber and passes. The third reading is final passage. After final passage in the chamber of origin, the bill goes across the capitol rotunda to the other chamber (to the Senate if it's a House bill, to the House if it's a Senate bill) and the above process starts all over. Makes you wish you'd paid closer attention to [Schoolhouse Rock!](#), doesn't it?

The legislative process can be confusing and, at times, unpredictable, even for those of us whose jobs require us to pay attention. However, it's not rocket science, and, as we have a citizen legislature in Texas (legislators aren't full-time legislators; rather, they're ordinary citizens with actual outside jobs who devote an extraordinary amount of time to public service for very little pay), it's a process that is designed to be understood by all.

Your TBA Advocacy Team follows the legislative process and advocates on your behalf at the Texas Capitol.

Please don't hesitate to let us know if you have any questions about the process or specific legislation. The easiest way to do so is email grassroots@texasbankers.com or call (512)472-8388 and ask to speak to Chris, John, or Celeste.

Looking for more?

People in and around the Capitol find out what's going on with Texas government and the officials elected to lead it at www.texastribune.org. The Texas Tribune is a member-supported, nonpartisan media organization that informs Texans about public policy, politics, government and statewide issues, and it's a great resource for information during the legislative session.

State Issues Update Primary Edition

February 16, 2018

[Forward to a Friend](#)

2018 Texas Primary Election

Election Date: Tuesday, March 6
Early voting: Tuesday, February 20 - Friday, March 2

For historical purposes . . .

([from the Secretary of State's website](#))

2014 Primary

Voting Age Population:	18,915,296
Registered Voters:	13,601,324
General Election Turnout:	4,727,208
Primary election Turnout:	1,918,107

2018 Primary

Voting Age Population:	19,502,633 *
Registered Voters:	15,249,541
General Election Turnout:	
Primary Election Turnout:	

* This is the VAP from the November 2017 constitutional election.

WHO IS ON THE BALLOT?

Senator Ted Cruz and every major statewide official -- governor, lieutenant governor, attorney general, comptroller of public accounts, commissioner of agriculture, land commissioner, and one of the state's three railroad commissioners. There are a number of statewide judicial races on the ballot as well.

Every member of the U.S. House of Representatives. Keep in mind: eight members of the 36-member Texas Congressional delegation are not running for reelection.

15 of Texas' 31 state senators (they serve 4-year terms.) Note: Senator Van Taylor (Plano) elected not to run again and is instead running for Texas' 3d Congressional district.

Every member of the Texas House of Representatives. Note: 13 of the 150 members of the Texas House are not running for reelection.

WHAT RACES ARE CONSIDERED TO BE THE MOST CONTESTED?

This shifts all day, every day. Ross Ramsey with the [Texas Tribune](http://www.texastribune.org) has put together a "[Hot List](#)" of races he

views as being the most up in the air.

Generally speaking, the business community is watching the following races most closely:

Congress:

CD-2	Ted Poe seat	CD-16	Beto O'Rourke seat
CD-3	Sam Johnson seat	CD-21	Lamar Smith seat
CD-5	Jeb Hensarling seat	CD-23	Will Hurd
CD-6	Joe Barton seat	CD-29	Gene Green seat
CD-7	John Culberson	CD-32	Pete Sessions seat

State Senate:

SD2	Bob Hall	SD30	Craig Estes
SD8	Van Taylor seat	SD31	Kel Seliger
SD17	Joan Huffman		

Texas House:

HD2	Dan Flynn	HD89	Jodie Laubenberg seat
HD8	Byron Cook seat	HD98	Giovanni Capriglione
HD18	Ernest Bailes	HD99	Charlie Geren
HD23	Wayne Faircloth	HD106	Pat Fallon seat
HD31	Ryan Guillen	HD114	Jason Villalba
HD45	Jason Isaac seat	HD121	Joe Straus seat
HD47	Paul Workman	HD122	Lyle Larson
HD52	Larry Gonzales seat	HD134	Sarah Davis
HD88	Ken King	HD150	Valoree Swanson

("Seat" is used above to indicate races where the incumbent is not running for reelection.)

WHERE CAN I FIND MORE INFORMATION ABOUT THE PRIMARY?

www.votetexas.gov

www.vote411.org

WHEN IS THE ELECTION?

Election Day is **Tuesday, March 6**. Early voting begins Tuesday, February 20 and runs through Friday, March 2.

WHY SHOULD YOU VOTE IN THE PRIMARY?

Gone are the days a pro-business voter could wait until November to cast his or her vote. From a business perspective, most elections in Texas are now decided in the primary. Four years ago, 14.1% of the voting age population voted in the March primary. Should 14.1% of Texas voters decide whether Texas business thrives?

Volume 85.16

May 28, 2017

[Forward to a Friend](#)

All Good Things Must Come To an End

Tomorrow, May 29, is the 140th day of the 85th Legislature (the 140th day is the last day). Today is the last day for both chambers to adopt conference committee reports, and tomorrow's business is reserved for technical corrections. Once the business of the day is concluded, both chambers will adjourn *sine die*, hopefully until the 86th Session of the Texas Legislature kicks off at noon on January 8, 2019. (In all honesty, the talk regarding the

likelihood (inevitability) of the governor calling a special session has reached a fever pitch this weekend, so legislators may be back in Austin before we know it tackling the issues the governor puts on the call.)

If you haven't registered for our 2017 Legislative Update Tour, there's still plenty of time to do so! We'll be kicking the tour off with a breakfast in The Woodlands on Monday, June 19, and we'll wrap up our 18-stop tour with a lunch in El Paso on Thursday, June 29.

We'll talk about the legislative progress TBA made on your behalf at the capitol this session. Our legislative wins include: home equity reform; streamlining the statutory new accounts form; strengthening Texas' laws governing the financial exploitation of the elderly; and ensuring an ill-advised rewrite of the state's mechanic's, contractor's, and materialman's lien laws did not finally pass. We'll also talk about regulatory relief efforts at the federal level and discuss our prospects for success. Registration information, along with locations, dates, and times, is all available [here](#). One hour of CLE credit is offered.

Thanks for spending part of your Sunday afternoons/evenings with me this session. If you have any questions, please don't hesitate to [let me know](#).

Happy *Sine Die*!

Volume 85.15

May 14, 2017

[Forward to a Friend](#)

All Hands on Deck

There are 10 days for the House and Senate to take action on bills on second and third reading, and these 10 days are incredibly important for the legislation we're tracking through the process. If you're not counting down the days like we are, the 85th Regular Session of the Texas Legislature ends in 15 days.

Our latest priority bill list can be found [here](#).

What we're watching this week is described below.

First and foremost, [HB 2832](#), Chairman Oliveira's tax lien lending bill, is set to be heard in the Senate Business & Commerce Committee Tuesday, May 16 at 8 a.m. We wrote last week that the bill passed the House Saturday, May 6. HB 2832 is the TBA-supported bill that simply requires a borrower interested in taking out a tax lien loan to give his preexisting lienholder notice 10 days before closing that tax lien loan. Here is the [push piece](#) we're using with legislators when we visit with them about HB 2832; we've also shared these [facts about tax lien lending](#).

Senator Robert Nichols is sponsoring the bill in the Senate, and TBA could not ask for a better sponsor. We face stiff opposition in the Senate, though, and if you haven't called your legislator yet to offer your support, it is **very important that you call first thing Monday** and ask your Senator to **support HB 2832**. This is especially true if your Senator is one of the nine members of Senate B&C. Those nine Senators are:

Kelly Hancock, Chair: (512)463-0109
Brandon Creighton, Vice Chair: (512)463-0104
Donna Campbell: (512)463-0125
Craig Estes: (512)463-0130
Robert Nichols: (512)463-0103
Charles Schwertner: (512)463-0105
Larry Taylor: (512)463-0111
John Whitmire: (512)463-0115
Judith Zaffirini: (512)463-0121

If HB 2832 is voted out of Senate B&C like we believe it should be, then watch for another Action Alert from your TBA Lobby Team with our next request. Even though we can almost see the light at the end of the legislative tunnel, we have to remain vigilant to ensure our legislative program succeeds – this is what grassroots advocacy

is all about!

Tomorrow morning the Senate State Affairs Committee will hear testimony on HB 1217 and HB 1463, two TBA supported bills that aren't on our priority list, but if finally passed, have the potential to make positive impacts on the business of banking in the State of Texas.

[HB 1217](#) is Tan Parker's electronic notary public legislation that would authorize Texas notaries to perform notarial acts using online notarization. TBA is supportive of this bill, which is being spearheaded by the Texas Mortgage Bankers Association, and will drop a card in support of HB 1217 at tomorrow morning's hearing.

State Affairs will also take testimony on John Smithee's [HB 1463](#) tomorrow morning. HB 1463 relates to procedures for actions alleging failure to comply with certain standards to accommodate persons with disabilities, and the bill is aimed at "drive-by" lawsuits against small businesses alleging violations of the ADA. HB 1463: requires a complainant to send a business a notification of its intent to sue under the ADA, stating the specific alleged violation; gives the business owner 60 days to cure the alleged violation before the complainant may commence the lawsuit; and prohibits attorneys from demanding settlement amounts in the initial alleged violation letter. TBA supports this bill and will indicate such at tomorrow morning's hearing.

Committees will continue to post hearing agendas as the week goes on, and we will alert you if something bad for banking appears to be moving. If you don't hear from us before then, we'll be back next Sunday with another update of what your TBA Lobby Team is doing for you at the Capitol in the waning days of the Session. Have a great week, and don't hesitate to [let us know](#) if you have any questions.

Volume 85.14

May 7, 2017

[Forward to a Friend](#)

Legislative Deadlines Are Coming

Every Session around this time a calendar showing the end of session legislative deadlines becomes a very important piece of paper for Capitol observers. Today is the first day depicted on this [session's calendar](#), and this is a good and a bad thing. It's good because even though sometimes it doesn't feel like it, the end of session really is near. We only have 22 more legislative days until *sine die*. It's bad because it means there are only 22 more legislative days until *sine die* -- there's not a lot of time to get bills passed, but there's still a whole lot of time for bills we don't want to pass to finally make it through the process. Either way, I will take great pleasure in marking each day off the calendar as we wearily tread towards May 29.

Two weeks ago, I provided you with an [update](#) of TBA's 2017 Legislative Agenda. Today, I'll give you the latest on these items. Here's a [handy reference guide](#) if you don't want to read the words below.

Home Equity

First, yesterday was a very good day on the home equity front. [SJR 60](#) was adopted 143-0. Since SJR 60 was already adopted in the Senate, and the JR received more than 100 votes in the House, this means SJR 60's next step is to be filed directly with the Secretary of State. The amendment will be on the ballot on November 7, 2017, and if approved by a majority of the Texans voting in that election, will take effect January 1, 2018. This is a huge accomplishment!

Chapter 53 Rewrite

The Chapter 53 rewrite bill, [HB 3065](#), was voted out of the House Business & Industry Committee Wednesday, May 3 and sent to House Calendars. As the calendar linked above shows, Thursday, May 11 is the last day for the House to consider non-local House bills on Second Reading, and this bill hasn't made it on a calendar yet. So, time *may* be on our side on this bill dying. We will continue to work to ensure the House Calendars Committee is the last stop for HB 3065 this session by reminding committee members of the considerable opposition to the bill. Because there is a Senate companion ([SB 1506](#) by Hinojosa,) we can't entirely stand down on this issue until Saturday, May 20, which is the last day for House committees to report Senate Bills. However, SB 1506 hasn't even had a committee hearing in the Senate, so the Senate bill successfully moving is highly unlikely to happen because of how many steps in the legislative process the bill would have to go through

between now until May 20. Strange things start happening at this point in the legislative session, though, so vigilance is essential.

Elder Financial Abuse

The House passed Chairman Parker's [HB 3921](#) on Third Reading 128-10 Thursday, May 4. The bill was read the first time in the Senate Friday, May 5 and was referred to Senate Business & Commerce that same day. I expect HB 3921 will be placed on one of B&C's hearing agendas this week, so the prospects for our elder financial exploitation legislation look good.

Statutory New Accounts Form

Next up is SB 714 by Seliger. [SB 714](#) is Seliger's legislation that cleans up the New Accounts Form found in Sec. 113 of the Estates Code. TBA supports this legislation, and I'm happy to report the Senate passed SB 714 on Wednesday, April 26. Unfortunately, credit unions were able to get themselves exempted from this bill's application. They did this, in part, by having 700 credit union customers in Seliger's district call and email the Senator voicing their opposition to the bill. Senators Perry and Menendez both went to bat for credit unions when the bill was being debated on the Floor of the Texas Senate, and when all was said and done, credit unions weaseled themselves out of this consumer protection statute again. The bill was referred to the House Investments & Financial Services Committee Tuesday, May 2. SB 714's House Companion, [HB 1752](#) by Farrar, was heard in House IFS Tuesday, April 25 and was left pending at that time. At some point over the next 16 days (Tuesday, May 23 is the last day for the House to consider Senate bills on Second Reading) one side in this dispute will blink – either TBA on behalf of the bankers or the credit unions on behalf of their members – and this legislation will start moving again. TBA continues to pursue all avenues to get this important bill passed.

Powers of Attorney

Both [SB 926](#) and [HB 1974](#), Senator Rodriguez and Representative Wray's legislation rewriting the durable powers of attorney laws in the state, are on Monday's calendars in their respective bodies. TBA continues to oppose these bills because they require banks to accept any power of attorney presented to them except in limited circumstances. We have provided amendatory legislation to Senators to exempt FDIC-insured institutions from the mandatory acceptance provision, however, we are not getting much traction on this issue. If you are concerned about your bank's employees being required to accept a power of attorney, **call your legislator now** and ask him or her to **vote no** on SB 926 in the Senate and HB 1974 in the House.

Tax Lien Lending

Yesterday was a good day on the tax lien lending front. [HB 2832](#), Chairman Oliveira's bill requiring 10-day advance notice to a preexisting lienholder prior to the closing of a tax lien loan, was finally passed by the Texas House. The final vote was 113-22, which was almost exactly the vote on this legislation two years ago (two years ago, Oliveira's [HB 1936](#) passed 114-25.) The bill will now go to the Senate, where it will be quarterbacked by Senator Robert Nichols. Hopefully, our next update on this bill will be equally as favorable.

SDSI

Senator Hinojosa's [SB 1875](#), the bill relating to the Self-Directed, Semi-Independent status of certain agencies, was received in the House on April 20 and referred to House State Affairs on May 3. The bill does not have a House sponsor listed, which is a good sign for legislation we do not want to finally pass. We will continue to monitor all sunset legislation to make sure the contents of SB 1875 don't make it onto a sunset bill that does pass (four years ago in the waning days of the 83rd Session, Hinojosa added language to an omnibus sunset bill that required the Sunset Commission to study SDSI. We are still feeling the effects of that last minute language four years later.)

Central Filing

Finally, [HB 3969](#) by Ken King passed the House on third reading 143-0 yesterday. As substituted by King in the House Ag & Livestock Committee, HB 3969 requires the Secretary of State to study the feasibility of implementing a central filing system for the filing of financing statements for ag liens. The bill now heads to the Senate where we hope to receive equally as favorable consideration. This is good news for our ag bankers, who say a central notification system for ag liens is long overdue.

As you can see, your TBA Lobby Team has had a busy, but productive, couple of weeks. If there's anything you'd like more information on, please don't hesitate to [let us know](#).

Status Update

With five weeks to go until *sine die*, rather than preview bills being set for hearing in the upcoming week, today seems like a good day to check on the progress of TBA's [2017 Legislative Agenda](#).

Home Equity Reform

[SJR 60](#) and [HJR 99](#) are both moving through the process. SJR 60 was passed by the full Senate Thursday, and HJR 99 was voted out of the House IFS Committee and sent to the Calendars Committee Tuesday. This means the legislation is in a good place. Hopefully, SJR 60 will get referred to IFS this week, and it can start catching up (in the procedural sense) to HJR 99. Based on the point they are in the process, SJR 60 will likely be substituted for HJR 99 on the floor of the Texas House, meaning it should reach the finish line (i.e., final passage) in the next few weeks. We continue to work to educate House members on the importance of these two joint resolutions, and we encourage you to do the same if you're presented with the opportunity. The materials we are distributing in support of SJR 60 can be found [here](#).

Chapter 53 Rewrite

The TBA Board of Directors directed staff to oppose legislation making significant changes to Chapter 53, Property Code, which relates to mechanic's, contractor's, and materialmen's lien laws. Last week we told you [HB 3065](#) was going to be heard in House B&I, and it was Monday night. At the conclusion of the hearing on HB 3065, at which TBA, TMBA, representatives from the Texas Homebuilders and Land Title Associations, suppliers, and advocates representing workers' rights all testified in opposition to the bill, Chairman Oliveira created a subcommittee to work on compromise language. The subcommittee is comprised of Paul Workman, who is serving as chair, and Jason Villalba and Ramon Romero. Both Workman and Villalba are coauthors of the bill, so it shouldn't be hard to discern the direction subcommittee members are leaning (hint: it's not in the direction of lenders, builders, suppliers, or the title industry.) We expect whatever "compromise" language the subcommittee develops to be voted out of the subcommittee and B&I this week. We will continue to work to educate legislators about our ongoing concerns with HB 3065 in an effort to stop the bill's progress. We continue to tell legislators that this project is big enough that it needs to be studied over the interim, not slapped together in the last few weeks of a frenzied legislative session.

Elder Financial Abuse

Thursday afternoon IFS voted on [CSHB 3921](#), and it was reported favorably as substituted. The adopted Committee Substitute is the language TBA and other members of the working group we convened last summer submitted to legislators for consideration back in January. CSHB 3921: defines financial exploitation, which is currently an undefined term in Texas law; provides that if a report is made to DFPS, then the bank may place a ten day hold on the account; provides that any person acting in good faith under this new law and reporting or holding a transaction shall have immunity from any civil, administrative, or criminal liability; and gives a bank suspecting their elderly customer is the victim of financial exploitation the ability to notify a third party on that customer's behalf so long as that person isn't the one doing the exploiting. [SB 2067](#), the Senate companion to CSHB 3921 will be heard Tuesday morning in Senate B&C.

Statutory New Accounts Form

As we have written about on a number of occasions, [SB 714](#) is Chairman Seliger's legislation seeking to reintroduce commonsense into the new account form found in [Sec. 113.052](#), Estates Code. SB 714 unwinds changes made to this form last session, and rather than having your customer initial to the right of every paragraph on the statutory form, the bill adds an acknowledgement to the end of the form that requires your customers to affirm that they have received disclosure of ownership rights to each of the accounts offered.

Hopefully, the bill will be heard by the full Senate tomorrow. It has hit a speed bump in the process, though, because Texas credit unions currently oppose the bill. Why do the credit unions oppose the bill? Because SB 714 requires credit unions to provide their customers the same disclosures banks provide their customers. Credit unions won't support the legislation because they believe compliance will be too expensive. If you haven't [contacted your Senator](#) yet to ask him or her to [support SB 714 as is](#), please do so first thing tomorrow morning!

Powers of Attorney

[SB 926](#), the Senate bill relating to durable powers of attorney, was heard in the Senate State Affairs Committee last Thursday. Last fall the TBA Board of Directors directed staff to oppose any legislation that contains a mandatory acceptance provision for powers of attorney, so we continue to oppose both SB 926 by Rodriguez and its House companion, [HB 1974](#) by Wray.

While we appreciate the work that has been done on this bill by the Real Estate, Probate, and Trust Law Section of the State Bar and the Texas Business Law Foundation, TBA remains opposed to this legislation because proposed Sec. 751.201 (ACCEPTANCE OF DURABLE POWERS OF ATTORNEY REQUIRED; EXCEPTIONS), provides that unless one or more grounds for refusal exist, a person who is presented with and asked to accept a durable power of attorney by an agent with authority to act under the power of attorney **shall**: accept the power of attorney; or before accepting the power of attorney: request an agent's certification or an opinion of counsel not later than the seventh business day after the date the power of attorney is presented; or if applicable, request an English translation not later than the fifth business day after the date the power of attorney is presented. TBA continues to believe that even with the exceptions contained in the bill, legislation requiring mandatory acceptance for powers of attorney is bad for Texas banks.

Residential PACE Lending

Our Board directed us to oppose any legislation that creates a Property Assessed Clean Energy (PACE) lending program for 1-4 family homes. Thankfully, no bill was filed to do this; however, we continue to vigilantly watch for any legislation that could become a vehicle for residential PACE.

Tax Lien Lending

[HB 2832](#) is Chairman Oliveira's legislation requiring a borrower to give his lender 10 days advanced notice before taking out a tax lien loan. TBA has supported this bill for two sessions now, and while the bill was voted out of B&I a couple of weeks ago, it is currently stalled in the House Calendars Committee. The House Calendars Committee is a 15-member Committee that is responsible for setting the legislative calendars for the Texas House. Any member of the Calendars Committee can "tag" a bill so that it will not be set on the next House Calendar. HB 2832 was sent to calendars on Monday, April 17, so as of tomorrow it will have been there for a week without being set. This is a pretty good indication that the bill has been tagged. We have been working with other supporters of the bill (IBAT, TMBA, Texas Land Title Association, the Texas Association of Realtors, and housing advocates) to get the bill "un-tagged". Hopefully, HB 2832 will break free this week and be sent to the floor of the Texas House for debate. If it doesn't, do not be surprised if you receive an Action Alert from Eric asking for your help getting the bill moving again. If your legislator is a member of the [House Calendars Committee](#), please take a few minutes to contact him or her to explain [what the bill does](#) and ask him to put HB 2832 on his priority list in that Committee

SDSI

As you know, the Texas Finance Commission is a self-directed, semi-independent agency. Our Board has directed TBA staff to oppose any effort to move the Finance Commission's self-directed, semi-independent status from the Finance Code to the Government Code. Senator Hinojosa's [SB 1875](#) is legislation relating to the SDSI status of certain agencies and the requirements applicable to, and the oversight of, those agencies. SB 1875 does not move the Finance Commission's SDSI status to the Government Code; however, TBA remains concerned that this bill is the first step to doing so, so we opposed the bill when it was considered by the Senate Finance Committee. SB 1875 passed the full Senate on April 19 and was received in the House the next day. A House author is not yet on record, but once one is, we will go to him or her and explain our concerns.

Central Filing

At the September Board meeting, our Board directed staff to research the development of a central filing system for agriculture liens in Texas. Texas' existing system for the filing of ag liens dates back to the 1980s when the Food Security Act was first passed, and, as many of our ag bankers tell us, it is woefully cumbersome and out of date. TBA convened a stakeholders meeting on central filing in Lubbock last fall, and despite it now being 2017, a number of ag groups still do not support an online system for the filing of liens. Working with IBAT, we were able to take legislative language to Representative Ken King for introduction, and King filed [HB 3969](#) back in March. On Wednesday, April 26, HB 3969 will be heard in the House Agriculture & Livestock Committee, and at that time, Representative King will introduce substitute language that will require a study of this issue over the interim. TBA is very supportive (and appreciative) of King's efforts, and we hope to work on either a study or a pilot project on central filing over the interim leading up to the 2019 session.

So, as you can see, our days have been busy, and we are making progress on our Legislative Agenda. If you have any questions about the bills we are filing, please don't hesitate to [let me know](#). Have a great week!

Volume 85.12

April 16, 2017

[Forward to a Friend](#)

Five Day Legislative Work Weeks are Here

Now that the Easter break has come and gone, legislators are preparing to spend the majority of their time between now and May 29 in Austin (that's 43 days from now for those who are counting.) Beginning tomorrow, April 17, the House will be meeting Monday through Friday for the rest of session; weekends will likely be added in May. There are thousands of bills pending at some point in the process, and legislators have the next six weeks to take action.

TBA's Bill Tracking List can be found [here](#); bills that have been set to be heard this week are listed below.

[House B&I](#)

Tuesday afternoon's [B&I Agenda](#) includes HB 2333 by Elkins. [HB 2333](#) relates to a breach of system security of a business that exposes consumer credit card or debit card information. The bill amends the Business & Commerce Code to include credit and debit card information to the existing definition of "breach of security system". HB 2333 adds new Sec. 521.024, Business & Commerce Code (BREACH INVOLVING CREDIT CARD OR DEBIT CARD INFORMATION) to provide that a business that accepts a debit or credit card for payment and retains any data related to the card other than a confirmation number of the transaction shall secure the retained information from a breach of system security. If a breach of system security occurs in which credit card or debit card information is compromised, the business shall: not more than 24 hours after discovering/receiving notice of the breach, send a notice to the attorney general; and as soon as practicable after discovering/receiving notice of the breach, send notice of the breach to each financial institution that issued a card or debit card affected by the breach.

New 521.055 (DATA SECURITY BREACH VICTIM COMPENSATION FUND) creates a data security breach victim compensation fund to pay claims to consumers who have suffered a financial loss in relation to a breach of system security and reimburse a financial institution for costs associated with a breach of system security. The office of the attorney general shall develop a claims process to make payments from the fund. Adds new 521.1515 (ADDITIONAL CIVIL PENALTY) to provide that a business that fails to secure the business's computer system and suffers a breach of system security under new 521.054 is liable to the state for a civil penalty of \$50 for each credit card and debit card from which information was compromised. Penalties collected shall be deposited to the credit of the data security breach victim compensation fund.

[HB 3065](#) by Deshotel is also on Monday's B&I Agenda. HB 3065 relates to mechanic's, contractor's, or materialman's liens and is the rewrite of Chapter 53 of the Property Code that TBA's Board of Directors directed staff to oppose as part of our 2017 Legislative Agenda. As we've discussed before, TBA opposes this legislation, which is being pushed by the Texas Construction Association, because the bill's proponents haven't described the problems in the current system that warrant this legislative 'solution'. Specific areas of concern we have about HB 3065 include: shifting liability from suppliers and subcontractors to owners; potentially providing a mechanism for subcontractors to try and pierce the corporate veil of owners; and requiring owners to monitor every subcontractor and supplier and reach out to them to confirm the status of payments (however, there is no obligation on the subcontractors and suppliers to advise others of aging receivables). TBA will be testifying against this legislation and suggesting to committee members that this issue warrants further study over the interim leading up to the 2019 legislative session.

[Senate B&C](#)

Tuesday morning's Senate [B&C Agenda](#) includes [SB 1431](#) by Zaffirini, relating to escrow payments for a loan secured by a new dwelling. As filed, SB 1431 adds new Sec. 343.107, Business & Commerce Code (DETERMINATION OF INITIAL AMOUNT OF EXCROW PAYMENTS ON LOAN SECURED BY NEW DWELLING), and only applies to a home loan secured by real property on which a dwelling has been constructed that is not included on the appraisal roll of the appraisal district that appraises the property for ad valorem tax purposes because the dwelling is a new improvement. Sec. 343.107 provides that subject to the Escrow Accounts

provisions in RESPA, if an escrow account is created for the home loan, the lender/mortgage servicer shall make a good-faith effort to ensure that the amount the borrower is initially required to pay into the escrow account is reasonably likely to be sufficient to pay the taxes based on all available evidence. A lender/mortgage servicer's failure to ensure that the amount paid into escrow is sufficient to pay the taxes does not affect the lender/mortgage servicer's interest in the real property that secures the home loan. Despite visiting with Senator Zaffirini's staff on this bill on a number of occasions, we do not believe this bill is needed. While the Senator's staff reports he knows of at least one person who was caught off guard by a tax bill in excess of the amount he was escrowing on his newly constructed home, this situation happened before 2010, and we do not believe this kind of problem routinely happens in the marketplace.

House IFS

Tuesday afternoon's IFS Agenda includes HB 1760 by Fallon. HB 1760 relates to money transmissions sent to destinations outside the United States. HB 1760 adds new Chapter 280, Finance Code (MONEY TRANSMISSION FEE), to provide that a money transmission business shall charge a fee on a money transmission for an individual that originates in this state and is transmitted to a destination outside of the US if the individual does not present proof that the individual is a US citizen or is lawfully present in the US. This section applies to a financial institution; however, a financial institution may not charge a fee to an individual that has an account with the financial institution.

New subsection (c) provides that the amount of the fee is the sum of: 3% of the total amount sent by the money transmission and \$5. On each money transmission for which the money transmission business charges a fee under this section, the business, to cover the cost of collecting the fee, may retain an amount equal to the greater of: 10% of the amount of the fee or \$1. Fees collected under this chapter must be remitted to the comptroller, and the comptroller must deposit the revenue received to the credit of a border security account. The comptroller shall retain a portion of the amount remitted to the comptroller under this section to cover the cost of administering this new Chapter. The comptroller by rule shall specify the portion to be retained. Finally, new Sec. 280.053 (BORDER SECURITY ACCOUNT) provides that the monies credited to this account in the general fund may only be appropriated to the Department of Public Safety or the Texas National Guard to provide funding for border security efforts in the state.

HB 2831 by Oliveira will also be heard Tuesday. HB 2831 relates to investments by state banks to promote public welfare and community development and amends Sec. 34.106, Finance Code (INVESTMENTS FOR PUBLIC WELFARE) to provide that a bank's aggregate equity investments to promote public welfare and community development may not exceed an amount equal to 15 percent of the bank's unimpaired capital and surplus and may not be made unless the bank is at least adequately capitalized. The bill further provides that a bank's investments, including equity investments and loans and commitments for loans, in a single entity may not exceed 25 percent of the bank's impaired capital and surplus without the prior authorization of the banking commissioner in response to a written application. The changes being made by HB 2831 put state chartered community banks on equal footing with national banks, which already have a higher limit for public welfare investments.

House JCJ

House JCJ's Agenda includes an interesting bill by Gene Wu Tuesday afternoon. HB 1435 relates to the commencement and prosecution of certain actions by county and district attorneys under the Deceptive Trade Practices-Consumer Protection Act (DTPA) and amends the DTPA to provide that "prosecuting attorney" means the consumer protection division of the attorney general's office; a district attorney; or a county attorney. Currently district and county attorneys support the attorney general when the attorney general pursues DTPA cases; HB 1435 would authorize the district and county attorneys to pursue these cases as well.

As you can see, it will be another busy week. Please don't hesitate to [let me know](#) if you have any questions about the above. Six more weeks until *sine die*!

Volume 85.11

April 9, 2017

[Forward to a Friend](#)

And then there were 50 . . . days

With seven weeks left in the 85th Session, the pace is picking up considerably. The House spent 15 hours debating the budget Thursday before passing it early Friday morning. [SB1](#), this year's budget bill, will now go to a conference committee made up of 5 Senators and 5 Representatives to reconcile the changes between the House-passed and Senate-passed versions of SB 1. (Reminder: the only bill legislators have to pass all session is the budget, and these 10 legislators will spend the next six to seven weeks reconciling the House and Senate versions of the bill.)

Here's our [latest bill list](#). The Committees and bills we're watching this week are below.

[Senate Finance](#)

Monday morning's Senate Finance Committee [Agenda](#) includes SB 1875 by Hinojosa. [SB 1875](#) relates to the self-directed and semi-independent status of certain agencies and the requirements applicable to, and the oversight of, those agencies. SB 1875 creates new Chapter 473, Government Code (PROVISIONS GENERALLY APPLICABLE TO SELF-DIRECTED AND SEMI-INDEPENDENT AGENCIES), to provide statutory provisions generally applicable to SDSI agencies, and TBA is paying very close attention to this bill because the Texas Department of Banking and the Texas Department of Savings and Mortgage Lending are two of the eight SDSI agencies in the state. Unlike [last session's bill](#) on this subject, SB 1875 leaves the financial regulatory agencies in Chapter 16 of the Finance Code (FINANCIAL REGULATORY AGENCIES: SELF-DIRECTED AND SEMI-INDEPENDENT) and simply says that financial regulatory agencies must comply with Chapter 473 of the Government Code. Again, we are closely monitoring this bill to ensure that the SDSI status of the Department of Banking and the Department of Savings and Mortgage Lending remain as they currently are in Chapter 16 of the Finance Code. At this time, TBA believes any action on SDSI as it relates to the financial regulatory agencies is unwarranted, particularly given the fact that the Texas Finance Commission will undergo [Sunset Commission](#) review in 2019.

[House B&I](#)

House B&I will also meet tomorrow morning, and Chairman Oliveira's [HB 2832](#) is on the Committee's [Agenda](#). HB 2832 is Oliveira's bill relating to notice by a property owner to a mortgage servicer that the owner intends to enter into a contract with a property tax lender. TBA is very supportive of HB 2832 because it simply requires a property owner interested in taking out a property tax loan to notify his mortgage lender 10 days before entering into that contract. This pre-closing notice is similar to what exists in home equity lending. TBA, and other trade groups interested in seeing HB 2832 finally passed, are working B&I Committee members and distributing [this piece](#) to underscore the importance of the legislation. TBA thanks First Community Bank President & CEO Wes Hoskins for making the effort to come to Austin to testify in support of HB 2832. Grassroots participation works!

[House IFS](#)

[Tuesday afternoon](#) House IFS will hear a number of financial exploitation bills, and, of these, TBA supports Chairman Parker's HB 3921. Along with stakeholders ranging from our friends at IBAT, AARP, the securities industry, and financial planners, TBA worked with Chairman Parker's office over the interim leading up to this session on common sense legislation that could enable banks to place temporary holds on the accounts of customers who they believe are being exploited. As we have written many times, Texas is already a mandatory reporting state for anyone believing an elderly person is being exploited. Because Adult Protective Services can only step in when there is an ongoing relationship between the elderly person and the alleged perpetrator, many cases of financial exploitation aren't prevented.

[HB 3921](#) attempts to stem the tide of this growing problem by: defining financial exploitation, currently an undefined term in Texas law; providing a tiered reporting mechanism such that APS is notified in accordance with existing statutory requirements, but also provides the financial institution or securities firm with the option to contact local law enforcement when no ongoing relationship exists; allowing a bank or securities firm to place a 10-day hold on an account to allow the bank or securities firm to research whether the transaction the elderly person is trying to make is a result of financial exploitation; providing that any person acting in good faith under this new law and reporting or holding a transaction shall have immunity from any civil, administrative, or criminal liability; and giving a bank or securities firm suspecting its elderly customer is the victim of financial exploitation the ability to notify a third party on that customer's behalf so long as that third party isn't the one doing the exploiting.

Again, TBA is very supportive of HB 3921, and we have committed to Chairman Parker to work to help him get the bill finally passed. At this point in time, the biggest hurdle to the bill appears to be AARP, who is withholding their support of the bill unless mandatory training for banks and securities firms is included. TBA does not, and will not, support legislation with a mandatory training component. As we have explained to AARP, and legislators,

many times, the very nature of BSA training requirements is to teach bank employees to spot suspicious activities. Furthermore, SAR forms have a place to indicate if the report relates to elder financial abuse. Finally, as recently as last year the CFPB included this particular piece in their guidance on elder financial abuse.

[House JCJ](#)

Tuesday afternoon House JCJ's [Agenda](#) includes HB 4107 by Neave. [HB 4107](#) relates to abatement or dismissal of a proceeding for an expedited order allowing foreclosure of a lien on real property and seeks to amend Section 154.208, Civil Practice & Remedies Code (MEDIATION FOLLOWING APPLICATION FOR EXPEDITED FORECLOSURE). Specifically, the bill adds new language to 154.208(e) to provide that at a hearing to determine whether a court is going to order an expedited foreclosure case to mediation, the court may abate or dismiss the application for expedited foreclosure if the court determines that at least 30 days prior to the hearing: (1) the borrower has submitted a completed loss mitigation application to the lender or servicer; and (2) the lender or servicer has not provided the borrower, in writing, a notice stating: (A) the borrower has been denied for any loss mitigation options; or (B) the lender or servicer's determination of which loss mitigation options, if any, will be offered to the borrower on behalf of the owner or assignee of the mortgage loan. TBA worked on the addition of Sec. 154.208, Civil Practice & Remedies Code, back in the 2013 session with [83R HB 2978](#), and we're surprised to see legislation seeking to make further changes to this section of the law, which we have heard no complaints about over the past four years. We will work with Neave and her staff to determine the problem she's seeking to address with this bill.

As always, please don't hesitate to [let me know](#) if you have any questions or concerns. Have a great week!

Volume 85.10

April 2, 2017

[Forward to a Friend](#)

When it rains, it pours

It's officially that time of the legislative session when there aren't two or three things are happening at the same time . . . there are 12 or 13. Committee hearing agendas are getting longer and longer, and the need to be in multiple places at the same time always exists.

TBA's full bill tracking list can be found [here](#). The bills we're watching in Committee this week are as follows:

[House Insurance](#)

Tuesday morning the House Insurance Committee will hear [HB 1675](#) by Dan Flynn. HB 1675 relates to the methods of payment to health care providers by certain health benefit plan issuers, and while it may not seem to be a bill bankers should worry about, it actually does impact TBA members. The bill provides that a health benefit plan issuer may pay a physician or health care provider by any lawful method of payment, including: ACH, wire transfer, EFT by card; payment through a private card network; or another form of EFT. HB 1675 clarifies that unless a contract between a health benefit plan issuer and the physician specifies the method of payment, a physician or health care provider may refuse to accept one of the aforementioned methods of payment. Finally, the bill sets out that a physician or health care provider that refuses to accept one of the methods of payment listed above shall give notice of the refusal to the health benefit plan issuer and specify an acceptable and otherwise lawful method of payment.

So, how does this relate to banking? HB 1675 is follow up legislation to similar legislation considered in 2015. Two years ago Senator Seliger filed [84R SB 1229](#), relating to restrictions on the use of credit card payments to settle claims for health care services. That bill initially presented itself as a dispute between doctors and health insurance companies and would have provided that a health insurance company could not use a virtual credit card to settle a claim for health care services provided by a physician. TBA quickly activated on SB 1229 when it became clear that a number of our members, both state-chartered institutions and national banks, process virtual credit card payments for insurers. SB 1229 died last session, and 85R HB 1675 simply provides that there are a number of methods of payment that may be used in contracts between health plans and physicians, and the payment methods may be established in those contracts.

[Senate Business & Commerce](#)

Tuesday morning Senate B&C will hear two of TBA's proactive legislative issues on our 2017 Legislative

Agenda. First up will be [SB 714](#) by Seliger, relating to certain account disclosures provided by a financial institution to a customer. SB 714 is clean-up legislation necessitated by the 2015 passage of [84R SB 1791](#). As we wrote back in early February, SB 714 seeks to unwind the headaches created by the 2015 legislative changes made to the Statutory New Accounts form. Those changes included requiring customers to initial to the right of every paragraph of the statutory new account form to show that each account type offered had been properly explained. Credit unions were exempted from this requirement because they were successful in arguing that compliance would be difficult and expensive.

SB 714 adds an acknowledgement to the Uniform Single-Party or Multiple Party Account Selection Form found in Sec. 113.052, Estates Code (FORM), that indicates the customer has read each paragraph of the form, received disclosure of the ownership rights to the accounts listed, and has placed his/her initials to the left of the type of account he/she wants. SB 714 also amends Sec. 113.053, Estates Code (REQUIRED DISCLOSURE; USE OF FORM) by removing the existing statutory requirement that the customer must initial to the right of each paragraph of the statutory form. The bill removes the requirement for institutions varying the format of the form provided in Sec. 113.052 that the account disclosures be given on a separate sheet in 14-point boldfaced type. New 113.053(d) provides that if a type of multiple-party account is not available from a financial institution, the financial institution is not required to make a disclosure about that type of account. Finally, SB 714 repeals Sec. 113.0531, Estates Code, which is that section of the Estates Code that establishes special account disclosure provisions for credit unions. Repealing this section of the Code will mean that credit unions will have to provide their customers with the same account disclosures as commercial banks and thrifts. TBA **strongly supports** this legislation, and we are grateful that TBA Board member Guy Young, President & CEO of First National Bank in Quitaque, has graciously agreed to testify in support of SB 714 at Tuesday morning's hearing. If your state senator sits on Senate B&C, please contact him or her and let him know you support SB 714!

The Committee will also hear [SJR 60](#) by Chairman Hancock Tuesday. SJR 60 is the home equity clean up amendment that TBA has been working on for years. Over the course of the interim leading up to the 85th session, we worked with the Texas Association of Realtors, IBAT, the Texas Mortgage Bankers Association, the Texas Credit Union Association, and the Texas Farm Bureau on agreed-to language that proposes to make a number of improvements to Texas' constitutional home equity provisions. These include: excluding from the constitutional 3% fee cap survey, appraisal, and title fees. In exchange for excluding these fees, the fee cap will be lowered from 3% to 2%. SJR 60 will also allow for the seasoned refinance of a home equity loan. This means that after a year, a homeowner can choose to refinance his home equity loan either as a home equity loan or a non-home equity loan; this change will finally do away with the notion of "once a home equity loan, always a home equity loan." Finally, SJR 60 will repeal the constitution's prohibition on home equity loans on agricultural homestead properties. TBA strongly supports this bill, and we encourage you to contact your legislators to let them know you do as well.

Finally, the Committee will hear [SB 1381](#) by Hughes, relating to photo identification for certain debit or credit card transactions. SB 1381 adds new Sec. 508.002, Business & Commerce Code (REQUIRING PHOTO IDENTIFICATION FOR CREDIT OR DEBIT CARD TRANSACTION) to provide that a merchant, in a point of sale transaction, **may** require the individual using a credit or debit card to provide photo ID verifying the individual's identity as the card holder. 508.002(b) provides that a merchant **may** choose to not accept the card for payment if the individual fails to provide photo ID verifying the individual's identity as the cardholder. Historically, Texas retailers have opposed legislation prohibiting retailers from accepting a credit or debit card unless photo ID is shown. TBA supports SB 1381 because it is a common sense approach to the issue – it simply provides that a merchant may require photo ID for point of sale transactions when a customer is using a credit or debit card.

[House Investments & Financial Services](#)

IFS has a full agenda Tuesday afternoon as well. The Committee is slated to hear [HJR 99](#) (Chairman Parker's companion bill to SJR 60 discussed above) and [HB 2839](#), Oscar Longoria's companion bill to Senator Hughes' SB 1381. The Committee will also hear a number of agency bills – bills the Departments of Banking and Savings and Mortgage Lending have brought to legislators to ensure the agencies' continued effective operations.

[House JCJ](#)

Also Tuesday, the House Judiciary and Civil Jurisprudence Committee will hear a number of bills we're following for our members. Importantly, the Committee will hear testimony on [HB 1974](#) by Wray. HB 1974 relates to durable powers of attorney, and, as the bill was filed, is legislation TBA opposes because it seeks to shift the burden of proof for the acceptance of durable powers of attorney. Under proposed Sec. 751.201 (ACCEPTANCE OF DURABLE POWER OF ATTORNEY REQUIRED; EXCEPTIONS), unless one or more grounds for refusal under Sec. 751.206 exist, a person who is presented with and asked to accept a durable power of attorney by an agent with the authority to act under the power of attorney **shall**: accept the POA; or before accepting the POA: request

an agent's certification or opinion of counsel not later than the seventh business day after the date the power of attorney is presented; or, if applicable, request an English language translation not later than the fifth business day after the date the power of attorney is presented. Proposed Sec. 751.206 (GROUNDS FOR REFUSING ACCEPTANCE) sets out 10 different instances where a person is not required to accept a durable power of attorney.

As we wrote earlier this session, Representative Wray, the bill's author, has been extremely patient in trying to negotiate compromise language on HB 1974. As a bank and title lawyer himself, he understands the complexities surrounding the bill, which is being pushed by the Real Estate, Probate & Trust Law Section of the State Bar. It's important to note, however, that many bank and business lawyers remain opposed to the bill. TBA believes that rather than pushing HB 1974 through the legislative process this session, the issue is ripe for study over the interim leading up to the 86th legislative session, which will convene in 2019. Despite the concessions that have been made with regard to the mandatory acceptance of a POA, we remain convinced that the final passage of HB 1974 as it currently stands is bad for banking in the State of Texas.

JCJ will also hear [HB 1954](#) by Murr. HB 1954 relates to convenience and trust accounts established at financial institutions and is TBA supported legislation that would amend Sec. 113.004, Estates Code (TYPES OF ACCOUNTS) by eliminating the definitions of "convenience account" and "trust account" found therein. Eliminating these two account types necessitates striking all references to these two account types found in the Uniform Single-Party or Multiple-Party Account Selection Form found in Section 113.052, Estates Code (FORM). TBA supports this legislation because our members tell us that these account types (convenience and non-testamentary trust accounts) are no longer offered by Texas banks.

This is just a snapshot of what our week will look like. As always, if you have questions about items not mentioned above, please don't hesitate to [let me know](#). Have a great week.

Volume 85.9

March 26, 2017

[Forward to a Friend](#)

64 days Until Sine Die

Generally speaking, the easiest half of the 85th Session of the Texas Legislature is behind us. The next nine weeks will be a whirlwind of committee hearings – this is certainly confirmed by looking at this week's committee postings in both the [House](#) and [Senate](#).

Interesting bills that have been posted to be heard in committee this week include the following:

[SB 813](#) by Hughes, relating to recovery of damages, attorney's fees, and costs related to frivolous regulatory actions by state agencies. One of the dozen or so bills set to be heard tomorrow morning in [Senate State Affairs](#) is SB 813, which amends the Civil Practice and Remedies Code by adding new Sections 105.005 (CAUSE OF ACTION FOR FRIVOLOUS REGULATORY ACTION) and 105.006 (RECOVERY OF ATTORNEY'S FEES AND COSTS IN FRIVOLOUS REGULATORY ACTION). New Sec. 105.005 provides that a claimant may bring an action against a state agency if the state agency takes a regulatory action against the claimant that is frivolous, unreasonable, or without foundation. New Sec. 105.006, Civil Practice and Remedies Code, provides that a person may recover, in addition to all other costs allowed by law or rule, reasonable attorney's fees and costs incurred in defending against a frivolous regulatory action during an administrative proceeding and judicial review of that proceeding if: the person prevails in the judicial review of an administrative proceeding; and the state agency is unable to demonstrate that the agency has good cause for the regulatory action.

State Affairs is also scheduled to hear [SB 869](#) by Chairman Joan Huffman. SB 869 amends the Estates Code by adding new Chapter 115, BENEFICIARY DESIGNATION FOR MOTOR VEHICLES, and adding new Section 501.0315, Transportation Code (BENEFICIARY DESIGNATION), to authorize a motor vehicle owner to designate a beneficiary for the transfer of ownership of the motor vehicle upon the owner's death.

Tuesday afternoon's [Investments & Financial Services \(IFS\) Committee](#) hearing will be a busy one for TBA. The Committee will hear five bills relating to the Public Funds Investment Act (PFIA), a couple of which we are following very closely. A few weeks ago [we wrote](#) about HB 2647 and HB 2648 by Stephenson. Both HB 2647 and HB 2648 amend Section 2256.009, Government Code (AUTHORIZED INVESTMENTS: OBLIGATIONS OF, OR GUARANTEED BY GOVERNMENTAL ENTITIES). [HB 2647](#) provides that interest-bearing banking deposits or other obligations that are guaranteed or insured by the FDIC or the National Credit Union Share Insurance Fund are authorized investments under the PFIA. [HB 2648](#) clarifies that obligations of the Federal Home Loan Banks are obligations of the United States or its instrumentalities, thus being acceptable investments under the PFIA.

Stephenson's [HB 2928](#) is also on Tuesday's agenda. HB 2928 relates to including the obligations of Federal Home Loan Banks as authorized investments for a governmental entity and the requirements for certificates of deposit or share certificates held as authorized investments for a governmental entity. HB 2928 includes the entirety of HB 2648 and also amends Sec. 2256.010(a)(3), Government Code (AUTHORIZED INVESTMENTS: CERTIFICATES OF DEPOSIT AND SHARE CERTIFICATES), by providing that a certificate of deposit or share certificate is an authorized investment under the PFIA if the certificate is issued by a depository institution that has its main officer or a branch office in this state and is secured in accordance with Chapter 2257, Government Code, or in any other manner and amount provided by law for deposit of the investing entity. The reference to Chapter 2257 is the new language. Chapter 2257 is the Public Funds Collateral Act, so essentially this change means that any CD or share certificate secured in accordance with the Public Funds Collateral Act is an authorized investment under the PFIA.

IFS will also hear [HB 1003](#) by Capriglione. HB 1003 relates to investment of public funds and proposes a number of changes to the Public Funds Investment Act. Interestingly, the bill adds new 2256.0206, Government Code (AUTHORIZED INVESTMENTS: HEDGING TRANSACTIONS), to provide that the governing body of a state agency or political subdivision (an "eligible entity") may enter into hedging contracts and related security and insurance agreements related to commodities used in the general operations of an eligible entity or used in connection with the acquisition or construction of a capital project by the eligible entity. A hedging transaction must comply with the regulations of the federal Commodity Futures Trading Commission and the SEC.

Rounding out the Committee's focus on the Public Funds Investment Act is Chairman Parker's [HB 1701](#), relating to the presentation of the investment policy of certain governmental entities to a business organization that conducts investment transactions for the entity. Currently the PFIA requires investing entities (i.e., political subdivisions) to adopt written investment policies for funds under their control. A business organization (i.e., bank) offering to engage in investment transactions with the investing entity must execute a written certification that acknowledges its receipt and review of the investment policy and its implementation of "reasonable procedures and controls" to prevent investments that are not permitted under the policy. This requirement makes sense when the business organization is providing investment advisory services. However, it does not make sense when that same business organization is also providing non-advisory services, for example when a bank provides depository services to an investing entity. HB 1701 clarifies existing law by providing that business organizations engaged to provide depository services or to clear securities transactions would not be required to certify the existence of procedures that are not within the scope of those services.

The last bill on the Tuesday IFS Agenda is [HB 2964](#) by Meyer, which provides that the three-year period of presumed personal property abandonment of a mutual fund under Chapter 72, Property Code (ABANDONMENT OF PERSONAL PROPERTY), begins on the later of the date of: the last investment in the mutual fund made by or on behalf of the owner; or the last payment to the owner or reinvestment by or on behalf of the owner of a dividend from the mutual fund.

Finally, House Judiciary and Civil Jurisprudence will hear [HB 1463](#) by Chairman Smithee Tuesday afternoon. HB 1463 is TBA-supported legislation that relates to procedures for asserting claims under the Americans with Disabilities Act. HB 1463 adds new Chapter 27A, Civil Practice and Remedies Code (ACTIONS INVOLVING THE AMERICANS WITH DISABILITIES ACT), and provides that the chapter applies to a claim under the ADA based on a respondent's failure to comply with applicable design, construction, technical, or other standards required by the ADA, including complying with website accessibility guidelines.

As the caption of the bill indicates, it is designed to set out the procedures a claimant must go through before filing a claim under the ADA. The bill provides that a claimant must provide notice of his intent to file a claim and then give the respondent time to cure the alleged defect before filing suit. If a suit is filed, the claimant must establish by a preponderance of the evidence that the respondent has not corrected one or more of the alleged violations stated in notice.

Interestingly, new Sec. 27A.008, BAD FAITH CLAIMS, provides that a claimant may not in bad faith provide a notice of intent to file a claim under the ADA. A notice of intent to file a claim is in bad faith if the notice includes a claim that the respondent has violated the ADA and is liable for that violation and the notice: does not meet the requirements set out in the Notice of Intent to File Claim Section; or describes a claim that is objectively baseless because the claimant does not have standing to file an action asserting the claim under the ADA or the premises is not subject to the requirements of the ADA.

The bill places the Attorney General in charge of enforcement of this new section, and provides the AG with the authority to seek the imposition of a civil penalty in an amount not to exceed \$50,000 for bad faith claims; an order requiring reimbursement for the reasonable value of investigating and prosecuting a violation of the bad faith claims section; and an order requiring restitution to a recipient of a bad faith notice of intent to file a claim for legal and professional expenses related to the violation.

As always, if you have any questions, please don't hesitate to [let us know](#).

Volume 85.8

March 20, 2017

[Forward to a Friend](#)

Busy days ahead

As of Friday, March 10 at 6:00 p.m., legislators had filed 6,654 bills and joint resolutions through the 60-day deadline. Thankfully, 6,654 fell short of the projected 8,000 bills we talked about a couple of weeks ago. This is, however, the 2nd highest number of bills filed in the Legislature's history. The highest number goes to legislators in the 81st session in 2009; that session 7,324 bills and joint resolutions were filed.

Not surprisingly, we are still trying to read the bills that were filed (more than 800 were filed on Friday, March 10 alone.) Every day another potential hiccup is found. And, making a busy time even more hectic, House and Senate committees are now holding substantive meetings, so in addition to digesting the bills filed before the bill filing deadline, we're now also preparing for hearings on legislation that could impact Texas bankers.

TBA's bill tracking list can be found [here](#). Important additions since we last published are as follows:

[HJR 99](#) by Chairman Tan Parker and [SJR 60](#) by Chairman Kelly Hancock. HJR 99 and SJR 60 are companion constitutional amendments that propose TBA-supported changes to our state's home equity laws. Importantly for our purposes, HJR 99 and SJR 60 exclude from the existing 3% fee cap: appraiser fees, survey fees, title insurance premiums, and the cost of a title exam report. Excluding these fees from the constitution's 3% fee cap does come at a price -- 1% to be exact. In exchange for taking the above fees outside of the fee cap, the fee cap will drop to 2%.

HJR 99 and SJR 60 will also allow Texas consumers to choose to refinance a home equity loan either as a home equity loan or a non-home equity loan. This proposed change will allow for a seasoned refinance of a home equity loan (i.e., one that has been on the books for more than a year). The proposed resolutions will also repeal the constitution's prohibition on home equity loans on agricultural homestead properties.

Home equity reform is a top item on TBA's 2017 Legislative Agenda, and we are delighted the proposed constitutional amendments are being sponsored by the chairmen of the committees the bulk of banking legislation pass through.

[HB 3921](#) and [SB 2067](#) are also TBA-supported companion bills that are being carried by Chairmen Parker and Hancock. These bills relate to the financial exploitation of certain vulnerable adults, which, you'll remember, is another proactive item on TBA's Legislative Agenda.

As background and a reminder before the bill is discussed, Texas is a "mandatory reporting" state for exploitation. This includes the financial exploitation of elderly and vulnerable adults, though "financial exploitation" is not defined in the Human Resources Code (the statute governing this areas of the law.) This means that anyone who believes an elderly person or vulnerable adult is being exploited must report to Adult Protective Services (APS). Under existing statute, APS can only get involved in cases of suspected exploitation when there is an existing relationship between the victim and the alleged exploiter. As a result, many banks find they have no resource to call when they have customers who they believe are the victims of financial exploitation from strangers, which is a growing problem because of criminals' new and creative uses of social media.

HB 3921 and SB 2067 seek to address this growing problem by adding new Chapter 280 to the Finance Code, Protection of Vulnerable Adults from Financial Exploitation, and: defining "financial exploitation"; giving a bank the option of placing a 10 day hold on an account after reporting suspected exploitation to APS; providing immunity to a financial institution (and its employees) who reports suspected exploitation so long as the report was not made in bad faith or with malicious purpose; and authorizing a bank submitting a report to APS to notify a third party reasonably associated with the elderly person/vulnerable adult of the suspected financial exploitation, unless the bank suspects the third party of financial exploitation of that vulnerable adult. The bill also covers the securities industry and duplicates the language of Chapter 280 in Section 45 of the Texas Securities Act.

Now that committees are meeting, we'll start highlighting relevant bills that have been set for hearing in the coming days. Those are as follows:

In addition to a number of minimum wage bills, the [House Business & Industry Committee](#) today will hear [HB 1470](#) by Villalba. This bill relates to the public sale of real property under a power of sale in a security instrument, and while TBA has taken no formal position on the bill, we are concerned by language found in new Sec. 22.006, Business & Commerce Code, which provides that the trustee or substitute trustee in a foreclosure is not considered a fiduciary. We will continue to work with Representative Villalba and the bill's proponent (yes, there appears to be just one) to make sure this bill is in the best interests of Texas homeowners.

Tomorrow afternoon [House Investments & Financial Services](#) (IFS) has a short agenda, with just two bills and a constitutional amendment scheduled to be heard. [HB 471](#) and [HJR 37](#) are Eric Johnson's bills relating to the creation of a savings promotion raffle. Last session Johnson authored similar legislation designed to incentivize people to deposit funds into their savings accounts by entering them into a raffle each time they deposited funds into those accounts. Last session's bill ([84R HB 1628](#)) was vetoed by the governor on the basis that it created an unconstitutional raffle. Johnson is back this session with the same legislation, but this year he also has a constitutional amendment that provides that savings promotion raffles conducted by credit unions and other financial institutions aren't unconstitutional raffles.

IFS will also hear [HB 993](#) by Walle tomorrow afternoon. HB 993 relates to providing accounting statements for non federally related mortgages and requires that the servicer of a non federally related mortgage must provide an annual statement to the borrower that contains: the amount of each payment received in the previous year and the outstanding balance of the loan. This is information all TBA members are required to provide to their borrowers under federal law; Walle is trying to get to that segment of the lending population not covered by federal law.

[House Judiciary & Civil Jurisprudence](#) also meets tomorrow afternoon. One of the bills on JCJ's agenda that we're watching is Senfronia Thompson's [HB 2102](#), the state bar's sunset bill. Though not a subject matter we typically follow, TBA has an interest in this legislation because of the Sunset Commission's recommendation that banks report to the State Bar disciplinary counsel any time a lawyer's IOLTA account is overdrawn. Thanks to the efforts of Sunset Committee members who recognize that banks should not be expected to police these accounts, this recommendation was not included HB 2102. However, it's important that we continue to monitor this legislation to make sure that stays the case.

If you have any questions about the above bills, please don't hesitate to [let me know](#). Next week's publication should be back to the normal Sunday schedule. Have a great week!

March 5, 2017

[Forward to a Friend](#)

Mad dash to the 60th day

As I've written about before, this coming Friday, March 10 is the last day for legislators to file all non-local bills for consideration this session. While the House and Senate Rules both allow for work-arounds of this constitutional deadline, the fact of the matter is for TBA's purposes, the bills we'll follow will likely be filed by Friday. The stream of bills filed last week was steady . . . between 125 and 200 bills were filed each day. I'm bracing myself for the flood of bills that is likely coming in the next five days. This is where session really starts to get fun.

TBA's latest bill tracking list can be found [here](#). Noteworthy filings from last week include:

[HB 2647](#) and [HB 2648](#) by Stephenson, which were both filed in response to a [recent Attorney General's opinion](#). For TBA's purposes, the most important question at issue in this opinion was whether certain financial transactions of the San Jacinto River Authority (SJRA) comply with the Public Funds Investment Act (PFIA). In a nutshell (and because lawyers and legislators are involved, please know this is a VERY distilled explanation of what the opinion was about), SJRA wanted the AG to determine whether or not federal home loan bank letters of credit are acceptable investments under the PFIA. The SJRA also wanted the AG to determine whether CDs guaranteed by the FDIC are authorized investments under the PFIA.

The opinion punted on the FHLB letters of credit issue and held that it couldn't say whether a Texas court would determine as a matter of law that a federal home loan bank letter of credit is an acceptable security under the PFIA. The opinion did say that a court could conclude that a time deposit account fully insured by the FDIC is within the scope of the PFIA. Because entities like more certainty than the AG's opinion provided, it was determined legislative action was needed to clear up both of these matters (and a number of others covered in the opinion).

[HB 2647](#) amends Sec. 2256.009(a), Government Code (OBLIGATIONS OF, OR GUARANTEED BY GOVERNMENTAL ENTITIES) by adding the following as authorized investments: interest-bearing banking deposits or other obligations that are guaranteed or insured by the FDIC or its successor or the National Credit Union Share Insurance Fund or its successor.

[HB 2648](#) amends 2256.009, Government Code, to clarify PFIA authorized investments that are obligations of the United States or its instrumentalities include obligations of the Federal Home Loan Banks.

[HB 2832](#) by Oliveira is TBA-supported legislation that Chairman Oliveira also offered last session. HB 2832 amends Sec. 32.06, Tax Code (PROPERTY TAX LOANS; TRANSFER OF TAX LIEN), by requiring that not later than the 10th day before the date a property owner executes a contract with a tax lien lender, the owner shall send via certified mail to any applicable mortgage servicer a notice that the property owner intends to enter into a contract with the tax lien lender authorizing the tax lien lender to pay the delinquent taxes on the property. As one of the items on TBA's Legislative Agenda this session, we are very supportive of HB 2832 and will work with Chairman Oliveira to ensure its final passage.

TBA's 2017 Texas Bankers Blitz was a huge success! If you weren't able to join us in Austin last week but you still want to participate in one of our legislative events, it's not too late. Our annual trip to Washington, DC for the ABA Government Relations Summit begins two weeks from today -- [join us](#)!

February 26, 2017

[Forward to a Friend](#)

Here we go!

As we've written before, there is a rhythm to session that is unmistakable. Generally speaking, committees start

meeting the last week of February / the first week of March. This session is no different, with our main committees in the House holding their first hearings this week. [B&I](#) and [IFS](#) will hold organizational hearings on Monday and Tuesday, respectively. [Senate Business & Commerce](#) will also be meeting for the first time of the session on Tuesday; in addition to adopting the Committee rules for the session, B&C will also be hearing a number of bills. We are about to enter the busy season for sure.

Our latest [Bill Tracking List](#) can be found here. Noteworthy filings of the week are below.

[HB 9](#) by Capriglione and [SB 1020](#) by Van Taylor relate to cybercrime and add two new offenses to the Penal Code. New Sec. 33.022 (ELECTRONIC ACCESS INTERFERENCE) provide that a person commits a third degree felony offense if the person intentionally interrupts or suspends access to a computer system or computer network without the effective consent of the owner.

New Sec. 33.023 (ELECTRONIC DATA TAMPERING) provides that a person commits an offense if the person alters data as it transmits between two computers in a computer network or computer system without the effective consent of the owner; or introduces malware, including ransomware, onto a computer, computer network, or computer system without the effective consent of the owner. An offense under 33.023 is a Class A misdemeanor unless the person acted with the intent to defraud or harm another or alter, damage, or delete property, in which event the offense is: a state jail felony if the aggregate amount involved is between \$2,500 and \$30,000; a third degree felony if the aggregate amount involved is between \$30,000 and \$150,000; a second degree felony if the aggregate amount involved is between \$150,000 and \$300,000; or a first degree felony if the aggregate amount involved is more than \$300,000.

[HB 2333](#) by Elkins amends existing Sec. 521.053(a), Business & Commerce Code (NOTIFICATION REQUIRED FOLLOWING BREACH OF SECURITY OF COMPUTERIZED DATA), by adding credit card or debit card information to the types of sensitive personal information covered by the definition of "breach of system security". HB 2333 also adds new 521.054 (BREACH INVOLVING CREDIT CARD OR DEBIT CARD INFORMATION) to provide that a business that accepts a credit card or debit card for payment and retains any data related to the card other than a confirmation number for the transaction shall secure the retained information from a breach of system security. If a breach of system security occurs in which credit card or debit card information is compromised, the business shall: not more than 24 hours after discovering/receiving notice of the breach, send a notice to the attorney general; and as soon as practicable after discovering/receiving notice of the breach, send notice of the breach to each financial institution that issued a credit card or debit card affected by the breach.

New 521.055 (DATA SECURITY BREACH VICTIM COMPENSATION FUND) creates a data security breach victim compensation fund to pay claims to consumers who have suffered a financial loss in relation to a breach of system security and reimburse a financial institution for costs associated with a breach of system security. The office of the attorney general shall develop a claims process to make payments from the fund. New 521.1515 (ADDITIONAL CIVIL PENALTY) provides that a business that fails to secure the business's computer system and suffers a breach of system security under new Sec. 521.054 is liable to the state for a civil penalty of \$50 for each credit card and debit card from which information was compromised. Penalties collected shall be deposited to the credit of the data security breach victim compensation fund.

Texas Bankers Blitz is this week! It's not too late to register, though, so if you're calendar Tuesday and Wednesday is clear, please join us! More information can be found [here](#).

Volume 85.5

February 20, 2017

[Forward to a Friend](#)

Waiting for an avalanche

Earlier this morning, the [Professional Advocacy Association of Texas](#) (yes, there really is a trade association for everyone) shared some interesting statistics on the number of bills that have been filed so far this session. As of Friday, February 17, which was three weeks before the March 10 bill filing deadline:

- More than 3,000 bills and joint resolutions have been filed in the House and the Senate
- House filings are up 18%
- Senate filings are up 44%

The following information is what **really** got my attention. Based on research conducted by PAAT, looking at the past three sessions, 60-65% of the bills that are filed as of the bill filing deadline are filed in three weeks leading up to the bill filing deadline. So, if the trends from previous three sessions hold true, there will be approximately 5,000 bills filed in the House and Senate in the next three weeks. This means we will likely see close to 8,000 bills filed this session. Again, thanks to our friends at PAAT for compiling and sharing this great information.

Here's a copy of TBA's latest [Bill Tracking report](#). Noteworthy introductions from last week include:

[HB 1954](#) by Murr, relating to convenience and trust accounts established at financial institutions. HB 1954 amends Sec. 113.004, Estates Code (TYPES OF ACCOUNTS) by eliminating the definitions of "convenience account" and "trust account" found therein. Eliminating these two account types necessitates striking all reference to these two account types from the Uniform Single-Party or Multiple-Party Account Selection Form found in Section 113.052, Estates Code (FORM) (remember, the "trust account" found in Sec. 113.004, Estates Code, does not include a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account or a fiduciary account arising from a fiduciary relationship.) The bill strikes a number of sections relating to convenience accounts and trust accounts from Chapter 113 and makes necessary clean-up changes.

[HB 1974](#) by Wray (and [SB 926](#)) by Rodriguez, relating to durable powers of attorney. HB 1974 is an omnibus rewrite of Chapter 751 of the Estates Code, the Durable Power of Attorney Act. This bill is being pushed by the Real Estate, Probate & Trust Law Section of the State Bar (REPTL), and, importantly for TBA member banks, seeks to shift the burden of proof for the acceptance of durable powers of attorney. Specifically, under proposed Sec. 751.201 (ACCEPTANCE OF DURABLE POWER OF ATTORNEY REQUIRED; EXCEPTIONS), unless one or more grounds for refusal under Sec. 751.206 exist, a person who is presented with and asked to accept a durable power of attorney by an agent with the authority to act under the power of attorney **shall**: accept the power of attorney; or before accepting the power of attorney: request an agent's certification or opinion of counsel not later than the seventh business day after the date the power of attorney is presented; or if applicable, request an English language translation not later than the fifth business day after the date the power of attorney is presented.

Proposed Sec. 751.206 (GROUNDS FOR REFUSING ACCEPTANCE) sets out 10 different instances where a person is not required to accept a durable power of attorney. TBA's [2017 Legislative Agenda](#) directs staff to oppose any legislation that contains a mandatory acceptance provision for Powers of Attorney, and at this time we oppose Wray's bill.

However, Representative Wray, an attorney himself, has been extremely willing to work with interested parties on this legislation. In fact, Wray facilitated a stakeholders meeting on the subject last week for interested parties (interested parties include REPTL, TBA, IBAT, the Texas Mortgage Bankers Association, and the Texas Business Law Foundation) and walked through the main sticking points parties have with the bill. Furthermore, he has said a number of times that he understands both sides of the argument when it comes to the mandatory acceptance of a power of attorney. However, he also wants the bill to pass, and I expect his patience with groups who may never agree on whether a POA must be accepted or may be accepted will likely wear thin.

So, with this being said, I encourage you to read through the exceptions set out in 751.206 of the bill (found beginning on page 23) and let me know whether you can live with these changes or whether the mandatory acceptance of a power of attorney is unduly burdensome for you/your bank's employees. A committee substitute for the bill is already in the works, though final language for that

substitute has not yet been agreed to. This is an ongoing negotiation process, so if you have an interest in this matter (and I suspect that you do,) please stay engaged on this matter!

TBA's biennial Texas Bankers Blitz is next week, and we'd love for you to participate! We have added a second room block to accommodate Texas bankers interested in participating in this year's "Bankers on the Hill" day here in Austin. More information on this event can be found [here](#).

Volume 85.4

February 12, 2017

[Forward to a Friend](#)

Thursday was a big day in the House

Thursday, February 9 was the 14th legislative day in the House, and, more importantly, it was the day everyone on the West side of the Capitol was waiting for -- the day the Speaker released [House Committee assignments](#). For TBA's purposes, we do not have turnover in the Chairs of the committees the majority of our bills go to -- [House Investments & Financial Services](#) will be led by Tan Parker, [House Business & Industry](#) will be led by Rene Oliveira, and [House Judiciary & Civil Jurisprudence](#) will continue to be led by John Smithee. There are, however, a number of new members on each of these committees, so we have work to do educating committee members on the intricacies of the business of banking in the State of Texas. Please take a moment to review the committee memberships of the three committees linked above, and [let us know if you know](#) any of the members -- leveraging relationships is what grassroots advocacy is all about!

We fully anticipate committee hearings to begin in earnest next week, though the first week (or two) of hearings will likely be devoted to educating committee members on the agencies and issues covered by the Committee.

TBA's latest bill tracking list is available [here](#) for your review. The following bills were filed last week and are of note:

[HB 1564](#) by Rick Miller amends [Section 33.06, Tax Code](#) (DEFERRED COLLECTION OF TAXES ON RESIDENCE HOMESTEAD OF ELDERLY OR DISABLED PERSON) and relates to the authority of an elderly or disabled person to defer or abate the collection of ad valorem taxes on the person's residence homestead if the homestead is subject to a mortgage. As a reminder, current Texas law entitles an individual to defer collection of a tax, abate a suit to collect a delinquent tax, or abate a sale to foreclose a tax lien if the individual is 65 years of age or older or is disabled; and the tax was imposed against property that the individual owns and occupies as a residence homestead.

HB 1564 adds new subsections (h), (i), and (j) to Sec. 33.06 to provide that except as provided by (i), an individual is not required to obtain the consent of the holder of a mortgage on property the individual owns and occupies as a residence homestead in order to obtain a deferral or abatement. New (i) provides that an individual must obtain the written consent of the holder of a mortgage on property the individual owns and occupies as a residence homestead before filing an affidavit under this section if: the mortgage balance is equal to at least 60 percent of the appraised value of the property; or a default has occurred with respect to the obligation secured by the mortgage for a reason other than nonpayment of the taxes for which the person is seeking the deferral or abatement. Finally, new (j) provides that filing an affidavit under this section or failing to pay taxes that are deferred or abated under this section does not constitute a default.

[HB 1634](#) by Greg Bonnen also seeks to amend Chapter 33 of the Tax Code. The bill adds new Subsection (k) to [Sec. 33.011, Tax Code](#) (WAIVER OF PENALTIES AND INTEREST), to provide that the governing body of a taxing unit may waive penalties and interest on a delinquent tax if the property for which the tax is owed is subject to a mortgage; the tax bill was delivered to the mortgagee of the property but the mortgagee failed to mail a copy of the bill to the owner of the property; and the taxpayer paid the tax not later than the 21st day after the date the taxpayer knew or should have known of the delinquency.

Representative Pat Fallon's [HB 1760](#) deals with a subject that we've seen a number of times over the years. Specifically, HB 1760 relates to money transmissions sent to destinations outside the US, and adds new Chapter 280, Finance Code (MONEY TRANSMISSION FEE), to provide that a money transmission business shall charge a fee on a money transmission for an individual that originates in this state and is transmitted to a destination outside of the US if the individual does not present proof that the individual is a US citizen or is lawfully

present in the US by showing a US passport or an unexpired Permanent Resident Card.

This section applies to a financial institution; however, the bill provides that a financial institution may not charge the fee required by this section to an individual that has an account with the financial institution. The amount of the fee is the sum of 3% of the total amount sent by the money transmission and \$5. On each money transmission for which the money transmission business charges a fee, the business, to cover the costs of collecting the fee, may retain an amount equal to the greater of 10% of the amount of the fee or \$1. Fees collected under this chapter must be remitted to the comptroller, and the comptroller must deposit the revenue received to the credit of a border security account. The comptroller shall retain a portion of the amount remitted to the comptroller under this section to cover the cost of administering this new Chapter. The comptroller by rule shall specify the portion to be retained. New Sec. 280.053, BORDER SECURITY ACCOUNT, provides that the monies credited to this account in the general revenue fund may only be appropriated to DPS or the Texas National Guard to provide funding for border security efforts in this state.

[SB 813](#) by Senators Hughes, Bettencourt, Buckingham, Hall, Huffines, and Perry relates to the recovery of damages, attorney's fees, and costs related to frivolous regulatory actions by state agencies. The bill adds new Sections 105.005 and 105.006, Civil Practice and Remedies Code, to provide that a claimant may bring an action against a state agency if the state agency takes a regulatory action against the claimant that is frivolous, unreasonable, or without foundation. New Sec. 105.006 provides that a person may recover, in addition to all other costs allowed by law or rule, reasonable attorney's fees and costs incurred in defending against a frivolous regulatory action during an administrative proceeding and judicial review of that proceeding if: the person prevails in the judicial review of an administrative proceeding; and the state agency is unable to demonstrate that the agency has good cause for the regulatory action.

We'll be talking about these bills, and many others, at our biennial [Texas Bankers Blitz](#). Due to popular demand, we've added an overflow hotel. So, If you haven't made plans to join us in Austin February 28 and March 1, do so [today](#)!

Volume 85.3

February 5, 2017

[Forward to a Friend](#)

Right on schedule

Two weeks ago this publication reported on Lieutenant Governor Dan Patrick's naming of the Senate Committees. Early last week, political wags around the capitol seemed fairly certain that the Speaker would name House Committees before sending legislators home for the week, but legislators went back to their districts Thursday without committee assignments. This is the perfect time to reiterate what should be fairly obvious: rumors floating around the capitol during the legislative session are a dime a dozen, and, more importantly, just like the rumors that floated around in junior high school, they're usually false.

Past history shows that Committee announcements in the House usually come the fourth or fifth week of session (the past two sessions have been the fourth week; the two sessions before that were the fifth week.) Tomorrow is the first day of the fifth week of session. Maybe we'll see House committee assignments this week, maybe we won't. This is certainly a good reminder that the Speaker is in control of the House and its calendar.

Even though House Committees weren't named, there was some excitement at the Capitol. As you likely saw, the Governor named four emergency items during his State of the State address Tuesday. These items are: CPS reform, banning sanctuary cities, ethics reform, and legislation authorizing Texas to join other states in calling for a Convention of States to amend the U.S. Constitution. Designating these items as

emergency items means that the Legislature may act upon them during the first 60 days of the session (reminder: under the Texas Constitution, legislators cannot pass bills in the first 60 days of a legislative session unless the governor submits emergency matters for consideration during this time. [Article 3, Section 5](#))

The Senate State Affairs Committee has already held hearings and passed sanctuary city ([SB 4](#)) and ethics reform bills ([SB 14](#), [SB 500](#), [SB 501](#), [SB 502](#), [SB 503](#), [SB 504](#), and [SB 505](#).) The full Senate is expected to debate these measures this week. Once passed by the Senate, the bills will go to the House for consideration. Once House committees are named, the Senate bills will be referred to their House committees of jurisdiction.

Here's our latest [Bill Tracking List](#). On the banking front, here are a handful of noteworthy bill introductions:

[SB 714](#) by Seliger is TBA-supported legislation that seeks to unwind the headaches created by the 2015 legislative changes made to the Statutory New Accounts form. For background purposes, last session the legislature enacted [84R SB 1791](#), a bill designed to increased awareness of payable-on-death accounts. TBA did not support 84R SB 1791 because we felt its requirement that customers initial to the right of every paragraph on the Uniform Single-Party or Multiple Party Account Selection Form, even for those account types they were not selecting, unnecessarily created confusion at account opening or modification. Furthermore, we were unhappy with the fact that credit unions were specifically exempted from the bill's application.

As we predicted, not only did 84R SB 1791 create a great deal of confusion for bank customers, it is difficult for banks to implement. Last fall, the TBA Board of Directors placed streamlining the statutory new accounts form on our 2017 legislative agenda, and we could not be more pleased with Chairman Seliger's interest in this matter.

SB 714 adds an acknowledgement to the Uniform Single-Party or Multiple Party Account Selection Form found in Sec. 113.052, Estates Code (FORM), that indicates the customer has read each paragraph of the form, received disclosure of the ownership rights to the accounts listed, and has placed his/her initials in the blank to the left of the type of account he/she wants. Additionally, SB 714 amends Sec. 113.053, Estates Code (REQUIRED DISCLOSURE; USE OF FORM), by removing the existing statutory requirement that the customer must initial to the right of each paragraph of the statutory form; the bill also removes the requirement for institutions varying the format of the form that the account disclosures be given on a separate sheet in 14-point boldfaced type.

New Sec. 113.053(d) provides that if a type of multiple-party account is not available from a financial institution, the financial institution is not required to make a disclosure about that type of account, and new Sec. 113.053(e) provides that this section does not apply to an account that is opened or modified by a customer who: is a legal entity or is acting as a legal representative for another person.

Finally, SB 714 repeals Sec. 113.0531, Estates Code, which is that section of the Estates Code that establishes special account disclosure provisions for credit unions. Repealing this section of the Code will mean that credit unions will have to provide their customers with the same account disclosures as commercial banks and thrifts. Again, TBA is very supportive this bill.

[HB 1290](#) by Roberts is similar to one of President Trump's recent Executive

Orders. Namely, the bill adds new Sec. 2001.0045, Government Code (REQUIREMENT FOR NEW RULE), to provide that a state agency may not adopt a proposed rule unless on or before the effective date of the proposed rule the state agency repeals at least one existing state agency rule. This will be an interesting bill to watch as it makes its way through the legislative process.

[HB 1463](#) by Smithee is a measure relating to the procedures for asserting claims under the Americans with Disability Act. HB 1463 adds new Chapter 27A, Civil Practice and Remedies Code (ACTIONS INVOLVING THE AMERICANS WITH DISABILITIES ACT), and provides that the chapter applies to a claim under the ADA based on a respondent's failure to comply with applicable design, construction, technical, or other standards required by the ADA, including complying with website accessibility guidelines.

As the caption of the bill indicates, it is designed to set out the procedures a claimant must go through before filing a claim under the ADA. The bill provides that a claimant must provide notice of his intent to file a claim and then give the respondent time to cure the alleged defect before filing suit. If a suit is filed, the claimant must establish by a preponderance of the evidence that the respondent has not corrected one or more of the alleged violations stated in notice.

Interestingly, new Sec. 27A.008, BAD FAITH CLAIMS, provides that a claimant may not in bad faith provide a notice of intent to file a claim under the ADA. A notice of intent to file a claim is in bad faith if the notice includes a claim that the respondent has violated the ADA and is liable for that violation and the notice: does not meet the requirements set out in the Notice of Intent to File Claim Section; or describes a claim that is objectively baseless because the claimant does not have standing to file an action asserting the claim under the ADA or the premises is not subject to the requirements of the ADA.

The bill places the Attorney General in charge of enforcement of this new section, and provides the AG with the authority to seek the imposition of a civil penalty in an amount not to exceed \$50,000 for bad faith claims; an order requiring reimbursement for the reasonable value of investigating and prosecuting a violation of the bad faith claims section; and an order requiring restitution to a recipient of a bad faith notice of intent to file a claim for legal and professional expenses related to the violation.

If you haven't registered yet for our 2017 Texas Bankers Blitz, [do so today](#)! As always, if you have any questions, please do not hesitate to [let us know](#).

Volume 85.2

January 22, 2017

[Forward to a Friend](#)

Procedural action starting

Despite the short work week due to the inauguration, there was note-worthy action taken at the Texas Legislature last week.

Lieutenant Governor Patrick announced Senate Committee assignments Wednesday afternoon. The Senate Committee that the majority of legislation TBA follows goes through is the Senate Business & Commerce

Committee (aka Senate B&C.) Members of Senate B&C are as follows: Kelly Hancock, Chair, Brandon Creighton, Vice Chair, Donna Campbell, Craig Estes, Robert Nichols, Charles Schwertner, Larry Taylor, John Whitmire, Judith Zaffirini. Other Senate Committee assignments can be found [here](#).

The appointment of Committees in the Senate is important because it means that the reading and referral of bills can begin. As a reminder, [Article 3, Section 32 of the Texas Constitution](#) provides that “no bill shall have the force of a law, until it has been read on three several days in each House”, and while senators have been filing bills since November 14, not one of them has been officially read yet. [Article 2, Section 37](#) of the Constitution provides that no bill can be considered “unless it has been first referred to a committee”, so reading and referral can start happening as soon as the Senate goes into Session tomorrow afternoon. Bills are usually read on the same day they are referred to Committee, so we fully expect Senate B&C to hold its first hearing within the next couple of weeks.

Both the House and the Senate adopted their governing rules the first week of session. An important byproduct of those rules being developed for Capitol watchers like your friends on the TBA Advocacy Team is the publication of the [Deadlines for Action Under House and Senate Rules Calendar](#). This calendar has the end of session bill deadlines that become so important as the regular session winds down. While May 7 (the first day on the calendar) seems like a very long way away today, it will be here before we know it, and it provides legislators and laymen alike with a clear explanation of the legislative deadlines to expect.

Our entire tracked bill list can be found [here](#). A couple of notable filings from last week including the following:

[HB 1128](#) by Wray relates to alternative dates for the sale of property under contract lien and amends Sec. 51.002, Property Code (SALE OF REAL PROPERTY UNDER CONTRACT LIEN) to provide that if the first Tuesday of the month falls on January 1 or July 4, then a public sale of real property under a power of sale conferred by a deed of trust or other contract lien must be held on the first Wednesday of the month.

[SB 526](#) by Birdwell relates to the abolishment of certain advisory committees and other entities created to assist or advise state agencies and officers, and notably for TBA's purposes, it seeks to abolish the Residential Mortgage Fraud Task Force. The Residential Mortgage Fraud Task Force was created in 2007 as a strategic partnership between state, federal, and local law enforcement agencies to better enable law enforcement and state agencies to take proactive steps towards tracking and prosecuting mortgage fraud and the perpetrators of mortgage fraud statewide. The task force consists of the following persons or their appointees: the attorney general; the consumer credit commissioner; the banking commissioner; the credit union commissioner; the commissioner of insurance; the savings and mortgage lending commissioner; the presiding officer of the Texas Real Estate Commission; the presiding officer of the Texas Appraiser Licensing and Certification Board; and a representative of the Texas Department of Housing and Community Affairs. The last readily available [report](#) of the Residential Mortgage Fraud Task Force from the September 1, 2014-August 31, 2015 Fiscal Year recognized that mortgage fraud is still a serious and ongoing problem and that the Task Force remains an important tool in keeping dialogue open between the agencies on the task force. TBA will work with Senator Birdwell's office to determine the nature of his opposition to the ongoing work of this important body.

[Registration](#) for our 2017 Texas Bankers Blitz is open! Please mark your calendar and plan to attend today!

Volume 85.1

January 15, 2017

[Forward to a Friend](#)

They're back . . .

The 85th Legislature kicked off Tuesday at noon as constitutionally required. As expected, the House reelected Joe Straus at the Speaker of the House for a fifth term, and both the House and Senate adopted the rules governing their bodies Wednesday afternoon before calling it a week and heading home. The upcoming week will likely be a short one as well – with the Monday holiday and inauguration festivities in Washington at the end of the week, Capitol watchers don't expect legislators to stay in town for long. We are hearing, however, that the Lieutenant Governor is close to releasing committee assignments for the Senate, which is great because it means that once it happens, bills will start being referred to committee and set for hearing. House members had a Friday

afternoon deadline to submit their committee preferences to the Speaker. (Curious about what this means? Refresh your memory [here](#). This [flow chart](#) of the legislative process is helpful as well.)

Right at 1,500 bills and joint resolutions have been filed so far, and repeating a theme from [last week's publication](#), the overwhelming majority of these do not impact the business of banking. Here's our [bill tracking list](#) as of this afternoon. A few of the newly filed bills worth mentioning are below.

First, Houston Freshman Shawn Thierry filed two elder financial abuse bills. [HB 959](#) adds new Section 32.55, Penal Code (FINANCIAL ABUSE OF ELDERLY INDIVIDUAL), to provide that a person commits an offense if the person with criminal negligence engages in the financial abuse of an elderly individual. Financial abuse is defined in the bill to mean the wrongful or negligent taking, appropriation, obtaining, retention, or use of, or assisting in the wrongful or negligent taking, appropriation, obtaining, retention, or use of, money or other property of another person by any means, including by exerting undue influence. [HB 916](#) adds new Chapter 280, Finance Code (REPORTING OF FINANCIAL ABUSE OF ELDERLY PERSONS), and requires an officer or employee of a financial institution having a good faith belief that financial abuse of an elderly person has occurred or is occurring to submit a report notifying Adult Protective Services of the suspected financial abuse, and notify the appropriate local law enforcement agency with jurisdiction over the municipality or county in which the elderly person resides of the suspected abuse for purposes of investigating and determining whether an offense has occurred. While these bills contain a number of items about which we are concerned, the good news is that Representative Thierry is interested in addressing the growing problem of the financial abuse and exploitation of elderly persons. We look forward to working with her office on this important issue.

In fact, this is a subject we have been working on since the last session ended. [TBA's 2017 Legislative Agenda](#), which was formulated by our Government Relations, Community Bankers, and Bank Leadership Councils and adopted by the TBA Board of Directors at the September 2016 Board Meeting, includes an item directing TBA staff to pursue legislation providing financial institutions with more options to serve their customers who the institutions suspect may be falling victim to financial abuse or exploitation. To this end, we began facilitating stakeholders meetings on this subject last August, and after six months, we hope we are very close to arriving at agreed to legislation for all parties. Here's a [high-level explanation](#) of the state of play TBA prepared for interested legislative offices.

For members serving as School District Depositories, [HB 878](#) by Ken King should be of interest. HB 878 amends Sec. 45.205, Education Code (TERM OF CONTRACT), and provides that a school district and the district's depository bank may agree to extend a depository contract for three additional two-year terms (current law allows for two additional two-year terms) and to modify any contract for an extension.

We'll continue to update you on events at the Captiol between now and *sine die*, but we hope you'll plan to come to Austin and see the fun first hand. TBA's [2017 Texas Bankers Blitz](#) is scheduled for February 28 and March 1, and [registration](#) is now open. Make your plans to attend today!

Volume 85.iii

January 8, 2017

[Forward to a Friend](#)

Green means "Go"

In less than 48 hours, the 85th session of the Texas Legislature will convene. The Legislative Reference Library has provided the following preview of the 85th Legislature:

PARTY	HOUSE	SENATE	OVERALL
DEMOCRAT	55	11	66
REPUBLICAN	95	20	115
TOTAL	150	31	181

GENDER	HOUSE	SENATE	OVERALL
WOMEN	29	8	37
MEN	121	23	144
TOTAL	150	31	181

So far, these legislators have filed 1,273 bills and joint resolutions for consideration this session. Thankfully, the vast majority of these do not affect the business of banking. However, here's a rundown of a few that we're keeping our eye on.

Under current Texas law title insurance premium rates are set by the Texas Department of Insurance. Rates are based on a property's sale value, and all title agents charge the same premium for property of the same value. Under [SB 372](#) by Senator Bob Hall, this system would change to a "file-and-use" model like that which exists in the property and casualty insurance markets. TBA's Board of Directors recently adopted a resolution in support of the existing land title pricing structure in the state because our board members believe Texas' current title insurance structure provides more choices and better prices to Texas consumers, especially those in rural markets.

[HB 454](#) by Cyrier is also insurance-related, however, it relates to property insurance. Currently, Section 557.002, Insurance Code, provides that if a claim under an insurance policy for damage to residential real property is paid to the insured and a lender, and the lender holds all or part of the proceeds from the insurance claim payment pending completion of all or part of the repairs to the property, the lender must notify the insured of each requirement with which the insured must comply for the lender to release the insurance proceeds. HB 454 amends this section of the Insurance Code to provide that if a claim under a residential real property insurance policy is paid to the insured and the lender, the lender shall notify the insured of the insured's option with respect to having the lender place the proceeds of the claim in escrow for repair or rebuilding the property or apply the proceeds to reduce the balance of the loan secured by the property.

Additionally, the bill adds new Section 343.107, Finance Code (NOTICE REQUIRED BY LENDER BEFORE APPLICATION OF CERTAIN INSURANCE PROCEEDS), to provide that a lender may not apply the proceeds of an insurance claim to reduce the balance of the home loan secured by the insured property at any time before the 90th day after the date the lender sends the notice required by Sec. 557.002, Insurance Code.

Representative Eric Johnson has refiled his legislation from last session authorizing a credit union or other financial institution to conduct savings promotion raffles. [HB 471](#) adds new Section 280, Finance Code (SAVINGS PROMOTION RAFFLE), to provide that a bank or credit union may conduct a savings promotion raffle. The legislation defines "savings promotion raffle" to mean a raffle conducted by a credit union or bank in which the sole action required for a chance of winning a designated prize is the deposit of at least a specified amount of money in a savings account or other savings program offered by the credit union or bank. Last session's version of this bill ([84RHB1628](#)) was vetoed by Governor Abbott because the Texas Constitution authorizes raffles to be conducted only for charitable purposes. Representative Johnson seeks to overcome this constitutional challenge by also filing [HRJ 37](#), which proposes a constitutional amendment allowing the legislature to authorize credit unions and banks to award prizes by lot to promote savings. If HB 471 is finally passed and HJR 37 is approved by Texas voters, then Johnson's idea of financially incentivizing customers to increase their savings would become law.

Once legislators are back in Austin, we typically see a spike in legislative filings, so stay tuned for more information on what our state legislators have in store for our industry over the coming weeks. . .

A few notable bills

We're officially three weeks into bill filing, and it's strange that only 728 bills and joint

resolutions have been filed. Not that that number is so far off where we were two years ago, but with almost 6,400 bills filed last session (6,398 to be exact), the strangeness stems from what all legislative watchers know is coming – the onslaught of bill filings in the first weeks of session. Thankfully, not many of the bills filed so far directly impact the business of banking. Here's to hoping this trend continues . . .

With this being said, the following bills are noteworthy for bankers:

[SB 229](#) by Menendez amends the Labor Code to provide that an employer shall pay to each employee not less than the greater of \$10.10 an hour or the federal minimum wage under the Fair Labor Standards Act. Representatives Alonzo and Reynolds both have bills ([HB 285](#) and [HB 475](#), respectively) that would set the Texas floor at \$15.00 an hour (rather than the \$10.10 provided in Menendez's bill).

After the 2015 legislative session, TBA received a number of inquiries on Texas' handgun law and how to go about complying with Texas' new open carry statute. A handful of bills have been filed that propose to further amend Sections [30.06](#) and [30.07](#), Penal Code. [HB 447](#) by Bell (R-Magnolia) adds new Chapter 95A, Civil Practices and Remedies Code, to provide that a person with control over a business who forbids entry on the premises by a license holder with a handgun is liable for damages that could have been prevented by the otherwise lawful use of a handgun by a license holder who would otherwise have carried the handgun onto the premises.

Similarly, [SB 86](#) by Hall (R-Canton) also adds new Chapter 95A, Civil Practices and Remedies Code, to provide that an owner of property on which the carrying of a handgun is not otherwise unlawful is immune from civil liability with respect to any claim that is based on the property owner's failure to exercise the option to forbid the carrying of handguns on the property.

On the HR front, both Representatives Terry Canales (D-Edinburg) and Nicole Collier (D-Fort Worth) have bills that would prohibit employers from requiring or requesting their employees or job applicants to provide copies of, or access to, their credit reports. Thankfully, both [HB 317](#) and [HB 334](#) specifically exempt employers providing financial services. We will continue to monitor these bills to ensure these exemptions remain.

And, finally, [HB 411](#) by Representative Longoria (D-Mission) adds new Chapter 508, Business & Commerce Code (Requiring Verification of Identity for Certain Purchases Paid with Credit or Debit Card) to provide that a merchant may not accept a credit or debit card for payment in a face to face transaction unless the merchant requires the individual presenting the credit or debit card to provide photo identification verifying the individual's identity as the cardholder if the transaction is for the purchase of goods or services in an amount of more than \$200 or the purchase of a stored value card. This new section does not apply if the merchant requires the individual presenting the credit card for payment to electronically enter the individual's zip code

to verify his identify or the individual presenting the debit or credit card for payment to electronically enter the personal ID number associated with the card. The bill also provides that a merchant who fails to comply with the requirements set out above is liable to the cardholder or the financial institution that issued the credit card or debit card for all losses attributable to the violation.

We'll be back in the next week of so with another round of the latest bill filings. If you have any questions before then, please don't hesitate to let us know at: grassroots@texasbankers.com.

Volume 85.i

November 27, 2016

[Forward to a Friend](#)

Gentlemen, start your engines!

Even though the 85th Session of the Texas Legislature isn't set to begin for 43 days, Monday, November 14 was the first day legislators could begin prefiling legislation. This means that when the 85th Session of the Texas Legislature convenes at noon on Tuesday, January 10 (this day is set by the Texas Constitution), hundreds of bills will already be in the hopper. (As of today, [674 bills and joint resolutions](#) have been filed. Look for a follow-up State Issues Update later this week highlighting what's been prefiled so far.)

As a reminder, the Texas legislature meets for 140 days in odd-numbered years; there are 150 members of the Texas House of Representatives, and 31 members of the Texas Senate. Texas Representatives elect one of their colleagues to serve as the Speaker of the House. The presiding officer of the Texas Senate is the Lieutenant Governor, who is elected by the voters of the state.

Since pre-filing has begun, this is a good opportunity to share a number of the terms that will regularly be used in this publication. This list is not exhaustive; rather, it is meant to serve as groundwork for what to expect in the initial weeks of session.

First, **"prefiling"** or **"prefiled"**. As mentioned above, this means that Representatives and Senators may begin filing legislation before the session actually begins. With the exception of a small number of bill numbers that are held and designated by House and Senate leadership as major legislation, bills are filed in numerical order. House Bills are designated as such by H.B. and then the bill number. So, when you see 85R H.B. 472, this means the bill is a bill filed by a member of the Texas House of Representatives for consideration in the 85th Regular Session of the Legislature. Senate bills are designated by S.B. Often, 85R will be omitted, but do not let this confuse you – unless otherwise indicated, all bills discussed in this publication will be from the 85th Regular Session.

Some people mistakenly believe that bills will be considered in numerical order; this

is not the case. A bill with a lower bill number has no more chance of passing than a bill with a higher number. After the bills are given bill numbers, it is up to the author of the bill to do all he or she can to ensure the bill's final passage.

Second, **"referred to committee"**. After filing, and once the session convenes, all bills must be read into the record and referred to a committee before any substantive work on the legislation can begin. In the House, the Speaker of the House and his staff decide the committee to which a bill should be referred. In the Senate, this job belongs to the Lieutenant Governor and his staff. Again, bill referral cannot take place until the legislature convenes, and it will continue to occur as long as bills can be filed. The bill filing deadline (i.e., the last day bills can be filed) is March 10, 2017, that day will be discussed in more detail as it draws near.

A bill is referred to the committee that has subject matter jurisdiction over the issues being proposed in the bill. For TBA's purposes, our main committees are Senate Business and Commerce (B&C), House Investments and Financial Institutions (IFS), and House Business & Industry (B&I) because these are the committees that have subject matter jurisdiction over banking issues. This is where the majority of the bills we follow and track will go, and you'll see many, many banking related bills being referred to both of these committees.

Next, **"set for hearing"**. Although this generally will not begin to happen until the end of February, at the earliest, this means that the author of the legislation has requested a hearing for the bill, and the chairman of the committee to which the bill is referred has scheduled the bill for a public hearing. All legislation must have a public hearing in order to advance in the legislative process. Usually, a bill set for hearing will be heard on its first hearing date. However, this is not always the case and, should a hearing for a bill be postponed, it doesn't necessarily mean the legislation is dead. There are so many moving parts associated with the legislative process, a postponed hearing could simply mean that the author of the bill had a scheduling conflict and was unable to attend the hearing (lots of committees meet at the same time, and legislators generally serve on at least three committees.)

"Lay a bill out". When the legislator arrives at the public hearing to present his bill to the full committee, legislative vernacular says the legislator is laying his bill out to be heard. This is where the Representative or Senator gives the committee background on the issue(s) being addressed in the bill, explains the problem the bill is seeking to fix, and contains the legislator's proposed change to Texas law that will provide that fix.

In order to pass out of the committee and move to the next step in the legislative process, a bill must receive the affirmative vote of a majority of the members of the committee.

The next steps of the legislative process are trickier because there are a number of legislative hurdles that have to be cleared before a bill actually makes it to the floor of

either chamber. However, for our purposes, and so as not to burden you with any more legislative minutiae than is completely necessary, the important thing to remember is that after a bill passes out of committee, it must be considered and passed by a majority in the full House (76 of 150 members) if it is a House bill, or the full Senate (16 of 31 members) if it's a Senate bill. Proposed constitutional amendments in the form of joint resolutions require a vote of two-thirds of the membership of each house for adoption (so 100 affirmative votes in the House and 21 votes in the Senate.)

Because nothing is ever as easy as it needs to be, a bill actually has to pass twice before it can go any further. The Texas Constitution requires a bill to be read on "three several days" in each House before it can have the force of law. The first reading is when the bill is introduced and read into the record; the second reading is the first time the bill is considered by the full chamber and passes; and the third reading is final passage. After final passage, the bill goes across the capitol rotunda to the other chamber (to the Senate if it's a House bill, to the House if it's a Senate bill) and the above process starts all over. Clear as a bell, isn't it?

The legislative process can be a confusing and somewhat unpredictable process, even for those of us whose jobs require us to pay attention to these things. However, it's not rocket science and, as we have a citizen legislature in Texas (legislators aren't full time legislators – rather, they're ordinary citizens with actual outside jobs who devote an extraordinary amount of time to public service for very little pay), it's a process that is designed to be understood by all.

Your TBA lobby team follows the legislative process and advocates on banking issues at the Capitol on your behalf. Should you have any question on what's happening at the Texas Capitol, please do not hesitate to let us know. The easiest way is to email grassroots@texasbankers.com or to call (512)472-8388 and ask to speak to a member of the TBA lobby team.

Volume 84.17

May 31, 2015

[Forward to a Friend](#)

[It's all over but the shouting](#)

Tomorrow, June 1, is the 140th day of the 84th Legislature, or, as we like to call it THE LAST DAY OF THE REGULAR SESSION! Today is the last day for either chamber to adopt conference committee reports, and tomorrow's business is reserved for technical corrections . . . and a lot of pomp and circumstance. Once the business of the day is concluded, both chambers will adjourn [sine die](#), hopefully until the 85th Legislature convenes January 10, 2017.

If you haven't yet [registered](#) for our 2015 Legislative Update Tour, there's still time to do so! We'll be kicking the first leg of our tour off on Monday, June 15 in Midland, and when all is said and done, we'll visit 18 cities across the state. Registration information, along with locations, dates, and times, is all available [here](#), and CLE is offered.

Thanks for reading this session, and, as always, please don't hesitate to [let us know](#) if you have any questions.

P.S. In case you're wondering what the stats look like since our [last publication](#), here's where we were as of last Friday morning:

Sent to Governor	727
Signed by Governor	194
Filed without Governor's signature	18
Vetoed by Governor	1 (HCR 84)
Effective immediately	87
Effective in 90 days	0
Effective 9/1/2015	97
Effective 1/1/2016	4
Effective according to the terms of the bill	3

Volume 84.16

May 17, 2015

[Forward to a Friend](#)

Race to the finish

Today, Sunday, May 17, is the 125th legislative day of Texas' 84th Legislature. There are 15 more days in the regular legislative session, and there are still a number of 'big ticket' items that remain unresolved. It was reported late last week that these items, which include tax cuts, limits on property tax increases, border security, ethics reform, and open carry of handguns, are being negotiated along with the budget. As a reminder, the only bill the Legislature must pass is the budget. Even with more than two weeks to go in the Session, it's still anyone's guess as to whether an agreement will be reached.

For TBA's purposes, there are a handful of unresolved issues that we are still working on. The first of these is [HB 1936](#), Chairman Oliveira's tax lien lending legislation. We are working to get a hearing on this bill in the [Senate Business & Commerce Committee](#), where we have confirmed we have the votes needed to successfully vote the bill out of committee and to the full Senate. We continue to work to secure a hearing for HB 1936 in advance of the May 27 deadline for the Senate to hear all bills on second and third reading.

[HB 3190](#), Representative Villalba's legislation adopting the Delaware directed trusts model in Texas, was passed by the House on third reading Wednesday, May 13. The bill was received in the Senate Thursday and referred to the Senate Committee on Business & Commerce Friday afternoon. TBA and our Wealth Management & Trust members are working to get a hearing on this bill this week. We believe the final passage of HB 3190 will benefit not just those Texans whose families can take advantage of favorable Texas law when developing their estate plans, but also all Texans as we believe the enactment of HB 3190 will stem the outflow of a significant amount of capital from Texas to jurisdictions like DE that have more advantageous estate planning laws.

In addition to working to usher the above legislation through the process, we remain vigilant about making sure standalone pieces of legislation that we've worked to stop do not find a ride on moving bills. In the legislative vernacular, we're working to make sure bills don't become Christmas trees – that is to say, bills with broad captions don't get amended to include bills we don't want to pass. This requires not only paying close attention to floor action, where unexpected amendments can be adopted with little to no debate, but also thorough research of code sections affected by the more than

1,700 bills still moving through the legislative process.

We'll be here, paying close attention, for the next two weeks. As always, don't hesitate to [let us know](#) if you have any questions.

For those of you who are interested, the following bill statistics were current through 2:45 p.m., Thursday, May 14.

	House Bills (HB) & Joint Resolutions (HJR)	Senate Bills (SB) & Joint Resolutions (SJR)
Filed	4,340	2,136
Reported out of committee	1,953	845
Passed by chamber of origin	1,032	702
Referred to committee in opposite chamber	824	643
Reported out of committee in opposite chamber	246	309
Passed opposite chamber	55	113
Sent to the Governor	35	94
Signed by the Governor	1	6

Mark Your Calendar for the 2015 TBA Legislative Update Tour!

TBA's biennial Legislative Update Tour is coming to your area in June and July -- mark your calendar! The Legislative Update Tour is designed to give TBA members the information they need on the laws passed by the 84th Legislature that will impact the business of banking. Each of our 18 stops will include networking opportunities, state and federal legislative updates, and one hour of MCLE credit from the State Bar of Texas. Registration is open, so what are you waiting for? [Register](#) today!

Volume 84.15

May 10, 2015

[Forward to a Friend](#)

A week of deadlines . . .

Today, Sunday, May 10, is the 118th day of the 84th Legislature. Tomorrow, Monday, May 11, is the last day for House committees to report House bills and joint resolutions out of committee. The week will be full of [legislative deadlines](#) in the House. These include: the 120th day's 10 p.m. deadline for the last daily House Calendar with House bills and joint resolutions; the 121st day's 9 p.m. deadline for the last House Local & Consent Calendar with consent House bills; the 122nd day's deadline for the House to consider second reading House bills and joint resolutions on the Calendar; and, on Friday, the 123rd day's deadline for the House to consider third reading House bills and joint resolutions. Clearly, this will be a very busy week in the House, and we anticipate a number of very late nights.

What we're worrying about this week . . .

TBA is happy to report that [HB 3190](#) by Villalba, which our Wealth Management & Trust Division is [actively advocating the passage of](#), is on tomorrow's House Calendar. HB 3190 seeks to adopt a workable directed trusts statute in the State of Texas by modeling our statute on the Delaware directed trusts law, which is well-settled and has been enacted in 19 other states. In a nutshell, HB 3190 clearly sets out that if a trust grantor has named an advisor or an investment trustee who can direct investments for a trust, the trustee is not liable for following that advisor or investment trustee's

instructions and does not have to oversee that advisor or investment trustee's actions. If your bank has a trust department, please [contact your legislator](#) and ask him to **vote yes on HB 3190**.

Through a series of parliamentary maneuvers that can generally only happen in the waning days of session, on Friday, the House approved on second reading [SB 1791](#) by Ellis. This is legislation that TBA was neutral on as it was originally filed in the Senate and in the House (SB 1791's House Companion is [HB 704](#)). As filed, SB 1791/HB 704 make changes to the [Uniform Account Form](#) set out in the Estates Code by requiring a financial institution to disclose the information contained in the Uniform Account Form at the time the customer selects or modifies an account. If a financial institution varies the form set out in the Estates Code, the disclosure required by the Estates Code must be given separately from other account information; be provided before account selection or modification; be printed in 14-point boldfaced type; and if the discussions that precedes the account opening or modification are conducted primarily in a language other than English, be in that language.

As amended and passed by the Senate, and as passed on second reading by the House Friday afternoon, SB 1791 provides that the changes made by this section **do not apply to a credit union**. While TBA didn't like the added compliance burdens created by SB 1791/HB 704 as originally filed, we remained neutral because we recognized the fact that we are not going to win every battle. However, now that the credit unions have been exempted from SB1791's mandates, we are very opposed. Granted, this one change may not seem worth fighting for, but statutory changes like these add up to very expensive compliance costs for banks across the State of Texas. Because this bill will be heard on third reading tomorrow, May 11, please [contact your House member](#) and ask him to **vote no on SB 1791** or, in the alternative, ask that he demand that this law apply equally to Texas' credit unions.

We continue to work on the final passage of [HB 1936](#). The bill was referred to the Senate Business & Commerce Committee Thursday, May 7, and we hope to have a public hearing on the bill in the next week. We will keep you posted on this important bill's progress as it makes its way through the Texas Senate.

Questions?

As always, we are happy to answer any questions you may have on our work on our members' behalves at the Texas Capitol. Until next Sunday, have a great week.

Volume 84.14

May 3, 2015

[Forward to a Friend](#)

Light at the end of the tunnel

With just over four weeks until [sine die](#) on Monday, June 1 (29 days to be exact, but who's counting?), we are beginning to see light at the end of the legislative tunnel. However, rather than being able to breathe a sigh of relief because session is on the downhill path towards the finish line, the next four weeks will require a heightened level of vigilance from Capitol watchers for a couple of reasons. First, if you have legislation you **do** want to pass, the [calendar](#) is starting to work against you, so you have to make sure your bill continues to move through the legislative process. The second reason for increased vigilance is that you have to make sure the bills you **don't** want to pass and thought were dead don't suddenly come back to life by catching a ride (as an [amendment](#)) on another moving legislative vehicle. This second reason is the trickier of the two.

As we remain watchful for the reappearance of legislation we'd hoped would move no further, we continue to work for the passage of bills that will help our industry. For example, late last week, we updated you on HB 1936 by Oliveira, which was scheduled for debate by the full House last Friday [HB 1936](#) simply requires a 10-day advance notice to a preexisting lienholder from a borrower

interested in taking out a tax lien loan. We appreciate the calls made by our members in support of the bill, and we are happy to report that HB 1936 passed to third reading Friday. This means that the House has to take one more vote on HB 1936 before the bill moves to the Senate. If you haven't [called your House member](#) yet, there's still time to do so before the House votes on the bill on [third reading](#) Monday. If you have called your House member and asked for his support of HB 1936, make sure to thank him for his affirmative vote!

Bills set on the House Calendar

At this point of the legislative session, the House Calendars Committee holds daily (sometimes twice-daily) meetings to set the calendar for the House to consider. So far, the following bills TBA is tracking are scheduled to be debated by the full House the week of May 4. Keep in mind that this calendar will be supplemented substantially as the week goes on, so while complete today, tomorrow is a whole other story.

[HB 831](#) by Giddings, relating to disclosure of home mortgage information to a surviving spouse. As passed by the House Investments and Financial Services Committee, HB 831 requires that not later than the 30th day after a mortgage servicer of a home loan receives a request for information from the surviving spouse of a mortgagor of the home loan, the mortgage servicer shall provide the surviving spouse with information that the mortgagor would have received in a standard monthly statement. This includes: the current balance information; whether the loan is current and any amounts that are delinquent; the loan number; and the amount of any escrow deposit for taxes and insurance purposes. The surviving spouse must prove his/her status by providing a death certificate of the mortgagor and an [affidavit](#) of disinterested witnesses concerning the identity of heirs. A mortgage servicer that provides the information that is required by this section is not liable to the estate of the mortgagor or any heir or beneficiary of the mortgagor.

[HB 3522](#) by Longoria, relating to photo identification requirements for certain stored value cards. HB 3522 adds new Sec. 604.153, Business & Commerce Code (REQUIRING PHOTO IDENTIFICATION FOR CARD TRANSACTION), to provide that a merchant may not accept a card for payment in a point of sale transaction for the purchase of or adding value to a stored value card unless the merchant requires the individual who uses the card to provide photo identification verifying the individual's identity as the cardholder. This does not apply if the merchant requires the individual presenting the credit card for payment to provide the individual's zip code to verify his identity or as to any card transaction, electronically enter the PIN associated with the card. Finally, the bill adds new Sec. 604.154, Business & Commerce Code (LIABILITY FOR FAILURE TO OBTAIN IDENTIFICATION), to provide that in the event the merchant fails to obtain the photo ID or PIN for a card transaction or the individual's zip code for a credit card transaction and the stored value transaction was not authorized by the cardholder, then the merchant shall be liable to the cardholder or the card issuing financial institution for all losses that may be attributed to such failure.

Bills scheduled for hearing this week

[House Judiciary and Civil Jurisprudence](#), Tuesday, 2:00 or upon adjournment

At Tuesday's JCJ hearing, the committee will hear testimony on [HB 1029](#) by Wray, relating to trusts. HB 1029 is part of the [REPTL](#) legislative program, and TBA voiced our concerns about HB 1029's Senate companion legislation, SB 387 by Rodriguez, in the Senate State Affairs Committee in March. Namely, on the direction of TBA's Wealth Management & Trust Division, we believe that the changes proposed to Sec. 114.003, Property Code (POWERS TO DIRECT), could lead to increased litigation in the trusts arena. We have visited with Representative Wray about our concerns, and we will continue to work with stakeholders on compromise language.

House JCJ will also consider Representative Naishtat's HB 2274 at its Tuesday hearing. [HB 2274](#) amends Sec. 256.204, Estates Code (PERIOD FOR CONTEST), to provide that after a will is admitted to probate, an interested person may commence a suit to contest the validity thereof not later

than the first anniversary of the date the will was admitted to probate. Current law provides for a two year period.

Questions or Comments?

As always, please don't hesitate to [let us know](#) if you have any questions or comments. For those of you who have made it this far, the following information from the Legislative Reference Library shows bill statistics as of April 30.

	House Bills (HB) & Joint Resolutions (HJR)	Senate Bills (SB) & Joint Resolutions
Filed	4,336	2,130
Reported out of committee	1,546	748
Passed by chamber of origin	470	530
Referred to committee in opposite chamber	107	147
Reported out of committee in opposite chamber	11	50
Passed opposite chamber	1	27
Signed by the Governor	0	2

Volume 84.13

April 30, 2015

[Forward to a Friend](#)

With 32 days left in the Session, today's mid-week State Issues Update is a little unusual. However, there are two key items we'd like to bring to your attention that we do not believe can wait until Sunday.

First, Chairman Rene Oliveira's [HB 1936](#) is **scheduled to be debated** on the House Floor **Friday, May 1**. If you'll remember, we recently sent an [Action Alert](#) urging our members to [contact their legislators](#) and voice their support for this bill that requires borrowers interested in taking out a tax lien loan to contact their bankers 10 days before closing that tax lien loan. We believe that this 10-day advance notice will give borrowers much-needed time to fully research all of their financial options and make the best decision for themselves. **If you haven't yet contacted your legislator -- it's not too late!** Please call your state House member and voice your support for HB 1936

Second, [HB 3123](#), a bill that sets the schedule for the Sunset Advisory Commission to review state agencies, was debated by the House today. Interestingly enough, for a brief period of time this afternoon, an amendment was attached to the bill that moved the sunset review dates of the Texas Department of Banking and the Texas Department of Savings and Mortgage Lending from the current 2019 date to 2017. This amendment was later withdrawn. The bill moves to Third Reading tomorrow, where it will face another important vote.

Thanks for your attention this evening, and we'll be back on our regular schedule Sunday.

HB 1936 Call to Action

April 23, 2015

CALL TO ACTION Re: HB 1936

We are anticipating that in the next week the full House will consider [HB 1936](#), **TBA-supported legislation** that requires lender notification before the closing of a tax lien loan. We have heard from TBA members from every corner of the state who have been negatively impacted by tax lien loans, so we believe this is a very important bill, and we urge you to let your legislator know you support the bill.

What does HB 1936 do?

HB 1936 requires a 10 day advance notice to preexisting lienholders before a tax lien loan can be made and placed ahead of your first lien!

What can you do to ensure HB 1936's passage?

WE NEED YOUR IMMEDIATE ASSISTANCE IN [CONTACTING YOUR LEGISLATOR](#) AND ASKING HIM/HER TO **VOTE FOR HB 1936**. We are contacting every 150 House members, and we need your help in doing so.

What should you say when you call your legislator?

"I'm calling regarding HB 1936. It is my understanding the House will be considering this legislation in the near future. I would like to visit with the staff person assigned to HB 1936.

I believe borrowers are ill-served by the tax lien lending industry. Most times, my customers take out a tax lien loan not knowing the consequences of the loan. It costs them substantially more than what it would cost to add the amount to the existing note and a tax lien loan places their loan in a classified position on our books.

The activities of the tax lien lenders are the equivalent of payday lending for homeowners. I would like the Representative to know my position which supports the passage of HB 1936."

Why should you take action?

I say this in all candor, if you want to stop the abuses of the tax lien lending industry, **now is the time to act** by making calls to your representative, and to those legislators who represent any branch offices you may have.

This needs to be done not later than 10 a.m. on Monday. Without your help, our efforts will not be successful. Please encourage your employees to call as well. Here's how to [find out who represents](#) you in the Texas House of Representatives.

Unfamiliar with tax lien lending?

Please take a look at our [short piece](#) on the tax lien lending industry.

THANKS!

Eric Sandberg

President & CEO
Texas Bankers Association
512-472-8388
512-914-5656

Every session the Texas Legislative Council publishes a [Dates of Interest](#) piece that tracks the Constitution, statutes, and the rules of the House and Senate for legislative deadlines and lists them by date for the legislative session. Some of these dates we've already covered in issues past – for example, Tuesday, January 13, the opening day of session, and Friday, March 13, the deadline for filing non-local bills and resolutions. After March 13, there were more than four weeks until the next date of interest, which was Wednesday, April 15, the first day a senator can put five bills or resolutions on the Senate Intent Calendar. While obscure, this date is important because until April 15, senators could only place three bills on the Intent Calendar each legislative day. This means that the Senate Intent Calendar potentially grew by 66% overnight (from 93 bills to 155 if all 31 senators put the maximum of five bills on the Calendar each day), and is indicative of how the calendars in both the Senate and the House are starting to look, which is to say long.

While Floor action is starting to become more important, we are still knee deep in committee work, so let's take a look at what we're working on in the week ahead.

Tuesday, [House Business & Industry](#)

2:00 p.m. or upon adjournment

The House B&I Committee will hear a number of bills we're following this week. The first is a bill being advocated for by TBA's Wealth Management & Trust Division, and relates to directed trustees. Filed by Representative Jason Villalba, [HB 3190](#) relates to persons authorized to direct, consent to, or disapprove a trustee's decisions. HB 3190 takes the Delaware approach to directed trustees by providing that if a trust has an advisor or an investment trustee who can direct investments, the trustee or the administrative trustee is not liable for following their instructions and does not have to oversee that advisor's or trustee's action. TBA supports this legislation because it recognizes that it is not the role of a trust's administrative trustee to second guess the decisions of a trustee that are made in good faith. If your institution has a wealth management or trust department, and your legislator serves on the [B&I Committee](#), please call him or her before Tuesday's hearing and voice your support!

B&I will also consider three bills that relate to a breach of system security of a business that exposes consumer credit or debit card information. Two are nearly identical: [HB 3478](#) by Elkins and [HB 3537](#) by Yvonne Davis. Both bills add new Section 521.054, Business & Commerce Code, BREACH INVOLVING CREDIT CARD OR DEBIT CARD INFORMATION, and provide that if a business experiences a breach of system security in which credit or debit card information is compromised, the business shall: send notice of the breach to the attorney general, and, after discovering the breach, send notice of the breach to each financial institution that issued cards affected by the breach. HB 3478 and HB 3537 also create a data security breach victim compensation fund to be developed and maintained by the attorney general.

Representative Raymond's [HB 4020](#) is the third bill in the suite, and it relates to the security of certain financial information and liability for certain security breaches. HB 4020 adds new Sec. 521.0521, Business & Commerce Code, BUSINESS DUTIES REGARDING CERTAIN PAYMENT INFORMATION, to provide that a business that accepts an access device (i.e., credit or debit card) may not, after authorization, retain the card security code, the PIN verification code data, or the full contents of any track of magnetic strip data. The bill further provides that if there is a breach of system security of a business that has violated this section or a breach of system security of the business's service provider, the business shall reimburse the financial institution that issued any access device affected by the breach for the costs of reasonable actions undertaken to protect the information of its cardholders or to continue to provide services to cardholders. The financial institution is also entitled to recover costs for damages paid by the financial institution to cardholders injured by a breach of system security of a business that has violated this section.

Tuesday, [House Judiciary & Civil Jurisprudence](#)

2:00 or upon adjournment

Tuesday afternoon the House JCJ Committee will hear [HB 3095](#) by Senfronia Thompson. HB 3095 is legislation being advocated for by the Real Estate, Probate & Trust Law (REPTL) Section of the State Bar and relates to durable powers of attorney and advance directives. HB 3095 makes a number of changes to the statutory durable power of attorney form, which you'll remember underwent significant changes just last session. Of note, HB 3095 adds new Sec. 751.065, Estates Code, ACCEPTANCE OF AND RELIANCE ON POWER OF ATTORNEY, to provide that a person who in good faith accepts a durable power of attorney without actual knowledge that the signature of the principal is not genuine may rely on the presumption that the signature is genuine and that the durable power of attorney was properly executed. Sec. 751.065 goes on to provide that a person who is requested to accept a durable power of attorney may request, and rely on, without further investigation: an agent's certification of any factual matter concerning the principal, agent, or power of attorney; an English translation of the power of attorney if the power of attorney contains language other than English; and an opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

Proposed Sec. 751.066, Estates Code, LIABILITY FOR REFUSAL TO ACCEPT POWER OF ATTORNEY, provides that a person shall either accept a durable power of attorney or request a certification, a translation, or an opinion of counsel not later than the seventh business day after the date the durable power of attorney is presented for acceptance. A person who requests a certification, a translation, or an opinion of counsel must accept the durable POA not later than the fifth business day after the date on which the certification, translation, or opinion of counsel is received.

Due to the extensive nature of the changes being proposed by HB 3095, we are uncomfortable with their potential impact on our member banks. Please take a few minutes to review HB 3095 and let us know if you have concerns about the legislation at your earliest convenience.

Questions or Comments?

As always, if you have any questions or comments about our work at the Texas Capitol, please do not hesitate to [let us know](#).

Volume 84.11

April 12, 2015

[Forward to a Friend](#)

The second half of the 84th Legislature

Now that Easter is behind us, the second half of the game we call the 84th Session of the Texas Legislature is underway. As is the case every session, the tempo of the session is noticeably picking up. Committee hearings are going later into the night because the debate on bills in both Chambers is longer and, at times, more contentious. There are less than five weeks left for House bills to be considered for the first time in the House – this means that if your House Bill hasn't gotten a hearing in the next two weeks, there's little hope for the bill to survive as a standalone piece of legislation in 2015. With this in mind, the following bills are bills we're tracking that are scheduled to be heard this week.

Monday, 9:00 a.m., [Senate State Affairs](#)

The Senate State Affairs Committee will hear testimony on SB 1020 by Creighton tomorrow morning. [SB 1020](#) relates to the designation of the trustee of an express trust as a beneficiary of a trust account or a P.O.D. payee of a P.O.D. account, and amends the definition of "beneficiary" found in Sec. 113.001, Estates Code, GENERAL DEFINITIONS, to include the trustee of an express trust, assigns "express trust" the meaning found in Sec. 111.04, Property Code, DEFINITIONS, and amends the definition of "P.O.D. payee" to include the trustee of an express trust.

The Committee will also consider [SB 1791](#) by Ellis, which relates to disclosures on selection or modification of an account by a customer of a financial institution. SB 1791 amends Sec. 113.053, Estates Code, USE OF FORM; DISCLOSURE, and requires banks to explicitly provide information on P.O.D. and other account types to people who are opening or modifying accounts. The bill requires that account holders initial each paragraph of the form when the statutory form is used. Furthermore, SB 1791 requires the financial institution to notify the customer of the type of account the customer has selected, and deletes existing statutory language that authorizes a financial institution to combine any of the provisions in, and vary the format of, the form and notices described in the statutory universal account form.

Tuesday, 8:00 a.m., [Senate Business & Commerce](#)

The Senate Business & Commerce Committee will consider SB 525 by Birdwell at its Tuesday morning hearing. [SB 525](#) is TBA-supported legislation relating to ad valorem tax lien transfers. SB 525 makes two changes to the existing law governing tax lien loans. First, it introduces a cooling off period for property owners interested in taking out tax lien loans by requiring the transferee to provide notice of the potential transfer to any mortgage lender/servicer not later than the 12th day before the property owner completes the tax lien transfer. Second, the bill gives TBA member banks and other lenders the right to obtain payoff information on a tax lien loan as soon as the borrower defaults on the underlying mortgage.

TBA has long advocated that a cooling off period like that which exists in home equity is appropriate given the nature of a tax lien loan and the fact that the borrower who defaults on a tax lien loan is likely to lose his property in foreclosure. Furthermore, TBA believes current law, which provides that a borrower must be delinquent on the underlying mortgage for at least 90 days before the lender has a right to pay off a tax lien loan on the property, unnecessarily adds to the fees charged to a borrower who is clearly in financial distress. If you are a constituent of any of the [members of the Senate Business & Commerce Committee](#), please contact them tomorrow and let them know you support SB 525.

Tuesday, 2:00 p.m. or on ADJ, [House Business & Industry](#)

HB 1208 by Cecil Bell will be heard Tuesday in House B&I. [HB 1208](#) relates to lender notice to contractors regarding construction loan or financing agreement for the improvement of real property and related procedures for suspending contractors' and subcontractors' performance. As we wrote earlier this session, this is the third session TBA has opposed this legislation because we believe it will significantly increase the cost of construction lending in the State of Texas.

HB 1208 adds new Sec. 28.0091, Property Code, LENDER NOTICE OF DEFAULT TO CONTRACTORS; SUSPENSION OF PERFORMANCE PENDING CURE. Subsection (a) applies only to a lender that provides financing through a construction loan or under a financing agreement for an improvement to real property for which the real property/improvement is collateral, and applies only to commercial property. Subsection (b) requires the contractor to provide to the lender the contractors name, address (physical and e-mail), and telephone number; and the name of the person to whom any notice required under this section should be delivered. Subsection (c) provides that each contractor or subcontractor is entitled to suspend contractually required performance without penalty or liability for damages if a contractor receives notice under (d). Subsection (d) provides that a lender shall immediately notify the contractor on the earliest date the lender sends to the borrower one of the following notices in connection with a particular default under the loan or financing agreement: a notice of intent to accelerate; a notice of acceleration; a notice of set-off; or a notice of foreclosure. Subsection (f) provides that on receipt of notice of default, a contractor shall immediately notify each of its subcontractors of their rights as a result of the notice to suspend contractually required performance without penalty or liability for damages. Finally, proposed subsection (h) provides that a lender that provides timely notice to a contractor is not liable for damages to the contractor or any of the contractor's subcontractors for any costs incurred to provide labor, materials, equipment, or services contemplated under the loan/financing agreement, except for those costs for which the lender has expressly agreed to be obligated to pay.

B&I will also consider HB 2391 at its Tuesday hearing. [HB 2391](#) by Bohac relates to the redemption of certain stored value cards, including gift cards, for cash and is identical to legislation filed by Bohac in 2013. The bill adds new Subchapter D to Chapter 604, Business & Commerce Code, to provide for the redemption of low-value cards. HB 1723 provides that if a stored value card is redeemed in person to make a purchase and a balance of less than \$5 remains following the redemption, at the consumer's request, the seller shall refund the balance of the card in cash to the consumer. Importantly, HB 1723 specifically provides that this new subchapter does not apply to a stored value card issued by a financial institution acting as a financial agent of the US or Texas; a federally insured financial institution if the financial institution is primarily liable for the card as the issuing principal; or an air carrier holding a certificate of public convenience and necessity.

Questions? Comments?

As always, please don't hesitate to [let us know](#) if you have any questions or comments.

Volume 84.10

March 29, 2015

[Forward to a Friend](#)

The busy season . . .

Last week was a busy week at the Texas Capitol for Team TBA – with 19 bills being considered in seven different committees, we had our work cut out for us. Importantly, Tuesday's hearing on [HB 1936](#) in House Business & Industry went very well. As you'll recall, HB 1936 relates to notice by a property owner to a mortgage servicer that the owner intends to enter into a contract with a property tax lender, and there was a lot of good discussion about the need for this bill. We were surprised to learn for the first time in the eight years we've been working on this issue that tax lien lending is an issue being followed by the Texas Association of Business. In fact, Bill Hammond, TAB's President and CEO, registered his organization's opposition to Chairman Oliveira's HB 1936. We hope to learn over the next few days the basis of this opposition. More importantly, we'd like to extend our sincere appreciation to Ford Sasser from Rio Bank in McAllen for making the time to come to Austin to testify in support of the tax lien lending notification bill.

This week promises to be as busy as last week was, and the days will go longer because the budget is due to be debated on the House Floor beginning Tuesday. With more than 350 pre-filed amendments to [HB 1](#), the House will go late Tuesday night. With the Easter break on the horizon, it will be interesting to watch how fast the budget debate moves – the sooner House members cast their final vote on the budget, the sooner they can go home for a long weekend.

[House Energy Resources,](#)

Monday, 2:00 or on Adjournment

Monday afternoon the House Energy Resources Committee will hear [HB 2207](#) by Keffer. HB 2207 relates to the foreclosure sale of property subject to oil or gas lease and is identical to legislation that was vetoed by Governor Perry two years ago. This bill fundamentally changes the 'first in time, first in right' truism in Texas property law as it relates to foreclosure situations where an oil and gas lease has been executed. TBA initially opposed HB 2207's predecessor legislation last session; after working with the oil and gas industry, we moved our position on the bill to neutral once the largest of our concerns were addressed. Our neutral position remains on the filed-version of HB 2207; however, we understand a committee substitute will be offered tomorrow, and depending on the language contained therein, we will either remain neutral or oppose the bill.

[Senate Agriculture, Water, and Rural Affairs,](#)

Monday, 2:00 or on Adjournment

There are two bills we're tracking on the Senate Ag Committee's agenda tomorrow afternoon. The first, [SB 1099](#) by Estes, relates to the operation and functions of the Texas Grain Producer Indemnity

Board. The Texas Grain Producer Indemnity Board was created in 2011 in an effort to address the situation of a grain elevator going bankrupt or failing when they're full of farmers' products. SB 1099 amends the law enacted in 2011 specifically as it relates to the establishment of a grain indemnity fund. TBA has been asked by a number of our Ag bankers to support this legislation.

Senate Ag will also hear Chairman Perry's [SB 1339](#) at its Monday hearing. SB 1339 relates to the perfection and priority of an agricultural lien on an agricultural crop. We've written about SB 1339's House companion bill, HB [1848](#) by Burrows, in a previous issue. SB 1339 is legislation that amends current law relating to the perfection and priority of an agricultural lien on an agricultural crop and seeks to create an automatically attaching, perfected agricultural lien for an agricultural crop on the date of delivery that lasts for 90 days, but can be extended upon the filing of a financing statement. Substitute language for this bill and its House companion is still being debated by affected parties. We have not seen that language yet; whether or not TBA weighs in on the bill will depend on what the committee substitute looks like.

[House Investments and Financial Services.](#)

Wednesday, 2:00 or on Adjournment

House IFS has a full schedule for Wednesday afternoon/evening and includes the following bills we're tracking: [HB 858](#) by Sanford, relating to the presumption of abandonment of an inactive checking or savings account or a matured certificate of deposit. HB 858 is legislation we've written about before that seeks to provide that for a checking or savings account or a matured certificate of deposit, the account is presumed abandoned if the account has been inactive for at least 15 years. TBA supports extending the abandonment period for these accounts from the current three year period to five years because of the compliance issues that arise with shortened abandonment periods. However, we are concerned that a 15-year period creates a host of compliance issues as well, so we continue to work with Representative Sanford and his staff on substitute language for his bill.

[HB 1881](#) by Capriglione. HB 1881 relates to authorizing certain private schools to charge fees for processing or handling certain payments or payment transactions. HB 1881 amends Title 5, Business & Commerce Code, by adding new Chapter 111, PRIVATE SCHOOLS, which provides, in part, that a private school may charge a fee in connection with the payment of tuition, a fee, or another charge if that payment is made by credit card, debit card, or electronic funds transfer. The fee charged may include a discount, convenience, or service charge for the transaction, or a service charge in connection with a payment that is dishonored or refused for lack of funds or insufficient funds. HB 1881 also amends Sec. 59.402, Finance Code, IMPOSITION OF SURCHARGE FOR USE OF DEBIT OR STORED VALUE CARD, and Sec. 339.001, Finance Code, IMPOSITION OF SURCHARGE FOR USE OF CREDIT CARD (those sections of state law prohibiting sellers from imposing surcharges for the use of debit/credit cards,) to provide that the sections do not apply to a private school that accepts a debit or credit card for the payment of fees or other charges.

Volume 84.9

March 22, 2015

[Forward to a Friend](#)

Calendar says . . . halfway to the finish line!

Monday, March 23 is the 70th day of session, which means that session is officially halfway over. We've entered the busy season as far as committee work goes. This week, TBA is tracking 19 bills scheduled for hearing in seven different committees. With two-thirds of the TBA Lobby Team in Washington, DC for the annual ABA Government Relations Summit, to say that we're spread thin is somewhat of an understatement. The following is an abbreviated list of the bills we're monitoring this week, we'll be back next week with a regular edition of the State Issues Update.

Tuesday's [B&I hearing](#) promises to be a busy one. There are 13 bills on the Agenda, and a number are ones we're watching closely. Importantly, Chairman Oliveira's [HB 1936](#) will be heard that day. HB 1936 is TBA-supported legislation that introduces the notion of a cooling-off period into tax lien loans. Specifically, the bill requires a property owner, not later than the 10th day before the date he executes a contract with a tax lien lender, to send his mortgage servicer a notice that the property owner intends to enter into a contract with the tax lien lender authorizing that third party lender to pay the delinquent taxes on the property.

Chairman Oliveira also has four foreclosure bills on Tuesday's agenda: [HB 2063](#), relating to the recording and effective date of certain paper documents relating to nonjudicial foreclosure sales; [HB 2066](#), relating to the rescission of nonjudicial foreclosure sales; [HB 2067](#), relating to the rescission or waiver of an acceleration of the maturity date of certain debt secured by a lien on real property; and [HB 2069](#), relating to administration of foreclosure sales of real property. TBA has expressed concerns on these bills because of the policy implications they have, especially given the fact that we have not heard from our members asking for these changes to be made. Of the suite of foreclosure bills, HB 2067 is the most attractive because it allows a lender to rescind the acceleration of a mortgage loan.

[House IFS](#) has a full agenda this week as well. Wednesday's agenda includes [HB 483](#) by Capriglione, relating to the establishment and administration of a state bullion depository, [HB 2394](#) by Darby, relating to the compelled production of certain customer records by a financial institution, [HB 3522](#) by Longoria, relating to photo identification requirements for certain stored value card purchases, [HB 3526](#) by Longoria, relating to requiring photo identification for certain credit card purchases, and [HB 3536](#) by Landgraf, relating to the appointment of commissioners of certain financial regulatory agencies by the Finance Commission of Texas.

Volume 84.8

March 15, 2015

[Forward to a Friend](#)

The Ides of March . . .

For Julius Caesar, the Ides of March was certainly a fateful day. For Texas legislators, the week leading up to the Ides of March (March 15 on the Roman calendar) was important because it marked the 60th day of the 84th Session of the Texas Legislature – the last day a non-local could be filed for consideration this session. Legislators embraced the 60th day deadline and filed over 2,600 bills since last week's publication. We're still wading through all of that good government, but the following bills did catch our eye for whatever reason:

[HB 2681](#) by Smith, relating to information required in a notice of sale of real property under contract lien. HB 2681 amends Sec. 51.002, Property Code, SALE OF REAL PROPERTY UNDER CONTRACT LIEN, to provide that the foreclosure notice served on a debtor under this section must state: the name and address of the sender of the notice; and the name, telephone number, facsimile number, email address, and street address of the trustee named in the deed of trust authorized to exercise the power of sale; and, if applicable, the substitute trustee authorized to exercise the power of sale under the deed of trust.

[HB 4120](#) by Fallon, relating to money transmissions sent to destinations outside the United States. Similar to legislation filed a number of years ago, HB 4120 assesses a 10% fee on a money transmission that originates in Texas and is transmitted to a destination outside of the US unless the person sending the money can provide proof that he is a US citizen or is lawfully present in the US. The collected fees are to be remitted to the comptroller for deposit into the border security account. The border security account created by HB 4120 is only to be used by the Department of Public Safety or the Texas National Guard to provide funding for border security efforts in the state.

[SB 1457](#) by Nichols, relating to bad faith claims of patent infringement; providing a civil penalty; creating a criminal offense. SB 1457 is TBA-supported legislation that is designed to combat bad faith

patent suits by patent assertion entities (e.g., patent trolls). The bill takes a two-pronged approach in trying to rein in patent trolls: first, it amends Texas' Deceptive Trade Practices Act by adding language that prohibits bad faith claims of patent infringement. The second prong of the bill is found in Texas' barratry statute. SB 1457 amends Sec. 38.12, Penal Code, BARRATRY AND SOLICITATION OF PROFESSIONAL EMPLOYMENT, to including bad faith patent infringement suits/claims. We look forward to working with Senator Nichols and his staff on this legislation in the hopes that it will bring much-needed relief to our member banks who continue to be sued by patent trolls.

Committee Hearings This Week

House Judiciary & Civil Jurisprudence, Tuesday

At Tuesday's House Judiciary Committee hearing, the Committee will consider [HB 705](#) by Farrar. HB 705 relates to access to a financial institution account of a person who dies intestate and is a bill we've shared with you before. HB 705 adds new Chapter 153, Estates Code, ACCESS TO INTESTATE'S ACCOUNT WITH FINANCIAL INSTITUTION. New 153.003 provides that on application of any person or on the court's own motion, a court may issue an order requiring a financial institution to release to the person named in the order information concerning the balance of each account that is maintained at the financial institution of a decedent who dies intestate. New 153.004 provides that on presentation of a certified copy of the decedent's death certificate and an affidavit that complies with new 153.003, a financial institution may release to an heir of a decedent who dies intestate information concerning the balance of each of the decedent's accounts that is maintained at the financial institution. This new chapter does not apply to an account with a beneficiary designation; a P.O.D. account; a trust account; or an account that provides for a right of survivorship. Representative Farrar was kind enough to share her draft of this bill before it was filed; at that time, we raised our concern that we do not believe it is the responsibility of a front line bank employee to be the arbiter of whether the person presenting the affidavit should have access to account information. We continue to work with Farrar and her staff on compromise language for a Committee Substitute.

Senate Criminal Justice, Tuesday

The Senate Criminal Justice Committee will hear public testimony on [SB 345](#) at its Tuesday hearing. SB 345 revises Sec. 33.02, Penal Code, BREACH OF COMPUTER SECURITY, to establish that a person commits the offense of breach of computer security with the "intent to obtain a benefit" as a punishable offense, which allows prosecutors to effectively prosecute these cases.

House Investments & Financial Services, Wednesday

Wednesday afternoon IFS will consider [HB 831](#) by Giddings and [HB 1002](#) by Yvonne Davis. These are identical bills relating to disclosure of home mortgage information to a surviving spouse. Both bills add new Sec. 343.103, Finance Code, DISCLOSURE OF MORTGAGE INFORMATION TO SURVIVING SPOUSE, to require that not later than the 30th day after a mortgage servicer of a home loan receives a request for the information from the surviving spouse of a mortgagor of the home loan, the mortgage servicer shall provide the surviving spouse with information including: documentation regarding the promissory note, balance information, and other information the mortgage servicer provided to the mortgagor. The surviving spouse must prove the person's status by providing a death certificate of the mortgagor; and an affidavit stating the surviving spouse was married to the mortgagor at the time of the mortgagor's death. We will visit with Ms. Giddings and Ms. Davis about our concerns with these bills, namely that we believe this information will be covered in the final TILA/RESPA rules that are currently out for comment.

Questions or Comments?

As always, please don't hesitate to [let us know](#) if you have any questions or comments about what's happening at the Capitol -- we're here to help!

Volume 84.7

March 8, 2015

[Forward to a Friend](#)

Kicking Into High Gear

With the 60th day bill filing deadline looming on March 13, Texas legislators are officially in bill filing overdrive. More than 700 bills were filed last week, bringing the total number of House and Senate bills and joint resolutions to 3,699. To give you an idea of the avalanche of bills we expect to see between now and Friday the 13th, in the week leading up to the bill filing deadline in the 2013 Session, there were **more than 2,500** bills and joint resolutions filed. That is not a typo. For what it's worth, the number of bills filed this session is tracking ahead of what we saw two years ago.

In addition to the (*pick your metaphor for A LOT*) of legislation being introduced, committees are beginning their substantive work, and a number of bills we're tracking are scheduled for public hearing in the week to come. The following is what we're working on this week.

Senate State Affairs, Monday at 9:00 a.m.

The Senate State Affairs Committee is set to hear [SB 512](#) by Zaffirini tomorrow morning. SB 512 is legislation relating to the promulgation of certain forms for use in probate matters and is legislation TBA is tracking for a couple of reasons. First, SB 512 requires the Texas Supreme Court to promulgate forms and instructions for the use of those forms for use by individuals representing themselves in certain probate matters or making certain wills. Because the front-line employees of TBA members are often approached by the loved ones of deceased account holders, a systematic approach for the development of forms by the Supreme Court for Texans seeking to make a will, probate a will as a muniment of title under the Estates Code, or a small estate affidavit proceeding is attractive. Second, we support SB 512 because we have seen the introduction of at least two bills this session that seek to require front line bank employees to accept affidavits as 'proof' that the holder of the affidavit is entitled to certain account information. TBA is very concerned about putting bank employees in the seats of judges and believes a thorough discussion by trained legal professionals is warranted on how to deal with account information in intestacy situations. We believe it is bad policy to have various affidavits in various sections of Texas law that require bank employees to turn over the personal financial information of deceased account holders.

Senate Business & Commerce, Tuesday at 9:00 a.m.

The Senate Committee on Business & Commerce will hold its first hearing of the session Tuesday morning at 9:00 a.m. Two bills on that meeting's agenda are of interest to our members. First, [SB 641](#) by Schwertner, relating to debit card or stored value card surcharges. SB 641 defines "surcharge" to mean any increase in the price charged for goods or services imposed on a customer who pays with a debit or stored value card that is not imposed on a customer who pays by any other means. SB 641 also adds new Sec. 59.403, Finance Code, CIVIL PENALTY, to provide that a person who knowingly violates the PROHIBITION OF SURCHARGE section of the Finance Code is liable to the state for a civil penalty not to exceed \$1,000 for each violation. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring a suit to

recover the civil penalty imposed under this section.

The second bill of note on B&C's Tuesday agenda is [SB 657](#) by Eltife, a bill relating to the appointment of the commissioners of certain financial regulatory agencies by the Finance Commission of Texas. SB 657 is legislation that is needed because of the 2011 expansion of the number of members serving on the Texas Finance Commission. Current statutes provide that the appointment of the banking commissioner and the savings and mortgage lending commissioner be by at least five affirmative votes of the finance commission because the commission used to be a 9 member body. Now that there are 11 members of the finance commission, this language is obsolete. SB 657 simply strikes the references to the finance commission needing five votes to appoint the commissioners at DOB and TDSML.

House State Affairs, Wednesday at 10:30 a.m. or upon adjournment

House State Affairs isn't a committee before which the banking industry regularly appears. However, at Wednesday's hearing, the Committee will consider [HB 2024](#) by Larry Gonzales, a bill that would have a significant impact on our state-chartered banks if finally passed. HB 2024 relates to the self-directed and semi-independent (SDSI) status of certain agencies and to the requirements applicable to, and the oversight of, those agencies and seeks to move the SDSI enabling statutes of the financial regulatory agencies from the Finance Code to the Government Code.

As we discussed at length with our Texas Bankers Blitz participants, TBA believes the SDSI status of our Banking and Savings and Mortgage Lending Departments benefits all Texas banks. For whatever reason, the Texas Sunset Commission recommended that the Legislature move the financial regulatory agencies' SDSI enabling legislation to that section of the Government Code that sets out the SDSI status for the Texas State Board of Public Accountancy, the Texas Board of Professional Engineers, and the Texas Board of Architectural Examiners. It is unfortunate that there seems to be a lack of recognition that the Department of Banking and the Department of Savings and Mortgage Lending are not occupational licensing agencies and should not be treated as such. Furthermore, HB 2024 seems to give the Legislative Budget Board oversight authority over DOB and TDSML, which we believe is inappropriate. The Finance Code clearly provides the Texas Finance Commission with the responsibility to oversee DOB and TDSML, and we believe that Commission is best-suited as the policy-making for these agencies. Rest assured that TBA will continue to advocate for leaving the financial regulatory agencies' SDSI enabling legislation in the Finance Code because we believe this is in our members' best interest. Stay tuned for updates on this important bill.

Volume 84.6

March 1, 2015

[Forward to a Friend](#)

In [last week's State Issues Update](#), we talked about the more than 400 bills that were filed and wondered whether that pace would keep up in the two weeks leading up to the bill filing deadline on March 13. Looking at the more than 530 bills and joint resolutions that were filed last week, we believe it's safe to assume that yes, there will be lots more bills filed before the deadline arrives.

Without further ado, here are a number of newly filed bills that caught our eye last week:

[HB 1777](#) by Giddings, relating to prohibiting an employer from accessing the personal online accounts of employees and job applicants through electronic communication devices. HB 1777 is similar to a bill filed by Giddings last session (83R HB 318), and it proposes to add a new section to the Labor Code that provides that an employer commits an unlawful employment practice if the employer: requires or requests that an employee or applicant for employment disclose a user name, password, or other means for accessing a personal online account of the employee or applicant; or otherwise uses an employee's or applicant's user name, password, or other means to access a personal online account of the employee or applicant through an electronic communication device. This legislation specifically does not apply to employers engaged in financial services, which is defined to mean a bank, savings and loan association or savings bank, credit union, or other depository institution or its affiliates; a mortgage banker or residential mortgage loan company; a securities firm or registered financial advisory firm; a regulated loan company; or an insurance company or insurance agency. As passed by the House Business & Industry Committee last session, [83R HB 318](#) contained the same language regarding "employers engaged in financial services." However, this language was removed from the bill by a Floor Amendment offered by Giddings during debate in the House two years ago. We will closely monitor HB 1777 to make sure the employers engaged in financial services language remains in the legislation if it moves forward.

[HB 1848](#) by Burrows, relating to the perfection and priority of an agricultural lien on an agricultural crop. HB 1848 adds new Section 70.4045, Property Code, PERFECTION AND PRIORITY OF AGRICULTURAL LIEN ON AN AGRICULTURAL CROP, to provide that notwithstanding [Chapter 9, Business & Commerce Code](#), an agricultural lien on an agricultural crop created under this subchapter is perfected at the time the lien attaches (i.e., on the date on which physical possession of the crop is delivered by the producer to the purchaser) and continues to be perfected if a financing statement covering the crop is filed on or before the 90th day after the date the lien attaches. New (b) provides that if a financing statement is not filed on or before the 90th day after the date the lien attaches, the lien is considered unperfected on the date the lien attached until the date the financing statement is filed or the lien is perfected under Chapter 9, Business & Commerce Code. Finally, new (c) provides that notwithstanding Chapter 9, Business & Commerce Code, an agricultural lien on an agricultural crop created and perfected under this subchapter has priority over a conflicting security interest in an agricultural lien on the agricultural crop.

[HB 1936](#) by Oliveira, relating to notice by a property owner to a mortgage servicer that the owner intends to enter into a contract with a property tax lender. HB 1936 amends Sec. 32.06, Tax Code, by requiring that not later than the 10th day before the date a property owner executes a contract with a tax lien lender, the owner shall send via certified mail to any applicable mortgage servicer a notice that the property owner intends to enter into a contract with the tax lien lender authorizing the tax lien lender to pay the delinquent taxes on the property. In the interim leading up to the 84th Session of the Texas Legislature, the House Business & Industry Committee studied tax lien lending; this bill is one of the Committee's recommendations for legislative action this session.

Questions? Comments?

As always, please don't hesitate to [let us know](#) if you have any questions about what's happening with the Texas Legislature. We hope to see at this week's [Texas Bankers Blitz](#), we're looking forward to a successful event at the Capitol!

99 Days of Session Left, 99 Days of Session . . .

With less than 100 days left in the 84th Session of the Texas Legislature, things are about to go into overdrive. In fact, last week, Governor Abbott issued [five proclamations](#) declaring emergency items to be immediately considered by the Legislature. The five emergency items relate to early education, higher education, border security, transportation, and ethics. Practically speaking, this means that these items do not have to wait the constitutionally mandated 60 days before legislation can be debated in either chamber.

Another indicator that the pace at the Capitol is picking up is the fact that more than 400 bills and joint resolutions were filed last week. With the March 13 bill filing deadline now less than three weeks away, we expect to see a huge uptick in the number of bills filed each day. In fact, we heard last week that there are more than 3,000 bill draft requests still pending at the Texas Legislative Council (the nonpartisan agency that provides bill drafting, computing, research, publishing, and document distribution services to the Texas Legislature.) Hopefully, not all of these drafts will see the light of day as standalone bills; either way, this week's bill filing numbers will certainly be interesting to watch.

Of the bills filed last week, the following are noteworthy for our purposes:

[HB 1628](#) by Johnson, relating to authorizing a credit union or other financial institution to conduct savings promotion raffles. HB 1628 adds new Chapter 279, Finance Code, SAVINGS PROMOTION RAFFLE, to provide that a credit union or financial institution may conduct a savings promotion raffle if each ticket or token representing an entry in the raffle has an equal probability of being drawn; and the raffle is conducted in a manner that does not jeopardize the ability of the financial institution to operate in a safe and sound manner and does not mislead the financial institution's customers. Chapter 279 defines "savings promotion raffle" to mean a raffle conducted by a credit union or financial institution in which the sole action required for winning a designated prize is the deposit of at least a specified amount of money in a savings account or other savings program offered by the credit union or financial institution. Federal law prohibiting these types of activities at banks was amended in December 2014, so a number of states have seen the introduction of legislation similar to HB 1628 this year as a result. The legislation is being pushed by nonprofit organizations who maintain that treating every deposit as a raffle entry is the type of savings incentive many people need in order to change their financial habits. While the bill specifically exempts these accounts from the [Sweepstakes](#) statutes found in the Business & Commerce Code, the bill does not amend the [Gambling section](#) of the Penal Code, so work needs to be done if this legislation is going to be enacted and utilized by Texas banks.

[HB 1726](#) by Oliveira, relating to a study by the consumer credit commissioner regarding payment by mortgage lenders of property tax loans. HB 1726 requires the Consumer Credit Commissioner to conduct a study on the frequency with which mortgage lenders pay off property tax loans and the reasons for doing so, including because the property owner has defaulted on the mortgage loan and the mortgage lender is trying to protect

its collateral. The bill requires the OCCC to issue the final study results to the legislature not later than December 1, 2016.

[HB1733](#) by Smithee, relating to automobile liability insurance for drivers providing transportation network services. Transportation network services are companies like Uber and Lyft who provide taxi-like services by private individuals through the use of mobile apps or platforms. Banks are brought into the policy discussions surrounding TNCs because if there is no insurance coverage for a private individual using his vehicle for commercial purposes, then the bank's collateral may not be insured in case there is an accident. Many states and localities have enacted legislation governing transportation network companies, known as TNCs, because of the unique auto insurance questions that arise in these arrangements. HB 1733 adds new Chapter 1954, Insurance Code, TRANSPORTATION NETWORK SERVICES, and sets out the statutory framework that would govern the insurance coverage of these services. Of particular note is the fact that HB 1733 requires a TNC and a participating driver to maintain a transportation network insurance policy. The bill defines "transportation network insurance policy" to mean an auto liability policy that covers a participating driver while the driver is providing transportation network services. The bill further provides that this transportation network insurance policy is the primary insurance as to the participating driver while the driver is providing TNC services. TBA has attended a number of stakeholder meetings on this issue and will continue to closely monitor this bill as it moves through the legislative process to ensure that our members' interests are protected in whatever bill finally passes.

Texas Bankers Blitz Just One Week Away!

It's not too late to register for [Texas Bankers Blitz](#), our biennial event at the Texas Capitol. This year's event will feature a Lege 101 session for first time attendees, an issue briefing at the Texas Capitol, a networking reception, Capitol visits with legislators, and a come-and-go luncheon for attendees and their elected officials. This popular event is a great opportunity for TBA members to visit with their legislators about issues impacting their banks. If you haven't made plans to attend yet, please do so today -- we'd love to have you!

Volume 84.4

February 15, 2015

[Forward to a Friend](#)

Getting Down to Business

House and Senate committees will start working in earnest this week (no offense to our friends in the House Appropriations and Senate Finance committees, who've been meeting daily for weeks, but we focus on the committees having jurisdiction over our issues in this publication.) Wednesday afternoon after the House adjourns for the day, the House Investments & Financial Services Committee will hold its first hearing. This organizational hearing will include invited testimony from the Finance Commission of Texas, the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and other financial regulatory agencies. We look forward to the testimony of our regulators as we all work to educate the five new members of the House IFS Committee on our issues. (There are [seven members of this committee](#); however, Vice Chair Oscar Longoria and Dan Flynn both served on the committee last session.)

Speaking of educating legislators, we have introduced a new legislative publication this

session aimed exclusively at legislators and their staffs. This weekly electronic publication, called Texas Banking Bytes, is part of our effort to increase TBA's legislative outreach and is designed to be a brief, high level primer for folks at the Capitol who may be unfamiliar with the banking industry. As the legislative session rolls on and we begin discussing the merits of specific bills, this publication will highlight where TBA stands on particular legislation . . . pro, con, or neutral and the reasoning behind our position. Until that time, we are working to introduce legislators and their staffs on who we are, who we represent, and the agencies that regulate our members. Last week was our fourth issue, and it focused on the Texas Department of Savings and Mortgage Lending. If you're interested in seeing what Texas Banking Bytes is all about, please take a look at [last week's issue](#).

Recently Filed Legislation of Note

[HB 1333](#) by Naishtat, relating to a request for a customer record of a financial institution for guardianship purposes. Sec. 59.006, Finance Code, DISCOVERY OF CUSTOMER RECORDS, provides the exclusive method for compelled discovery of a record of a financial institution relating to one or more customers but does not create a right of privacy in a record. HB 1333 adds investigations of guardianship applications and court-initiated investigations to the list of demands/requests for information that a financial institution is not required or authorized to give a customer notice of.

[SB 512](#) by Zaffirini, relating to the promulgation of certain forms for use in probate matters. SB 512 adds new Sec. 22.020, Government Code, PROMULGATION OF CERTAIN PROBATE FORMS, that requires the Texas Supreme Court to promulgate forms and instructions for the use of those forms by individuals representing themselves in certain matters or making certain wills. New subsection (d) provides that a court shall accept a form promulgated by the supreme court under this section unless the form has been completed in a manner that causes a substantive defect that cannot be cured.

[SB 525](#) by Birdwell, relating to ad valorem tax lien transfers. SB 525 is TBA-supported legislation that: introduces a 12-day cooling off period before a tax lien loan can be closed; creates the responsibility for the tax lien transferee, in that 12-day period, to notify any mortgage servicer and each holder of a recorded preexisting lien that the property owner has requested that the transferee pay the taxes on the property, that the tax lien will be transferred to the transferee, and that the transferred tax lien will be superior to the mortgage; and allows a mortgage servicer or first lienholder to pay off a tax lien upon the property owner's default. TBA applauds Senator Birdwell for his efforts on Texas consumers' behalves, and we look forward to working with he and his staff on this important legislation this session.

More hotel rooms added for Texas Bankers Blitz!

Because our original Texas Bankers Blitz room block at the AT&T Center has sold out (thank you existing registrants!), we have added additional rooms at an overflow hotel. If you haven't registered for Texas Bankers Blitz yet, it's not too late! Please visit the [Texas Bankers Blitz website](#) for more information, and register today!

Volume 84.3

February 9, 2015

[Forward to a Friend](#)

Ready For The First Play

January's edition of the Texas Banking Magazine compared the 84th Session of the Texas

Legislature to a college football game. In that article committee chairmen were likened to captains of football teams. As you'll remember from our last two publications, Senate 'captains' were appointed January 23. Speaker Straus released [House committee appointments](#) Wednesday, February 4.

For TBA's purposes, the committees we follow most closely in the House are Investments & Financial Services, Business & Industry, and Judiciary & Civil Jurisprudence. Two of these three have new committee chairmen, so we are working to educate these members, and their staffs, on our issues. They are: Tan Parker, Chairman, House Committee on Investments & Financial Services, and John Smithee, Chair, House Committee on Judiciary & Civil Jurisprudence. If you know either Parker or Smithee (or both), [please let us know](#) so we can leverage your relationship with them this session. We are thankful that Rene Oliveira is back as the Chairman of House Business & Industry.

In keeping with our sports analogy, now that we know who our captains are, we are officially ready to play ball! ([Wrong sport](#), but you get the idea.) We anticipate that committees having jurisdiction over financial services issues will begin having hearings in the next two weeks. Until that time, we will continue to review introduced legislation of note.

[HB 858](#) by Sanford, relating to the presumption of abandonment of an inactive checking or savings account or a matured certificate of deposit. HB 858 amends Sec. 73.101(c), Property Code, to provide that for a checking or savings account or a matured certificate of deposit, the account is presumed abandoned if the account has been inactive for at least 15 years. The current presumed abandonment period for these accounts is three years, and since those periods were set in 2011, TBA has heard from a number of our members about the increase in compliance costs that has resulted from these shorter periods. While we support extending the time periods past three years, we believe that a 15 year abandonment period creates its own compliance issues, which is what we recently [shared with](#) Representative Sanford. We look forward to working with Sanford on this legislation as it moves through the process.

[HB 1208](#) by Bell, relating to lender notice to contractors regarding a construction loan or financing agreement for the improvement of real property and related procedures for suspending contractors' and subcontractors' performance. This is the subcontractor notification bill; the 84th session will be the third session TBA has opposed this legislation because we believe it will significantly increase the cost of construction lending in the State of Texas.

HB 1208 adds new Sec. 28.0091, Property Code, LENDER NOTICE OF DEFAULT TO CONTRACTORS; SUSPENSION OF PERFORMANCE PENDING CURE. Subsection (a) applies only to a lender that provides financing through a construction loan or under a financing agreement for an improvement to real property for which the real property/improvement is collateral. This section does not apply with respect to a loan or financing agreement used primarily for personal, family, or household purposes. Subsection (b) requires the contractor to provide to the lender the contractor's name, address (physical and e-mail), and telephone number; and the name of the person to whom any notice required under this section should be delivered. Subsection (c) provides that each contractor or subcontractor is entitled to suspend contractually required performance without penalty or liability for damages if a contractor receives notice under (d). Subsection (d) provides that a lender shall immediately notify the contractor on the earliest date the lender sends to the borrower one of the following notices in connection with a particular default under

the loan or financing agreement: a notice of intent to accelerate; a notice of acceleration; a notice of set-off; or a notice of foreclosure. Subsection (e) provides that a lender and a contractor may devise and agree on a method for delivering any notice required under (d); if a method is not agreed upon, the notice must be delivered by certified mail, return receipt requested. Subsection (f) provides that on receipt of notice of default, a contractor shall immediately notify each of its subcontractors of their rights as a result of the notice to suspend contractually required performance without penalty or liability for damages. Subsection (g) provides that a lender is not required to notify a contractor and the contractor and the subcontractors are not entitled to suspend performance if, before the lender sends a notice to the borrower, a written agreement exists between the lender and the contractor that: provides for continued performance by the contractor and for payment to the contractor in the event of a default; provides for notice from the lender to the contractor that the borrower is in default; AND requires that on the receipt of the notice of default, the contractor shall immediately notify the contractor's subcontractors of the borrower's/property owner's default. (h) a lender that provides timely notice to a contractor is not liable for damages to the contractor or any of the contractor's subcontractors for any costs incurred to provide labor, materials, equipment, or services contemplated under the loan/financing agreement, except for those costs for which the lender has expressly agreed to be obligated to pay.

Texas Bankers Blitz

[Texas Bankers Blitz](#) is a little over three weeks away and registrations are still being accepted! This no-cost event is the biennial opportunity for TBA member bankers to participate in the legislative process. Your representatives and your senators are here because of your votes -- make sure they understand YOUR issues as a banker. We need your help to make this session's Texas Banker Blitz successful; if you have not [registered](#) yet, please do so today!

Volume 84.2

February 1, 2015

[Forward to a Friend](#)

Hurry Up and Wait

Now that Senate committees have been assigned and legislation is being referred to those committees, there is a sense, at least on one side of the Capitol, that the work of session is beginning. In fact, three of the Senate's 14 committees held hearings last week, and three are scheduled to hold hearings this week.

As was mentioned last Sunday, the Speaker of the House hasn't released House committee appointments yet, so we're still waiting to see who will be chairing the House committees. In a body with almost five times the number of members (150 in the House as opposed to 31 in the Senate,) it's not surprising that this process takes longer. Once the House committee assignments are made, we expect committee hearings to begin shortly thereafter. (For the curious or those with a little extra time on their hands, note that under the [Rules of the House](#), there is a five day posting rule for committees, so, no House committee can meet unless notice of the hearing has been posted at least five calendar days in advance of the hearing.)

Of the 1465 bills filed, the following are of note:

[HB 705](#) by Farrar, relating to access to a financial institution account of a person who dies intestate. HB 705 adds new Chapter 153, Estates Code, Access to Intestate's Account with Financial Institution. This new chapter does not apply to an account with a beneficiary designation; a P.O.D. account; a trust account; or an account that provides for a right of survivorship. New Sec. 153.003 provides that on application of any person or on the court's own motion, a court may issue an order requiring a financial institution to release to the person named in the order information concerning the balance of each account that is maintained at the financial institution of a decedent who dies intestate if: 90 days have elapsed since the date of death; no petition for the appointment of a personal representative for the decedent's estate is pending; and no letters testamentary or of administration have been granted with respect to the estate. New Sec. 153.004 provides that on presentation of a certified copy of the decedent's death certificate and an affidavit that complies with new 153.005, a financial institution may release to an heir of a decedent who dies intestate information concerning the balance of each of the decedent's accounts that is maintained at the financial institution.

[HB 896](#) by Hernandez, relating to a personal financial literacy component in a statistics course offered for public high school graduation. HB 896 adds new Sec. 28.0021(d), Education Code, to provide that if the State Board of Education approves a statistics course as an advanced mathematics course, the course must include instruction in personal financial literacy relating to: avoiding and eliminating credit card debt; being a prudent investor in the stock market and using other investment options; and beginning a savings program and planning for retirement.

Register for Texas Bankers Blitz!

Texas Bankers Blitz is rapidly approaching, and we need you to participate! This hands-on grassroots event is essential for TBA members because it not only allows our member bankers to be a part of the legislative process, it also shows our elected officials that we are engaged and care about the impact legislative actions will have on communities and businesses across the state. More information on this biennial event can be found [here](#).

Volume 84.1

January 25, 2015

[Forward to a Friend](#)

A Week to Remember

Last Tuesday at noon, Governor Greg Abbott and Lieutenant Governor Dan Patrick were sworn into office. Their swearings-in, and the festivities surrounding them, brought election season to a close and signaled the beginning of the work to be done at the Texas Capitol over the course of the next 127 days.

As the leader of the Texas Senate, Governor Patrick wasted no time getting down to business. First up was Wednesday's debate on the Rules that will govern the Senate this session. Much has been written on the Senate's vote to change its rule providing for how many votes are needed to bring legislation to the floor for debate. Beginning this session, rather than needing a two-thirds vote (i.e., 21) to bring legislation up for debate on the floor of the Texas Senate, now Senators will only need a three-fifths vote (19). Governor Patrick has sought to change this Senate rule since he was first elected as a Republican Senator from Houston in 2007.

More importantly for our purposes, the Senate voted to reduce the number of committees in the Texas Senate. Previously, there were 18 committees in the Senate. Now there are 14. Further proving to observers that the Senate is open and ready for business, late Friday afternoon, Governor Patrick released his committee appointments for the session. That means that we now know who the chairmen, vice chairmen, and committee members are for those 14 committees. Senate Committee assignments can be found [here](#). Starting tomorrow, bills will begin to be referred to committee. (For a refresher on what this means, please take a look at [our first issue](#).) Historically, the Senate Business & Commerce Committee has been the main committee that considers banking-related legislation; we anticipate this will continue to be the case this session.

House Committee assignments are expected to be released sometime in the next couple of weeks.

Bills of Interest

Despite there being an 80% increase in pre-filed legislation through the month of December, and a 52% overall increase in the number of bills filed to date, we are tracking fewer than 50 of the more than 1200 bills and joint resolutions filed so far this session. This means that as of now, only a few dozen bills potentially impact the business of banking -- this is what a cynic would call the calm before the storm.

Recently filed legislation of note includes:

[HB 831](#) by Giddings, which adds new Sec. 343.103, Finance Code, to require that not later than the 30th day after a mortgage servicer of a home loan receives a request for the information from the surviving spouse of a mortgagor of the home loan, the mortgage servicer shall provide the surviving spouse with information including: documentation regarding the promissory note; balance information; and other information the mortgage servicer provided to the mortgagor. The surviving spouse must prove the person's status by providing a death certificate of the mortgagor; and an affidavit stating that the surviving spouse was married to the mortgagor at the time of the mortgagor's death.

[SB 283](#) by West, which adds new Sec. 51.0012, Property Code, to provide that a mortgagee or mortgage servicer of a mortgage loan on real property used as the debtor's residence may not foreclose under Sec. 51.002, Property Code (non-judicial foreclosure), unless the mortgagee or mortgage servicer obtains an expedited order under Rule 736, Texas Rules of Civil Procedure, before proceeding with the foreclosure. The bill further requires the mortgagee or mortgage servicer to state in the application for the expedited order that the payment for the mortgage loan is at least 120 days delinquent and no loss mitigation application submitted to the mortgage servicer is pending.

[SB 284](#) by West, which amends the Civil Practice and Remedies Code to provide that for a power of sale exercised by the filing of an application of an expedited order allowing the foreclosure of a contract lien under Rule 736, Texas Rules of Civil Procedure, a citation must be served on each person who is obligated to pay the debt.

Texas Bankers Blitz -- March 3 & 4

If you haven't already, please make plans to attend the Texas Bankers Blitz March 3 and 4 in Austin! This biennial event is the perfect opportunity for you to visit with your local Senators and Representatives and tell them about the issues most affecting your

customers, your banks, and your communities. Registration is easy -- simply log in to the TBA website, and take it from there. The registration page can be found [here](#).

As always, please feel to let us know if you have any questions.

New Year, (Almost) New Lege!

Along with the arrival of 2015 last week, Texans also welcomed a host of newly elected officials . . . well, sort of. Because nothing is ever as easy as it should be, these officials take office at various times over the next few weeks. State law provides that the regular term of an elective state office begins on January 1 of the year following the general election for state and county officers. ([Section 601.003](#), Government Code) However, this law does not apply to the office of governor, lieutenant governor, state senator, or state representative. So, while we saw Comptroller Glenn Hegar and Land Commissioner George P. Bush take their oaths of office on Friday, January 2, per statute, Texas legislators will not take their oaths of office until noon on the second Tuesday of January. ([Section 301.001](#), Government Code)

[Article 4, Section 4](#) of the Texas Constitution provides that the Governor shall be installed on the first Tuesday after the organization of the Legislature, or as soon thereafter as practicable. So, Governor-elect Greg Abbott will be sworn into office on Tuesday, January 20. Article 4, Section 16, Texas Constitution, provides that the Lieutenant Governor "shall be chosen at every election for Governor by the same voters, in the same manner, continue in office for the same time, and possess the same qualifications", so Lieutenant Governor-elect Dan Patrick will also be sworn in on January 20.

Because the Texas Legislature only meets for 140 days in odd-numbered years, it's easy to think that legislators arrive in Austin and immediately get down to the business of debating legislation. However, this is not the case. The Texas Constitution provides that "when convened in regular Session, the first thirty days shall be devoted to the introduction of bills and resolutions . . . and such emergency matters as may be submitted by the Governor . . . [and] the succeeding thirty days . . . the various committees of each House shall hold hearings to consider all bills and resolutions and other matters then pending". [Article 3, Section 5](#), Texas Constitution. So, aside from being an interesting lesson in Texas government for policy wonks, this timeline is important to keep in mind as we wade through the first few weeks of the legislative session and wonder why we're not seeing a lot of action.

As of Friday, January 2, 2015, there have been 815 House and Senate bills and joint resolutions filed for consideration by the 84th Legislature. Thankfully, only a small number potentially impact the business of banking, and we've told you about two of those in our last publication. Keep in mind, though, that in the last regular session of the Texas Legislature (which adjourned May 27, 2013), there were approximately 5,900 bills and joint resolutions filed, over 1,400 of which were finally passed, so we know the number of bills affecting TBA member banks will go up.

For what it's worth, statistics show that a bill filed the second week of February has the greatest likelihood of final passage, so we know from experience that we will see legislative filings increase exponentially the last weeks of February and the first week of March.

Speaking of the first week of March, have you registered yet for TBA's [Texas Bankers Blitz](#) March 3-4? This biennial legislative event is the perfect time for TBA member bankers to travel to Austin and visit with their elected officials. As hard as your TBA Lobby Team works to educate elected officials about the positive or negative impact legislation could have on Texas banks, your legislators want to hear from you! If you haven't participated in the past, have any questions about this year's event, or any legislative questions in general, please let us know!

Volume 84.ii

November 16, 2014

[Forward to a Friend](#)

And they're off!

Last Monday, November 10, was the first day of prefiling for the 84th Session of the Texas Legislature. Over the course of five days, legislators and legislators-elect filed 443 bills and joint resolutions. This represents a more than 40 percent jump in the number of pre-filed bills in the same time period before the 83rd Session. It will be interesting to see whether this increased level of legislative filing holds true for the session as a whole.

Thankfully, the vast majority of the legislation filed does not affect the business of banking. However, there are a number of bills that we are tracking because they would impact all Texas businesses if they were finally passed -- these include bills and joint resolutions doing away with the state's franchise tax and legislation increasing the minimum wage.

Representative Jose Menendez from San Antonio filed the only two bills that directly impact banking, and both relate to requiring photo ID for certain credit card purchases.

The first, [HB 146](#), adds new Sec. 506.002, Business & Commerce Code, to provide that a merchant may not accept a credit card for payment in a face-to-face transaction unless the merchant requires the person presenting the credit card to provide photo ID verifying the person's identity as the cardholder if the transaction is for: the purchase of goods or services in an amount of \$200 or more; or the purchase of a stored value card. This requirement does not apply if the merchant requires the

person presenting the card for payment to enter his zip code to verify his identity or enter the PIN number associated with the card.

Similarly, [HB 149](#) adds new Sec. 604.153, Business & Commerce Code, to provide that a merchant may not accept a credit card for payment in a face-to-face transaction for the purchase of or adding value to a stored value card unless the merchant requires the person presenting the credit card to provide photo ID verifying the individual's identity as the cardholder. This requirement does not apply if the merchant requires the person presenting the card for payment to enter his zip code to verify his identity.

Enjoy this abbreviated edition of the State Issues Update – hopefully next week's edition is equally brief! As always, if you have any questions about a legislative matter, please contact any member of the [TBA Lobby Team](#).

Volume 84.i

November 9, 2014

[Forward to a Friend](#)

84TH SESSION OF TEXAS LEGISLATURE KICKING OFF

First, the players

As the TBA lobby team discussed at each of our 19 Texas Tour stops this summer, the mid-term elections will reshape the face of two of the three branches of government in the State of Texas. In the Executive Branch, seven of the nine officers will be new. After serving as the state's Attorney General for the past 12 years, Greg Abbott will be inaugurated as Texas' 38th governor in January. Senator Dan Patrick will serve as Lieutenant Governor, Senator Ken Paxton will be our next Attorney General, Senator Glenn Hegar will serve as the Comptroller, political newcomer George P. Bush will be our next Land Commissioner, former Representative Sid Miller will be the Agriculture Commissioner, and Ryan Sitton will be one of the state's three Railroad Commissioners.

The Legislative Branch will likewise have a large number of new members. As the list of statewide officers above should indicate, there are a number of vacancies in the Texas Senate. New Senators-elect include: Bob Hall in SD-1 (Edgewood), Paul Bettencourt in SD-7 (Houston), current Representative Van Taylor in SD-8 (Plano), Konni Burton in SD-10 (Colleyville), and Don Huffines in SD-16 (Dallas). Senator Brandon Creighton from Conroe was elected in a special election over the summer, so the 2015 Legislature will be his first representing SD-4. Senator Charles Perry from Lubbock was similarly elected in a special election over the summer to represent SD-28. Finally, there will be a special election to fill the seat being vacated by Senator Hegar, who will be resigning his SD-18 seat to become the next Comptroller. In the Texas House of Representatives there will be at least 25 first-time House members next session – too many to individually identify here, but easily found [here](#). (*At least is used because Representative Mike Villarreal announced he will resign his San Antonio House seat to launch a mayoral bid in that city, prompting the need for a special election; likewise Representative Lois Kolkhorst from Brenham has announced her intention to run for the soon-to-be-vacant SD-18 seat. This

is a free run for Kolkhorst – if she does not win, she can continue serving the people in House District 13 next session.)

While equally important as the other two branches, for our purposes, the judicial branch of government didn't see any change. Each of the four Texas Supreme Court Justices handily won reelection. (Three of the state's nine judges serving on the Texas Court of Criminal Appeals will be new; however, again, for our purposes, the Texas Supreme Court is the court we watch here at TBA.)

Next, the process

Now that we know who the people are, let's put them into context. Opening day of the 84th Session of the Texas Legislature will begin at noon on Tuesday, January 13 (this day is set by the Texas Constitution). However, tomorrow, Monday, November 10, is the first day legislators – even those who are elected but have not yet been sworn in – may begin pre-filing legislation for consideration during the 84th Session.

As a reminder, the Texas legislature meets for 140 days in odd-numbered years; there are 150 members of the Texas House of Representatives, and 31 members of the Texas Senate. Texas Representatives elect one of their colleagues to serve as the Speaker of the House. The presiding officer of the Texas Senate is the Lieutenant Governor.

Since pre-filing begins tomorrow, this is a good opportunity to share a number of the terms that will regularly be used in this publication. This list is not exhaustive; rather, it is meant to serve as groundwork for what to expect in the initial weeks of session.

First, **"prefiling"** or **"prefiled"**. As mentioned above, this means that Representatives and Senators may begin filing legislation before the session actually begins. With the exception of a small number of bill numbers that are held and designated by House and Senate leadership as major legislation, bills are filed in numerical order. House Bills are designated as such by H.B. and then the bill number. So, when you see 84R H.B. 472, this means the bill is a bill filed by a member of the Texas House of Representatives for consideration in the 84th Regular Session of the Legislature. Senate bills are designated by S.B. Often, 84R will be omitted, but do not let this confuse you – unless otherwise indicated, all bills discussed in this publication will be from the 84th Regular Session.

Some people mistakenly believe that bills will be considered in numerical order; this is not the case. A bill with a lower bill number has no more chance of passing than a bill with a higher number. After the bills are given bill numbers, it is up to the author of the bill to do all he or she can to ensure the bill's final passage.

Second, **"referred to committee"**. After filing, and once the session convenes, all bills must be read into the record and referred to a committee before any substantive work on the legislation can begin. In the House, the Speaker of the House and his staff decide the committee to which a bill should be referred. In the Senate, this job belongs to the Lieutenant Governor and his staff. Again, bill referral cannot take place until the legislature convenes, and it will continue to occur as long as bills can be filed. The bill filing deadline (i.e., the last day bills can be filed) is March 13, 2015, that day will be discussed in more detail as it draws near.

A bill is referred to the committee that has subject matter jurisdiction over the issues being proposed in the bill. For TBA's purposes, our main committees are Senate Business and Commerce (B&C), House Investments and Financial Institutions (IFS), and House Business & Industry (B&I) because these are the committees that have subject matter jurisdiction over banking issues. This is where the majority of the bills we follow and track will go, and you'll see many, many banking related bills being referred to both of these committees.

Next, "**set for hearing**". Although this generally will not begin to happen until the end of February, at the earliest, this means that the author of the legislation has requested a hearing for the bill, and the chairman of the committee to which the bill is referred has scheduled the bill for a public hearing. All legislation must have a public hearing in order to advance in the legislative process. Usually, a bill set for hearing will be heard on its first hearing date. However, this is not always the case and, should a hearing for a bill be postponed, it doesn't necessarily mean the legislation is dead. There are so many moving parts associated with the legislative process, a postponed hearing could simply mean that the author of the bill had a scheduling conflict and was unable to attend the hearing (lots of committees meet at the same time, and legislators generally serve on at least three committees.)

"**Lay a bill out**". When the legislator arrives at the public hearing to present his bill to the full committee, legislative vernacular says the legislator is laying his bill out to be heard. This is where the Representative or Senator gives the committee background on the issue(s) being addressed in the bill, explains the problem the bill is seeking to fix, and contains the legislator's proposed change to Texas law that will provide that fix.

In order to pass out of the committee and move to the next step in the legislative process, a bill must receive the affirmative vote of a majority of the members of the committee.

The next steps of the legislative process are trickier because there are a number of legislative hurdles that have to be cleared before a bill actually makes it to the floor of either chamber. However, for our purposes, and so as not to burden you with any more legislative minutia than is completely necessary, the important thing to remember is that after a bill passes out of committee, it must be considered and passed by a majority in the full House (76 of 150 members) if it is a House bill, or the full Senate (16 of 31 members) if it's a Senate bill.

Because nothing is ever as easy as it needs to be, a bill actually has to pass twice before it can go any further. The Texas Constitution requires a bill to be read on "three several days" in each House before it can have the force of law. The first reading is when the bill is introduced and read into the record; the second reading is the first time the bill is considered by the full chamber and passes; and the third reading is final passage. After final passage, the bill goes across the capitol rotunda to the other chamber (to the Senate if it's a House bill, to the House if it's a Senate bill) and the above process starts all over. Clear as a bell, isn't it?

The legislative process can be a confusing and somewhat unpredictable process, even for those of us whose jobs require us to pay attention to these things. However, it's not rocket science and, as we have a citizens legislature in Texas (legislators aren't full time legislators – rather, they're ordinary citizens with actual outside jobs who devote an

extraordinary amount of time to public service for very little pay), it's a process that is designed to be understood by all.

Your TBA lobby team follows the legislative process and advocates on banking issues at the Capitol on your behalf. Should you have any question on what's happening at the Texas Capitol, please do not hesitate to let us know. The easiest way is to email grassroots@texasbankers.com or to call (512)472-8388 and ask to speak to a member of the TBA lobby team.

Finally, the participation

TBA's lobby team is only as good as our grassroots network. So, please let us know if you work with, do business with, are friends with, or even go to church with our elected officials. TBA keeps a "Who Do You Know?" database, so please let us know who you know by filling out our ["Who Do You Know?" form](#)!

State Issues Update – Summer 2014

July 13, 2014

Six Months and Counting . . .

With just over six months until the start of the 84th Session of the Texas Legislature on January 13, 2015, it is a good time to update our members on what your TBA Lobby Team is working on at the state level.

First, a reminder about how our biennial Legislature functions in off-session years: because the Texas Legislature only meets for 140 days in odd-numbered years, members of the House and Senate accomplish a significant amount of pre-session work through the interim study process during the months between regular sessions. Interim study items are designated by the Lieutenant Governor and the Speaker of the House and require committees in the House and the Senate to hold meetings and public hearings to study and make recommendations to the next legislature on specific issues.

Governor Dewhurst and Speaker Straus have designated the following items of particular interest to Texas bankers as interim study issues:

First, both the Senate State Affairs and the House Technology Committees are studying abuses in the patent system. As many of you are all too aware, patent assertion entities, also known as patent trolls, have been filing frivolous patent claims against banks for years. The rocket docket in the federal court in the Eastern District of Texas in Marshall has long drawn patent suits (a quick Google search reveals that Marshall's rocket docket has even garnered [international attention](#)) against all sorts of companies, banks included, because of the speed with which these cases can move to trial.

Because the costs of litigation run so high, many companies that have been sued by patent trolls settle rather than litigate even if there is no violation/infringement. Patents are issued by the US Patent & Trademark Office, so this has long been an issue under the exclusive purview of Congress. However, last year the Vermont Legislature took a novel approach in addressing this issue when it enacted legislation

relating to bad faith assertions of patent infringements. The easiest way to think about the VT law is that it creates a new deceptive trade practice claim for entities that believe they have been wrongly sued to pursue. Thirteen states have adopted the Vermont approach this year, and a number of Texas legislators have an interest in pursuing similar legislation here next session.

The House Investments and Financial Services Committee is reviewing Texas home equity laws. The Committee has been tasked with studying and making recommendations for "ensuring Texas consumers have appropriate access to the equity in their homes and adequate protections." At the May 21 hearing of the Committee, TBA testified that it is our members' belief that Texans do not have appropriate access to the equity in their homes, certainly not after the TX Supreme Court's decision in the *Norwood* case. However, changing Texas' home equity law requires a constitutional amendment; not only must this legislation be approved by two-thirds of the House and Senate, it must also be approved by Texas voters. While TBA would like to see changes made to [Article 16, Section 50\(a\)\(6\)](#) of the Texas Constitution so Texans will, in fact, have "adequate access to the equity in their homes", serious consideration must be given to any potential negative changes that could result before any effort is made to change the law. This may fall into the category of "the devil you know is better than the devil you don't."

The House Business & Industry Committee is studying a number of issues we have monitored closely for quite some time. First, the Committee has been asked to study the impact of credit card data theft and other credit or privacy information theft on Texas consumers and businesses. In the wake of the Target breach late last year, our members have grown more and more vocal about their belief that the problem lies with retailers who do not have adequate identification and security protocols in place. TBA testified to this effect at the March 27 hearing of the Committee. TBA also testified on the financial impact breaches have on banks, estimating that the cost of card reissuance is *at least* \$2.50 per card for many institutions.

Of course, to hear our friends from the retailers testify on the issue, they are the ultimate victims of credit card data theft. And, rather than accepting responsibility for systems failures in instances such as the Target breach, the Texas Retailers Association's testimony that day focused in part on the fact that "more data breaches occur at financial institutions than at retailers." Of course, there are actual protocols in place and ramifications for financial institutions where there are security breaches. Rest assured this was not brought up by TRA. We continue to work with Chairman Oliveira and other members of House B&I as they develop policy recommendations on this issue for next session.

House B&I has also been asked to review existing lien laws in Texas. As you will remember, subcontractors have been particularly active at the capitol the last three sessions, and one of the pieces of legislation they have been trying to pass is a wholesale rewrite of Texas lien laws. Despite the fact that TBA, along with IBAT, TMBA, the homebuilders, the title companies, and other building trades groups, have repeatedly asked to participate in any interim legislative drafting sessions these groups hold, we have consistently been shut out of the process. While changes to the existing lien laws may be necessary, legislation that is drafted for the exclusive benefit of one industry is rarely successful. Again, we will continue to work with Chairman Oliveira and the Committee on legislation that is helpful to all parties, most

importantly, Texas consumers.

The final issue House B&I is studying is the tax lien lending issue. The Committee has been asked to review ad valorem tax lien lending after the implementation of last session's [SB 247](#) and the impact on homeowners, taxing authorities, mortgage lenders, and tax lien lenders. The Committee has also been asked to review the procedures and powers of the Office of Consumer Credit Commissioner to ensure compliance with SB 247. The property tax lien lending industry continues to maintain that it is a highly regulated industry that is providing a much-needed and valuable customer service. TBA believes this could not be further from the case, and we continue to raise important instances where property tax lenders are not complying with the law. We welcome further study on this issue by the legislature because we believe that once legislators understand the true impact of a tax lien loan for a troubled borrower, they will share our view that this is nothing more than payday lending for housing. TBA recently developed a [piece on tax lien lending](#) that we have shared with CFPB Director Richard Cordray and his staff, our Congressional delegation, and attendees at each of the 15 stops of the 2014 TBA Texas Tour we have held across the state. We encourage you to share [this piece](#) with any elected official you know.

Last but not least, both the Senate Business & Commerce and the House Insurance Committees have been asked to monitor the status of the Texas Windstorm Insurance Association and review TWIA's administrative and financial state. This perennial issue is vitally important to bankers everywhere, not just in the fourteen coastal counties covered by TWIA. TBA has participated in a TWIA workgroup organized by Chairman Todd Hunter for the last year as various stakeholders work to draft legislation that all interested parties can live with. As you might imagine, this is no easy task, but it is one that everyone is endeavoring to work toward.

Finally, as you know, there will be an unprecedented level of turnover at the statewide level next year. In addition to having a new Governor, Texas will also have a new Lieutenant Governor, Attorney General, Comptroller, Land Commissioner, Agriculture Commissioner, one of the state's three Railroad Commissioners, and four Texas Supreme Court justices. There will also be seven new state senators and twenty-two freshmen in the Texas House of Representatives (this is assuming all incumbents keep their seats). Again, this level of turnover is unprecedented.

So, what does this mean for TBA and the Texas banking industry? We have a lot of new friends to make! If you haven't taken the time to fill out TBA's "[Who Do You Know?](#)" form lately, please do so today! Grassroots involvement has never been more important, so please let us know who you know.

If you have any questions about the above, or any other legislative issue, please do not hesitate to contact us at grassroots@texasbankers.com.

Join me on the 2013 Texas Legislative Tour and find out what the 83rd Texas Legislature did and didn't do for your bank

Dear :

I'd like to invite you to join me and the Texas Bankers Association Legislative Team for our **2013 Texas Legislative Tour**, which is coming to a city near you. We'll be discussing the banking-related legislation that passed during the 83rd Texas Legislative Session and why it's important to you and your bank.

Some of the changes we will be discussing relate to:

- Regulation of banks, trust companies and bank holding companies
- The transfer of an ad valorem tax lien
- Changes in durable powers of attorney forms
- The foreclosure sale of property subject to certain agreements related to the production or sale of oil and gas
- Financial Literacy credits required for graduation under the recommended and advanced high school programs
- Lender notice to contractors regarding a construction loan or financial agreement for the improvement of real property and related procedures for suspending contractors' and subcontractors' performance
- An account or bond for construction retainage under certain contracts

In addition, we'll be touching on the latest federal legislation and regulatory developments that impact banking.

Our Legislative Tour kicks off June 17 in Lubbock and ends June 27 in Austin. The events are for member and nonmember bankers as well as Texas Association of Bank Counsel members. Because these sessions will impart valuable information for your banks, you are encouraged to bring several bank staff with you.

Register [here](#) for the location nearest you.

Thank you,

A handwritten signature in cursive script, appearing to read "Ignacio Urrabazo Jr.", written in dark ink.

Ignacio Urrabazo Jr.
TBA Chairman

The 83rd Regular Session of the Texas Legislature must end by midnight today, May 27. With 6,061 bills and joint resolutions filed for consideration this session, legislators certainly had their work cut out for them. As of yesterday, May 26, [1,459](#) bills have been finally passed, and 947 have been sent to the Governor or filed with the Secretary of State. Of course the final bill counts will not be available until the Governor's veto period ends June 16. So far, the Governor has vetoed two bills, [SB 346](#) by Seliger and [HB 535](#) by Yvonne Davis. (The Governor's veto statements can be found [here](#).) The Governor has [never shied away](#) from the veto pen, so we anticipate more vetoes will be announced in the coming days.

With the substantive work of the session wrapping up last night at midnight, the last bills that TBA was following are officially done. These included:

[HB 1675](#) by Bonnen, relating to the sunset review process and certain governmental entities subject to that process. Known as the sunset safety net bill, among other things, HB 1675 changes the sunset review schedule for the Finance Commission and the agencies under its purview (e.g., Banking, TDSML, and OCCC). Last session legislators pushed the review to 2015; HB 1675 pushes our regulatory agencies' review to 2019. HB 1675 was signed in the House earlier today and is awaiting signature in the Senate. Once signed in the Senate, it will be sent to the Governor.

[HB 2590](#) by Keffer, relating to the foreclosure sale of property subject to an oil or gas lease. In its final form, HB 2590 adds new Chapter 66, Property Code (Sale of Property Subject to Oil or Gas Lease), and provides that if an oil and gas lease was executed and recorded before the date the security interest in the property is recorded, the O&G lease does not expire upon the foreclosure of that security interest. Similarly, the bill provides that if an oil and gas lease was executed and recorded after the date the security interest was recorded but before the foreclosure sale, the O&G lease does not expire upon the foreclosure of that security interest.

Importantly for TBA members' purposes, HB 2590 provides that a lessee of the O&G lease shall indemnify the purchaser and any mortgagee of the foreclosed property from actual damages resulting from the lessee's operations conducted pursuant to the oil and gas lease. Furthermore, the bill provides that if an O&G lease is executed and recorded after the date a security interest in the affected property is recorded and the affected property is subsequently sold in foreclosure, the foreclosure sale terminates and extinguishes the lessee's right to use the surface of the real property subject to the lease. Finally, HB 2590 provides that a subordination agreement between an O&G lease lessee and a mortgagee controls over any conflicting provisions of this new law. HB 2590 was signed in the Senate and the House yesterday and sent to the Governor today.

Now that the Regular Session is coming to a close, as we mentioned last week, your TBA Lobby Team is busily preparing for our biennial Texas Legislative Tour, which is slated to begin in Lubbock Monday, June 17. The briefing will include not only a discussion of actions taken in Austin this session, but also a federal update, so if you've not yet [registered to attend](#), please do so today!

As always, please let us know if you have any questions.

Volume 83.12

May 19, 2013

For the first time in recent memory, neither the House nor the Senate met this weekend ♦ the second to the last before *sine die*. With eight days to go before the Session ends, legislators still have a lot of work to do. However, House and Senate leadership clearly determined that that work could wait until Monday, so they sent members home Friday evening. As has been widely [reported](#) in all of the major dailies around the state, a compromise was reached on the budget late last week. If the deal holds together, the chances that legislators will get to go home after May 27 is high; if the compromise falls apart, there ♦s a chance the governor will call legislators back to Austin as early as May 28. Needless to say, [everyone](#) hopes the compromise holds together.

So, with just eight days remaining, what is it that TBA is still tracking to make sure it gets done before Wednesday, which is the last day for both the House and Senate to consider bills (the remaining days of session are left for [conference committees](#) to meet and adopt conference committee reports and for corrections)?

Tomorrow morning ♦s [House Local, Consent, and Resolutions Calendar](#) will include [SB 778](#) by Carona. SB 778 is TBA-supported legislation that relates to trusts and amends the Property Code to provide trustees with more flexibility in providing beneficiaries access to insurance products and determining disbursements from income and principal.

Also of note is [SB 247](#) by Carona, which is on tomorrow ♦s House General State Calendar. SB 247 is Carona ♦s tax lien lending bill, which [TBA supports](#). While far from being a perfect bill, SB 247 does make improvements to the statutes governing tax lien lenders and tax lien loans. These improvements include:

- Requiring all solicitation materials sent by property tax lenders to include language alerting the potential borrower to the fact that the tax office may offer delinquent tax installment plans that may be less costly;

- Eliminating the so-called “evergreen provision,” language in existing law that property tax lenders use to pay a borrower’s taxes in perpetuity; and
- Removing the ability of a property tax lender to utilize expedited or non-judicial foreclosure proceedings to foreclose a property tax loan.

We continue to monitor the progress of a number of other bills that impact our members that we have written about before. These include [HB 2590](#) by Keffer, relating to the foreclosure sale of property subject to an oil or gas lease. This bill was voted out of Senate Natural Resources last Thursday and is on its way to the Senate Local & Uncontested Calendar, and [SB 1202](#) by West, relating to an order to conduct mediation following an application for expedited judicial foreclosure proceedings. SB 1202 was voted out of House B&I last Wednesday and sent to the full Calendars Committee. Both of these bills have a race against time because, again, Wednesday is the last day for the House and Senate to consider bills on second or third reading.

Once the Legislature adjourns, the TBA Lobby Team will turn our attention to preparing for our biennial Texas Legislative Tour. Scheduled for 17 cities across the state, the Texas Legislative Tour is an informative briefing on banking laws enacted by the 83rd Session of the Texas Legislature. This seminar will ensure bankers have the very latest information on new laws that will affect their business. Join us for an overview of the relevant legislation considered and a behind the scenes look at the Texas legislative process. Participants will receive a legislative scorecard at the update and a detailed end-of-session report covering legislation affecting financial institutions after the Governor’s veto period expires (Art. 4, Sec. 14 of the Texas Constitution provides the Governor with a twenty day veto period after adjournment.) The cost is \$25, and CLE and CPE credit have been applied for. [Register](#) today!

As always, if you have any questions about the above, please do not hesitate to let us know.

As was discussed in last week’s publication, Thursday, May 9 was an important day in the Texas House. Again, it was the last day for the

House to consider House bills and joint resolutions on second reading. The House met at 10 a.m. that day and was faced with a 16-page calendar to get through before the midnight deadline. Despite having worked all day, when the clock struck 12, the House was barely halfway through the calendar. The bill they were debating at that time, and every bill behind it on Thursday's calendar, died because the deadline for consideration of House bills on second reading was reached. As luck would have it, the bill the House was debating at midnight was one TBA opposed ♦ [HB 1344](#) by Canales, relating to the expunction of arrest records and files relating to certain nonviolent offenses. A point of order was raised on the bill after midnight, and, of course, that point of order was sustained, proving that the legislative calendar can be your friend as well as your foe! (To refresh your recollection of HB 1344, please review the [March 17 Legislative Issues Update](#).)

So, with two weeks to go before the end of the Regular Session, what's left for your TBA Lobby Team to do? The short answer is A LOT! First, we continue to monitor those bills that have successfully made it through their House of origin and are awaiting action in the other chamber. In fact, we'll be spending quite a bit of time in Committee hearings for the next ten days testifying in support of measures we believe are good for Texas banks.

Second, and more challenging, we vigilantly watch for amendments that we oppose. For example, HB 1344 that was mentioned above may be looking for a ride on another bill that is still making its way through the legislative process ♦ our job is to make sure that does not happen. We're looking to make sure that bills that are still moving do not become Christmas trees to the detriment of the Texas banking industry ♦ that is to say, that they are not decorated with amendments we oppose.

Of the more than 300 bills scheduled to be heard this week, the following are ones we are watching and/or will weigh in on.

Senate B&C ♦ Tuesday

[HB 346](#) by Deshotel, relating to the electronic storage of personal identification information obtained from driver's licenses or personal identification certificates. HB 346 amends Sec. 521.126, Transportation Code (Driver's Licenses and Personal Identification Cards), to provide that a business that provides information to a check services company or fraud prevention services company may access or use the electronically readable information on a driver's license or personal ID.

[HB 699](#) by John Davis, relating to the location of certain public sales of real property. HB 699 allows a commissioners court to designate a location for execution sales other than the courthouse door as long as the site is a public place within a reasonable proximity to the courthouse that is as accessible as the courthouse door.

[HB 1664](#) by Villarreal, relating to the regulation of banks, trust companies, and bank holding companies. As we discussed back in March, HB 1664 is legislation that proposes to make a number of changes to the Finance Code and clarifies and enhances the oversight authority of the Texas Department of Banking. HB 1664 also revises certain requirements and rules to establish parity with national banks and federal statutes, changes the limits for investment in trust company fixed assets, and clarifies the instances under which advisory directors may be privy to confidential information.

[HB 1979](#) by Villarreal, relating to interest on commercial loans. HB 1979 authorizes lenders and borrowers to calculate the interest on a commercial loan using the paid-in-kind method, the 365/360 method, or any other method otherwise permitted by law.

[HB 2758](#) by Anderson, relating to the business, supervision, and regulation of state savings and loan associations and state savings banks. HB 2758 is TBA-supported legislation that is designed to remove outdated, obsolete, and inconsistent provisions of the Savings & Loan Act and the Savings Bank Act. The bill removes the liquidity and local service area requirements, amends the qualifications of the TDSML Commissioner to ensure the credibility of appointees, creates a criminal slander section explicitly applicable to savings banks, modifies the criminal slander section applicable to associations, clarifies supervisory and regulatory matters, and updates sections relating to supervisory orders.

Senate Education ♦ Tuesday

[HB 2662](#) by Farney, relating to requiring a personal financial literacy credit for graduation under the recommended and advanced high school programs. HB 2662 extends the personal financial literacy requirement currently found in the Texas essential knowledge and skills by requiring personal financial literacy credit for high school programs.

As the session draws to a close, we are busy planning TBA♦s biennial

Legislative Tour, which begins Monday, June 17. Registration for the 2013 Legislative Update is now open, so [make plans](#) to attend today!

Volume 83.10

May 5, 2013

Today, Sunday, May 05, is the [118th day](#) of the 83rd Legislature. The final 22 days of the session promise to be action-packed, so without further ado, here's an update of what your TBA Lobby Team is working on.

House IFS has a short agenda of only two bills tomorrow morning. First, the Committee will hear [HB 1441](#) by Terry Canales, relating to accounting and payoff statements for certain seller-financed residential loans. HB 1441 only applies to a seller-financed loan secured by a purchase money lien on residential real property that is not a federally related mortgage loan. In short, the bill requires individuals financing non-federally related mortgage loans to provide RESPA-like annual accounting statements to their borrowers.

The second bill IFS will consider is [HJR 118](#) by Villarreal. HJR 118 proposes a constitutional amendment providing for an exception from the limitation on the principal amount of home equity loans for the refinancing of certain loans secured by the homestead. HJR 118 is legislation allowing for home equity loan refinances so long as there is no additional cash advanced. While TBA supports this legislation, the legislative reality is that due to the late date of the session, the odds of its final passage are scarce.

Monday afternoon House Judiciary & Civil Jurisprudence (JCJ) will hear [SB 778](#) by Carona, relating to trusts. SB 778 is TBA-supported legislation that grants a bank serving as trustee the authority to purchase insurance by or through an affiliate so long as that purchase is consistent with the trustee's fiduciary duties; is not prohibited by the trust instrument; and is of an insurance product and premium that are the same or similar to a product and premium offered by organizations that are not affiliates of the bank. The bill also amends the Disbursements from Income section of existing law to authorize a trustee to determine that, consistent with its fiduciary duties, a different portion, none, or all of the trustee's compensation shall be allocated to income. Finally, because of the changes made in the Disbursements from Income section of the Property Code, the bill makes necessary changes to the Disbursements from Principal section of existing law to provide that a trustee should make one-half of the disbursements from principal unless, consistent with its fiduciary duties, the trustee has determined that a different portion should be allocated to income, in which case that portion of the disbursements that are not allocated to income shall be allocated to principal. Representative Travis Clardy, a Nacogdoches attorney, is the House Sponsor of SB 778.

Tuesday morning, Senate B&C will hear [HB 2459](#) by Thompson, relating to the limitation on the amount that may be charged for certain debt cancellation agreements. HB 2459 is TBA-supported legislation that amends the Finance Code to require that the amount charged for a debt cancellation agreement made in connection with a retail installment contract may not exceed five percent of the

amount financed. HB 2459 is clean-up legislation that addresses ambiguity that currently exists around the amount that may be charged for debt cancellation agreements (gap waivers). Namely, existing Texas law provides for a pricing standard of ♦made in good faith and commercially reasonable♦, which has created confusion and uncertainty on the part of those who finance debt cancellation agreements. HB 2459 is designed to bring certainty back to this marketplace. Chairman Carona is the Senate Sponsor of this bill.

Tuesday afternoon House Business & Industry will hear [SB 1202](#) by West. SB 1202 relates to an order to conduct mediation following an application for expedited judicial foreclosure proceedings. As originally filed, TBA opposed this legislation because it amended Sec. 51 of the Property Code (Provisions Generally Applicable to Liens) to provide a court with the authority to order a Rule 736 expedited foreclosure proceeding to mediation. Our opposition was twofold: first, we did not believe this procedural change to Texas law belonged in the Property Code; second, we question whether a court should have the ability to order an expedited foreclosure proceeding to mediation if the debtor in default has made no answer to the suit.

Thankfully, we were able to work with Senator West and other stakeholders to address our first concern, and the change envisioned by SB 1202 is now found in new Sec. 154.028, Civil Practice and Remedies Code. We still believe, however, that if no answer has been provided by the debtor in default, then mediation is not warranted. We will raise our remaining concerns at House B&I Tuesday, where we will likely also share with the committee the fact that we believe the Texas Supreme Court has the exclusive authority to develop rules governing expedited foreclosure proceedings. Article 16, Section 50(r) of the Texas Constitution provides ♦the supreme court shall promulgate rules of civil procedure for expedited foreclosure proceedings related to the foreclosure♦ of home equity and reverse mortgage liens; SB 1202 seems to ignore this Constitutional provision. Representative Rafael Anchia is the House Sponsor of SB 1202.

Finally, Wednesday afternoon Senate IGR will hear [HB 1554](#) by Justin Rodriguez, relating to the authority of a municipality to file a lien for the costs of abatement of a floodplain ordinance violation, providing a civil penalty. Senator Donna Campbell is the Senate Sponsor of this legislation. While typically not the type of bill we follow, HB 1554 contains troubling language that creates a privileged lien in favor of a municipality alleging a violation of a floodplain management ordinance. We were able to work with Senator Campbell on compromise language for [SB 1087](#), her companion bill to HB 1554; she has indicated she will include this language in HB 1554 as well. The language she added at our request simply provides that the floodplain management lien created by this bill is inferior to any previously recorded bona fide mortgage lien attached to the property.

As always, please don♦t hesitate to let us know if you have any questions. Have a great week!

The days are getting longer

With 29 days left to go before *sine die*, there is a lot of legislating to do and an ever-shorter window of time within which to do it. Both the House and Senate are having longer legislative [calendars](#), which means hours are spent debating items on the House and Senate Floors each day. As was the case last week with the [Lottery Commission Sunset bill](#), sometimes these debates run long and take unexpected turns. What this means around the Capitol is that it's a safe bet to not make any plans after work or on weekends until after Monday, May 27. In fact, the House has set its first Saturday Calendar for Saturday, May 4, so this is already proving to be true.

The next major legislative deadline is Monday, May 6, which is the last day for House committees to report House Bills and House Joint Resolutions. We are officially at the point of session when there's a general recognition that a bill getting its first committee hearing in its House of origin has very little chance for survival. However, House and Senate Rules were made to be suspended, so as your advocates, the TBA Lobby Team continues to educate legislators about the potential impacts legislation could have on Texas bankers.

The Week Ahead

For two sessions we have visited with bankers and legislators about TBA-opposed legislation being pushed by the subcontractors lobby. Similar to legislation introduced two years ago, these bills require a lender to immediately notify a contractor of a suspension of a disbursement of loan proceeds to a borrower or property owner under a loan or financing agreement. Upon receipt of this notice, a contractor shall immediately notify each of the contractor's subcontractors of the suspension of the disbursement of loan proceeds or cessation of disbursements of loan proceeds and of the subcontractor's right to suspend contractually required performance without penalty or liability for damages as a result of the suspension/cessation of disbursements. Finally, the legislation provides that a subcontractor is a third-party beneficiary of a lender's obligations with equal standing to a contractor to enforce remedies.

Both [SB 295](#) by Deuell and [HB 2180](#) by Bell, relating to lender notice to contractors regarding a construction loan or financing agreement for the improvement of real property and related procedures for suspending contractors and subcontractors' performance, are set to be heard this week. Senate Business & Commerce will take public testimony on SB 295 beginning at 8:00 a.m. Tuesday morning; House Business & Industry will hear HB 2180 at 1:30 or upon House adjournment Tuesday afternoon. TBA remains opposed to both bills for a number of reasons, not least of which is that we believe if finally passed this legislation will drive up the cost of construction lending.

Also up Tuesday in [House Business & Industry](#) is [SB 247](#) by Carona. SB 247 relates to the transfer of an ad valorem tax lien and, as passed by the Senate, makes a number of positive changes to tax lien lending laws. Namely, the bill:

- Requires all solicitation materials sent by property tax lenders to include language alerting the potential borrower to the fact that the tax office may offer delinquent tax installment plans that may be less costly;
- Eliminates the so-called “evergreen provision” found in Sec. 32.06, Tax Code, which property tax lenders are using to pay borrowers' taxes in perpetuity; and
- Removes the ability of a property tax lender to utilize expedited or non-judicial foreclosure proceedings to foreclose a property tax loan.

Regrettably, the bill does not contain language requiring a property tax lender to provide pre-closing notice to the potential borrower and each holder of a recorded preexisting lien. However, Senator Carona has asked all interested parties not to work to amend the bill on the House side. Even with this directive, the hearing on SB 247 should be interesting, certainly considering the fact that there are many, many people at the Capitol who are now engaged on this issue.

Questions?

As always, if you have any questions, please don't hesitate to let us know. Otherwise, we'll check back in with you next Sunday.

Volume 83.8

April 21, 2013

Last week saw the 100th day of the 83rd session. Thankfully, this means we are well on the way to *sine die*; however, it also means the next 36 days will be even busier than the previous 104 have been. In fact, the general sentiment around the Capitol is that this session has felt busier from day one. Committee assignments were released earlier than they have been the past couple of sessions, and, as a result, the days have felt longer, sooner.

Interestingly enough, though, while committees got to work earlier, this has not necessarily translated to more bills being passed in their House of origin. Statistically speaking, the Senate is right on track with where it was 100 days in last session. So far this session, the Senate has passed 545 total bills and joint resolutions. Two years ago, the Senate passed 535 total bills and joint resolutions in the first 100 days.

The House is a different story altogether. While House members in the 82nd session passed 362 total bills and joint resolutions in the first 100 days; House members this session have only passed 130. Putting aside the policy arguments on whether this is a good or a bad thing, it is interesting. Calendar management is a powerful tool in the House – legislators who have bills they'd like to see debated on the Floor are certainly much more willing to compromise than those whose legislative packages have already moved to the Senate. As such, the deals that are struck over the next 36 days will certainly be worth watching.

Before turning to the week ahead, a quick **recap of action taken since our last publication** is warranted.

First, [SB 778](#), TBA-supported legislation relating to trusts passed out of the Senate Tuesday, April 16. As [Engrossed](#), SB 778 amends Sec. 113.053, Property Code (Purchase or Sale of Trust Property by Trustee), to provide that unless the instrument governing the fiduciary relationship expressly prohibits the purchase, a bank serving as a trustee may purchase insurance underwritten by an affiliate. The bill also amends Sec. 116.201, Property Code (Disbursements from Income), to authorize a trustee to determine that, consistent with its fiduciary duties, a different portion, none, or all of the trustee's compensation shall be allocated to income. Similarly, the bill amends Sec. 116.202, Property Code (Disbursements from Principal), to provide that a trustee should make one-half of the disbursements from principal unless, consistent with its fiduciary duties, the trustee has determined that a different portion should be allocated to income, in which case that portion of the disbursements that are not allocated to income shall be allocated to principal. Stay tuned as SB 778 makes its way through the House, and, hopefully, to the Governor's desk.

On Tuesday, April 9, House B&I reported out [CSHB 318](#) by Giddings, relating to prohibiting an employer from requiring or requesting access to the personal accounts of employees and job applicants through electronic communication devices. As originally filed, TBA opposed HB 318 because it conflicted with FINRA compliance requirements for banks.

However, we were able to work with Representative Giddings and her staff on compromise language which allowed us to drop our opposition. That compromise language makes it clear that new Sec. 21.0605, Labor Code, added by this bill does not apply to an employer engaged in financial services. "Employer engaged in financial services" is defined to mean a bank, savings and loan association or savings bank, a credit union, or other depository institution or its subsidiaries or affiliates; a mortgage banker or residential mortgage loan company; a securities firm or registered financial advisory firm; a regulated loan company; or an insurance company or insurance agency.

On Thursday, April 18, the House passed [HB 584](#) by Eddie Rodriguez. HB 584 amends Sec. 51.002, Property Code, to provide that if a county maintains a website, the county must post a notice of sale filed with the county clerk on the website on a page that is publicly available for viewing without charge or registration.

Also on Thursday, the House passed [SB 422](#) by Duncan, relating to service of citation on a financial institution. SB 422 is TBA-supported legislation that clarifies that service on and delivery to a financial institution of claims against a customer of the financial institution are governed by Sec. 59.008, Finance Code. Sec. 59.008 provides that this be at the address of the registered agent of the financial institution; if no registered agent is on file at the Secretary of State's office, then the financial institution is subject to service or delivery of all claims against customers of the financial institution as otherwise provided by law.

Looking ahead to the week of the 22nd

Tomorrow afternoon, House Ways & Means will hear [HB 2687](#) by Eddie Rodriguez, relating to the authority of a taxing unit to approve the transfer of an ad valorem tax lien loan. HB 2687 is TBA-supported legislation that amends Sec. 32.06 of the Tax Code to provide that the governing body of a taxing unit may opt out of allowing its tax liens to be transferred to a third party tax lien lender.

House IFS will hear [SB 581](#) by Carona, relating to procedures for securing deposits of public funds tomorrow upon adjournment. SB 581 seeks to amend the Texas Public Funds Collateral Act (TBA-supported legislation that was first adopted in 2009) to bring it more into line with current practices in the banking industry; namely, it seeks to align custodial obligations pertaining to the issuance and delivery of trust receipts with generally accepted business practices.

Tuesday upon final adjournment, the House Human Services Committee will hear [HB 2303](#) by Eddie Rodriguez, relating to a request for a customer record of a financial institution for guardianship purposes. HB 2303 amends Sec. 59.006, Finance Code (Discovery of Customer Records), to add to the list of circumstances under which a financial institution is not authorized or required to give its customer notice of a request for records. HB 2303 adds requests for account records pursuant to an investigation by a court investigator or by the court to determine whether a guardianship should be established to that list of circumstances.

Also Tuesday afternoon, the Senate Criminal Justice Committee will hear SB 1451 by Hinojosa, relating to the prosecution of the offense of money laundering and to the forfeiture of certain contraband. [SB 1451](#) is legislation the Attorney General's office is very interested in seeing passed. Like its House counterpart [HB 3138](#) by Sheets, SB 1451 makes structuring (i.e., depositing money in smaller increments to avoid the reporting requirements set forth in the Bank Secrecy Act) a state crime. TBA had concerns with the bill as initially filed because of its references to the BSA; however, we have been able to work with the legislation's authors and the Attorney General's office on compromise language which strikes all cites to the BSA. We anticipate that language will be offered in the form of a Committee Substitute Tuesday afternoon.

Finally, Tuesday afternoon's House Insurance Committee hearing will include public testimony on [HB 1742](#) by Eric Johnson, relating to the release by a lender of insurance proceeds for damage to residential real property. HB 1742 amends Chapter 557, Insurance Code (Insured Property Subject to Security Interest) to provide that a lender holding proceeds from a claim under an insurance policy for damage to residential real property may not require the insured, as a condition of releasing the insurance proceeds, to do any of the following: take an action that only a person other than the insured is authorized to take; secure the performance by a person other than the insured of an action the performance of which is not within the insured's control or discretion; obtain information or other items that the insured does not have the right to obtain; incur an expense for which the insurance proceeds do not provide reimbursement; take an action that would require the insured to expend an unreasonable amount of time; or engage in an activity requiring expertise the insured cannot reasonably be expected to have. HB 1742 is similar to legislation filed four years ago about which TBA has a number of concerns. We will work with Representative Johnson to address our continued concerns with this legislation.

As always, if you have any questions about the above, please do not hesitate to let us know!

Volume 83.7

April 7, 2013

Every session legislators treat the Easter holiday as a sort of a last hurrah before the non-stop action of the last third of the session. 2013 is no different, and last week's break (the Capitol was a ghost town the last two days of March) hopefully provided legislators the time they needed to charge their batteries for the next seven weeks. With only four weeks to go until the last day for House committees to report House bills and Joint resolutions, legislators will certainly need all the stamina they can muster.

Since there was no State Issues Update last week, before we turn to what we're worried about in the coming days, a review of the items we were following last week should be helpful.

First, the good news: SB 778 by Carona, relating to trusts, was voted favorably from the Senate Jurisprudence Committee as substituted Wednesday afternoon. SB 778 is legislation TBA's Wealth Management & Trust Government Relations Council has been instrumental in authoring, securing a sponsor, and helping to navigate through the legislative process.

As substituted, [CSSB 778](#) amends Sec. 113.053, Property Code (Purchase or Sale of Trust Property by Trustee) to authorize a trustee to sell insurance by or through an affiliate so long as the instrument governing the fiduciary relationship does not expressly prohibit that sale/purchase. At the request of the [REPTL](#) section of the State Bar, language was added in the committee substitute to clarify that the trustee can sell the insurance by and through an affiliate only if the product and premium are the same or similar to products offered by organizations that are not affiliates.

SB 778 also amends Section 116.201, Property Code (Disbursements from Income) to provide that a trustee may disburse one-half of the regular compensation of the trustee from income, unless the trustee determines that a different portion, none, or all of the compensation should be allocated to income. Finally, CSSB 778 amends Sec. 116.202, Property Code (Disbursements from Principal) to provide that a trustee should make the remaining disbursements from principal, unless, consistent with the trustee's fiduciary duties, the trustee determines that a different portion should be allocated to income, in which case that portion of the disbursements that are not allocated to income shall be allocated to principal. We understand this bill could come to the floor of Senate for debate as early as Wednesday, April 10.

Now, the not so good news: [HB 2590](#) by Keffer, relating to the foreclosure sale of property subject to certain agreements related to the production or sale of oil or gas. Wednesday afternoon the House Committee on Energy Resources heard HB 2590 by the Committee's Chairman. As introduced, HB 2590 adds new Sec. 51.010, Property Code (Sale of Property Subject to Certain Agreements Related to Production or Sale of Oil or Gas) to provide that an oil or gas lease or other agreement related to the

production or sale of oil or gas from real property subject to a security interest that is being foreclosed remains in effect after the foreclosure sale and has priority over the foreclosed lien. The bill also provides that any royalty payment due to the debtor in default shall be paid to the purchaser of the foreclosed property.

Obviously, TBA has serious concerns about legislation that fundamentally changes real property and lien priority laws. We are working with Chairman Keffer's office and a number of stakeholders to craft a compromise that will address what the bill's advocates (energy/oil and gas companies) are trying to accomplish while at the same time preserving our members' interests. The bill was left pending in the committee Wednesday night, but it will likely pass in the next week, so we are diligently working on compromise language. As mentioned above, this bill is in House Energy Resources, which is not a committee the banking industry typically appears before, so we definitely have our work cut out for us as we educate committee members on the far-reaching impacts this bill could have on Texas lenders.

The **week of April 8** promises to be very busy as we anticipate weighing in on the following bills scheduled for public hearings in the coming days.

MONDAY

House IFS will hear [HB 2459](#) by Senfronia Thompson, relating to the limitation on the amount that may be charged for certain debt cancellation agreements. HB 2459 amends the Finance Code to require that amount charged for a debt cancellation agreement made in connection with a retail installment contract may not exceed five percent of the amount financed. HB 2459 is clean-up legislation that addresses ambiguity that currently exists around the amount that may be charged for debt cancellation agreements (gap waivers). Namely, existing Texas law provides for a pricing standard of "made in good faith and commercially reasonable", which has created confusion and uncertainty on the part of those who finance debt cancellation agreements. HB 2459 is designed to bring certainty back to this marketplace.

House Judiciary and Civil Jurisprudence will take public testimony on [HB 2978](#) by Tan Parker, relating to notice of sale in connection with an expedited judicial foreclosure of a contract lien on real property. We believe HB 2978 is designed to provide certainty when it comes to whether a debtor in default has received notice under the expedited foreclosure proceeding rules issued by the Texas Supreme Court. However, as filed, the bill is fairly confusing, and we are uncomfortable with the fact that these proposed changes are being made in the Property Code rather than the Civil Practice and Remedies Code, so we will work with Representative Parker on crafting language that accomplishes his goal while not creating unnecessary confusion surrounding the expedited foreclosure process.

House Pensions will hear [HB 2081](#) by Senfronia Thompson, relating to the exemption of certain property from seizure from creditors. Under current Texas law insurance proceeds are exempt from creditors. A question arises as to whether that exemption continues if insurance proceeds are paid to the estate of the insured decedent. HB 2081 amends Sec. 1108.052, Property Code (Exemptions Unaffected by Beneficiary Designation) to clarify that the insurance proceeds do not lose their exemption because they are paid to the estate of the insured. Finally, the bill amends Sec. 42.0021, Property Code (Additional Exemption for Certain Savings Plans) to provide

that nondeductible contributions to a traditional IRA are also exempt from creditors (current law only provides that deductible contributions are exempt.)

TUESDAY

House Public Education will hear [HB 2662](#) by Marsha Farney, relating to requiring a personal financial literacy credit for graduation under the recommended and advanced high school programs. HB 2662 is TBA-supported legislation that adds a personal financial literacy requirement to the K-12 curriculum, at least one-half credit of which should be offered in high school.

WEDNESDAY

Wednesday afternoon House Energy Resources will take public testimony on [HB 2184](#) by Keffer, relating to the partition of mineral interests of a charitable trust. HB 2184 adds new Chapter 124, Property Code (Partition of Mineral Interests of Charitable Trust) to provide that a partition of any mineral interest owned or claimed by a charitable trust may not be compelled by a joint owner or claim.

With 693 bills scheduled for public hearings this week, obviously this is a mere snapshot of what we're following at the Capitol. If there's a bill you're concerned about that hasn't been mentioned in this publication, please do not hesitate to let us know. We're here to serve your needs!

Finally, for those who are counting, there are officially 50 days until the end of session.

Volume 83.6

March 24, 2013

Halfway to the finish line

With the 70th day of session behind us, the 83rd Session of the Texas Legislature is now halfway over. To say the next nine weeks will be busy is quite an understatement; now that the serious business of session has settled in, the days and weeks will surely go fast. If there is a bill or legislative matter you have a question about, it's best to act as soon as it comes to your attention, whether acting means calling your legislator's office or your TBA Lobby Team. Either way, time is now of the essence, and with each day that passes, there are less options available, especially if you'd like to fix a bill that you believe will have negative consequences.

Legislation is now being debated on the Floors of both the House and the Senate. In fact, the House will debate [HB 5](#), Chairman Aycock's workforce preparedness bill, Tuesday and [HB 4](#), Chairman Ritter's legislation that funds the state water plan, Wednesday. These are both

substantive pieces of legislation that much has been written about over the past few months.

Committees continue to work in earnest, and the week ahead promises to be a busy one.

MONDAY

House IFS will hear public testimony on a number of bills TBA is tracking this week. These include HB 1979 by Villarreal, relating to interest on commercial loans. [HB 1979](#) is very similar to [SB 952](#), Senator Carona's legislation authorizing lenders and borrowers to calculate the interest on a commercial loan using the paid-in-kind method, the 365/360 method, or any other method otherwise permitted by law.

IFS will also take testimony on [HB 2548](#) by Burkett, relating to the enforcement of provisions regarding the imposition of a surcharge for the use of a credit card. HB 2548 gives the consumer credit commissioner, as opposed to the Finance Commission, the exclusive jurisdiction to enforce existing law prohibiting the imposition of a surcharge for the use of a credit card.

Finally, the committee will hear [HB 2758](#) by Anderson, relating to the business, supervision, and regulation of state savings and loan associations and state savings banks. HB 2758 is designed to remove outdated, obsolete, and inconsistent provisions of the Savings & Loan Act and the Savings Bank Act. The bill removes the liquidity and local service area requirements, amends the qualifications of the Department of Savings & Mortgage Lending commissioner to better ensure the credibility of appointees, creates a criminal slander section explicitly applicable to savings banks, modifies the criminal slander section applicable to associations, clarifies supervisory and regulatory matters, and updates sections relating to supervisory orders.

Upon adjournment Monday afternoon, **House Technology** will take public testimony on [HB 584](#) by Eddie Rodriguez, relating to the posting of a notice of foreclosure sale on a county's Internet website. HB 584 amends Sec. 51.002, Property Code, to provide that if a county maintains a website, the county must post a notice of sale filed with the county clerk on the website on a page that is publicly available for viewing without charge or registration.

TUESDAY

Senate B&C has a lengthy agenda Tuesday morning, and, thankfully, most of the bills affect industries other than banking. The Committee will hear a number of payday lending type bills, though, so it will be a long day for committee members and interested parties. Of note for our purposes, the Committee will hear [SB 1008](#) by Carona, relating to the business, supervision, and regulation of state savings and loan associations and state savings banks. SB 1008 is companion legislation to HB 2758 discussed above.

Upon final adjournment Tuesday, **House Criminal Jurisprudence** will hear [HB 1540](#) by Pitts, relating to the prosecution of certain criminal offenses involving theft or involving fraud or other deceptive practices. HB 1540 brings Texas law up to date regarding the electronic transfer of funds. Specifically, HB 1540 amends the Penal Code, Code of Criminal Procedure, Government Code, and Tax Code by replacing the phrase "check or similar sight order" with "payment device" to encompass electronic funds transfers.

Also on Tuesday upon adjournment, **House B&I** will hear [HB 1723](#) by Bohac, relating to the redemption of certain stored value cards, including gift cards, for cash. HB 1723 adds new Subchapter D to Chapter 604 of the Business & Commerce Code to provide for the redemption of low-value cards. HB 1723 provides that if a stored value card is redeemed in person to make a purchase, and a balance of less than \$5 remains following the redemption, at the consumer's request, the seller shall refund the balance of the card in cash to the consumer. Importantly, HB 1723 specifically provides that this new subchapter does not apply to a stored value card issued by a financial institution acting as a financial agent of the US or the Texas; a federally insured financial institution if the financial institution is primarily liable for the card as the issuing principal; or an air carrier holding a certificate of public convenience and necessity.

As always, if you have any question about the above, please do not hesitate to let your TBA Lobby Team know -- we're always happy to help!

Volume 83.5

March 17, 2013

Friday, March 8 was the 60th day of the 83rd Session of the Texas Legislature. For all intents and purposes, aside from local bills and instances where 4/5 of a Chamber

votes to suspend the rules to allow for the late introduction of a bill, March 8 was the last day legislators could file bills for consideration this session.

As is the case every session, there was a rush to file bills in the days leading up to deadline. So much so, in fact, there were 2,500 bills and joint resolutions filed the week of March 4 alone. We mentioned in one of our last publications that legislators were running behind their filing pace from last session; with the frenetic pace bills were filed in the days leading up to March 8, this difference was all but made up. As of today, legislators have filed 5,893 bills and joint resolutions this session. This is 110 fewer bills than legislators in the 82nd session filed.

Committees are also now in full swing in both the House and the Senate, and we spend most of our time these days preparing for public hearings on bills TBA and our members care about. The week of March 18 will be no different. The following is a summary of what we're preparing for in the week ahead.

MONDAY

House IFS

Monday afternoon House IFS is scheduled to hear testimony on [HB 1664](#) by Chairman Villarreal, relating to the regulation of banks, trust companies, and bank holding companies. HB 1164 is legislation that proposes to make a number of changes to Finance Code and clarifies and enhances the oversight authority of the Texas Department of Banking. HB 1664 also revises certain requirements and rules to establish parity with national banks and federal statutes, changes the limits for investment in trust company fixed assets, and clarifies the instances under which advisory directors may be privy to confidential information. TBA supports HB 1664, and its companion, [SB 805](#) by Carona.

House Technology

Though not a committee we typically follow, tomorrow afternoon the House Technology Committee is hearing a bill that we are watching with interest. [HB 335](#), by Stickland, relating to the posting of required notice on a political subdivision's Internet website. HB 335 amends the Government Code to provide that a political subdivision may satisfy a requirement to provide notice by publication in a newspaper by posting the notice on its Internet website continuously from the earliest date provided for in the requirement until the day after the date the action for which notice was required occurs. HB 335 is not legislation TBA will weigh in on; it's just a bill we are watching because its final passage could affect our members, who are required by a number of different statutes to provide various notices by publication. Needless to say, HB 335 faces stiff opposition from the Texas Press Association, which set up a [website](#) in opposition to the bill.

TUESDAY

Senate B&C

[SB 952](#) by Carona, relating to interest on commercial loans. SB 952 Amends Sec. 306, Finance Code, to provide that a lender and a borrower may calculate the interest on a commercial loan using the paid-in-kind method, the 365/360 method, or any other method otherwise permitted by law. SB 952 also clarifies that the provisions in

Chapter 306, Finance Code, are not intended to affect or negatively impact loans made under other provisions of the Chapter.

House B&I

[HB 855](#) by Lucio III, relating to a security services contractor's lien. HB 855 is reincarnated from last session, and it seeks to add a new Chapter 66 to the Property Code to provide that a security services contractor who provides security services for a commercial entity under a contract with that commercial entity has a lien for the amount owed under the contract. The lien attaches to the premises for which the security services contractor provided the security services if owned by the commercial entity that entered into the contract and to the personal property owned by the commercial entity and located on those premises.

"Security services contractor" is defined in the Occupations Code to mean a person acting as an alarm systems company, armored car company, courier company, guard company, guard dog company, locksmith company, or private consultant company. Under HB 855, any of these entities could file a lien on a financial institution's premises if there were a billing dispute. TBA opposes this legislation just as we did last session.

[HB 991](#) by Carter, relating to imposing liens for labor and materials provided by interior designers. HB 991 adds new Subchapter G to Section 70 of the Property Code (Miscellaneous Liens) to provide that an interior design contractor who provides labor or materials under an interior design contract has a lien for the amount owed. Under the bill, the lien attaches to the commercial personal property provided under the interior design contract and all nonexempt commercial real property that is owned by a person who contracts with an interior design contractor and on which the interior environment is located. Finally, the bill provides that the lien created by Sec. 70.603 does not expire and is discharged only when the claimant receives full payment of the amount owed under the interior design contract. TBA opposes this legislation just as we did in 2011.

House Criminal Jurisprudence

[HB 1344](#) by Canales, relating to the expunction of arrest records and files relating to certain nonviolent offenses. HB 1344 amends the Code of Criminal Procedure to provide that a person who has been placed under arrest for an offense other than an offense under Title 5, Penal Code (Offenses Against the Person), is entitled to have all records and files related to the arrest expunged if the person was placed on deferred adjudication and subsequently received a discharge and dismissal; the person has not been arrested for the commission of any Class B or Class A misdemeanor or felony committed after the date of the offense; and no less than 5 years has passed since the death on which the person received a discharge and dismissal.

TBA has concerns about HB 1344 because it conflicts with existing Texas law governing licenses issued by the Texas Department of Savings & Mortgage Lending. Under the SAFE Act and its Texas equivalent, a person is considered to have been convicted of a criminal offense if the person received probation or community supervision, including deferred adjudication or community service, or if the court deferred final disposition of the person's case. Because HB 1344 allows an individual to

have this information expunged from his record, he could have plead to a financial crime and still receive a license from the TDSML. Stay tuned on HB 1344.

Senate Jurisprudence

[SB 1202](#) by West, relating to an order to conduct mediation following an application for expedited judicial foreclosure proceedings. SB 1202 adds new Sec. 51.016, Property Code, to provide that following the receipt of an application for an expedited foreclosure proceeding under the Texas Rules of Civil Procedure, a court may, in its discretion, conduct hearings or order the parties to mediate the dispute. The court may appoint the mediator if the parties cannot agree on one. SB 1202 is silent about any time frame within which this mediation must take place. The bill is also silent on which party to the suit is supposed to pay for the mediation. TBA has concerns about SB 1202 for these reasons, and we will testify to this effect at the bill's hearing Tuesday afternoon.

Reminder

If you haven't made plans to join us in Washington for the 2013 ABA Government Relations Summit, please do so today -- there is still plenty of time to [register](#) to participate!

Volume 83.4

March 3, 2013

60th Day is Right Around the Corner

The 60th day of each regular legislative session is an important one. Not only is it the last day for legislators to file bills for consideration (except for local bills and certain other limited circumstances), it is also the day after which the "Legislature shall act upon such bills and resolutions as may be pending". [Texas Constitution, Article 3, Section 5\(b\)](#)

What this means in layman's terms is that Friday, March 8 is the bill filing deadline for the 83rd Session of the Texas Legislature; it also means that after Friday, legislators can begin debating legislation on the Floors of the House and Senate. So far this session, only one bill has been debated by either Chamber – HB 10, the emergency supplemental appropriations bill (because HB 10 was an emergency appropriations bill, it could be debated before the 60th day.) Look for that number to change in very short order.

Committee Action Last Week

On Tuesday, February 26, the Senate Committee on Business & Commerce heard public testimony on [SB 247](#), relating to the transfer of an ad valorem tax lien. Authored by Committee Chairman John Carona, SB 247 is designed to address problems that consumers, bankers, taxing units, and governmental entities continue to have with private, third party tax lien lenders. While SB 247, and its committee substitute, make a number of changes to laws governing tax lien lenders and tax lien loans, TBA believes there are still improvements to be made. We are grateful for

language protecting preexisting lienholders – namely, the addition of a new subsection that clarifies that a lender with an existing recorded lien on a property may request payoff information. We support this new language because bankers from across the state report that property tax lenders routinely refuse to provide this information, even after a property owner has authorized the release of such information. And, like many interested parties following SB 247, we support language in the bill removing the ability of a tax lien lender to foreclose a tax lien loan using a power of sale or non judicial foreclosure process.

TBA will continue to work with Chairman Carona and his staff on language that we believe will protect the interest of our members. The Committee Substitute for SB 247 (which in future publications will be referred to as CSSB 247) was voted out of committee Wednesday, February 27. The language for CSSB 247 is not yet posted on the state's website, but should be later this week. We believe it will mirror [this](#), which was distributed by Chairman Carona's staff before Wednesday's committee vote. As a postscript, a special thank you to Broadway Bank CEO Jim Goudge who came to Austin and [testified](#) on SB 247 on behalf of TBA Tuesday morning!

Tax lien lending was also on the Senate Committee on Intergovernmental Relations' Agenda Wednesday, February 27. Specifically, IGR heard public testimony on [SB 476](#) by Committee Chairman Juan "Chuy" Hinojosa. Importantly, SB 476 requires a tax lien lender to provide the property owner/borrower with a notice highlighting the fact that the taxing unit may offer an installment agreement for the payment of the taxes. This notice must be provided prior to closing. As filed, SB 476 does contain language about which TBA is concerned, so we are working with Chairman Hinojosa on substitute language for consideration by the Committee. SB 476 was left pending Wednesday, so stay tuned as it makes its way through the legislative process.

Committee Action the Week of March 4

House Investments & Financial Services (IFS) has a number of bills we're following on tomorrow afternoon's Agenda. They include:

[HB 1113](#) by Darby, relating to service of citation on a financial institution. Like its Senate companion [SB 422](#) by Duncan, HB 1113 is designed to provide that service of process on a financial institution, regardless of whether the action is against the financial institution, must be on the registered agent of the institution, or, if none, the president or branch manager.

[HB 225](#) by Van Taylor, relating to the imposition of a surcharge for the use of a credit card for payments under a commercial or residential real estate lease. Current Texas law specifically prohibits sellers from imposing a surcharge on buyers who use credit cards for an extension of credit instead of cash, a check, or a similar means of payment. Statutorily, surcharges for payment by credit card may only be charged by government entities, such as for the payment of property or other taxes or other fees required by a government agency (e.g., online renewal of a Texas driver license.) TBA is concerned about HB 225 for a number of reasons, not least of which is the trend nationally among retailers is NOT to surcharge. In fact, the National Retail Federation

recently told Forbes that “merchants have no desire to surcharge and no plans to surcharge.”

The Agenda for Senate Business & Commerce (B&C) Tuesday is in large part devoted to [craft beer bills](#). However, the Committee will hear public testimony on [SB 699](#) by Carona, relating to the contents of an assumed name certificate filed by certain businesses or professionals. SB 699 eliminates the existing statutory requirement that an entity filing an assumed name certificate include the entity’s registered address and provides that a filing entity need only list the street or mailing address of the entity’s principal office. This change is designed to eliminate the provision of unnecessary information to the Secretary of State’s office during the filing process.

And Finally

If you missed our legislative day in Austin and would like a second opportunity to experience the legislative process firsthand, consider joining TBA in Washington, DC April 15-17 for the ABA Government Relations Summit. More information about the Summit can be found [here](#).

Volume 83.3

February 17, 2013

As of Saturday, February 16, there were 100 days remaining in the 83rd Session of the Texas Legislature. So far this session, legislators have filed approximately 2,050 bills and joint resolutions. This is about 13% fewer bills than had been filed at this point in the 82nd session. However, legislators have until Friday, March 8 (the 60th day of the session) to file legislation other than local bills, emergency appropriations, and bills that have been declared an emergency by the governor, so there are almost three weeks for legislators to catch up to last session’s metrics.

The first House Calendar has been set for Thursday, February 21. The only bill on the calendar is [HB 10](#) by House Appropriations Chairman Jim Pitts; HB 10 is the emergency supplemental appropriations bill that is intended to address the Medicaid shortfall in the current biennium. Because HB 10 is an emergency appropriations bill, it is eligible to be acted on at this time. Legislators have until 5:00 p.m. tomorrow, to file amendments to HB 10.

Committee Work

The Senate Committee on Business & Commerce (B&C) has held substantive hearings for the past couple of weeks, and committee members have already favorably voted a number of bills out of committee. On Tuesday, February 18 Senate B&C is scheduled to hear 14 bills, two of which TBA is following.

The first, [SB 72](#) by Ellis, amends the Insurance Code to prohibit the use of credit scoring by insurers. SB 72 amends the Insurance Code to provide that an insurer may not refuse to underwrite, cancel, or refuse to renew a risk based wholly or partly on the credit report or credit score of an insured or an applicant for insurance coverage; or rate a risk based wholly or partly on the credit report or credit score of an insured

or an applicant for insurance coverage in any manner, including the provision or removal of a discount, assignment of an insured or applicant to a rating tier, or placement of an insured or applicant with an affiliate. Senator Ellis has filed similar legislation the past three sessions.

B&C will also hear [SB 474](#) by Carona. SB 474 reflects the 2010 Amendments to UCC Article 9 and conforms the filing requirements to the International Association of Commercial Administrators' form change that is due to go into effect in July.

This week our relevant House committees will begin holding organizational and substantive hearings. House Investments & Financial Services (IFS) will hold its first hearing Monday, February 18 and, of interest to TBA members, will hear testimony from the Finance Commission, the Credit Union Commission, and each of the agencies under the Finance Commission umbrella.

House Business & Industry (B&I) will hold its first hearing Tuesday, February 19. This hearing will be both organizational and substantive – the Committee is scheduled to hear HB 318 by Giddings that day.

[HB 318](#) by Giddings adds Chapter 21.0605, Labor Code, to provide that an employer commits an unlawful employment practice if the employer requires or requests that an employee or applicant for employment disclose a user name, password, or other means for accessing a personal account of the employee or applicant, including a personal e-mail account or a social networking website account or profile, through an electronic communication device. This new section does not prohibit an employer from maintaining lawful workplace policies governing employee usage of employer-provided electronic communication devices or employee usage of personal electronic communication devices (ECD) during working hours; monitoring employee usage of employer-provided ECD or email accounts; or obtaining information about an employee or applicant for employment that is in the public domain or that is otherwise lawfully obtained. In order to make sure that TBA members are able to comply with FINRA requirements if HB 318 is finally passed, we are working with Representative Giddings on a committee amendment to HB 318 that would clarify that nothing in the bill should be construed to prevent an employer from complying with the requirements of state or federal statutes, rules or regulations, case law or rules of self-regulatory organizations.

Texas Bankers Blitz A Huge Success

More than 150 bankers and guests from across the state participated in TBA's biennial Texas Bankers Blitz Tuesday, February 5. Senators and representatives, including Speaker of the House Joe Straus, welcomed large groups of bankers to discuss banking-related issues, particularly tax lien lending difficulties and legislation requiring a lender to notify a contractor of a suspension or cessation of disbursements of loan proceeds in the event of a borrower or property owner's default on a construction loan. Thank you again to the bankers who sacrificed time out of their banks to come to Austin and advocate on all bankers' behalves.

All Systems Go

The Lieutenant Governor announced [Senate Committee Assignments](#) Friday, January 18. Speaker Straus announced [House Committee Assignments](#) Thursday, January 31. Now that committee assignments have been made, the true work of session can begin. Article 3, Section 5(b) of the Texas Constitution states that committees may begin holding hearings to consider bills and resolutions pending before the legislature after the expiration of the first 30 days of a regular session. We are officially at the point, and committees in both the House and Senate are now holding committee hearings on a daily basis. Committee assignments were made 10 days sooner on the Senate side and 9 days sooner on the House side this year. In a 140-day session, these additional days will definitely help!

It's worth noting that we have a number of new chairmen to work with this session in both the House and the Senate. As expected, Senator John Carona will continue to chair the Senate Committee on Business & Commerce (B&C), the Senate committee with primary jurisdiction over banking issues. Senator Royce West will chair Senate Jurisprudence now that Senator Harris has retired. Senator West's move to Jurisprudence means we'll also have a new chairman for the Senate Committee on Intergovernmental Relations (IGR); we look forward to working with Chairman Juan "Chuy" Hinojosa in Senate IGR this session. Over in the House, where there has been a high level of turnover since last session, most of the committees with jurisdiction over our issues have new chairmen. The Investments & Financial Services Committee (IFS) will be chaired by San Antonio Representative Mike Villareal, the House Business & Industry Committee (B&I) will be led by Rene Oliveira from Brownsville, and the Judiciary & Civil Jurisprudence Committee will be led by Odessa Representative Tryon Lewis. As we've mentioned before, the relationships legislators have with their constituents are far more important than the relationships legislators have with Austin lobbyists, so if you know any of our new chairmen, we'd love to [hear about it](#).

So far this session there have been just under 1,300 bills filed. This is about 300 fewer than we saw filed by the beginning of February in both 2011 and 2009. We are currently tracking about 50 bills that would affect the business of banking. The following bills are of particular note.

[HB 225](#) by Van Taylor. Currently Texas is one of 10 states that explicitly prohibits a seller in a sale of goods or services from imposing a surcharge on a buyer who uses a credit card (this does not apply to a state agency, county, local governmental entity, or other governmental entity.) HB 225 adds an exception to Sec. 339.001, Finance Code, to provide that a landlord or a landlord's agent who accepts a credit card for the payment of rent may impose a surcharge upon a tenant choosing to pay his rent with a credit card.

[HB 318](#) by Giddings. HB 318 adds a new Chapter to the Labor Code to provide that an employer commits an unlawful employment practice if the employer requires or requests that an employee or applicant for employment disclose a user name, password, or other means for accessing a personal account of the employee or applicant, including a personal e-mail account or a social networking website account

or profile, through an electronic communication device. ([SB 118](#) by Hinojosa is the Senate companion to this bill.)

[HB 552](#) by Lozano. HB 552 adds new Chapter 397, Finance Code (Deferred Collection of Consumer Debt or Certain Military Servicemembers) to provide that a military servicemember who is on federal active duty or is called to federal active duty who incurs a wound or other injury while serving in a combat zone and is hospitalized for treatment of the wound or injury for 21 or more consecutive days is entitled to defer the collection of or abate a suit to collect a consumer debt of the servicemember incurred before the date the servicemember was wounded.

HB 552 also provides that the receipt by a servicemember of a deferral or abatement of collection of a consumer debt may not provide the sole basis for: a denial or revocation of an extension of credit by a creditor; a change by a creditor in the terms of an existing credit arrangements; a refusal by a creditor to extend future credit to the servicemember in substantially the amount or on substantially the terms requested; an adverse report relating to the creditworthiness of the servicemember or the servicemember's spouse by or to a consumer reporting agency; or an annotation in the servicemember's file by a consumer reporting agency identifying the servicemember as a member of the armed forces of the US; the Texas National Guard or the National Guard of another state; or a reserve component of the armed forces of the US. The rights conferred under this section may not be waived.

[SB 295](#) by Deuell. SB 295 is legislation being advocated by the subcontractor lobby and is very similar to legislation TBA opposed last session. SB 295 adds new Sec. 28.0091, Property Code (Lender Notice of Default to Contractors; Suspension of Performance Pending Cure) to provide that a lender shall immediately notify the contractor of a suspension of a disbursement of loan proceeds or cessation of disbursements of loan proceeds to a borrower or property owner under the loan or financing agreement. Upon receipt of this notice, a contractor shall immediately notify each of the contractor's subcontractors of the suspension of the disbursement of loan proceeds or cessation of disbursements of loan proceeds and of the subcontractor's right to suspend contractually required performance without penalty or liability for damages as a result of the suspension/cessation of disbursements.

SB 295 also provides that a lender is not required to give notice to a contractor if, before the lender suspends or ceases the disbursement of loan proceeds, a written agreement exists between the lender and the contractor that: 1) provides for the continued performance by the contractor and for payment to the contractor in the event of a default by the borrower or property owner; 2) provides for notice from the lender to the contractor that the borrower or property owner is in default under the loan or financing agreement; 3) requires that, on the receipt of this notice, the contractor shall immediately notify all subs of the default; and 4) specifically states that subcontractors of the contractor are third-party beneficiaries of the lender's obligations under the agreement. Finally, SB 295 provides that a subcontractor is a third-party beneficiary of a lender's obligations with equal standing to a contractor to enforce remedies. TBA opposes SB 295, and we will work to educate Senator Deuell and other members of the legislature about the very negative impact the final passage of this bill would have on construction lending in the state.

TBA is holding our biennial Texas Bankers Blitz at the Capitol on Tuesday, February 5. It's not too late to [register](#) if you're interested in participating; we'd love to add to the large crowd we're expecting at the Capitol first thing Tuesday morning.

As always, if you have any questions on this or any other legislative matter, please do not hesitate to [let us know](#)!

Volume 83.1

January 13, 2013

83rd Legislature Convenes

The 83rd Legislature convened at noon last Tuesday, January 8. The 181 members of the legislature were sworn in at that time, and Joe Straus (R-San Antonio) was reelected to serve as the House's presiding officer; this will be Speaker Straus' third term in office. Lieutenant Governor David Dewhurst will continue to serve as the Senate's presiding officer. He did not have to be sworn in this week – like Governor Perry, he is not up for re-election until 2014.

The Texas Constitution provides that the first 30 days of each session "shall be devoted to the introduction of bills and resolutions . . . and such emergency matters as may be submitted by the Governor in special messages to the Legislature." ([Article 3, Section 5\(b\)](#)) What this means is that even though there are only 140 days to each session, the House and the Senate are prohibited from considering legislation during the first 30 days unless the Governor declares specific issues to be emergency items. As of Friday afternoon, the Governor had not named any emergency items.

As discussed in the December edition of TBA's *Texas Banking* magazine, there is an extraordinary level of turnover in both the Texas House and Senate this session. 29% (43 of 150) of House members in 2013 will be serving their first term. Once the special election for Senate District 6 is decided (that election is scheduled to occur January 26), almost 20% (6 of 31) of the Senate will be new. Your TBA lobby team is working hard to introduce ourselves to these new members and their staffs. However, we need your help. If you have not done so already, please take a few minutes to complete our [Who Do You Know? form](#). The relationships our members have with their hometown legislators are invaluable, and we'd like to know about them!

Looking to the week ahead, the House is scheduled to debate [HR 4](#) Monday, January 14. HR 4 is the House Rules Resolution and it does just what the name implies, which is set out the rules for the House for the 83rd session. Importantly for TBA's purposes, HR 4 also sets out the Standing Committees for the session. You will remember last session our main committee of jurisdiction in the House was the Pensions, Investments and Financial Services Committee. Sections 22 and 28 of HR 4 propose to split this committee into two – the Pensions Committee and the Investments and Financial Services Committee. So, rather than hearing a lot about the PIFS Committee in 2013, look forward to hearing about bills in the IFS Committee. This change may take some time to get used to!

To date, fewer than 700 bills have been filed for consideration by the 83rd Legislature. Thankfully, only a handful relate to the business of banking. At this time, none of these are of major consequence (either based on content or likelihood of final passage); rest assured we will let you know as soon as this changes.

Your TBA lobby team follows the legislative process and advocates for banking issues at the Texas Capitol on your behalf. Should you have any questions on what's happening under the pink dome, please do not hesitate to let us know. The easiest way to do this is to email grassroots@texasbankers.com, or call (512)472-8388 and ask to speak to a member of the TBA lobby team – Eric Sandberg, John Heasley, Celeste Embrey or Emily Hayes.

Finally, do not forget to register for the Texas Bankers Blitz, which is in Austin on February 5. This is our biennial bankers day at the Texas Capitol, and it is a great opportunity for TBA members to visit with their legislators and educate them about what their banks are doing for their banks and communities. January 14 is the room block cutoff, so [register](#) today!

Volume 83.i

November 20, 2012

Now that the 2012 general election is behind us, the work of the 83rd Session of the Texas Legislature can begin. Granted, opening day of the session (the day legislators convene at the Capitol) is not until

Tuesday, January 8, 2013, but legislators have already begun pre-filing legislation for consideration during the 83rd Session.

A couple of quick facts to keep in mind: the Texas Legislature meets for 140 days in odd-numbered years; there are 150 members of the Texas House of Representatives, and 31 members of the Texas Senate; House members elect one of their colleagues to serve as Speaker of the House; all voting Texans elect the Lieutenant Governor. The Speaker of the House is Joe Straus (R-San Antonio), and the Lieutenant Governor is David Dewhurst (R-Houston).

Pre-filing began last Monday, November 12, so this is a good opportunity to share a number of the terms that will be regularly used in this publication. This list will not be exhaustive; rather, it is meant to lay the groundwork for what to expect in the initial weeks of session.

First, “prefiling” or “prefiled”. As mentioned above, this means that Representatives and Senators may begin filing legislation before the session actually begins. With the exception of a small number of bill numbers that are held and designated by House and Senate leadership as major legislation, bills are filed in numerical order. House Bills are designated as such by H.B. and then the bill number. So, when you see 83R H.B. 922, this means the bill is a bill filed by a member of the Texas House of Representatives for consideration in the 83rd Regular Session of the Legislature. Senate bills are designated by S.B. Often, 83R will be omitted, but do not let this confuse you – unless otherwise indicated, all bills discussed in this publication will be from the 83rd Regular Session.

Some people mistakenly believe that bills will be considered in numerical order; this is not the case. A bill with a lower bill number has no more chance of passing than a bill with a higher number. After the bills are given bill numbers, it is up to the author of the bill to do all he or she can to ensure the bill’s final passage.

Second, “referred to committee”. After filing, and once the session convenes, all bills must be read into the record and referred to a committee before any substantive work on the legislation can begin. In the House, the Speaker of the House and his staff decide the committee to which a bill should be referred. In the Senate, this job belongs to the Lieutenant Governor and his staff. Again, bill referral cannot take place until the legislature convenes, and it will continue to occur as long as bills can be filed. The bill filing deadline (i.e., the last day bills can be

filed) is in March, that day will be discussed in more detail as it draws near.

A bill is referred to the committee that has subject matter jurisdiction over the issues being proposed in the bill. For TBA's purposes, our main committees are Senate Business and Commerce (B&C), House Pensions, Investments and Financial Institutions (PIFS), and House Business & Industry (B&I) because these are the committee that have subject matter jurisdiction over banking issues. This is where the majority of the bills we follow and track will go, and you'll see many, many banking related bills being referred to these committees.

Next, "set for hearing". Although this generally will not begin to happen until the end of February, at the earliest, this means that the author of the legislation has requested a hearing for the bill, and the chairman of the committee to which the bill is referred has set the bill for a public hearing. All legislation must have a public hearing in order to advance in the legislative process. Usually, a bill set for hearing will be heard on its first hearing date. However, this is not always the case and, should a hearing for a bill be postponed, it doesn't necessarily mean the legislation is dead. There are so many moving parts associated with the legislative process, a postponed hearing could simply mean that the author of the bill had a scheduling conflict and was unable to attend the hearing (lots of committees meet at the same time, and legislators generally serve on at least three committees.)

"Lay a bill out". When the legislator arrives at the public hearing to present his bill to the full committee, legislative vernacular says the legislator is laying his bill out to be heard. This is where the Representative or Senator gives the committee background on the issue(s) being addressed in the bill, explains the problem the bill is seeking to fix, and contains the legislator's proposed change to Texas law that will provide that fix.

In order to pass out of the committee and move to the next step in the legislative process, a bill must receive the affirmative vote of a majority of the members of the committee. The Senate Business and Commerce Committee has nine members; five members must be present in order for the committee to have a quorum and vote on bills. So, even if only five members of the committee are present at a hearing, because the committee has a quorum, they may take a vote on a bill being

considered, and that bill can pass out of the committee with a majority vote of the members present (i.e., 3).

The next steps of the legislative process are trickier because there are a number of legislative hurdles that have to be cleared before a bill actually makes it to the floor of either chamber. However, for our purposes, and so as not to burden you with any more legislative minutia than is completely necessary, the important thing to remember is that after a bill passes out of committee, it must be considered and passed by the full House (i.e., all 150 members) if it is a House bill, or the full Senate (31 members) if it's a Senate bill. For the overwhelming majority of bills, this means 76 members of the House have to vote 'yes' on a bill for it to pass on the House side and 16 for it to pass on the Senate side.

Because nothing is ever as easy as it needs to be, a bill actually has to pass twice before it can go any further. The Texas Constitution requires a bill to be read on three several days in each House before it can have the force of law. The first reading is when the bill is introduced and read into the record; the second reading is the first time the bill is considered by the full chamber and passed; and the third reading is final passage. After final passage, the bill goes across the capitol rotunda to the other chamber (to the Senate if it's a House bill, to the House if it's a Senate bill) and this process starts all over.

The legislative process can be a confusing and somewhat unpredictable process, even for those of us whose jobs require us to pay attention to these things. However, it's not rocket science and, as we have a citizens legislature in Texas (legislators aren't full time legislators – rather, they're ordinary citizens who devote an extraordinary amount of time to public service for very little pay -- \$600 per month, to be exact), it's a process that is designed to be understood by all.

Your TBA lobby team follows the legislative process and advocates for banking issues at the Capitol on your behalf. Should you have any questions on what's happening at the Texas Capitol, please do not hesitate to let us know. The easiest way is to email grassroots@texasbankers.com or to call (512)472-8388 and ask to speak to a member of the TBA lobby team -- Eric Sandberg, John Heasley, or Celeste Embrey.

Finally, don't forget the Texas Bankers Blitz in Austin on February 5, 2013. This is our biennial bankers day at the Texas Capitol and it is

open to all Texas bankers. Visit the [event's website](#) for more information. Please plan to attend!
