



2023 Report of the 88th Texas Legislature



TexasBankers
Association

Strong Banks. Stronger Communities.



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Legislative actions that will impact your customers, your communities, and your banks

The 88th Session of the Texas Legislature was a thankful return to “normal” at the Texas Capitol. The COVID-19 restrictions that impacted legislating and advocating in 2021 were long gone. And, due to the state’s once in a lifetime budget surplus, crafting and adopting the state’s biennial budget — the only bill that must pass during a regular legislative session — was not as dire as in sessions’ past.

Every legislative session has its own personality, though, so the return to normal from an operational perspective does not mean the *feel* of the legislature was the same as pre-pandemic sessions. In fact, as your TBA advocates, one of our biggest takeaways of the 88th Session of the Texas Legislature was that the relationships community bankers have with their legislators have **never** been more important.

Historically, banking policy has been straight-forward — with pro-business legislators, regardless of party affiliation, tending to support pro-growth business policies. But we can no longer take any vote or legislator’s support for granted. It is important for bankers to remain engaged with their state and local officials and provide Main Street “ground truth” from your bank and Texas communities if the state’s economic success is to continue. This is the very essence of grassroots advocacy.

Relationship building cannot begin the day the legislature convenes and end on *sine die*. Rather, it must be an ongoing process to ensure when an urgent matter arises, candidates and legislators solicit their local bankers’ input on the issue. Will you help? Let us know if you are willing to serve on our Government Relations, Community Bankers, and Regional Bankers Councils.

Texas banks fared well in the 88th Session. This is due, in very large part, to the relationships TBA members have with their elected officials. But 2025 will be here before we know it, and the Texas banking industry will continue to need legislative champions to ensure a robust industry that optimally serves Texas families, small businesses, and our state’s world-class economy.

It is an honor and privilege to represent you in Austin and in Washington, D.C. We will continue to fight for you and hope you will actively join us to ensure that *strong banks mean stronger communities*. Please do not hesitate to contact of us if you have any questions.

Chris Furlow

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DATA PRIVACY

HB 4 by Capriglione

Relating to the regulation of the collection, use, processing, and treatment of consumers' personal data by certain business entities; imposing a civil penalty.

Description:

HB 4 is the Texas Data Privacy and Security Act. It adds new Chapter 541, Business and Commerce Code (CONSUMER DATA PROTECTION), which entitles a consumer to exercise the right to: confirm whether a controller, defined to mean an individual that determines the purpose and means of processing personal data, is processing the consumer's personal data and to access the personal data; correct inaccuracies in the consumer's personal data; delete personal data provided by or obtained about the consumer; if the data is available in a digital format, obtain a copy of the consumer's personal data that the consumer previously provided to the controller in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another controller without hindrance; or opt out of the processing of the personal data for the purposes of targeted advertising, the sale of personal data, or profiling in furtherance of a decision that produces a legal or similarly significant effect concerning the consumer.

The Texas Data Privacy and Security Act does not apply to a financial institution or data subject to Title V, Gramm-Leach Bliley Act. However, the Act does apply to the affiliates of financial institutions. Sec. 541.001 (DEFINITIONS) defines "affiliate" to mean a legal entity that controls, is controlled by, or is under common control with another legal entity or shares common branding with another legal entity. The Act requires entities to which the Act applies to provide consumers with a reasonably accessible and clear privacy notice; if a controller sells personal data to third parties or processes personal data for targeted advertising, the controller must clearly and conspicuously disclose that process and the manner in which a consumer may exercise the right to opt out of that process.

The attorney general has the exclusive authority to enforce the Texas Data Privacy and Security Act. A person who violates the chapter or who breaches a written statement provided to the attorney general is liable for a civil penalty in an amount not to exceed \$7,500 for each violation. The Act may not be construed as providing a basis for a private right of action.

Index to sections affected:

Sections 541.001–541.205 (new), Business and Commerce Code

Effective date:

This Act takes effect July 1, 2024; however, the provisions in the legislation relating to a consumer designating an authorized agent to act on the consumer's behalf to opt out of the processing of the consumer's data take effect January 1, 2025.

HB 18 by Slawson

Relating to the protection of minors from harmful, deceptive, or unfair trade practices in connection with the use of certain digital services and electronic devices, including the use and transfer of electronic devices to students by a public school.

Description:

HB 18 adds Chapter 509, Business and Commerce Code (USE OF DIGITAL SERVICES BY MINORS), the Securing Children Online through Parental Empowerment (SCOPE) Act, which is designed to limit the collection and use of a minor's personal identifying information by digital service providers. The Act defines "digital service" to mean a website, application, program, or software that collects or processes personal identifying information with Internet connectivity. "Digital service provider" is defined to mean a person who owns or operates a digital service, determines the purpose of collecting and processing the personal identifying information of users of the digital service, and determines the means used to collect and process the personal identifying information of users of the digital service.

The SCOPE Act does not apply to a financial institution or data subject to Title V, Gramm-Leach Bliley Act. A violation of the SCOPE Act is a violation of Texas Deceptive Trade Practices — Consumer Protection Act solely enforceable by the consumer protection division of the attorney general's office.

Finally, the SCOPE Act creates a joint committee of the legislature to conduct a study on the effects of media on minors.

Index to sections affected:

Sections 509.001–509.153 (new), Business and Commerce Code

Sections 32.101, 32.1021 (new), and 32.104, Education Code

Effective date:

This Act takes effect September 1, 2024, except the portions of the SCOPE Act relating to the Education Code took immediate effect June 13, 2023.

HB 2060 by Capriglione

Relating to the creation of the artificial intelligence advisory council.

Description:

HB 2060 adds new Subchapter S, Chapter 2054, Government Code, establishing an artificial intelligence advisory council. “Artificial intelligence systems” are defined to mean systems capable of: perceiving an environment through data acquisition and processing and interpreting the derived information to take an action or actions or to imitate intelligent behavior given a specific goal and learning and adapting behavior by analyzing how the environment is affected by prior actions.

The seven-member council is directed to study and monitor artificial intelligence systems developed, employed, or procured by state agencies and submit a report to the legislature not later than December 1, 2024. The council is abolished and new Subchapter S, Chapter 2054, Government Code, expires January 1, 2025.

Index to sections affected:

Sections 2054.621–2054.624 (new), Government Code

Effective date:

This Act took effect June 13, 2023.

SB 768 by Parker

Relating to the process for notifying the attorney general of a breach of security of computerized data by persons doing business in this state.

Description:

Sec. 521.053, Business and Commerce Code (NOTIFICATION REQUIRED FOLLOWING BREACH OF SECURITY OF COMPUTERIZED DATA), requires a person who conducts business in Texas and owns or licenses computerized data that includes sensitive personal information to disclose any breach of system security no later than the 60th day after the date on which the person determines the breach has occurred. Similarly, the person is required to notify the attorney general of that breach not later than the 60th day after the date on which the person determines that the breach occurred if it involves at least 250 Texas residents.

SB 768 amends Sec. 521.053 to provide that the notification to the attorney general must occur as soon as practicable and not later than the 30th day after the date the person determines the breach occurred. The notification to the attorney general must be submitted electronically using a form submitted through the attorney general’s website.

Index to sections affected:

Sec. 521.053, Business and Commerce Code

Effective date:

This Act takes effect September 1, 2023.

DIGITAL ASSETS

HB 1666 by Capriglione

Relating to the commingling of funds by digital asset service providers; providing an administrative penalty.

Description:

HB 1666 adds new Chapter 160, Finance Code (DIGITAL ASSET SERVICE PROVIDERS). The bill defines “digital asset” to mean a natively electronic asset that confers economic, proprietary, or access rights and is recorded or stored in a blockchain, cryptographically secured digital ledger, or similar technology, and includes: a digital asset that the laws of any country considers to be legal tender; or virtual currency, which is defined in Sec. 12.001, Business and Commerce Code, to mean a digital representation of value that is used as a medium of exchange, unit of account, or store of value, and is not legal tender, whether or not denominated in legal tender. A “digital asset service provider” is an electronic platform that facilitates the trading of digital assets on behalf of a digital asset customer and maintains custody of the customer’s digital assets.

New Chapter 160 applies to a digital asset service provider doing business in Texas that: holds a money transmission license; and either serves more than 500 digital asset customers in Texas, or has at least \$10 million in customer funds. [Chapter 160 does not apply to a bank, or an entity excluded by Finance Commission rule or order of the banking commissioner based on the finding that the entity is not required to hold a money transmission license or not subject to the requirements of this new chapter.]

New Sec. 160.004, Finance Code (DUTIES OF DIGITAL ASSET SERVICE PROVIDERS), provides that a digital asset service provider may not commingle customer funds with funds belonging to the digital asset service provider, including the digital asset service provider’s operating capital, proprietary accounts, digital assets, fiat currency, or other property that is not customer funds; use customer funds to secure or guarantee a transaction other than a transaction for the customer contributing the funds; or maintain customer funds in such a manner that a digital asset customer may be unable to fully withdraw the customer’s funds. In addition to the requirements found in new Chapter 160, a digital asset service provider

must also obtain and maintain a money transmission license under the Money Services Act.

The department of banking is charged with administering new Chapter 160, and the Finance Commission of Texas is authorized to adopt rules necessary to administer and enforce the law.

Index to sections affected:

Sections 160.001–160.006 (new), Finance Code

Effective date:

This Act takes effect September 1, 2023.

SB 895 by Johnson

Relating to the regulation of money services businesses; creating a criminal offense; creating administrative penalties; authorizing the imposition of a fee.

Description:

SB 895 relies heavily on the Model Money Transmission Modernization Act, model legislation that creates a single set of nationwide money transmitter standards and requirements created by industry and state experts and approved by the Conference of State Bank Supervisors Board of Directors. Federally insured depository financial institutions, bank holding companies, offices of international banking corporations, foreign banks that establish federal branches under the International Banking Act of 1978, corporations organized under the Bank Service Company Act, corporations organized under the Edge Act, and trust companies are exempt from SB 895’s application. For TBA’s purposes, it is interesting, however, that new Sec. 152.006, Finance Code (CENTRALIZED DIGITAL CURRENCY PROHIBITED), explicitly provides that the Money Services Modernization Act does not authorize the creation of any centralized bank digital currency or any other action that prohibits or limits the use of paper currency.

Index to sections affected:

Relevant sections: Chapter 152 (new), Finance Code

Effective date:

This Act takes effect September 1, 2023.

ELECTRONIC PAYMENTS

HB 2837 by Schaefer

Relating to prohibiting a person or entity from surveilling, reporting, or tracking the purchase of firearms, ammunition, and accessories through the use of certain merchant category codes; imposing a civil penalty.

Description:

HB 2837, entitled the Second Amendment Financial Privacy Act, targets actions taken by the Swiss-based International Organization for Standardization (ISO) in September 2022 when it approved a merchant category code (MCC) for firearm and ammunition merchants. ISO merchant category codes are assigned and used by worldwide payment networks to identify the type of business in which a merchant is engaged.

The bill's prologue lambasts the ISO's creation of the firearm and ammunition merchant MCC and ties the utilization of the ISO's firearm code to paving the way for "unprecedented surveillance of Second Amendment activity and information sharing between financial institutions and the government". Because payment card networks, not payment card issuers, assign merchant category codes, TBA opposed HB 2837 because it unnecessarily penalizes TBA member banks for actions taken by payment card networks.

HB 2837 adds new Chapter 610, Business and Commerce Code (UNAUTHORIZED TRANSACTION CATEGORIZATION). New Sec. 610.002 (UNAUTHORIZED CATEGORIZATION OF CERTAIN TRANSACTIONS) provides that a person or entity involved in facilitating or processing an electronic payment transaction, including a payment card issuer or payment card network, may not assign to a merchant or require a merchant to use a firearms code. Sec. 610.002(b) similarly prohibits a firearms retailer from providing a firearms code to a payment card issuer or payment card network and provides that a firearms retailer may only use or be assigned a merchant category code for general merchandise retailers or sporting goods retailers. Sec. 610.002(c) requires a payment card issuer or a payment card network to notify the payment card holder in writing on every occasion that a firearms code is assigned to an electronic payment transaction on the payment card holder's account. So, if a payment card network assigns the firearms code to a transaction, HB 2837 requires the issuer, e.g., the Texas bank, to notify the customer. The legislation authorizes the attorney general to issue a civil investigative demand if the attorney general has reason-

able cause to believe a person is violating Chapter 610. Furthermore, if the attorney general finds that a violation has occurred, the attorney general shall bring an action to: recover a civil penalty of up to \$10,000 for each violation; and restrain or enjoin a person or entity from violating Chapter 610.

Finally, HB 2837 provides a private right of action to a person who has used a payment card to purchase a firearm, ammunition, or a firearm accessory against a payment card issuer or payment card network found to have violated Sec. 610.002(a). The action is limited to a declaratory judgment that the card issuer or card network has violated Sec. 610.002 or a judgment enjoining the payment card issuer or payment card network from further violations.

In TBA's testimony in opposition to HB 2837, we made clear that our members support the Second Amendment and the privacy of our customers' information. However, because HB 2837 requires banks that do not issue MCCs to be held responsible for the unlawful assignment of a MCC by a payment card network, we firmly opposed the legislation in both the Texas House and the Texas Senate.

Index to sections affected:

Sections 610.001–610.006 (new), Business and Commerce Code

Effective date:

This Act takes effect September 1, 2023.

HB 3395 by Capriglione

Relating to the charging of swipe fees on certain electronic payment transactions; authorizing a civil penalty.

Description:

HB 3395 sought to add new Chapter 610, Business and Commerce Code (CHARGING OF SWIPE FEES), to require payment card networks to: deduct the amount of state or local tax imposed on each electronic payment transaction from the swipe fees attributable to the transaction at the time of settlement; or rebate the merchant an amount equal to the amount of swipe fees attributable to the state or local tax imposed on the transaction. A "swipe fee" was defined to mean the interchange fee and, if applicable, any assessment fee paid directly to the payment card network for allowing a merchant to use a payment card or other payment code or device in an elec-

tronic payment transaction. The bill created a civil penalty for violators of new Chapter 610; the penalty was up to \$1,000 per violation and required a person found to have violated Chapter 610 to refund a merchant any swipe fees charged in violation of the chapter.

HB 3395 was legislation pushed by the Texas Restaurant Association and Texas Retailers Association that sought the government's intervention into the private contracts of merchants and banks and payment card networks that offer electronic payment platforms. TBA was vocally opposed to the legislation because we do not believe it is the state's place to pick winners and losers in the marketplace; HB 3395 would have allowed retailers and restaurants who benefit from their acceptance of electronic payments to shift the burden of paying for that benefit onto the banks, payment card issuers, and payment card networks offering those services.

Effective date:

HB 3395 died before reaching the House floor.

HB 3615 by Lambert

Relating to surcharges imposed for the use of a credit card.

Description:

Under existing Texas law, a merchant may not impose a surcharge on a buyer who uses a debit or stored value card instead of cash, a check, credit card, or similar payment means. Sec. 604A.002, Business and Commerce Code (IMPOSITION OF SURCHARGE FOR USE OF DEBIT OR STORED VALUE CARD), exempts from this section's applicability governmental entities or private schools that accept a debit card for the payment of private school tuition, fees, or other charges. HB 3615 sought to add new Sec. 604A.004, Business and Commerce Code (IMPOSITION OF SURCHARGE FOR USE OF CREDIT CARD), to provide that a merchant may impose a surcharge on a buyer who uses a credit card for an extension of credit instead of cash, a check, or a similar means of payment to pay for the purchase of goods and services.

TBA initially supported HB 3615 as it was heard by the House Pensions, Investments & Financial Services Committee because we believed it provided an avenue for merchants unhappy with their agreed-to interchange rates (see HB 3395 discussion) to surcharge transactions to help offset their costs (again, costs which they agreed to). However, as passed by the Texas House, TBA's position shifted because we believed the amount of surcharge imposed and the disclosure of the surcharge to the customer needed to be statutorily addressed. Specifically, we sought to include in statute a limit on how much a merchant could surcharge a transaction, this limit being no more than what that transaction cost to process. We also sought more meaningful disclosure to the customer that the surcharge was being imposed at the option of the merchant. Furthermore, we believed the customer should receive notice of the credit card surcharge at the point of entry and at the point of sale.

Effective date:

This bill died before reaching the Senate Floor.

SB 761 by Hughes

Relating to photo identification for certain debit or credit card transactions.

Description:

The 85th Legislature added Chapter 508, Business and Commerce Code (REQUIRING VERIFICATION OF IDENTITY FOR CERTAIN CARD TRANSACTIONS), in 2017. Chapter 508 authorizes merchants to require an individual using a credit or debit card to provide photo ID verifying the individual's identity as the card holder at the point of sale. Chapter 508 was due to expire September 1, 2023. SB 761 removes the statutory expiration date, thus continuing Chapter 508 and the right it gives merchants to request photo ID for credit and debit card sales.

Index to sections affected:

Sec. 508.003, Business and Commerce Code

Effective date:

This Act took effect May 19, 2023.

GENERAL BANKING

HB 3574 by Lambert

Relating to the regulation of state banks.

Description:

HB 3574 makes a number of changes to existing Texas law governing bank regulation. Under Sec. 31.005, Finance Code (IMPLYING THAT PERSON IS BANK), a person may not use the term “bank,” “bank and trust,” or similar term in a manner that would imply to the public that the person is engaged in the business of banking in the State of Texas. Depository institutions or other entities organized under the laws of this state, another state, the United States, or a foreign sovereign are exempt from this provision. HB 3574 restricts the use of the term “bank” or “bank and trust” to federally insured depository institutions.

HB 3574 adds new Sec. 31.005(c-2) to provide the banking commissioner with the authority to remove an officer, director, employee, controlling shareholder, or other position participating in the affairs of a state bank on an emergency basis for that person’s failure to comply with a subpoena. The emergency removal will remain in effect until the person complies with the subpoena.

Sec. 33.001, Finance Code (ACQUISITION OF CONTROL), provides that without prior written approval of the banking commissioner, a person may not directly or indirectly acquire a legal or beneficial interest in voting securities of a state bank or corporation. HB 3574 amends Sec. 33.005 (EXEMPTIONS) to provide the banking commissioner with the authority to re-evaluate the control person in applications for change of control. The bill also gives the banking commissioner the authority to issue cease and desist orders to current or former officers, employees, directors, or a bank acting through an authorized person. HB 3574 expands Sec. 35.106 (AUTHORITY OF SUPERVISION), to provide that during a period of supervision, a bank may not engage in any activity determined by the banking commissioner to threaten the safety and soundness of the bank. Finally, changes made to Sec. 281.006, Finance Code (RECORDS), enable the banking commissioner to receive access to or copies of a financial institution’s records relevant to the suspected financial exploitation of vulnerable adults.

Index to sections affected:

Sections 31.002, 31.005, 31.105, 33.005, 34.103, 35.002, 35.106, and 281.006, Finance Code

Effective date:

This Act took effect June 18, 2023.

HB 2674 by Kitzman

Relating to the application submitted to the comptroller for designation as a state depository.

Description:

Chapter 404, Government Code, governs the state treasury operations of the Texas Comptroller. Sec. 404.022 (APPLICATIONS) sets out the application process that must be utilized by banks interested in being designated by the comptroller as a state depository. HB 2674 amends that application process by giving eligible financial institution applicants more time to apply to be a state depository by requiring the comptroller to send out application notices in May of odd-numbered years as opposed to June of odd-numbered years. This notification can now be made electronically. Similarly, an application to become a state depository institution can be mailed or electronically submitted by the financial institution. HB 2674 authorizes the comptroller to specify the format required for electronic submission and to adopt rules to administer the electronic application process.

Index to sections affected:

Sec. 404.022, Government Code

Effective date:

This Act took effect June 11, 2023.

HB 4635 by Guillen

Relating to organized crime, racketeering activities, and collection of unlawful debts; providing a civil penalty; creating criminal offenses.

Description:

HB 4635 adds new Chapter 140B, Civil Practices and Remedies Code. Chapter 140B (CIVIL REMEDIES AND ENFORCEMENT RELATED TO RACKETEERING AND UNLAWFUL DEBT COLLECTION) is designed to create a state-level RICO offense. Representative Guillen introduced the legislation to help better equip law enforcement and prosecutors with the tools needed to target the financial crimes committed by transnational gangs and criminal enterprises. Importantly for TBA’s members’ purposes, the bill adds new Chapter 72, Penal Code (RACKETEERING AND UNLAWFUL DEBT COLLECTION), which establishes the elements of the crimes of racketeering and unlawful debt collection.

“Unlawful debt” is defined to mean any money or other thing of value constituting principal or interest of a debt that

is wholly or partly legally unenforceable because the debt was incurred or contracted in violation of: the Texas Racing Act; Chapter 47, Penal Code, relating to gambling; or Subtitle A, Title 4, Finance Code, or Section 11, Article XVI, Texas Constitution, relating to interest and usury, if the usurious rate is at least twice the enforceable rate. Subtitle A, Title 4 of the Texas Finance Code sets out statutory interest provisions; Article XVI, Section 11 of the Texas Constitution governs usury and the rate of interest in the absence of legislation. The definition of unlawful debt is similar to that found in the federal RICO statute in that the focus is on interest charged that is more than twice the enforceable rate. A person commits the offense of unlawful debt collection if they collect on debt in violation of new Chapter 72; an offense is a second degree felony. If a person collects on more than one debt in violation of the statute (e.g., debt the interest rate for which is more than twice the enforceable rate), the person commits the offense of racketeering, which is also a second degree felony.

Index to sections affected:

Relevant sections: 72.01–72 .05, Penal Code (new)

Effective date:

This Act takes effect September 1, 2023.

SB 158 by Perry

Relating to the location of a bank eligible to be selected as a depository or subdepository of county public money, including money held by a county or district clerk.

Description:

Chapter 116, Local Government Code, governs depositories for county public funds. Sec. 116.026 sets out the requirements for depository applicants from outside a county. SB 158 adds new Sec. 116.026(b) to provide that if only one bank located in a county applies to be designated as the county depository, the commissioners court may reject the applicant if the applicant proposes terms that: (1) are not in the best interest of the county; (2) are not financially competitive with the financial market outside of the county; or (3) impose noncompetitive fees. New Sec. 116.026(c) provides that if the commissioners court rejects the applicant under Subsection (b), the commissioners court may advertise for applications from banks in an adjoining county.

SB 158 also adds new Sec. 116.028, Local Government Code (SUCCESSOR BANK AS COUNTY DEPOSITORY), to provide that if a bank selected to be a county depository and holding county funds is sold to another bank in an adjoining county, the successor bank in the adjoining county may continue to serve as a county depository and

apply and be selected as a county depository if the successor bank: (1) continues to have an office in an adjoining county; and (2) timely applies and is selected to be a county depository in a manner to ensure no lapse of service as a county depository. New Sec. 116.028(b) provides that if a bank selected as a county depository and holding county funds closes, a branch of the bank in an adjoining county may continue to serve as a county depository and apply to be a county depository if the successor bank: (1) continues to have an office in an adjoining county; and (2) timely applies to be a county depository in a manner that ensures no lapse of service as a county depository.

Index to sections affected:

Sections 116.026, 116.028 (new), 117.026, and 117.118, Local Government Code

Effective date:

This Act took effect June 18, 2023.

SB 1379 by Parker

Relating to a pilot program to increase the financial independence of foster youth who are transitioning to independent living.

Description:

SB 1379 establishes a four-year pilot program designed to increase the financial independence of foster youth who are transitioning to independent living. The bill adds new Sec. 264.1215, Family Code (PILOT PROGRAM FOR FINANCIAL TRANSITIONAL LIVING SERVICES), which directs the Department of Family and Protective Services (DFPS) to enter into an agreement with one or more banks, credit unions, or other financial institutions to establish savings and checking accounts for foster youth who are at least 14 but not more than 21 years of age and participate in the pilot program. The terms of the checking or savings account must include: 1) a requirement that foster youth participating in the program are the sole owner of the savings and checking accounts and may establish savings and checking accounts without a co-signor; 2) a requirement that the department and the financial institution encourage the foster youth participating in the program to open or continue private savings and checking accounts once the participants are no longer eligible for the program; 3) procedures to ensure the participants maintain ownership and control of the account at the time the participants exit the program; 4) a requirement that the financial institution offer the account to participants in the program fee free; and 5) options to make financial coaching or mentoring available to foster youth participating in the pilot program.

New Sec. 264.1215(e) requires DFPS to survey each foster youth who enters and exits the pilot program created by SB 1379 in order to assess any changes in the youth's attitudes, perceptions, and knowledge about financial matters from the time the youth entered the program until the youth exited the program. Sec. 264.1215(f) requires DFPS to complete an evaluation of the pilot program and submit a report on the evaluation of the program to legislative leaders no later than December 31, 2027.

Sec. 264.1215(g) provides that a foster youth may not be denied the right to control money earned and deposited into an account under the pilot program. Finally, Sec. 264.1215(h) provides that if DFPS is unable to enter into an agreement with a bank, credit union, or other financial institution, the department shall include in its report to legislative leaders a description of any legal or practical barriers that must be addressed to ensure foster youth are able to participate in the pilot program and establish savings and checking accounts before the foster youth are no longer eligible for foster care services. The pilot program and Sec. 264.1215, Family Code, expire on January 1, 2028.

Index to sections affected:

Sec. 264.1215 (new), Family Code

Effective date:

This Act takes effect September 1, 2023.

SB 1645 by Parker

Relating to the hearings officer of the Texas Department of Banking.

Description:

Section 11.202, Finance Code (HEARINGS OFFICER AND AUDITOR), provides that the Texas Department of Banking may employ a hearings officer to serve the finance agencies (i.e., Texas Department of Banking, Texas Department of Savings and Mortgage Lending, and Office of Consumer Credit Commissioner). A hearings officer employed under this section is considered an employee of the agency for which the hearing services are provided. SB 1645 amends Sec. 11.202 to provide that a hearings officer may be retained under contract to provide services on a part-time basis.

Index to sections affected:

Sec. 11.202, Finance Code

Effective date:

This Act took effect May 19, 2023.

MISCELLANEOUS

HB 139 by Klick

Relating to the provision of notice of certain proposed rules by state agencies.

Description:

Under existing Texas law, a state agency is required to file notice of proposed rules with the Secretary of State for publication in the Texas Register. A summary of the proposed rule is required to be published on the agency's website. HB 139 amends Sec. 2001.023, Government Code (NOTICE OF PROPOSED RULE), to provide that failure to publish a summary of the proposed rule does not invalidate a rule's adoption. Sec. 2001.024 sets out the requirements for the content of the notice required by Sec. 2001.023. HB 139 adds the requirement that the notice also include the bill number for the legislation that enacted the statutory authority under which the rule is proposed to be adopted. Failure to include the bill number does not invalidate a rule adopted by a state agency or an action taken by the agency under that rule.

HB 139 adds new Sec. 2001.0261, Government Code (NOTICE TO CERTAIN PERSONS), to provide that for a rule that is proposed to be adopted by a state agency under statutory authority that specifically authorizes the agency to adopt the rule and became law during the preceding four-year period, the state agency shall provide notice of the proposed rule to the primary author and primary sponsor of the legislation that enacted the statutory authority under which the proposed is to be adopted. Failure to provide notice to the primary author and primary sponsor of the legislation does not invalidate a rule adopted.

Index to sections affected:

Sections 2001.023, 2001.024, and 2001.0261 (new), Government Code

Effective date:

This Act took effect June 13, 2023; however, the amendments to Sec. 2001.023, Government Code will become effective September 1, 2023.

HB 255 by Swanson

Relating to notaries public; increasing the amount of certain fees.

Description:

HB 255 amends the seal requirements for notaries public by clarifying that a notary public may not provide a copy

of the notary's seal to another person or affix or attach the notary public's seal to any document except to authenticate the notary public's official act. The bill also amends the records requirements for notaries public by clarifying that a notary public may record the expiration date of an identification card issued by the US if the signer, grantor, or maker of an instrument or document presents the card or passport to the notary public as identification. Finally, HB 255 increases the fees a notary public may charge for his services and gives the secretary of state the authority to adjust the fees once every five years based on the rate of inflation

Index to sections affected:

Sections 406.013, 406.014, and 406.024, Government Code

Effective date:

This Act takes effect September 1, 2023.

HB 609 by Vasut

Relating to the liability of a business owner or operator arising from the exposure of an individual to a pandemic disease.

Description:

The 87th Legislature passed the Pandemic Liability Protection Act in 2021 to ensure businesses are protected from liability claims during pandemics if the businesses in good faith substantially comply with an applicable rule, order, or declaration of the governor, legislature, state agency, or a local governmental entity. HB 609 amends the Pandemic Liability Protection Act by providing that a business owner or operator that does not require employees or contractors to be vaccinated against a pandemic disease is not liable for injury or death caused by the exposure of an individual to the pandemic disease through an employee or contractor.

Index to sections affected:

Section 148.003, Civil Practice and Remedies Code

Effective date:

This Act takes effect September 1, 2023.

HB 611 by Capriglione

Relating to the creation of the criminal offense of unlawful disclosure of residence address or telephone number.

Description:

HB 611 is designed to address doxing, which is the gathering of a person's personal identifying information and posting it publicly without permission. The bill adds new Sec. 42.074, Penal Code (UNLAWFUL DISCLOSURE OF RESIDENCE ADDRESS OR TELEPHONE NUMBER), to provide that a person commits an offense if he posts on a publicly accessible website the residence address or telephone number of an individual with the intent to cause harm or a threat of harm to the individual or the individual's family or household. This offense is a Class B misdemeanor; however, the offense is a Class A misdemeanor if the doxing results in bodily injury. This section does not apply to a public servant who posts the residence address or telephone number of a person to a publicly accessible website in the performance of the public servant's duties as required by or in accordance with state or federal law.

Index to sections affected:

Section 42.074 (new), Penal Code

Effective date:

This Act takes effect September 1, 2023.

HB 1195 by Holland

Relating to the authority of certain county and district clerks to obtain and retain information that identifies a person filing a document or requesting services.

Description:

Under existing Texas law, a county clerk in a county with a population of 800,000 or more may require a person presenting a document in person for filing in the real property records to present photo identification. Because Sec. 191.010, Local Government Code (AUTHORITY TO REQUIRE PHOTO IDENTIFICATION TO FILE CERTAIN DOCUMENTS IN CERTAIN COUNTIES), only applies in certain counties, fraudsters have illegally presented transfer of title documents for filing in the real property records, resulting in the theft of houses from unknowing or deceased homeowners. HB 1195 amends Sec. 191.010 to provide that a county clerk in a county that allows for electronic filing of documents in the real property records may require the person presenting a document for filing to present a photo ID.

Sec. 191.011, Local Government Code (AUTHORITY OF CLERKS TO OBTAIN AND RETAIN IDENTIFYING INFOR-

MATION IN CERTAIN COUNTIES), authorizes a county or district clerk in a county with a population of 3.3 million or more to copy or record identifying information regarding an individual who presents a document or other instrument for filing or recording to the county clerk or district clerk or requests or obtains an ex officio service or other public service provided by the county or district clerk. HB 1195 similarly authorizes a county or district clerk in a county that allows for electronic filing or recording of documents to require an individual to present photo ID and copy or record the information on that ID. If the individual refuses to provide photo ID, the county or district clerk may refuse to accept the document or other instrument being presented.

Index to sections affected:

Sections 191.010 and 191.011, Local Government Code

Effective date:

This Act took effect June 9, 2023.

HB 1817 by Capriglione

Relating to the validity of a contract for which a disclosure of interested parties is required.

Description:

In 2015, Rep. Capriglione authored 84R HB 1295, which was designed to increase government transparency by requiring all contracts with a governmental entity to include a Certificate of Interested Parties that must be filed with the Texas Ethics Commission. The Certificate of Interested Parties has become known as a "Form 1295" disclosure. In 2022, a Texas judge invalidated a contract between a private entity and a Texas city because the city did not verify whether a Form 1295 was submitted and on file. HB 1817 amends Sec. 2252.908, Government Code (DISCLOSURE OF INTERESTED PARTIES), by adding language providing that a contract entered into by a governmental entity is voidable for failure to provide the Form 1295 disclosure only if the government entity submits to the business entity written notice of the entity's failure to provide the Form 1295 disclosure and the entity fails to submit the disclosure by the 10th business day after the date the entity receives the notice.

Index to sections affected:

Section 2252.908(f-1), Government Code (new)

Effective date:

The Act took immediate effect June 9, 2023.

HB 5232 by Spiller

Relating to civil penalties imposed for violations of the Texas Free Enterprise and Antitrust Act of 1983.

Description:

Texas law authorizes the attorney general to sue for antitrust violations. Individuals found to have violated the antitrust statute must pay a fine to the state in an amount not to exceed \$1 million if a corporation, or, if any other person, \$100,000. HB 5232 amends Sec. 15.20, Business and Commerce Code (CIVIL SUITS BY THE STATE), to increase the fines due from antitrust violators as follows: if an individual, \$300,000; or \$3 million for entities less than \$100 million in assets or market capitalization; \$20 million for entities between \$100 million and \$500 million; or \$30 million for entities with assets or market capitalization of \$500 million or more.

Index to sections affected:

Section 15.20, Business and Commerce Code

Effective date:

This Act takes effect September 1, 2023.

SB 315 by Hall

Relating to the definition of telephone call for purposes of regulating telephone solicitations.

Description:

Chapter 302, Business and Commerce Code, regulates telephone solicitation; Chapter 304, Business and Commerce Code, regulates telemarketing. Chapter 304 defines “telephone call” as a call or other transmission made to or received at a telephone number, including: a call made by an automated telephone dialing system; a transmission to a facsimile recording device; and a call or other transmission, including a transmission of a text or graphic message or of an image, to a mobile telephone number serviced by a provider of commercial mobile service ... except that the term does not include a transmission made to a mobile telephone number as part of an ad-based telephone service, in connection with which the telephone service customer has agreed with the service provider to receive the transmission.

Chapter 302 defines “telephone solicitation” but not “telephone call”, meaning consumers may not be adequately protected against unauthorized text messaging. SB 315 adds the definition of “telephone call” found in Chapter 304 to Chapter 302 for purposes of regulating telephone solicitations.

Index to sections affected:

Section 302.001(6-a), Business & Commerce Code

Effective date:

SB 315 was vetoed by the Governor on the basis that the legislation is not as important as cutting property taxes; the veto proclamation indicated the bill can be reconsidered at a future special session only after property tax relief is passed.

SB 1780 by Parker

Relating to online notarizations.

Description:

Subchapter C, Chapter 406, Government Code (ONLINE NOTARY PUBLIC), was enacted in 2019 by the 86th Legislature to allow for remote online notarization (RON). However, the current statute does not allow for the use of a remote ink notary (RIN), which allows a person to use a wet ink signature rather than an electronic signature. During the COVID pandemic, by proclamation, Governor Abbott allowed remote ink notarizations in certain circumstances, which ensured real estate closings could continue despite pandemic restrictions. SB 1780 codifies the use of the pandemic’s successful remote ink notarization protocols by adding RIN to the existing security framework in place for remote online notarizations.

The definitions section of Subchapter C, Chapter 406, is amended by adding a definition of “sign” to mean, with the present intent to authenticate or adopt a record, to execute or adopt a tangible symbol or execute an electronic signature as that term is defined in the Uniform Electronic Transactions Act, e.g., an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. “Signature” is defined to mean a tangible symbol or electronic signature that evidences the signing of a record executed or adopted by a person with the intent to sign the document.

Online notary record keeping requirements are amended to include the requirement that for documents that are tangible instruments, an online notary public shall keep a record of the document notarized by the online notary public with a tangible symbol. The record for each online notarization with a tangible symbol must contain the same elements as exist for electronic records.

The online notarization procedures found in Sec. 406.110, Government Code, are amended by removing references to “creating an electronic signature” and replacing with “signing a document”. Sec. 406.110(d) is amended to

clarify that a notarial certificate for an online notarization must include a notation that the notarization is an online notarization and must indicate if the signature was a tangible symbol or an electronic signature.

New Sec. 406.1103 (ONLINE NOTARIZATION PROCEDURES FOR TANGIBLE DOCUMENTS) provides that in performing an online notarization in which the principal signs with a tangible symbol and not an electronic signature, an online notary public shall reasonably confirm that a document before the online notary public is the same document in which the principal made a statement or on which the principal executed a signature. Sec. 406.1103(b) provides the steps a notary performing an online notarization may take to satisfy this requirement, though Sec. 406.1103(e) clarifies that subsection (b) does not preclude the use of another procedure to satisfy statutory requirements for an online notarization performed with respect to a tangible document.

Finally, new Sec. 406.1107 (ONLINE NOTARIZATION PROCEDURES FOR OATHS OR AFFIRMATIONS), provides that an online notary public may administer an oath or affirmation to a principal as an online notarization if the online notary identifies the principal; creates or causes the creation of a video and audio recording of the principal taking the oath or affirmation; and retains or causes the retention of the recording in accordance with Chapter 406.

Index to sections affected:

Sections 406.101, 406.108–406.110, 406.1103 (new), and 406.1107 (new), Government Code

Effective date:

This Act takes effect January 1, 2024.

REAL PROPERTY

HB 207 by Murr

Relating to the exclusion of certain conveyances from classification as sham or pretended sales.

Description:

Chapter 41, Texas Property Code, governs interests in land. Sec. 41.001 (INTERESTS IN LAND EXEMPT FROM SEIZURE) exempts homesteads from seizure for the claims of creditors. HB 207 adds new Sec. 41.0022, Property Code (CERTAIN CONVEYANCES NOT SHAM OR PRETENDED SALES), to provide that a conveyance of a parcel of land not meeting the definition of an urban homestead by an individual to an entity in which the individual or an individual's spouse has a direct or indirect ownership interest is not a sham or pretended sale if: (1) the deed conveying the parcel is recorded at least 30 days before the entity grants a mortgage, deed of trust, or other lien on the parcel; (2) the individual does not reside on the parcel at the time of conveyance; (3) the parcel is not contiguous to the parcel on which the individual resides; (4) the deed conveying the parcel does not contain a condition of defeasance; and (5) the individual recorded contemporaneously with the deed an Affidavit Regarding Conveyance To An Entity.

New Sec. 41.0022(c) provides that an individual executing a deed under this new section is estopped from claiming that: the conveyance is a sham or pretended sale; or the individual has not abandoned homestead rights, if any, in the parcel by executing the deed.

New Sec. 41.0022(d) sets out the requirements for the Affidavit Regarding Conveyance To An Entity. This Affidavit may be conclusively relied upon by an entity or a lender. Finally, new Sec. 41.0022(g) provides that a transaction that does not meet the requirements of this section is not invalid if the homestead has been abandoned or disclaimed as provided by other provisions of law.

Index to sections affected:

Section 41.0022, Property Code (new)

Effective date:

This Act takes effect September 1, 2023.

HB 219 by Noble

Relating to the release of a deed of trust or other contract lien securing a home loan after payoff by mortgagor.

Description:

HB 219 adds new Sec. 343.108, Finance Code (RELEASE OF LIEN AFTER PAYOFF BY MORTGAGOR), to provide that no later than the 60th day after the date a mortgage servicer or mortgagee receives the correct payoff amount for a home loan from a mortgagor, the mortgage servicer or mortgagee shall: deliver to the mortgagor a release of lien for the home loan; or file the release of lien with the appropriate county clerk's office for recording in the real property records of the county.

New Sec. 343.108(c) provides that if, on or before the 20th day after the date of the payoff of the home loan, the mortgagor delivers a written request to the mortgagee or mortgage servicer for the release of lien to be delivered to the mortgagor or filed with the appropriate county clerk, the mortgagee or mortgage servicer shall deliver or file the release of lien not later than the 30th day after the written request is received. A mortgage servicer is required to comply with this new section only if the mortgage servicer has the authority to deliver or file a release of lien for the home loan.

Index to sections affected:

Section 343.108, Finance Code (new)

Effective date:

This Act takes effect September 1, 2023.

HB 697 by Holland

Relating to seller's disclosures regarding fuel gas piping in residential real property.

Description:

Section 5.008, Property Code (SELLER'S DISCLOSURE OF PROPERTY CONDITION), contains the statutory safe harbor form for sellers of residential real property. HB 697 amends the Seller's Disclosure Notice to include the disclosure of black iron, copper, and corrugated stainless steel tubing as fuel gas piping.

Index to sections affected:

Section 5.008(b), Property Code

Effective date:

This Act takes effect September 1, 2023.

HB 1382 by Hernandez

Relating to the public sale of real property taken in execution of a judgment.

Description:

Section 34.041, Civil Practice and Remedies Code (SALE AT PLACE OTHER THAN COURTHOUSE DOOR; DATE AND TIME OF SALE), provides that if a public sale of real property is required by court order or other law to be made at a place other than the courthouse door, sales under a writ of execution shall be made at the place designated by that court order or other law. HB 1382 adds new Sec. 34.041(a-1) to provide that the commissioners court of a county by official action may authorize the officer charged with conducting a public sale of real property taken in execution of a judgment to conduct a public auction using online bidding and sale. New Sec. 34.041(a-2) clarifies that a public auction using online bidding and sale may not be utilized for foreclosure sales under Sec. 51.002, Property Code (SALE OF REAL PROPERTY UNDER CONTRACT LIEN).

Index to sections affected:

Section 34.041, Civil Practice and Remedies Code

Effective date:

This Act takes effect September 1, 2023.

HB 1558 by Ann Johnson

Relating to the extension or amendment of deed restrictions in certain older subdivisions.

Description:

HB 1558 adds new Chapter 216, Property Code (EXTENSION OR AMENDMENT OF RESTRICTIONS IN CERTAIN OLDER SUBDIVISIONS), to provide a procedure for extending or amending restrictions for certain older subdivisions, including the removal of any restriction relating to race, religion, or national origin that is void and unenforceable under the US Constitution or Section 5.026, Property Code (DISCRIMINATORY PROVISIONS). This new chapter applies only to an older subdivision that: is wholly or partly located in a municipality with a population of two million or more (note: Houston is the only city in Texas with population of more than two million); had original restrictions that: for at least one section of the subdivision, did not have an express procedure that provides for successive extensions of the restrictions; did not have an express procedure for amending the restrictions; under Texas common law could not be amended without unanimous consent of all owners of the subdivision or all owners in any section of the subdivision; and has a single property owners' association in which all

owners in the subdivision are eligible for membership but in which membership is not mandatory.

Index to sections affected:

Sections 216.001–216.014 (new), Property Code

Effective date:

This Act took immediate effect June 12, 2023.

HB 4250 by Lalani

Relating to the right of the clerk of a court to deduct from the amount of the excess proceeds from an ad valorem tax sale of property the cost of postage for sending to the former owner of the property a notice of the owner's right to claim the proceeds.

Description:

Section 34.03, Tax Code (DISPOSITION OF EXCESS PROCEEDS), details the process for disposition of excess proceeds of a tax sale by the county clerk. If the amount of excess proceeds is more than \$25, within 31 days of the date the excess proceeds are received by the clerk, the county clerk must send by certified mail, return receipt requested, a written notice to the former owner of the property that states the amount of the excess proceeds; informs the former owner of that owner's rights to claim the excess proceeds from the tax sale; and 3) includes a copy of those sections of the Tax Code explaining the disposition of and claims for excess proceeds. HB 4250 adds new Sec. 34.03(d) to provide that the clerk may deduct from the amount of the excess proceeds the cost of postage for sending to the former owner of the property the written notice described above.

Index to sections affected:

Section 34.03, Tax Code

Effective date:

This Act takes effect September 1, 2023.

SB 59 by Zaffirini

Relating to notice of water and wastewater requirements for the foreclosure sale of residential properties by certain political subdivisions.

Description:

Chapter 232 of the Local Government Code governs the county regulation of subdivisions located outside the limits of a municipality. Under Sec. 232.0315 (NOTICE OF WATER AND WASTEWATER REQUIREMENTS BY COUNTIES), existing law requires a county that sells real property presumed for residential use under a tax sale or

writ of execution, to notify bidders that the property is being sold as is and, if the property lacks water or wastewater service, it may not qualify for residential use.

Often times, however, the county is not the governmental entity selling the property under a tax sale or writ of execution. Because school districts or other taxing entities aren't specifically enumerated in Sec. 232.0315, some taxing entities have had their sales voided because they did not provide adequate water and wastewater notice to the buyer. SB 59 renames the section heading for Sec. 232.0315 to NOTICE OF WATER AND WASTE-WATER REQUIREMENTS BY POLITICAL SUBDIVISIONS and clarifies that the section applies to a county or other political subdivision in a county that sells a residential property under a tax sale or writ of execution.

SB 59 also amends Sec. 34.01, Tax Code (SALE OF PROPERTY), to provide that the notice of sale for a sale of real property seized under a tax warrant or ordered sold pursuant to foreclosure of a tax lien must include the statement found in Sec. 232.0315 for counties and other political subdivisions.

Index to sections affected:

Section 232.0315, Local Government Code
Section 34.01, Tax Code

Effective date:

This Act takes effect September 1, 2023.

SB 62 by Zaffirini

Relating to posting certain documents and information related to certain real property sales on a county's internet website.

Description:

Chapter 51.002, Property Code (SALE OF REAL PROPERTY UNDER CONTRACT LIEN), governs foreclosure sales. Under existing law, if a county maintains an Internet website, the county must post a notice of sale on a page that is publicly available for viewing without charge or registration. The requirement for posting the notice of sale on the county's website does not, however, include the date, time, or location of where the sale will occur. SB 62 amends Sec. 51.002(f-1) to clarify that along with each notice of sale posted on a county's website, the county must post the date, time, and location of the sale.

Under Sec. 34.015, Tax Code (PERSONS ELIGIBLE TO PURCHASE REAL PROPERTY), in order to purchase real property at a county's foreclosure sale, a purchaser must deliver to the tax assessor-collector of the county an

unexpired written statement showing that there are no delinquent taxes owed by the purchaser to the county or to any school district or municipality having territory in the county. SB 62 adds new Sec. 34.015(c-1) to provide that the county assessor-collector for each county shall post on the county's website the form a person must use to provide this statement. If the county permits purchasers to use a form prescribed by the comptroller for that purpose, the county may post a link to the location of that form on the comptroller's website.

Index to sections affected:

Section 51.002, Property Code
Section 34.015, Tax Code

Effective date:

This Act takes effect September 1, 2023.

SB 539 by Campbell

Relating to the manner in which an individual who has elected to defer collection of a tax, abate a suit to collect a delinquent tax, or abate a sale to foreclose a tax lien on the individual's residence homestead is listed on the delinquent tax roll of a taxing unit.

Description:

Under Sec. 33.03, Tax Code (DELINQUENT TAX ROLL), each taxing unit's collector must annually prepare a current and a cumulative delinquent tax roll for the taxing unit. SB 539 amends Sec. 33.03 by adding the requirement that the collector for the taxing unit must also indicate that a delinquent tax included on the roll is deferred or abated.

Index to sections affected:

Section 33.03, Tax Code

Effective date:

This Act takes effect January 1, 2024.

SB 785 by Birdwell

Relating to the ownership of and certain insurance policy provisions regarding the geothermal energy and associated resources below the surface of the landowner's land.

Description:

Current Texas law does not address whether geothermal energy and associated resources are owned by the surface owner of the real property or the owner of the mineral estate of that same property. SB 785 adds new Sec. 141.004, Natural Resources Code (OWNERSHIP OF GEOTHERMAL ENERGY AND ASSOCIATED

RESOURCES), to provide that except as otherwise expressly provided by a conveyance, contract, deed, reservation, exception, limitation, lease, or other binding obligation, the geothermal energy and associated resources below the surface of land are owned as real property by the landowner or if the surface estate and the mineral estate of the land have been severed, the owner of the surface estate of the land. The property rights described by this new section entitle the owner of the geothermal energy and associated resources below the surface of land and the owner's lessee, heir, or assignee to drill for and produce the geothermal energy and associated resources. This new section does not apply to minerals dissolved or otherwise contained in groundwater, including in hot brines; or change existing law regarding oil, gas, or mineral extraction regardless of its heat or energy potential; the rights of the dominant and servient estates; or the ownership and use of groundwater.

SB 785 also makes conforming changes to Sec. 2703.056, Insurance Code (EXCEPTIONS; MINERAL AND GEOTHERMAL ENERGY INTERESTS), to ensure that a title company may in a commitment for title insurance or a title insurance policy include a general exception or a special exception to except from coverage the geothermal energy and associated resources below the surface of the land.

Index to sections affected:

Section 2703.056, Insurance Code

Sections 141.003 and 141.004 (new) Natural Resources Code

Effective date:

This Act took immediate effect June 18, 2023.

SB 1568 by Campbell

Relating to the persons authorized or appointed to exercise the power of sale under the terms of a contract lien on real property.

Description:

SB 1568 redefines "substitute trustee" and "trustee" as those terms are found in Chapter 51, Property Code (PROVISIONS GENERALLY APPLICABLE TO LIENS). The bill expands the definition of "substitute trustee" to include not just a person, but an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or other legal entity appointed by the current mortgagee or mortgage servicer under the terms of a security instrument to exercise the power of sale. Similarly, the definition of "trustee" no longer is limited to

a person or persons, rather, it is expanded to mean an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or other legal entity authorized to exercise the power of sale under the terms of a security instrument in accordance with Sec. 51.0074, Property Code (DUTIES OF TRUSTEE).

Index to sections affected:

Section 51.0001, Property Code

Effective date:

SB 1568 was vetoed by the Governor on the basis that the legislation is not as important as cutting property taxes; the veto proclamation indicated the bill can be reconsidered at a future special session only after property tax relief is passed.

SB 1712 by Perry

Relating to the purchase, sale, or lease of real property on behalf of a limited partnership or a limited liability company.

Description:

The Real Estate License Act requires individuals to hold a real estate license in order to act on another person's behalf in a real estate transaction. The Real Estate License Act does not apply to: a licensed Texas attorney; an attorney-in-fact authorized under a power of attorney to conduct not more than three real estate transactions each year; a public official engaged in official duties; a licensed auctioneer if the auctioneer is not performing another act of a broker; an on-site manager of an apartment complex; an owner or the owner's employee who leases the owner's improved or unimproved real estate; or a transaction involving the sale, lease, or transfer of a mineral or mining interest or cemetery lot, the lease or management of a hotel or motel, or the sale of real property under a power of sale conferred by a deed of trust or other contract lien.

SB 1712 amends Sec. 1101.005, Occupations Code (APPLICABILITY OF CHAPTER), to provide the Real Estate License Act also does not apply to the purchase, sale, or lease of real property for a limited partnership by: a general partner of the limited partnership; an employee of a general partner of the limited partnership who negotiates the transaction in the course of employment; or an employee of the limited partnership who negotiates the transaction in the course of employment. The bill similarly exempts from the Real Estate License Act the purchase, sale, or lease of real property for a limited liability company by: a manager or managing member of the limited liability company; an employee of a manager or managing

member of the limited liability company who negotiates the transaction in the course of employment; or an employee or member of the limited liability company who negotiates the transaction in the course of employment.

Index to sections affected:

Section 1101.005, Occupations Code

Effective date:

SB 1712 was vetoed by the Governor on the basis that the legislation is not as important as cutting property taxes; the veto proclamation indicated the bill can be reconsidered at a future special session only after property tax relief is passed.

WEALTH MANAGEMENT & TRUST

HB 2196 by Smithee

Relating to trusts.

Description:

HB 2196 is omnibus legislation advanced by the Texas Real Estate and Probate Institute (TREP). It amends the definition of “qualifying trust” found in Sec. 41.0021, Property Code (HOMESTEAD IN QUALIFYING TRUST), to expand the types of instruments that can be used in qualifying trusts. The bill also amends Sec. 112.035, Property Code (SPENDTHRIFT TRUSTS), to prohibit a beneficiary of a trust or the estate of a beneficiary of a trust from being considered a settlor merely because the beneficiary, in any capacity: held or exercised a testamentary power of appointment other than an general power of appointment, held a testamentary general power of appointment, or exercised a testamentary general power of appointment in favor of or for the benefit of the takers in default of the appointive assets. New Sec. 112.035(f-2) provides that if a beneficiary of the spendthrift trust exercised a testamentary general power of appointment in favor of or for the benefit of any appointee other than the takers in default of the appointive assets, they are: subject to the claims of creditors of the beneficiary, but only to the extent the beneficiary’s own property is insufficient to meet the beneficiary’s debts; and unless appointed to the beneficiary’s estate, not subject to: administration as part of the beneficiary’s estate; recovery by the personal representative of the beneficiary’s estate; or the payment of taxes or administration expenses of the beneficiary’s estate.

HB 2196 makes clarifying changes to Sec. 112.036 (RULE AGAINST PERPETUITIES), and, finally, with respect to a trust decanted into a new trust, amends Sec. 112.0715 (CREATION OF A SECOND TRUST) to provide that the new trust may keep the same name and tax identification number as the first trust.

Index to sections affected:

Sections 41.0021, 112.035, 112.036, 112.0715, 115.014, Property Code

Effective date:

This Act took effect June 9, 2023.

HB 2333 by Allison

Relating to noncharitable trusts without an ascertainable beneficiary.

Description:

HB 2333 adds new Subchapter F, Chapter 112, Property Code (NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY). The bill authorizes the creation of a trust for a noncharitable purpose without a definite or definitely ascertainable beneficiary. A noncharitable purpose may include seeking economic or noneconomic benefits. Simply put, HB 2333 allows for the creation of business trusts. New Sec. 112.122 (ENFORCEMENT OF TRUST) provides that a trust created under this subchapter must be enforced by one or more persons appointed in the terms of the trust to serve as a trust enforcer. New Sec. 112.123 (APPLICATION OR DISTRIBUTION OF TRUST PROPERTY) provides that the property of a trust created under this new subchapter may be applied only to the intended purpose of the trust, except to the extent that a court finds that the value of the trust property exceeds the amount required for the intended purpose of the trust.

Index to sections affected:

Sections 111.004 and 112.121–112.123 (new), Property Code

Effective date:

This Act took effect June 18, 2023.

SB 801 by Hughes

Relating to an instrument that names a trust as a party.

Description:

SB 801 adds new Sec. 114.087, Property Code (INSTRUMENT NAMING TRUST AS PARTY), which provides that the trustee of a trust is considered for all purposes to be the named party to an instrument that names the trust as a party to the instrument in any capacity, unless the trust is a legal entity under Texas law.

Index to sections affected:

Sections 114.087 (new) and 5.028, Property Code

Effective date:

This Act takes effect September 1, 2023.

SB 1646 by Parker

Relating to the regulation of state trust companies.

Description:

SB 1646 amends Sec. 182.502(b)(4) to require “the officers and directors of the trust institution as a group have sufficient fiduciary experience” as opposed to banking experience. A state trust companies shall comply with regulatory accounting principles in accounting for its investment in and depreciation of trust company facilities, furniture, fixtures, and equipment. This addition to Section 184.002(c) replaces all other requirements for state trust companies in this section. Section 184.003(a) allows a trust company to invest its restricted capital in real property with prior written approval of the banking commissioner. Section 184.003(c) provides that a state trust company shall dispose of any real property no later than the fifth anniversary of the date the real property ceases to be a state trust company facility as provided by Section 184.002(b).

Index to sections affected:

Sections 182.002, 182.003, and 182.502, Finance Code

Effective date:

This Act took effect May 19, 2023.



TexasBankers Association

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