2019 Report of the 86th Legislature

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

TBA is a member-first organization. What this means at the Texas Capitol is that your Texas Bankers Association Legislative Team is dedicated to advocating for legislation that will protect your banks, your employees, and your customers, and against legislation that will harm your banks, your employees, and your customers. Every position taken on behalf of the Texas Bankers Association was considered with this in mind.

The 86th Session was a productive one for the Texas banking industry. We had a number of legislative victories that will help ensure the strong and sustainable future of Texas community banks. These victories include: the passage of the financial regulatory agencies’ Sunset bill, which means the Finance Commission, the Texas Department of Banking, and the Department of Savings and Mortgage Lending were reauthorized for an additional 12 years; the adoption of legislation requiring more safeguards at gas pumps to protect consumers and to mitigate the increasing costs of card skimming to banks; and the repeal of the section of the Tax Code that prohibited a Texan with a home equity loan on his residential homestead from adding an ag use designation to that homestead property.

Of course, we still have work to do. This work includes not only ensuring our members comply with new statutory requirements enacted by the 86th Legislature, it also includes looking forward to the 2021 session and developing a robust legislative package for consideration two years from now. On the compliance front, we encourage bankers to make sure they understand the requirements of HB 3, the school finance reform legislation that included a provision addressing escrow accounts for homeowners. Please contact us with questions or concerns. Looking to 2021, we are committed to working with stakeholders on legislation that will bring the buying, selling, and banking of farm products into the 21st century. We strongly believe that Texas should always lead the way when it comes to both community banking and agriculture. We can replace the cumbersome and outdated paper-based direct notice system that exists today with a system that is both modern and a model for the rest of the country.

This is an exciting time for the Texas Bankers Association, and we are honored to represent you. Whether in the halls of Congress or at the Texas Capitol in Austin, we are proud to carry the message that strong banks mean stronger communities. Thank you for your membership, and please do not hesitate to contact any member of the TBA Legislative Team if you have any questions.

Chris Furlow  John Heasley  Celeste Embrey

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SB 64 by Nelson
Relating to cybersecurity for information resources.

Description:
SB 64 revises various cybersecurity requirements for state agency information resources, including oversight of cybersecurity practices and the state’s electricity grid. Importantly for TBA’s members are the following two additions to the Information Resources Act:

First, SB 64 adds new Sec. 2054.519, Government Code (CYBERSTAR PROGRAM; CERTIFICATE OF APPROVAL), to provide that the state cybersecurity coordinator shall work with the cybersecurity council and public and private entities to develop best practices for cybersecurity that include:

- measurable, flexible, and voluntary cybersecurity risk management programs for public and private entities to adopt to prepare for and respond to cyber incidents that compromise the confidentiality, integrity, and availability of the entities’ information systems;
- appropriate training and information for employees or other individuals who are most responsible for maintaining security of the entities’ information systems;
- consistency with the NIST standards for cybersecurity;
- public service announcements to encourage cybersecurity awareness; and
- coordination with local and state governmental entities.

Furthermore, Sec. 2054.519(b) directs the state cybersecurity coordinator to establish a cyberstar certificate program to recognize public and private entities that implement the best practices for cybersecurity.

Second, the bill adds new Subchapter R, INFORMATION RESOURCES OF GOVERNMENTAL ENTITIES, to the Information Resources Act. Within new Subchapter R, new Sec. 2054.601 (USE OF NEXT GENERATION TECHNOLOGY) provides that each state agency and local government shall, in the administration of the agency or local government, consider using next generation technologies, including cryptocurrency, blockchain technology, and artificial intelligence. New Sec. 2054.602 (LIABILITY EXEMPTION) provides a liability exemption for a person who in good faith discloses to a state agency or other governmental entity information regarding a potential security issue with respect to the agency’s or entity’s information resources technologies unless the person stole, retained, or sold any data obtained as a result of the security issue.

Index to relevant sections affected:
Secs. 2054.519 (new), 2054.601 (new), 2054.602 (new), and 2059.058, Government Code
Sec. 1702.104, Occupations Code

Effective date:
This Act takes effect September 1, 2019.

DATA PRIVACY
HB 4390 by Capriglione
Relating to the privacy of personal identifying information and the creation of the Texas Privacy Protection Advisory Council.

Description:
Existing Texas law (Sec. 521.053, Business & Commerce Code (NOTIFICATION REQUIRED FOLLOWING BREACH OF SECURITY OF COMPUTERIZED DATA), requires a person who conducts business in this state and owns or licenses computerized data that includes sensitive personal information to disclose any breach of system security, after discovering or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. Current law also provides the disclosure must be made as quickly as possible. HB 4390 amends this section of Texas law to provide that the disclosure must be made without unreasonable delay and in each case not later than the 60th day after the date on which the person determines the breach occurred.

The bill also adds Sec. 521.053(j) 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 not later than the 60th day after the date on which the person determines that the breach occurred if the breach involves at least 250 Texas residents. The notification must include: a description of the nature and circumstances of the breach or the use of sensitive personal information acquired as a result of the breach; the number of Texas residents 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; and information regarding whether law enforcement is engaged in investigating the breach. It’s important to keep in mind that existing Texas law (Sec. 521.053(g)) provides that a person who...
maintains the person’s own notification procedures as part of an information security policy for the treatment of sensitive personal information that complies with the timing requirements for notice under this section complies with the section if the person notifies affected persons in accordance with that policy.

HB 4390 also creates the Texas Privacy Protection Advisory Council to study data privacy laws in this state, other states, and relevant foreign jurisdictions. The council is composed of 15 members, all of whom must be Texas residents. The Speaker of the House appoints five members, three of whom must be members of the house of representatives; the Lieutenant Governor appoints five members, three of whom must be senators; and the Governor appoints five members, two of whom must be either a representative of a nonprofit organization that studies or evaluates data privacy laws from the perspective of individuals whose information is collected or processed by businesses; or a professor who teaches at a Texas law school or other institution of higher education and whose books or scholarly articles on the topic of data privacy have been published.

The remaining seven members of the council must be representatives of the following industries: medical profession; technology; Internet; retail and electronic transactions; consumer banking; telecommunications; consumer data analytics; advertising; Internet service providers; social media platforms; cloud data storage; virtual private networks; or retail electric. The council shall convene on a regular basis to study and evaluate laws governing the privacy and protection of information that identifies or is linked or reasonably linked to a specific individual, technological device, or household; and make recommendations to the members of the legislature on specific statutory changes regarding the privacy and protection of that information. The recommendations to the legislature shall be made not later than September 1, 2020. The council is abolished December 31, 2020.

Index to sections affected:
Sec. 521.053, Business & Commerce Code

Effective date:
The Act takes effect September 1, 2019; however, the changes made to Sec. 521.053, Business & Commerce Code, take effect January 1, 2020.

FRAUD

HB 37 by Minjarez
Relating to the creation of the criminal offense of mail theft.

Description:
HB 37 adds new Sec. 31.20 (MAIL THEFT) to the Penal Code. New Sec. 31.20(b) provides that a person commits an offense if the person intentionally appropriates mail from another person’s mailbox or premises without the effective consent of the addressee and with the intent to deprive that addressee of the mail.

An offense under this section is: a Class A misdemeanor if the mail is appropriated from fewer than 10 addressees; a state jail felony if the mail is appropriated from at least 10 but fewer than 30 addressees; or a third degree felony if the mail is appropriated from 30 or more addressees. Penalties are enhanced if it’s shown on the trial of an offense under this section that the appropriated mail contained an item of identifying information and the actor committed the offense with the intent to facilitate the commission of a crime under Sec. 32.51, Penal Code (FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION). Furthermore, if the appropriated mail contained an item of identifying information that at the time of the offense the actor knew or had reason to believe is from a disabled or elderly individual, then the punishment is increased to the next higher category of offense.

Index to sections affected
Sec. 31.20 (new), Penal Code

Effective date:
This Act takes effect September 1, 2019.

HB 101 by Canales
Relating to the creation of the criminal offense of false caller identification information display.

Description:
HB 101 adds new Sec. 33A.051, Penal Code (FALSE CALLER IDENTIFICATION INFORMATION DISPLAY), to provide that a person commits an offense if the person, with the intent to defraud or cause harm, makes a call or engages in any other conduct using any type of technology that results in the display on another person’s telecommunications device of data that misrepresents the actor’s identity or telephone number. An offense under this section is a Class A misdemeanor punishable by a fine not to exceed $4,000, confinement in jail for a term not to exceed one year, or both. This new section
contains a number of defenses to prosecution for law
enforcement officers lawfully discharging official duties.

**Index to sections affected:**
Sec. 33A.051 (new), Penal Code

**Effective date:**
This Act takes effect September 1, 2019.

**HB 869 by Heffner**
Relating to the prosecution of organized criminal activity
involving the interception, use, or disclosure of certain
communications.

**Description:**
HB 869 is designed to give law enforcement another tool
to use to fight card skimming. The bill adds the existing
offense of Unlawful Interception, Use, or Disclosure of
Wire, Oral, or Electronic Communications found in Sec. 16.02, Penal Code, to the list of offenses that can constitute the offense of Engaging in Organized Criminal Activity under Sec. 71.02, Penal Code. Adding Sec. 16.02
charges to the organized criminal activity statute means
that law enforcement can pursue organized crime
against thieves perpetrating card skimming crimes because the thieves often work in groups to defraud numerous individuals per card skimmer installed.

**Index to sections affected:**
Sec. 71.02, Penal Code

**Effective date:**
This Act takes effect September 1, 2019.

**HB 2624 by Perez**
Relating to the prosecution of certain criminal offenses
involving fraud.

**Description:**
HB 2624 amends the Code of Criminal Procedure to
better equip prosecutors in their efforts to prosecute
those who commit fraud via credit or debit card abuse (i.e., card skimming). The bill adds new Art. 13.291, Code of Criminal Procedure (CREDIT CARD OR DEBIT CARD ABUSE) to provide that an offense under Sec. 32.31, Penal Code (CREDIT CARD OR DEBIT CARD ABUSE), may be prosecuted in any county in which the offense was committed or in the county of residence for any person whose credit card or debit card was unlawfully possessed or used by the defendant.

The bill also amends Art. 38.19, Code of Criminal
Procedure (INTENT TO DEFRAUD: CERTAIN OFFENSES),
to provide that in trials for the offenses of forgery, credit
card or debit card abuse, or fraudulent use or possession
of identifying information, the attorney for the state is not
required to prove that the defendant committed the act
with the intent to defraud any particular person. Rather, it
is sufficient to prove that the offense was, in its nature,
calculated to injure or defraud any of the persons or enti-
ties named in the definition of the offense in the Penal
Code.

**Index to sections affected:**
Art. 13.291 (new) and Art. 38.19, Code of Criminal
Procedure

**Effective date:**
This Act takes effect September 1, 2019.

**HB 2625 by Perez**
Relating to creating the criminal offense of fraudulent use
or possession of credit card or debit card information.

**Description:**
HB 2625 creates the criminal offense of fraudulent use or
possession of credit card or debit card information by
adding new Sec. 32.315, Penal Code (FRAUDULENT USE
OR POSSESSION OF CREDIT CARD OR DEBIT CARD
INFORMATION). New Sec. 32.315 defines “counterfeit
credit or debit card” to mean a: (1) credit 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; or (2) card, other than one issued as a credit
card or debit card, that has been altered to contain the digi-
tal imprint of a credit card or debit card. “Digital imprint” is
defined to mean the digital data placed on a credit card or
debit card or on a counterfeit credit card or debit card.

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: a coun-
terfeit credit card or debit card; the number and expiration
date of a credit card or debit card without the consent of
the account holder; or the data stored on the digital
imprint of a credit card or debit card without the consent
of the account holder. If an actor possessed five or more
of these counterfeit cards or card numbers, a rebuttable
presumption exists that the actor possessed each item
without the consent of the account holder.
New Sec. 32.315(c) provides that an offense under this section is: a state jail felony if the number of items obtained, possessed, transferred, or used is less than five; a felony of the third degree if the number of items is five or more but less than 10; a felony of the second degree if the number of items is 10 or more but less than 50; or a felony of the first degree if the number of items obtained, possessed, transferred, or used is 50 or more. As a reminder, the following are the punishments for the above listed felonies: state jail felony is punishable by between 180 days and two years in jail and a fine not to exceed $10,000; a third degree felony shall be punished by incarceration in a TDCJ facility for two to 10 years and a fine not to exceed $10,000; a second degree felony is punishable by two to 20 years in a TDCJ facility and a fine not to exceed $10,000; and a third degree felony is punishable by imprisonment in the TDCJ for life or for any term of not more than 99 years or less than five years and a fine not to exceed $10,000.

Finally, if a court orders a defendant convicted of an offense under this section to make restitution to a victim of the offense, new Sec. 32.315(f) provides that the court may order the defendant to reimburse the victim for lost income or other expenses incurred as a result of the offense.

Index to sections affected:
Sec. 32.315 (new), Penal Code

Effective date:
This Act takes effect September 1, 2019.

HB 2697 by Meyer
Relating to the prosecution of the offense of fraudulent use or possession of identifying information.

Description:
Currently, Sec. 502.001, Business & Commerce Code (WARNING SIGN ABOUT IDENTITY THEFT FOR RESTAURANT OR BAR EMPLOYEES), requires a restaurant or bar owner to display a sign stating “UNDER SECTION 32.51, PENAL CODE, IT IS A STATE JAIL FELONY (PUNISHABLE BY CONFINEMENT IN A STATE JAIL FOR NOT MORE THAN TWO YEARS) TO OBTAIN, POSSESS, TRANSFER, OR USE A CUSTOMER’S DEBIT CARD OR CREDIT CARD NUMBER WITHOUT THE CUSTOMER’S CONSENT.” This law was enacted in 2005 in an effort to cut down on employees’ unlawful use of skimmers in restaurants and bars. HB 2697 expands this section of the Business & Commerce Code by adding “OR EFFECTIVE CONSENT” at the end of the posted statement.

HB 2697 also amends Sec. 32.51, Penal Code (FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION), to expand the conduct that constitutes an offense under the section to include obtaining, possessing, transferring, or using an item of identifying information of another person without that person’s effective consent.

Victims’ rights groups testified for HB 2697 because of the growing problem of coerced debt, which is a form of family violence wherein the abuser, through violence, threat, or fraud, forces the victim to engage in nonconsensual, credit-related transactions. Legislators believe adding effective consent language to Sec. 502.001, Business & Commerce Code, and Sec. 32.51, Penal Code, will result in more prosecutions of domestic abusers for coerced debt and will also provide victims of coerced debt with the rights conferred to identity theft victims.

Index to sections affected:
Sec. 502.001, Business & Commerce Code
Sec. 32.51, Penal Code

Effective date:
This Act takes effect September 1, 2019.

HB 2945 by Perez
Relating to payment card skimmers on motor fuel dispensers and to creating a payment fraud fusion center; imposing civil penalties; creating criminal offenses.

Description:
Experts believe that 42 percent of all card skimming losses incurred in the United States are incurred in Texas. HB 2945 seeks to address the growing problem of card skimming at gas pumps by adding new Chapter 607 to the Business & Commerce Code (PAYMENT CARD SKIMMERS ON MOTOR FUEL DISPENSERS).

New Sec. 607.051 (MERCHANT DUTIES REGARDING UNATTENDED PAYMENT TERMINALS ON MOTOR FUEL DISPENSERS) requires a merchant with an unattended payment terminal on a gas pump to implement procedures in accordance with rules adopted by the attorney general 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 department. The AG shall establish reasonable policies and procedures for merchants to use to comply with this section. In adopting these rules, the AG must consider: emerging technology; compliance costs to merchants; and any impact the policies and procedures may have on consumers.

New Sec. 607.053 provides that if a skimmer is discovered on an unattended payment terminal, either by a merchant or by a service technician, the merchant shall: immediately disable, or cause to be disabled, the motor fuel dispenser...
on which the skimmer was discovered and notify a law enforcement agency that a skimmer has been detected; take appropriate measures to protect from tampering with the motor fuel dispenser until the law enforcement agency arrives; and not later than 24 hours after the discovery of the skimmer is made to the merchant, report the discovery to the department. Because the responsibility for Weights and Measures for Motor Fuel will shift from the Texas Department of Agriculture (TDA) to the Texas Department of Licensing and Regulation (TDLR) next year, the report shall be made to TDA until August 31, 2020, and to TDLR beginning September 1, 2020. A law enforcement agency, a financial institution, a credit card issuer, a service technician, or any other interested person may similarly submit a report of the discovery of a skimmer on an unattended payment terminal of a gas pump at a merchant’s place of business to the department.

On the receipt of a report of the presence of a skimmer, the department shall notify the Payment Fraud Fusion Center (discussed below) and share the report with the center; the department and the center shall coordinate with law enforcement agencies in conducting an investigation of the report. A merchant shall cooperate with the department or law enforcement agency during an investigation of a skimmer discovered at the merchant’s place of business and permit the department or agency to inspect and alter the motor fuel dispenser that is the subject of the report as necessary.

New Sec. 607.101 (CORRECTIVE ACTION) provides that if the AG has reason to believe that a merchant who, after an investigation conducted by the department or one or more law enforcement agencies, has at the merchant’s place of business a gas pump on which a skimmer was installed and who is in violation of a rule adopted by the AG, the AG shall notify the merchant of the violation. The AG may order the merchant to take corrective action as necessary, including the implementation of best practices and the training of employees to detect skimmers.

More importantly, Secs. 607.102 and 607.103 create penalties for noncompliant merchants. Sec. 607.102 sets out civil penalties and provides that a merchant who violates a rule adopted by the AG is liable to the state for a civil penalty in an amount not to exceed $5,000. A merchant who negligently fails to make a report within 24 hours after the discovery of skimmer, or who has had at least three reports of skimmers on its gas pumps within a 24-month period as a result of the merchant failing to comply with this chapter, is liable to the state for a civil penalty of at least $1,000 but not more than $5,000 for each violation.

Under Sec. 607.103, a person commits a Class C misdemeanor if the person refuses to allow an inspection of a gas pump. A person commits a Class B misdemeanor if the person negligently or recklessly disposes of a skimmer that was installed on a gas pump. A person commits a third degree felony if the person, knowing that an investigation is ongoing or that a criminal proceeding has been commenced and is pending, the person disposes of a skimmer that was installed on a gas pump. The punishments for a Class C misdemeanor, Class B misdemeanor, and third degree felony are as follows: a Class C misdemeanor shall be punished by a fine not to exceed $500; a Class B misdemeanor is punishable by a fine not to exceed $2,000, confinement in jail for a term not to exceed 180 days, or both; and a third degree felony shall be punished by incarceration in a TDCJ facility for a term of two to 10 years and a fine not to exceed $10,000.

HB 2945 also creates Chapter 424, Government Code (PAYMENT CARD FUSION CENTER), which establishes a payment card fraud fusion center in the City of Tyler. The center will serve as the state’s primary entity for the planning, coordination, and integration of the capabilities of law enforcement agencies and other governmental agencies to respond to criminal activity that is related to payment fraud, including through the use of skimmers. The purpose of the center is to maximize the ability of law enforcement agencies and other governmental agencies to detect, prevent, and respond to criminal activities related to payment fraud.

Index to sections affected:
Secs. 607.001 (new), 607.051 (new) - 607.056 (new), 607.101 (new) - 607.103(new), Business & Commerce Code
Secs. 424.001 (new) - 424.005 (new), Government Code

Effective date:
This Act takes effect September 1, 2019.

SB 207 by Kolkhorst
Relating to the offense of money laundering

Description:
Chapter 34 of the Penal Code is Texas’ money laundering statute. SB 207 adds digital currency to the definition of “funds” found in Chapter 34 to ensure that criminal transactions involving cryptocurrencies can be charged as money laundering and treated like all other transactions.

Index to sections affected:
Sec. 34.01, Penal Code

Effective date:
This Act takes effect September 1, 2019.
**GENERAL BANKING**

**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.

**Description:**
HB 1254 repeals Sec. 23.42(a-1), Tax Code, which currently provides that an individual is not entitled to have land designated for agricultural use if the land secures a home equity loan described by Sec. 50(a)(6), Article XVI, Texas Constitution.

In 2017, Texas voters approved a number of changes to the home equity provisions found in Article 16, Section 50(a)(6) of the Texas Constitution. One of those changes was the repeal of the constitutional prohibition on home equity lending on properties with ag use designations. While the language was struck from the Texas Constitution, the Tax Code was not similarly amended to ensure that Texans with home equity loans can designate their homestead for agricultural use. HB 1254 ensures that this can happen beginning January 1, 2020.

**Index to sections affected:**
Section 23.42(a-1), Tax Code

**Effective date:**
This Act takes effect January 1, 2020.

**HB 3598 by Martinez Fischer**
Relating to certain unclaimed property that is presumed abandoned.

**Description:**
Under Chapter 74, Property Code (REPORT, DELIVERY, AND CLAIMS PROCESS), holders of property that is presumed to be abandoned must annually file a report on that property with the comptroller. HB 3598 adds new Sec. 74.105, Property Code (COMBINED REPORTING), to provide that if a holder that is required to file a property report is a member of an affiliated group, the holder shall file one report for the affiliated group. New Sec. 74.106 (CONTINUING REPORTING REQUIREMENT) provides that a person who is required to file a property report in any year shall file a property report in each successive year. If the person is not holding any property that is reportable under this chapter, the person shall certify that fact. New Sec. 74.206 (ADVERTISING AND PROMOTION) provides the comptroller with the authority to advertise or otherwise promote the unclaimed property program in any available media to provide effective and efficient notice to reported owners.

Existing law empowers the comptroller, the attorney general, or an authorized agent of either to examine the books and records of any holder. New Sec. 74.7021 (LIMITATION PERIOD FOR EXAMINATION) provides that the comptroller or AG may not begin an examination relating to the reporting, payment, or delivery of property under this chapter after the seventh anniversary of the date a person filed a property report under the Unclaimed Property title. The limitation does not apply if: the person has filed a false or fraudulent property report with the intent to avoid delivery of property as required by this title; a property report for a period has not been filed; or a court grants a petition to compel the person to submit to an examination under this chapter, deliver property, or file a property report. A person is presumed to have acted with intent to avoid delivery of property if, after correction of a report, the amount of property delivered exceeds the amount initially reported by at least 25 percent. The comptroller may request the assistance of the attorney general in the enforcement of this chapter.

**Index to sections affected:**
Secs. 72.101, 74.001, 74.103, 74.105 (new), 74.106 (new), 74.206 (new), 74.401, 74.501, 74.7021 (new), 74.704, 74.709, 74.711 (new), 74.712 (new), Property Code

**Effective date:**
This Act took immediate effect when it was signed by the Governor on June 10, 2019.

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

**Description:**
SB 614 is the Sunset bill for the Finance Commission, Texas Department of Banking, and the Department of Savings and Mortgage Lending. The Sunset Commission’s website reports that the Texas Legislature created the Sunset process in 1977 to question the need for and success of agencies carrying out the responsibilities of state government. The Sunset Commission reviews the operations of state agencies and then makes recommendations for changes. Legislators serving on the Sunset Commission then file legislation implementing the changes the Sunset Commission agreed need to be made.
The majority of SB 614 includes across the board Sunset recommendations that relate to internal operations of the financial regulatory agencies. These include: creating a training manual for finance commission members; maintaining a system to promptly and efficiently act on consumer complaints; developing a policy to encourage negotiated rulemaking and alternative dispute resolution; and authorizing the commissioners to appoint advisory committees to assist the departments in performing their duties. Most importantly, SB 614 extends the Finance Commission, the Department of Banking, and the Department of Savings and Mortgage Lending until September 1, 2031. This means that as of September 1, 2019, the next scheduled Sunset review for the financial regulatory agencies will be undertaken by the 92nd Session of the Texas Legislature.

Index to sections affected:

Effective date:
This Act takes effect September 1, 2019.

SB 726 by Zaffirini
Relating to investments by state banks to promote community development.

Description:
Current federal law sets the Community Reinvestment Act’s investment test limit for medium-sized and large banks at 15 percent of a national bank’s capital and surplus. Texas law sets this cap at 10 percent of a state bank’s unimpaired capital. SB 726 increases the cap on CRA investments for state-chartered banks to 15 percent of the bank’s unimpaired capital and surplus.

Index to sections affected:
Sec. 34.106, Finance Code

Effective date:
This Act takes effect September 1, 2019.

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.

Description:
SB 1823 expands the definition of “third-party service provider” found in the Texas Banking Act to include a person who: for the purpose of furnishing to third parties reports indicating a person’s creditworthiness, credit standing, or credit capacity, regularly engages in the practice of assembling or evaluating, and maintaining, public record information and credit account information from persons who furnish that information regularly and in the ordinary course of business. The expansion of this definition in Sec. 31.002, Finance Code (DEFINITIONS), is the Department of Banking’s response to the 2017 Equifax data breach. Even though the personal information of more than 143 million Americans was exposed during the Equifax breach, federal regulators lacked clear authority to investigate Equifax after the breach. Under existing Texas law, the Texas Banking Commissioner also had limited authority to investigate Equifax as a third-party service provider. Fortunately, he joined with banking commissioners from seven other states to investigate the breach. This investigation ended with the DOB entering into a Consent Order with Equifax.

The bill also amends Sec. 31.105, Finance Code (EXAMINATION REQUIRED), by adding new subsections (f) and (g). New subsection (f) provides that except to the extent disclosure is necessary to locate and produce responsive records or obtain legal representation, a subpoena issued under this section may provide that a person to whom the subpoena is directed or any person who comes into receipt of the subpoena may not: disclose that the subpoena has been issued; describe or describe any records requested in the subpoena; disclose whether records have been furnished in response to the subpoena; or if the subpoena requires a person to be examined under oath, disclose or describe the examination, including the questions asked, the testimony given, or the transcript produced.

New 31.105(g) provides that a subpoena issued under this section may prohibit the disclosure of this information only if the banking commissioner finds, and the subpoena states, that the subpoena, the examination, or the records relate to an ongoing investigation; and the disclosure could significantly impede or jeopardize the investigation.

Existing Sec. 31.107, Finance Code (REGULATION AND EXAMINATION OF RELATED ENTITIES), governs the
regulation and examination of third-party service providers, and new Sec. 31.107(e) provides that a third-party service provider that refuses to submit to examination or to pay an assessed fee for examination under this section is subject to an enforcement action. With respect to a third-party service provider’s refusal to submit to examination, the banking commissioner may notify all state banks of the refusal and warn that continued use of the third-party service provider may constitute an unsafe and unsound banking practice. SB 1823 also amends Sec. 35.203, Finance Code (SUBPOENA AUTHORITY), and the language added to this section mirrors the language added in Sec. 31.105 described above.

Chapter 33 of the Finance Code governs the ownership and management of state banks. Sec. 33.001 governs the acquisition of control of a state bank, and Sec. 33.005 contains a number of exemptions from the requirements of Sec. 33.001. SB 1823 provides that a transaction to acquire a bank holding company is exempt if: the acquiring bank holding company currently owns and controls a state bank; or the post-transaction controlling person: has previously complied with and received approval as a controlling person, or is identified as the controlling person in a merger or other acquisition-related application filed with the banking commissioner concurrently with the submission of the application for approval.

Finally, SB 1823 makes identical third-party service provider, examination requirement, and regulation and examination of related entities changes to the Texas Trust Company Act.

**Index to sections affected:**

**Effective date:**
This Act takes effect September 1, 2019.

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**HURRICANE HARVEY**

**SB 442 by Hancock**
Relating to a disclosure regarding flood coverage under a commercial or residential property insurance policy.

**Description:**
Adds new Sec. 2002.103, Insurance Code (DISCLOSURE REGARDING FLOOD COVERAGE REQUIRED), to provide that an insurer that issues or renews a commercial or residential property insurance policy that does not provide coverage against loss caused by flooding shall include with the policy documents provided to the policyholder at the time the policy is issued or renewed the following statement:

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

This statement must be conspicuous, as that term is defined in Sec. 1.201, Business & Commerce Code (GENERAL DEFINITIONS). An insurer’s failure to comply with this section does not invalidate any exclusion, including a flood exclusion, in an insurance policy subject to this section. Sec. 2002.103, Insurance Code, applies only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2020.

**Index to sections affected:**
Sec. 2002.103 (new), Insurance Code

**Effective date:**
This Act takes effect September 1, 2019

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**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 uninhabit-able or unusable as a result of a disaster.

**Description:**
Existing Texas law enables an owner of a residence homestead who is entitled to receive a homestead exemption under the Tax Code to continue the exemption if the structure for which the owner receives the exemption is rendered uninhabitable or unusable by a casualty or by wind or water damage. To continue the exemption under existing law, the owner must begin active construction of the replacement qualified residential structure or other physical preparation of the site on which the structure is to be located not later than the first anniversary of the date the owner ceased to occupy the former qualified residential structure as the owner’s principle residence. The owner may not receive the exemption for more than two years.

SB 443 amends Sec. 11.135, Tax Code (CONTINUATION OF RESIDENCE HOMESTEAD EXEMPTION WHILE
REPLACEMENT STRUCTURE IS CONSTRUCTED; SALE OF PROPERTY), to provide that to continue to receive the exemption, an owner must begin active construction of the replacement qualified residential structure or other physical preparation of the site not later than either the first anniversary or the fifth anniversary of the date the property became uninhabitable. An owner may not receive a continuation of a residential homestead exemption while replacement structure is constructed for more than: five years if the property is located in an area declared to be a disaster area 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; or two years if the property is not within an area declared to be a disaster.

Index to sections affected:
Sec. 11.135, Tax Code

Effective date:
This Act took immediate effect on June 4, 2019.

HB 3815 by Morrison
Relating to a seller’s disclosure notice for residential property regarding floodplains, flood pools, floodways, or reservoirs.

Description:
HB 3815 amends the Seller’s Disclosure Notice found in Sec. 5.008, Property Code (SELLER’S DISCLOSURE NOTICE OF PROPERTY CONDITION), by striking the existing “check the blank” flood event and flood insurance disclosures and replacing them with new stand-alone disclosures as follows.

Sellers must disclose whether they are aware of whether: there is present flood insurance coverage; there was previous flooding due to a failure or breach of a reservoir or a controlled or emergency release from a reservoir; or there has been previous water penetration into a structure on the property due to a natural flood event. If the seller answers yes to any of these, they must disclose whether the property is wholly or partly located: in a 100-year floodplain; in a 500-year floodplain; in a floodway; in a flood pool; or in a reservoir. The bill defines 100-year floodplain, 500-year floodplain; flood pool; floodway; and reservoir.

Additionally, sellers must disclose whether they have ever filed a claim for flood damage to the property with any insurance provider, including the National Flood Insurance Program and also whether they have ever received assistance from FEMA or the U.S. Small Business Administration for flood damage to the property.

Index to sections affected:
Sec. 5.008, Property Code

Effective date:
This Act takes effect September 1, 2019.

SB 339 by Huffman
Relating to a seller’s disclosure notice for residential property regarding floodplains, flood pools, floodways, or reservoirs.

Description:
Like HB 3815, SB 339 amends the Seller’s Disclosure Notice found in Sec. 5.008, Property Code (SELLER’S DISCLOSURE NOTICE OF PROPERTY CONDITION), by striking the existing “check the blank” flood event and flood insurance disclosures and replacing them with new stand-alone disclosures as follows:

Sellers must disclose whether they are aware of whether: there is present flood insurance coverage; there was previous flooding due to a failure or breach of a reservoir or a controlled or emergency release from a reservoir; or there has been previous water penetration into a structure on the property due to a natural flood event. If the seller answers yes to any of these, they must disclose whether the property is wholly or partly located: in a 100-year floodplain; in a 500-year floodplain; in a floodway; in a flood pool; or in a reservoir. The bill defines 100-year floodplain, 500-year floodplain; flood pool; floodway; and reservoir.

Additionally, sellers must disclose whether they have ever filed a claim for flood damage to the property with any insurance provider, including the National Flood Insurance Program and also whether they have ever received assistance from FEMA or the U.S. Small Business Administration for flood damage to the property.

Index to sections affected:
Sec. 5.008, Property Code

Effective date:
This Act takes effect on September 1, 2019.

HB 492 by Shine
Relating to a temporary exemption from ad valorem taxation of a portion of the appraised value of certain property damaged by a disaster.

Description:
Adds Sec. 11.35, Tax Code (TEMPORARY EXEMPTION FOR QUALIFIED PROPERTY DAMAGED BY DISASTER)
to provide that a person is entitled to exemption from taxation by a taxing unit of a portion of the appraised value of qualified property in the event of a disaster. Qualified property is defined to be property that consists of: tangible personal property used for the production of income; an improvement to real property; or a manufactured home that is used as a dwelling, regardless of whether the owner has elected to treat the home as real property; is located in an area declared by the governor to be a disaster area following a disaster; is at least 15 percent damaged by the disaster; and is the subject of a rendition statement or property report that demonstrates that the property had taxable situs in the disaster area for the tax year in which the disaster occurred.

If the disaster is declared on or after the date a taxing unit adopts a tax rate for the year in which a disaster declaration is made, the governing body of the taxing unit must adopt the exemption no later than the 60th day after the date the governor first declares territory in the taxing unit to be a disaster area as a result of the disaster. Within seven days of adopting the exemption, the governing body of the taxing unit must notify the chief appraiser of each appraisal district in which the taxing unit participates, the assessor for taxing unit, and the comptroller of the exemption.

On receipt of the application for the temporary exemption, the chief appraiser must determine whether any item of qualified property that is the subject of the application is at least 15 percent damaged by the disaster and assign a damage assessment rating of Level I, Level II, Level III, or Level IV, as appropriate. In determining the appropriate damage assessment rating, the chief appraiser may rely on information provided by a county emergency management authority, FEMA, or any other source the chief appraiser deems appropriate.

The chief appraiser shall assign damage assessment ratings (DAR) as follows:

- Level I: 15 – 30 percent damaged (minimal);
- Level II: 30 – 60 percent damaged (nonstructural);
- Level III: 60 – not a total loss (significant structural; or
- Level IV: Total loss (property repair not feasible).

The amount of the exemption will be determined by multiplying the appraised value, determined for the tax year in which the disaster occurred, of the property by:

- 15% if assigned a Level I DAR;
- 30% if assigned a Level II DAR;
- 60% if assigned a Level III DAR; or
- 100% if assigned a Level IV DAR.

A person who qualifies for this exemption must apply for the exemption not later than the 45th day after the date the governing body of the taxing unit adopts the exemption. The chief appraiser may extend the deadline for good cause. A property owner who is denied an exemption has the right to protest the modification or denial of the property owner’s application for the exemption.

Finally, HB 492 amends Sec. 403.302, Government Code (DETERMINATION OF SCHOOL DISTRICT PROPERTY VALUES), to provide that the taxable value of property included in the comptroller’s school property value study will be reduced by the total dollar amount of any exemptions granted under this new section of the Tax Code.

Index to sections affected:
Secs. 11.35 (new), 11.42, 11.43, 11.45, 23.02 (repealed), 26.012, 41.03, 41.41, 41.44, Tax Code
Sec. 403.302, Government Code

Effective date:
This Act takes effect January 1, 2020, but only if HJR 34 is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

HJR 34 by Shine
Proposing a constitutional amendment authorizing the legislature to provide for a temporary exemption from ad valorem taxation of a portion of the appraised value of certain property damaged by a disaster.

Description:
Adds new Tex. Const. Art. 8, Sec. 2(e) to provide that the Legislature by general law may provide that a person who owns property located in an area declared by the governor to be a disaster area following a disaster is entitled to a temporary exemption from ad valorem taxation by a political subdivision of a portion of the appraised value of the property. The text of the ballot proposition will read: “The constitutional amendment authorizing the legislature to provide for a temporary exemption from ad valorem taxation of a portion of the appraised value of certain property damaged by a disaster.”

Index to sections affected:
Article 8, Section 2, Texas Constitution

Effective date:
The election for constitutional amendments will be held on Tuesday, November 5, 2019. If passed by a majority of the Texans voting that day, HJR 34 will become effective January 1, 2020.
HB 1159 by Price
Relating to the acknowledgment of a written instrument on behalf of a limited liability company or partnership.

Description:
Current Texas law does not enable limited liability companies to utilize short forms for certificates of acknowledgement. HB 1159 amends Sec. 121.006, Civil Practice and Remedies Code (ALTERATION OF AUTHORIZED FORMS; DEFINITIONS), to provide that in the case of a limited liability company, “acknowledged” by a member, manager, authorized officer, or agent acting for the limited liability company, means that the member, manager, authorized officer, or agent personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument in the capacity stated, as the act of the limited liability company, for the purposes and consideration expressed in it.

HB 1159 also amends Sec. 121.008, Civil Practice and Remedies Code (SHORT FORMS FOR CERTIFICATES OF ACKNOWLEDGMENT), to include limited liability companies in the short forms for certificates of acknowledgment.

Index to sections affected:
Secs. 121.006 and 121.008, Civil Practice and Remedies Code

Effective date:
This Act takes effect September 1, 2019.

HB 1992 by Leman
Relating to prohibiting telemarketers from transmitting misleading caller identification information or otherwise misrepresenting the origin of a telemarketing call.

Description:
HB 1992 amends Sec. 304.151, Business & Commerce Code (INTERFERENCE WITH CALLER IDENTIFICATION SERVICE OR DEVICE PROHIBITED), by adding new subsection (b)(3) to provide that a telemarketer may not cause misleading information to be transmitted to a recipient’s caller identification service or device or to otherwise misrepresent the origin of a telemarketing call. A telemarketer does not violate this new subsection if the telemarketer substitutes the name and telephone number of the person on whose behalf the call is made for the telemarketer’s name and telephone number. Existing law provides the Public Utility Commission with the authority to enforce Sec. 304.151, and after investigation, the PUC may impose an administrative penalty not to exceed $1,000 for each violation.

Index to sections affected:
Sec. 304.151, Business & Commerce Code

Effective date:
This Act takes effect September 1, 2019.

HB 3163 by Springer
Relating to parking for persons with disabilities.

Description:
Chapter 469 of the Government Code is designed to ensure that each building and facility governed by the chapter is accessible to and functional for persons with disabilities without causing the loss of function, space, or facilities. HB 3163 amends Sec. 469.052, Government Code (ADOPTION OF STANDARDS AND SPECIFICATIONS; RULEMAKING), to provide that the Commission on Licensing and Regulation, which is responsible for administering and enforcing the chapter, must adopt standards and specifications that provide that: if an accessible parking space is provided in accordance with a requirement of the standards and specifications is paved, the international symbol of access must be painted on the parking space and the words “NO PARKING” must be painted on any access aisle adjacent to the parking space. A sign identifying an accessible parking space must include a statement regarding the potential consequences of illegally parking a vehicle in the space, including the towing of the vehicle or the assessment of a fine or other penalty against the vehicle owner or operator.

Sec. 681.009, Transportation Code (DESIGNATION OF PARKING SPACES BY POLITICAL SUBDIVISION OR PRIVATE PROPERTY OWNER), provides that a political subdivision must designate a parking space or area by conforming to the standards and specifications adopted in accordance with Sec. 469.052, Government Code, so please monitor any changes to accessibility standards in your
area to ensure you're complying with state and local law governing accessible parking spaces.

Index to sections affected:
Sec. 469.052, Government Code
Secs. 504.205 (new), 681.004, and 681.009, Transportation Code

Effective date:
This Act takes effect September 1, 2019.

SB 1258 by Buckingham
Relating to the prosecution of limited liability companies and other business entities under the Penal Code.

Description:
Under Sec. 1.07, Penal Code (DEFINITIONS), “person” is defined as an individual, corporation, or association.

“Limited liability company” and other entities or organizations governed by the Business Organizations Code are not specifically included in this definition, leaving open the question of whether the Office of the Attorney General would be able to prosecute these types of business entities. By updating the definition of “person” to include both limited liability companies and business entities, defined to mean entities or other organizations governed by the Business Organizations Code, other than corporations, associations, or limited liability companies, SB 1258 ensures the penal laws of Texas apply to all legal entities.

Index to sections affected:
Secs. 1.07, 7.21, 7.22, 7.23, 7.24, 12.51, 20.01, and 32.43, Penal Code

Effective date:
This Act takes effect September 1, 2019.

REAL PROPERTY

HB 3 by Huberty
Relating to public school finance and public education; creating a criminal offense; authorizing the imposition of a fee.

Description:
The Texas Education Agency describes HB 3 as “sweeping and historic” school finance legislation. The bill increases funding and equity, reduces and reforms property taxes and recapture, rewards teacher excellence, and focuses on improving student outcomes.

Buried on page 173 of this 308 page bill is the following new section of the Tax Code: Sec. 26.151 (ESCROW ACCOUNT FOR PROPERTY TAXES), which provides that to the extent that HB 3 has the effect of reducing property taxes, a lender or home loan servicer of a home loan that maintains a property escrow account must take into account the effect of HB 3 in establishing the borrower’s annual property tax payments to be held in the escrow account and immediately adjust the borrower’s monthly payments accordingly. This new section expires September 1, 2023.

The language in HB 3 describes the lender or home loan servicer as “establishing” annual property tax payments. The plain language of this provision points to the prospective/future establishment of a tax rate as opposed to the retroactive/re-establishment of an existing tax rate. This language, coupled with the fact that school districts will not adopt tax rates until August or September, and the assessor-collectors will not be able to calculate the 2019 property taxes until after that time, most likely in the month of October, means the earliest possible compliance date for this section of HB 3 cannot be achieved until the fourth quarter of 2019.

Furthermore, it's TBA's understanding that many lenders and home loan servicers typically establish escrow accounts in the first quarter after taxes are actually paid, so escrow shortages or overages can be accurately calculated. This means that many servicers will establish their borrowers' annual property tax payments to be held in the escrow accounts at that time. Finally, there is considerable debate as to whether this section of HB 3 is preempted by RESPA. The conventional wisdom among bank lawyers who have opined about compliance with HB 3 points to a lender or a home loan servicer adjusting its escrow accounts for the 2020 tax year, as the retroactive adjustment for the 2019 tax year seems unachievable.

Index to relevant sections affected:
Sec. 26.151 (new), Tax Code

Effective date:
This Act takes effect September 1, 2019.

HB 1883 by Greg Bonnen
Relating to deferred payment of ad valorem taxes for certain persons serving in the United States armed forces.
Description:
Under current Texas law, Texas military personnel on active duty during a war or national emergency declared in accordance with federal law are provided an additional 60 days to pay delinquent property tax without penalty or interest accruing. HB 1883 strikes the “during a war or national emergency declared in accordance with federal law” language from Sec. 31.02, Tax Code (DELINQUENCY DATE), which means all Texas active duty military personnel will be able to defer payment of outstanding property taxes without penalty or interest for 60 days. This change to Texas law is in keeping with the protections extended by the federal Servicemembers Civil Relief Act.

HB 1883 also amends Sec. 33.01, Tax Code (PENALTIES AND INTEREST), by adding new subsection (f) to provide that any taxes paid by a Texas servicemember after the deferral period expired would accrue interest at a rate of six percent for each year or portion of a year that the tax remained unpaid, and no penalty would be accrued.

Index to sections affected:
Secs. 31.02 and 33.02, Tax Code

Effective date:
This Act takes effect September 1, 2019.

HB 1885 by Greg Bonnen
Relating to the waiver of penalties and interest if an error by a mortgagee results in failure to pay an ad valorem tax.

Description:
Currently, Sec. 33.011, Tax Code (WAIVER OF PENALTIES AND INTEREST), sets out the instances when the governing body of a taxing unit shall or may waive penalties and provide for a waiver of interest. HB 1885 adds new subsection (k) to the list of penalty/interest waivers 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 that does not require the owner of the property to fund an escrow account for the payment of the taxes on the property; the tax bill was mailed or delivered by electronic means 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. HB 1885 seeks to ensure that taxpayers are not held liable for penalties and interest on a property tax bill that becomes delinquent as a result of an error by a mortgagee.

Index to sections affected:
Sec. 33.011, Tax Code

Effective date:
This Act takes effect January 1, 2020.

SB 2128 by Creighton
Relating to the recording by a county clerk of certain documents concerning real or personal property.

Description:
SB 2128 seeks to provide a process for the recording of a tangible copy of an electronic document for those counties that do not have the capacity to record electronic documents.

SB 2128 adds new Sec. 12.0013, Property Code (RECORDATION OF PAPER OR TANGIBLE COPY OF ELECTRONIC RECORD), to provide that a county clerk shall record a paper or tangible copy of an electronic record that is otherwise eligible under state law to be recorded in the real property records if the paper or tangible copy of the electronic record: contains an image of an electronic signature or signatures that are acknowledged, sworn to with a jurat, or proved according to law; and has been declared by a notary public or other officer who may take acknowledgements or proof to be a true and correct copy of an electronic document.

New Sec. 12.0013(c) provides that a document that is a paper or tangible copy of an electronic record and is printed and declared to be a true and correct copy satisfies any requirement of law that, as a condition for
recording, the document: be an original or be in writing; be signed or contain an original signature, if the document contains an image of an electronic signature of the person required to sign the document; and be notarized, acknowledged, verified, witnessed, made under oath, sworn to with a jurat, or proved according to law, if the document contains an image of an electronic signature of the person authorized to perform that act and all other information required to be included.

Under new Sec. 12.0013(d), a notary public or other officer who may take an acknowledgment or proof may declare that a paper or tangible copy of an electronic record is a true and correct copy of an electronic record by: executing and attaching an official seal to a tangible paper declaration under penalty of perjury; and affixing or attaching the declaration to the printed paper or tangible copy of an electronic record. The legislation also contains a template for a Declaration of Authenticity that meets the requirements of the certification.

SB 2128 also makes necessary changes to Sec. 193.003, Local Government Code (INDEX TO REAL PROPERTY RECORDS), and Sec. 12.0011, Property Code (INSTRUMENTS CONCERNING PROPERTY: ORIGINAL SIGNATURE REQUIRED FOR CERTAIN INSTRUMENTS). These changes include clarifying that a paper document includes a tangible copy of an electronic record that has been declared to be a true and correct copy of the electronic record by a notary public or other officer who may take an acknowledgment of proof of a written instrument.

Index to sections affected:
Sec. 193.003, Local Government Code
Sec. 12.0011 12.0013 (new), Property Code

Effective date:
This Act takes effect September 1, 2019.
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