Dear LBA Members:

The 2013 State Regular Session will be remembered by most as the tax reform session that never got off the ground. Beginning in January, Governor Jindal announced his intention to pursue highly ambitious tax reforms including elimination of state personal and corporate income tax in favor of increased sales taxes, and a widening of the sales tax base. The Jindal plan brought strong opposition from a wide range of groups from business interests to the clergy. With respect to banking, the Jindal plan did not provide relief for corporate taxes paid by banks (bank shares tax), but would have increased the sales tax burden of banks.

LBA brought forth a limited agenda of bills in 2013 with the expectation that tax reform would be the major focus of the session and require very significant attention. However, Governor Jindal ultimately listened to the strong criticism regarding his tax plan and decided to “park” it on the first day of the legislative session. This was a surprise to most and tax reform plans of other legislators quickly fizzled.

Even without tax reform, the session provided LBA staff plenty of work. LBA sponsored a legislative package of four bills and two resolutions as approved by your Government Relations Council and LBA Board of Directors. All of these measures were passed into law and will be helpful to Louisiana banks and thrifts. We also were successful in protecting the banking industry from harmful legislation by either stopping or favorably amending such bills throughout the process. Bills that contain LBA supported amendments are mentioned throughout this report, and on pages 14 and 15 of this report you will find the bad legislation introduced this year that did not pass.

The LBA government relations team (including Joe Gendron, Director of Government Relations, David Boneno, General Counsel, Ginger Laurent, Chief Operating Officer and myself) stands committed to fervently protecting your interests at the state capitol, and we hope this session report is helpful to your bank in becoming familiar with recent legislative developments. If you have questions or need more information on a specific Legislative Act, please contact David Boneno or Joe Gendron at our office.

Finally, to print any Act described in this report go to www.legis.la.gov; under “2013 Regular Session” click on “Bill Search” and enter the relevant Act or Bill Number.

Thanks to the bankers and bank counsel around Louisiana who helped us in our work.

Sincerely,

Robert T. Taylor
Chief Executive Officer
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BILLS ENACTED INTO LAW

BANKING & OFI REGULATED ACTIVITY

CRA Ratings and Public Funds
Act 32; Effective 8/01/13
HB 114 by Reps. Katrina Jackson and Erich Ponti (LBA sponsored) repeals state law statutes that prohibit a bank from being able to accept public funds if it receives two consecutive examination ratings of “less than satisfactory” under the Community Reinvestment Act. These state statutes were unnecessary as federal regulators have ample tools under federal law to ensure satisfactory compliance with CRA requirements. Further, these state statutes were problematic because of how they related to actions taken by federal regulators enforcing the federal law. For instance, if a bank contests a lending violation alleged by a federal regulator, the federal regulators may assign a less than satisfactory CRA rating during the time that the allegation is being contested. The process for contesting an alleged violation can potentially last years. In this type of situation, federal regulators likely do not account for separate state statutes and their implications. Therefore, without the passage of this Act, a bank could have been seriously punished (lost ability to hold public funds) before due process had run its course at the federal level. This Act repealed La. R.S. 6:124.1(C) and R.S. 39:1220(A)(4) in their entirety, and amended R.S. 49:317.

Unclaimed Property Act Revisions
Act 247; Effective 8/01/13
HB 348 by Rep. Jeff Arnold (LBA sponsored) shortens the time periods contained in the Louisiana Uniform Unclaimed Property Act (UUPA) for the state treasurer (UUPA administrator) to bring an action against a FDIC insured institution. The Act also decreases the records retention time requirements for FDIC insured institutions. Specifically, the Act creates a 6 year look-back period or statute-of-limitations for the state treasurer to bring an action against a financial institution under the UUPA. Prior law (until 8/01/13) allowed the state treasurer to go back and audit 10 years of unclaimed property reports. LBA has been told consistently by banks that third-party auditors hired by the state treasurer to conduct unclaimed property audits are utilizing that authority and routinely asking for 10 years of unclaimed property reports and for supporting records going back even further in time. Prior law also did not provide a statute-of-limitations for actions brought by the state treasurer if the financial institution failed to file a yearly report, but only prohibited the state treasurer from going back more than 10 years on submitted reports.

The Act also reduces the records retention time requirements for financial institutions from 10 years to 6 years after the unclaimed property report is filed with the state treasurer. This change should reduce the time and expense that can be incurred by banks and thrifts in maintaining and producing old account records if they are audited under the UUPA.

This Act is the result of numerous meetings and negotiations with the state treasurer and his staff. We believe the changes in Act 247 provide more reasonable guidelines for banks and thrifts to comply with, while not ultimately affecting the amount of unclaimed property being reported to the state. See La. R.S. 9:171(C) and 173(A) and (C).

Credit Agreement Statute
Act 356; Effective 6/17/13
SB 174 by Sen. Danny Martiny (LBA sponsored) amends the Louisiana Credit Agreement Statute to clarify that its provisions apply to bar a debtor’s defenses not based on a written credit agreement. The Act clearly prevents a debtor from being able to use verbal communications and other writings that do not
meets the definition of a written credit agreement as a defense in a foreclosure action or other proceeding by a creditor to collect a debt. Prior to this Act, the Louisiana Credit Agreement Statute was already clear that it barred a debtor’s claims against a creditor when they were based on a written credit agreement that expressed consideration, set forth the relevant terms and conditions, and was signed by the creditor and debtor. This Act provides similar criteria for defenses raised by a debtor.

As the legislation moved through the legislature it drew strong opposition from the AARP who was concerned that the language of the bill would somehow prevent a consumer from asserting that he or she paid a credit card debt (without presenting a written credit agreement as documentation) if a debt buyer attempted to collect on an old debt that had been previously settled between the debtor and creditor by an oral agreement. AARP also raised concerns with the ability of a debtor to raise defenses such as identity theft and forgery, among others.

Based on the concerns expressed, LBA offered an amendment on the House floor to provide that nothing in the Act shall limit the debtor's ability to assert a defense of forgery, identity theft, mistaken identity, lack of authorization, lack of contractual capacity, or payment of the debt. Further, the amendment exempted consumer credit cards and all other unsecured consumer loans from the provisions of this Act. This removed the AARP objections, and still allowed us to accomplish our objective. LBA’s focus with this Act is on commercial and secured loan transactions. See La. R.S. 6:1121.1.

**Access to Accounts by Succession Representatives**  
Act 65; Effective 5/30/13  
SB 190 by Sen. Rick Gallot (LBA sponsored) amends the Louisiana Banking Code to further clarify that a bank can allow access to deposit accounts and safety deposit boxes of a deceased customer by a succession representative who is properly appointed and presents letters testamentary to the bank, and that the succession representative does not need additional court orders each time they access the estate’s accounts and safety deposit boxes. This Act addresses a harmful decision by the Louisiana First Circuit Court of Appeal in a case involving a dispute between heirs to an estate where the bank was sued by one of the heirs. On appeal, the First Circuit held that the bank acted improperly by allowing the executor access to the deposit account and safety deposit box of the deceased customer without requiring additional court orders. LBA believed the prior law already gave banks protection from liability when transferring property of a deceased customer to an executor upon the bank receiving the proper letters testamentary, but this Act goes into detail to further clarify such protections for Louisiana banks and thrifts. Requirements that a bank, when releasing funds to a succession representative, obtain a receipt that is signed by the succession representative or by heirs was repealed. The Act made similar changes to the savings and loan statutes. See La. R.S. 6:325, 767 and 768.

**Qualified Mortgage Resolution**  
Filed with Secretary of State  
HCR 143 by Rep. Chris Hazel and over 30 co-authors (LBA sponsored) is a concurrent resolution passed by the legislature that memorializes Congress to give “Qualified Mortgage” (QM) Status to all balloon loans held in portfolio by a bank, and urges and requests the Consumer Financial Protection Bureau (CFPB) to expand their definition of “rural” for balloon loan QMs. This resolution is in response to the CFPB’s recently released “ability-to-repay” rule that provides specific criteria for mortgage lenders to follow in order to make a good faith determination that a borrower has the ability-to-repay their loan. As part of the rule, the CFPB created QMs, which are mortgages with characteristics that are either conclusively deemed or presumed to be in compliance with the ability-to-repay rule.

The resolution describes how mortgage loans made that do not receive QM status will be subject to increased scrutiny and subject lenders making them to increased potential liability. Therefore, some lenders may stop making non-QM loans. Ultimately, this could decrease access to credit for consumers that may already have few credit options, and that want and need certain loan features. The resolution provides that Louisiana bankers are very concerned with the narrow definition that the CFPB used in their
rule for a “rural” area because only banks making loans predominantly in “rural or underserved” areas can qualify for balloon loan QMs. Currently, only 22 parishes in Louisiana are considered “rural or underserved” areas.

**Study of the Trust Code**

HCR 168 by Rep. Neil Abramson (LBA sponsored) is a resolution that authorizes and directs the Louisiana State Law Institute to study and make recommendations relative to the Louisiana Trust Code, current trust industry practices and the needs of Louisiana citizens, and to report its findings and recommendations to the Louisiana Legislature no later than January 1, 2015. The resolution states that in recent years other states have enacted trust laws that provide features and functions that address the increasingly complex needs of those who use trusts. Further, the resolution provides that Louisiana citizens may be going to other states to establish trusts to avail themselves of other states' trust laws thereby causing a loss of trust business and potential loss of assets in Louisiana. The study was requested as a result of discussions by the LBA Trust Peer Group, which raised the issue whether laws should be changed to provide for asset protections trusts, silent trusts, and directed trusts in Louisiana.

**Restrictions on Non-Bank Check Cashers**

HB 425 by Rep. Cameron Henry requires non-bank check cashers to require photographic identification before cashing federal and state tax refund checks in an amount of $1,000 or more. The person requesting that the check be cashed must present one of the many forms of photographic identification provided for in the Act. The Act also requires non-bank check cashers to maintain specific information and records for each transaction for at least 3 years from the date on which the check is cashed. See La. R.S. 6:1013.1.

**LENDING & COLLATERAL**

**Claims or Privileges under the Private Works Act**

HB 190 by Rep. Clay Schexnayder and Sen. Ronnie Johns amends the Private Works Act dealing with preservation of claims and privileges. The Act makes clear that a claimant filing a statement of claim or privilege lien in the public records shall not be required to attach copies of unpaid invoices unless the statement of claim or privilege specifically states that the invoices are attached. This Act is in response to a 2012 Louisiana Appellate Court decision (Jefferson Door vs. Cragmar Construction) that created some confusion in this area of the law. The Court ruled that under the specific facts of that case the claimant supplier should have attached copies of invoices with its lien affidavit. We are told that as a result of that decision Louisiana District Courts are interpreting this decision in different ways (whether copies of unpaid invoices must be filed or not), and suppliers and subcontractors felt compelled to attach copies of invoices with their statement of claim or privilege out of an abundance of caution. Since filing the copies of invoices increases lien filing costs, suppliers wanted to clarify the law to provide that a general description or summary of the unpaid material supplied or work performed will be sufficient unless the statement of claim or privilege specifically states that the invoices are attached. See La. R.S. 9:4822(G)(4).

**Redemption of Blighted Property**

HB 256 by Rep. Patrick Williams and Sen. Ronnie Johns is a constitutional amendment dealing with blighted and abandoned property. Specifically, it reduces the statewide redemption period (after tax sale) from 3 years to 18 months for property declared blighted or abandoned. Currently, only Orleans Parish has an 18 month redemption period for blighted or abandoned property. This constitutional amendment will be submitted to the voters of Louisiana during the statewide election to be held on November 4,
2014. If adopted by the voters, this constitutional amendment would become effective on January 1, 2015.

LBA understands the importance of returning truly blighted or abandoned property to commerce, but we had serious concerns with this bill as originally filed because definitions were not provided for “blighted” or “abandoned”. After working with the supporters of this bill and other interested parties that had concerns, LBA supported amendments were adopted to address our concerns and remove our opposition. The amendments provided clear definitions for “blighted” and “abandoned”, which will ensure uniformity around the state. For purposes of this bill, “blighted” is defined by R.S. 33:1374(B)(1) and “abandoned” is defined by R.S. 33:4720.59(D)(2) as of January 1, 2013. The definitions used in the bill are currently being used in New Orleans.

"Blighted property" means commercial or residential premises, including lots, which are vacant, uninhabitable, and hazardous and because of their physical condition, are considered hazardous to persons or property, or have been declared or certified blighted, and have been declared to be a public nuisance by a court of competent jurisdiction or by an administrative hearing officer acting pursuant to competent jurisdiction or by an administrative hearing officer acting pursuant to R.S. 13:2575 et seq., or any other applicable law. See La. R.S. 33:1374(B)(1).

"Abandoned property" means property that is vacant or not lawfully occupied. The terms "vacant" or "not lawfully occupied" shall include but shall not be limited to any premises which are not actually occupied by its owner, lessee, or other invitee or if occupied, without utilities, and which has been left unsecured or inadequately secured from unauthorized entry to the extent that the premises could be entered and utilized by vagrants or other uninvited persons as a place of harborage or any premises which by reason of dilapidation, deterioration, state of disrepair, or other such status is otherwise detrimental to or endangers the public safety, health, or welfare. See La. R.S. 33:4720.59(D)(2).

Without these definitions, each parish or municipality could have created their own definitions of “blighted” and “abandoned” property. This would have created much confusion for property owners and mortgage holders. If adopted this adds Article VII, Section 25(B)(3) to the Constitution of Louisiana.

Redemption of Blighted Property Act 223; Effective 6/12/13
SB 51 by Sens. Gerald Long, Rick Gallot, Neil Riser and Francis Thompson is related to the Constitutional Amendment (Act 436 by Rep. Williams) described above concerning blighted or abandoned property. This Act provides uniform procedures that are to be used by parishes and municipalities in conducting proceedings and making determinations of blighted or abandoned property, and for providing notice of such proceedings and determinations to property owners and mortgage holders. LBA had strong concerns with this Act as it was initially proposed because it did not provide clear, uniform procedures to be used by all parishes and municipalities to ensure that due process was provided to persons with an interest in the property, including mortgage holders.

As with Act 436, LBA was sympathetic to the stated goal of the proponents of returning truly blighted or abandoned property to commerce, but we needed more clarity in the legislation in order to be comfortable. After working with the supporters of this bill and other interested parties that shared our concerns, LBA supported amendments were adopted to remedy our concerns and remove our opposition. The Act now contains clear definitions of “blighted property”, as provided for in R.S. 33:1374(B)(1), and “abandoned” property”, as provided for in R.S. 33:4720.59(D)(2). Statewide uniformity in these terms was important to bankers we received feedback from. The Act also provides clear procedures for conducting an administrative adjudication hearing for making a determination of blighted or abandoned property, and requires notice by certified or registered mail or personal service to the property owners and all mortgagees of record at least 30 days in advance of the date of the hearing.
After a hearing to determine whether a property is blighted or abandoned is conducted, the hearing officer shall send written post hearing notice to property owners and each mortgagee of record explaining whether the property has been determined blighted or abandoned and whether any fine, penalty, costs, or fees were assessed. This post hearing notice shall also be sent by certified or registered mail or by personal service to property owners and mortgagees of record. The Act also provides an appeal process for property owners and mortgagees of record to appeal a determination of blighted or abandoned property. See La. R.S. 13:2575(H).

This Act does not apply to Orleans parish because Orleans has had its own procedures in place for determining blighted or abandoned property for many years, and currently is the only parish that has a reduced redemption period (18 months) for blighted or abandoned property. See La. R.S. 13:2575(A), (B), (C)(2), (D), (F) and (H) and 2576(A)(introductory paragraph) and (A)(7).

**Foreclosure Action Procedures**

Act 339; Effective 8/01/13

SB 27 by Sen. Sharon Broome and Reps. Wesley Bishop and Walt Leger amends foreclosure related provisions dealing with notices of seizure. The Act requires that a notice of seizure served by the sheriff contain the form language provided for in R.S. 13:3852(B). The form language provided in the statute used to be suggested or model language but now it is mandatory language. Further, new form language was added by the Act to include certain information concerning the property owner’s rights and the availability of housing counseling services. The new language required to be in the notice is copied below as follows:

"Please be aware that the sheriff’s sale date may change. You may contact the sheriff's office to find out the new date when the property is scheduled to be sold. The new sale date will also be published in the local newspaper in accordance with R.S. 43:203. If the seized property is residential property, you may be afforded the opportunity to bring your account in good standing by entering into a loss mitigation agreement with your lender, or by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. You are strongly encouraged to seek legal counsel. If you cannot afford to pay an attorney, you may be able to qualify for free legal services. Foreclosure prevention counseling services through a housing counselor, including loss mitigation, are provided free of charge. To find a local housing counseling agency approved by the U.S. Department of Housing and Urban Development, you may contact the U.S. Department of Housing and Urban Development or the Louisiana Housing Corporation."

The Act also provides that the initial sheriff’s sale date shall not be scheduled any earlier than 60 days after the date of the signed court order commanding the issuance of the writ.

LBA was opposed to the original filed bill as it provided for a number of additional requirements in the foreclosure process that were very concerning. Specifically, it required a notice of seizure to be served at least 90 days prior to the scheduled sheriff’s sale. We viewed this proposed requirement as unnecessary and one that would cause delay and add expense to foreclosure proceedings. Further, the original bill provided that if the sheriff’s sale date was changed, an amended notice of seizure was to be served upon the judgment debtor within 5 days from when the change occurred.

At the request of LBA, Sen. Broome made a number of significant amendments to her bill in committee including removing the requirement that an additional notice be given to the debtor if the sheriff’s sale date was changed. Further, an amendment was added to reduce from 90 to 60 days the amount of time required to elapse before a sheriff’s sale can occur. Most importantly, the 60 day period now begins to toll upon the date of the signed order commanding the issuance of the writ, as opposed to from the date of
actual service of the notice. We recognized that service can be delayed for extended periods of time for various reasons, and we did not want that to unnecessarily delay the conducting of sheriff’s sales. See La. R.S. 13:3852 and Code of Civil Procedure Articles 2293(B)(1) and 2721(B).

**Lessee’s Rights in Residential Foreclosures**

**Act 354; Effective 8/01/13**

SB 156 by Sen. Sharon Broome requires a lessor, both during and prior to entering into a lease agreement for a residential dwelling, to disclose in writing to the lessee or prospective lessee of any pending foreclosure action to which the premises is subject to and the right of the lessee to receive a notification of a foreclosure action.

The Act provides that within 7 calendar days after being served pursuant to Code of Civil Procedure Article 2293 with a notice of seizure in a foreclosure action on a residential dwelling, a lessor of such a dwelling shall provide written notice of the seizure to all lessees of the premises. The written disclosure shall be signed by the lessor and shall include the name of the district court in which the foreclosure action is pending, the case name and docket number and the following statement: "This is not a notice to vacate the premises. This notice does not mean ownership of the building has changed. All lessees are still responsible for payment of rent and other obligations under the rental agreement. The lessor is still responsible for his obligations under the rental agreement. You will receive additional notice if there is a change in owner."

The Act provides that a lessee is entitled to recover $200 in damages, in addition to any other damages or remedies and costs to which the lessee may also be entitled, in a civil legal proceeding against an owner or lessor if the lessee establishes that a violation of this Act occurred.

The Act specifically states that the requirements shall apply to all lessors in residential leases, including lessors who are leasing residential dwellings subject to a federally-related mortgage loan, as defined in 12 USC 2602, or who have entered into a housing assistance payments contract with the public housing agency to receive housing subsidies on behalf of a lessee pursuant to Section 8 of the United States Housing Act of 1937, and to all lessees in residential leases, including such lessees receiving vouchers or housing assistance pursuant to Section 8 of the United States Housing Act of 1937. Thus, the Act does not apply to non-residential properties.

An LBA supported amendment was added to provide that the requirements of the Act shall not apply to a federally insured financial institution that is asserting its rights as an assignee of a lessor whose property is under foreclosure or as a mortgage holder. Additionally, a number of other LBA backed amendments were accepted by the author, in order to remove LBA’s opposition to the original bill. LBA’s concerns with the original bill included a provision that allowed lessees to terminate their lease agreement if their lessor did not comply with the notification requirements provided for in the Act. LBA advised the author that Louisiana law already requires the sheriff to notify tenants in buildings that are subject to a foreclosure proceeding, and that failure of the lessor to notify the lessee should not result in invalidation of the lease agreement, which could negatively impact third-parties such as mortgage holders. See La. R.S. 9:3260.1.

**Land Title Search Periods**

**Filed with Secretary of State**

HCR 18 by Rep. Neil Abramson establishes a Title Insurance Committee to: study land title search periods provided by La. R.S. 22:512(17)(b)(vi)(gg), relative to the required search periods of mortgage and conveyance records for the issuance of policies of title insurance in the state of Louisiana; to develop recommendations to facilitate adequate safeguards for the issuance of polices of title insurance, while ensuring that the process is efficient and does not cause unnecessary expense or delay; and to report its findings to the legislature no later than February 1, 2014. One member of this committee shall be an appointment of LBA.
This HCR is a follow up to Act 1028 of the 2010 Regular Session that amended state law in order to increase the minimum title search periods for a sale or mortgage. Since then some practitioners have expressed concern that the increased minimum search period may result in increased costs, duplication of efforts, and unnecessary delays in loan closings.

**Flood Insurance Premium Relief**

Filed with Secretary of State

HCR 60 by Rep. Greg Miller and Sen. Gary Smith, HCR 141 by Rep. Chris Leopold, HCR 177 by Rep. Marcus Hunter, SCR 91 by Sen. Bret Allain, SCR 95 by Sen. Jonathan Perry, and SR 114 by Sen. Fred Mills are LBA supported resolutions that memorialize Congress in different ways to either amend or repeal the Biggert-Waters Flood Insurance Reform Act of 2012 that phases out certain subsidized flood insurance rates, thereby allowing drastic flood insurance rate increases until rates reach actuarial status. The rate increases have been widely reported as having a devastating effect on many homeowners in South Louisiana. Affordable flood insurance is critical for the housing market of Louisiana, and if unchanged the provisions of Biggert-Waters will result in unconscionable flood insurance premiums for some of Louisiana’s residents, which will severely impact the real estate market and certain local economies.

**Privileges on Immovable Property**

Act 357; Effective 8/01/13

SB 183 by Sen. Page Cortez provides that for a lessor of movables to secure a privilege for the amount of rent owed for such movables (rented construction equipment) used at the construction site, the lessor shall deliver a copy of the lease notice to the owner and to the contractor not more than 10 days after the movables are first placed at the site of the immovable for use in a work. The Act provides that the notice shall contain the name and mailing address of the lessor and lessee and a description sufficient to identify the movable property placed at the site of the immovable for use in a work. The notice shall state the rental and payment terms and shall be signed by the lessor and lessee. See La. R.S. 9:4802(G)(1).

**Tax Lien Sales**

Filed with Secretary of State

SR 40 by Sen. Bret Allain urges and requests the Louisiana State Law Institute to study the feasibility of authorizing tax lien sales as a replacement or alternative to tax sale certificates. The resolution provides that the majority of other states appear to utilize either tax lien sales or tax deed sales without right of redemption to recover tax amounts owed upon real estate. The resolution further provides that Louisiana's current system of selling tax deeds with a right of redemption, now known as tax sale certificates, has resulted through the years in costly and protracted litigation over rights and procedures involved in such sales, including but not limited to: constitutional questions of due process in notice, advertising and sale processes; issues involving annulment, quiet title, and foreclosures and effects upon mortgages, seizing creditors and subrogation; tax sales by municipalities and adjudications to political subdivisions and post-adjudication sales; issues involving blighted, abandoned, and vacant property; liability issues; and redemption processes and effects, including effects of adjudication upon redemption. The Louisiana State Law Institute shall report to the Senate regarding the study no later than February 1, 2014, and provide its findings, including any recommendations regarding specific proposed legislation.

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**TAX ASSESSMENT AND COLLECTION**

**Assessment for Undivided Interests**

Act 379, Effective 8/01/13

HB 122 by Rep. Major Thibaut allows, but does not require, a tax assessor to make separate assessments for undivided interests in a tax parcel upon request by a tax debtor. See La. R.S. 47:2126.
Tax Assessment Notices

Act 154; Effective 6/07/13

HB 369 by Speaker Chuck Kleckley and Sen. Ronnie Johns provides that tax assessment notices sent by local assessors shall include the taxpayer's estimated property tax assessment and property value for the current year and the property tax assessment and property value for the previous year. The Louisiana Tax Commission shall design a notice that shall be used by all assessors throughout the state and shall be of an appropriate size to clearly indicate to the taxpayer the change in the property's value. See La. R.S. 47:1987(B)(2).

Data Match for Financial Institutions - State Debt Recovery

Act 399; Effective 6/17/13

HB 629 by Reps. Chris Broadwater and Ted James (and 11 other co-sponsors) creates an Office of Debt Recovery (ODR) within the Louisiana Department of Revenue (Department) that will be responsible for the collection of taxes payable to the Department, and may be responsible for the collection of delinquent debts, accounts, or claims due on behalf of all other state “agencies” that refer delinquent debt to the ODR for collection. “Agencies” are defined as entities which are authorized to perform any function of state government in the executive branch.

The Act requires all debts owed to state agencies to be referred to either the attorney general’s office or to the ODR for collection. State agencies that do not have a contract with the attorney general’s office for debt collection on or before January 1, 2014 shall refer all delinquent debts to the ODR for collection when the debt is final and has been delinquent for 60 days. “Delinquent debt” is defined as a final debt that is 60 days or more past due. “Final” means the amount due is no longer negotiable and that the debtor has no further right of administrative and judicial review.

The Act requires the Department to charge the debtor a fee not to exceed 25% of the total delinquent debt that becomes final and collectable. The Act authorizes the ODR to submit a request for the suspension, revocation or denial of any type of professional or other license, permit or certification to the entity or body that governs, regulates or issues them. See La. R.S. 47:1676.

The provisions of the Act relevant to banking deal with the creation of a financial institution data match system to assist the ODR and Department in collecting delinquent state tax and non-tax debt. Although LBA does not like the idea of additional requirements for banks to police their customers, we recognized early on that this legislation had widespread support, especially in light of the state’s budget woes and constant search for new revenues. It has been widely reported that this Act could result in $200 million in new state revenues over five years. We also were told by the Department that without a data match system to efficiently find and collect unpaid debts, other potentially more burdensome methods would be pursued. For instance, the Department has told us that in recent years they have significantly increased the number of paper levies generated would likely continue to greatly increase without data match in place because the Department was looking at technology to reduce time and expense while greatly increasing the volume of levies produced.

In addition to philosophical concerns and concerns with the alternative collection procedures being contemplated by the Department, LBA had concerns with the initial language proposed in the bill and we wanted to ensure that the data match program, if passed into law, would be conducted in the same manner as is currently being done for the collection of past due child support. For many years, state law (in accordance with a federal mandate) has required financial institutions to conduct data match with the Department of Children and Family Services (DCFS) to assist in the payment of child support obligations.
LBA worked with the authors and the Department to prevent this Act from imposing additional cost and burden on financial institutions. After lengthy discussions throughout the session, all of our suggested amendments were adopted and the final product should result in most banks and thrifts not having any additional work or costs to comply with the Act. If additional costs are incurred by an FDIC insured institution, the legislation allows for those costs to be recovered from the Department.

The bill provides that a financial institution or its processor shall provide to the Department or the ODR the name, record address, social security number or other taxpayer identification number, other identifying information and an average daily account balance for the most recent 30 day period, for each calendar quarter for each account owner who maintains an account at such institution and who the office purports is a tax or non-tax debtor.

For purposes of the data match provisions of this Act, a “tax debtor” shall be an individual against whom an assessment or judgment for state taxes payable has become final and is currently enforceable in accordance with law. A “non-tax debtor” shall be an individual against whom an assessment or judgment for a debt owed to the state has become final and is currently enforceable in accordance with law. An “account” shall mean any money held in the name of an account owner, individually or jointly with another, including but not limited to a deposit account, demand account, savings account, negotiable order of withdrawal account (NOW account), share account, member account, time certificate of deposit, or money market account. An account shall not include money held by a financial institution where the tax or non-tax debtor is listed in a capacity other than owner, such as custodian, tutor or agent.

The Act provides that if a financial institution or its processor has a current data match system developed or used to comply with the child support data match system provided for in R.S. 46:236.1.4, the financial institution or its processor may use that system to comply with the provisions of this Act. The ODR shall not require a financial institution or its processor to change their data match system or file format established under R.S. 46: 236.1.4 in order to comply with this Act.

The Act provides that for Louisiana domiciled financial institutions having no branch offices outside the state, the ODR or its data match vendor shall ensure that compliance with both the provisions of this Act and R.S. 46:236.1.4 may be accomplished with a single data match file. In other words, Louisiana domiciled institutions having no branch offices outside the state, or their processor, shall not be required to process multiple data match files to comply with this Act.

Financial institutions may, but are not required to, disclose to their depositors or account holders that the department or the ODR has the authority to request and receive certain identifying information provided for under this Act for state tax and non-tax debt collection purposes.

The Act provides clear protection from civil and criminal liability for financial institutions, including its directors, officers, employees, attorneys, accountants, or other agents as a result of providing account information to the Department or ODR in compliance with a request under the Act. The Act also requires the Department, ODR and their designated vendor for the data match program to keep all information received from financial institutions pursuant to this Act confidential, and prohibits any employee, agent or representative of the Department, ODR and their designated vendor from disclosing that information to any other third-parties.

The Act provides that the Department or ODR shall pay a participation fee to each financial institution that actually receives a data match request file. The participation fee to a financial institution shall be for their actual costs incurred for conducting the data match and otherwise complying with the provisions of the Act. Actual costs incurred for complying with the Act shall be the total cost incurred by the financial institution to process all data match request files under R.S. 46:236.1.4 and this Act minus the costs
incurred to process data match request files under R.S. 46:236.1.4. In order to receive the participation fee under this section, the financial institution must be FDIC insured.

In order to receive the participation fee under this Act, a financial institution must show it incurred costs under R.S. 46:236.1.4 and this Act. The Department or ODR may require a financial institution to submit paperwork such as invoices and other documentation to substantiate the costs that have been incurred. After actual costs are established by a financial institution through submitted paperwork, the ODR shall automatically remit payment to the financial institution on a quarterly basis without the financial institution having to resubmit additional paperwork each quarter thereafter. However, the office may request additional paperwork from a financial institution on a periodic basis, not to exceed once every two years, to verify their actual costs in complying with this Act.

The Act also provides that if a financial institution assesses a fee to its customer for processing a state tax or state non-tax levy received from the ODR or the Department, the fee shall be collected by the financial institution from the proceeds of the customer’s account before any account proceeds are remitted to the ODR or the Department to satisfy the state tax or state non–tax levy. This provision was added at the specific request of LBA to ensure that costs to financial institutions for processing levies can be recovered before any account funds are remitted. This will prevent situations where insufficient funds are available for the financial institution to collect it’s contractually agreed to fee.

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The Act provides that the Department or ODR shall generally conduct the data match program on a quarterly basis, but allows them to conduct data match with a particular financial institution less frequently than every quarter if they follow certain notification procedures provided for in the Act. See La. R.S. 47:1677.

Finally, the Act amends the records disclosure provisions in the banking code to give banks and thrifts clear authority to comply with the data match provisions contained in this Act. See La. R.S. 6:333(B)(intro paragraph) and (F)(18).

**Collection of Sales and Use Tax**

**Act 425; Effective 7/01/13**

HB 653 by Rep. Joel Robideaux provides that it is the duty of the secretary of the Department of Revenue to collect all sales and use taxes due from sales by a remote seller of tangible personal property or services in Louisiana. The Act authorizes and directs the secretary to employ all means available to ensure the collection of the tax in an equitable, efficient, and effective manner. The Act also reduces the amount of compensation (commission) for dealers (persons that manufacture or produce tangible personal property for sale at retail) in accounting for and remitting sales and use tax to the secretary in the form of a deduction in submitting their report. The amount of dealer compensation is reduced from 1.1% to .935% of taxes collected. This compensation shall be allowed only if the payment of the dealer is timely paid and the return is timely filed. The application of this Act is prospective to all taxable transactions occurring on or after July 1, 2013. The Act also changes the basis for calculating the portion of sales and use tax monies collected that is dedicated to marketing and economic development purposes. See La. R.S. 47:302(U), 306(A)(3)(a), and 318(A).

**Rehabilitation of Historic Structures**

**Act 263; Effective 6/13/13**

HB 630 by Rep. Walt Leger amends provisions dealing with tax credits for historic structures in downtown development or cultural districts. The Act provides that the credit shall not exceed 25% of the eligible costs and expenses of the rehabilitation and that no taxpayer shall claim more than $5 million of credit annually. The prior law capped the amount of credit receivable at $5 million. The Act also extends
the ending date of this program from January 1, 2016 to 2018. See La. R.S. 47:6019(A)(1)(a), 2(a), and (3)(b)(i)(cc), (B)(1)(a), and (C).

**Net Operating Loss Carryback**

**Act 341; Effective (See Below)**

SB 37 by Sens. Gary Smith and Troy Brown and Rep. Clay Schexnayder provides that upon certification by the Department of Revenue, at the election of the taxpayer, a net operating loss deduction may be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss, if the allocable loss for the tax year is attributable to Hurricane Isaac. The aggregate amount of net operating loss carryback deduction allowed under this Act for all taxpayers during any taxable year shall not exceed $10 million dollars. The Act further provides that an allocable loss is attributable to Hurricane Isaac if a portion of the allocable loss is attributable to business activity or business property of the taxpayer located in any parish which is in whole, or in part, in the area that a disaster has been declared by the president of the United States before September 10, 2012, under Section 401 of the Stafford Act by reason of Hurricane Isaac. The provisions of this Act become effective if and when Congress grants a similar benefit to taxpayers under federal income tax law. See La. R.S. 47:246(E) and 287.86(B)(1).

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**OTHER BILLS OF INTEREST**

**Appraisal Management Companies**

**Act 31; Effective 5/29/13**

HB 76 by Rep. Frank Hoffmann extends the ability of the Louisiana Real Estate Appraisers Board to collect licensing fees from Appraisal Management Companies (AMCs) operating in the state. The licensing fee authority was due to sunset on December 31, 2013 if not extended by the legislature. The original filed bill permanently removed the sunset provisions, but an amendment was added to extend the sunset by 2 years to December 31, 2015. See La. R.S. 37:3415.10(D).

**Fiscal Agents for Water Districts**

**Act 11; Effective 6/02/14**

HB 96 by Rep. Chris Broadwater provides that a board of commissioners of a water district shall elect a fiscal agent for a term of no more than 3 years, and such an election shall be done on the first Monday in June of any year in which the term of the fiscal agent expires. Prior law required the annual election of a fiscal agent. The Act also allows the board of commissioners to renew the election of a fiscal agent for one additional term without complying with advertising requirements contained in the law. See La. R.S. 33:3817(C)(1).

**Payment by Secondhand Dealers**

**Act 381; Effective 8/01/13**

HB 188 by Rep. Erich Ponti provides that a secondhand dealer shall not enter into any cash transactions in payment for the purchase of any precious metal object. Payment for a precious metal object shall be made in the form of a check made payable to the seller of the metal. The Act defines a “precious metal object” as any of the following: (1) a precious metal containing gold, iridium, palladium, platinum, or silver; (2) a precious or semiprecious stone or a pearl, that is or appears to be attached to or inlaid in a precious metal or alloy of a precious metal; or (3) an object, including currency or coinage regardless of the issuing governmental entity, that is composed of a precious metal or precious metal alloy if at least 25 percent of the object’s weight is precious metal or the market value of the metal in the object lies primarily in the precious metal component. See La. R.S. 37:1864.3(A)(2) and 1861(A)(8).

**Civil Code Revisions**

**Act 78; Effective 8/01/13**

HB 192 by Reps. John Bel Edwards and Neil Abramson was brought on recommendation of the Louisiana State Law Institute relative to the continuous revision of the Code of Civil Procedure. The Act provides for exceptions to the general rules of venue and provides for application of rules to determine
proper venue when two or more articles conflict. See CCP Articles 43 and 45. The Act also provides that a judgment of default must only be confirmed by sufficient proof that is admitted on the court record prior to confirmation, and allows the court to permit documentary evidence to be filed in the record in any electronically stored format authorized by local court rules of the district court or approved by the clerk of the district court for receipt of evidence. See CCP Article 1702. The Act also provides that a final judgment may only be amended after hearing with notice to all parties, except that a hearing is not required if all parties consent or if the court or the party submitting the amended judgment certifies that it was provided to all parties at least 5 days before the amendment and that no opposition has been received. See CCP Article 1951. Finally, the Act provides that when a court grants a motion for new trial, it shall specify each of its reasons in the order. See CCP Article 1979.

**Justice of the Peace Court Costs**


**State Uniform Construction Code**

HB 580 by Rep. Hunter Greene makes various changes to statutes dealing with the state uniform construction code. The Act gives the state uniform construction code council (hereafter “code council”) up to 5 years from the date of publication of the latest edition of the appropriate international or national code to review and update the state uniform construction code. Prior law (or the current law until January 2014) gave the code council until the second regular legislative session after the release of the latest edition to update the state uniform construction code. The Act also requires the code council to adopt Part V- Mechanical from the latest edition of the International Residential Code, and requires the code council to adopt Part IV - Energy Conservation from the 2009 edition of the International Residential Code. The Act also provides that all plumbing and sanitary references in Part V - Mechanical in the International Residential Code shall be replaced with the applicable provisions of the Louisiana State Plumbing Code. Finally, the Act updates the North American Industry Classification System (NAICS) codes for industries exempt from provisions of the state uniform construction code, and gives the code council authority to adopt compatible NAICS code designation updates. See La. R.S. 40:1730.26(2), 1730.28(A)(3)(introductory paragraph), (e), and (h), and 1730.29.

**Liberative Prescription**

HB 588 by Rep. Neil Abramson was brought on recommendation of the Louisiana State Law Institute to revise La. Civil Code articles dealing with liberative prescription and other matters. Article 3505 provides that after liberative prescription on an obligation has commenced to run but before it accrues, an obligor may by juridical act extend the prescriptive period, and an obligor may grant successive extensions the duration of which may not exceed one year. Article 3505.1 provides that an extension of liberative prescription must be express and in writing. Article 3505.2 provides that the period of extension commences to run on the date of the juridical act granting it. Article 3505.3 provides that an extension of liberative prescription is effective only against the obligor granting it but benefits all joint obligees of an indivisible obligation and all solidary obligees. Additionally, an extension of liberative prescription by a principal obligor is effective against his surety, and an extension of liberative prescription by a surety is effective only if the principal obligor has also granted it. Article 3505.4 provides that prescription may be interrupted or suspended during the period of extension. A non-Law Institute amendment relative to revocatory actions was added to the Act late in the process. Specifically, La. Civil Code Article 2041 was amended to provide that the 3 year peremptory period for bringing a revocatory action on a contract shall not apply in cases of fraud.

**Revisions to Code of Civil Procedure**

Civil Procedure Article 966(B)(2) clarifies that a motion for summary judgment shall be rendered based only on pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, that are admitted for purposes of the motion for summary judgment. Article 966 (E) is amended to clarify that summary judgment may be rendered on a particular issue but not necessarily dispose of the entire case as to a party or parties. Article 966 (F) is amended to further clarify that only evidence admitted for purposes of the motion for summary judgment may be considered by the court in its ruling on the motion, and that evidence cited in and attached to the motion for summary judgment or memorandum filed by an adverse party is deemed admitted for purposes of the motion for summary judgment unless excluded in response to an objection to the evidence made by an adverse party in a memorandum or written motion to strike stating the specific grounds therefor.

This Act maintains the general provisions of Article 1732, which disallows a jury trial in a suit when no individual petitioner’s cause of action exceeds $50,000 exclusive of interest and costs. However, the Act adds the following exceptions to the general provision: (1) if an individual petitioner stipulates or otherwise judicially admits 60 days or more prior to trial that the amount of the individual petitioner's cause of action does not exceed $50,000 exclusive of interest and costs, a defendant shall not be entitled to a trial by jury; (2) if an individual petitioner stipulates or otherwise judicially admits for the first time less than 60 days prior to trial that the amount of the individual petitioner's cause of action does not exceed $50,000 exclusive of interest and costs, any other party may retain the right to a trial by jury if that party is entitled to a trial by jury and has otherwise complied with the procedural requirements for obtaining a trial by jury; (3) notwithstanding (1) and (2) above, if, as a result of a compromise or dismissal of one or more claims or parties which occurs less than 60 days prior to trial, an individual petitioner stipulates or otherwise judicially admits that the amount of the individual petitioner's cause of action does not exceed $50,000 exclusive of interest and costs, a defendant shall not be entitled to a trial by jury.

The Act also makes technical and stylistic changes to Article 1915 relative to partial final judgments, partial judgments, partial exceptions, and partial summary judgments.

Central Database for Testaments
HCR 107 by Rep. Jay Morris authorizes and directs the Louisiana State Law Institute to study and make recommendations relative to the feasibility of creating a central database for testaments and to report its findings and recommendations to the legislature no later than January 1, 2015. The resolution discusses the importance of a testament to estate planning and discusses how properly executed testaments can be misplaced or even improperly concealed or destroyed in order to subvert decisions of the testator as to his estate. The resolution provides that it may be beneficial to establish a voluntary central database in order to alert interested parties that a testament has been executed and that such a database could be created within the office of the secretary of state or the clerk of court for the parish in which the testator is domiciled.

Title Insurance Producers
Act 21; Effective 6/26/13
SB 53 by Sen. Dale Erdey provides that beginning with license renewals effective in 2015, licensed title insurance producers shall complete 12 hours of continuing education. Prior law only required 6 hours of continuing education. The Act also allows for continuing education hours to be obtained by verifiable self-study, and requires at least 2 hours be dedicated to matters related to state and federal consumer finance protection laws. See La. R.S. 22:1573(L).

Small Tutorships
Act 118; Effective 6/05/13
SB 62 by Sen. Ed Murray redefines a small tutorship as a tutorship of a minor whose property in Louisiana has a gross value of $50,000 or less. Prior law required property to have a gross value of $20,000 or less. The Act also allows the court to dispense with the appointment of an undertutor. The
Act also provides that in proceedings under this Act, court costs shall be one-half the court costs in similar proceedings in larger tutorships, provided that the minimum costs in any case shall be $100. Prior law provided that the minimum costs in any case be $5. See La. Code of Civil Procedure Articles 4461, 4463(C) and 4464.

**Payment by Scrap Metal Recyclers**  
Act 92; Effective 8/01/13  
SB 131 by Sens. John Smith and Ronnie Johns changes the methods for which scrap metal recyclers can pay their customers for purchases by requiring payments for all copper purchases to be made after a 5 day waiting period from the date of the transaction. After the waiting period, payment shall be made by either presenting a check in person or mailing the check to an address shown on a photographic identification of the seller, or by electronic transfer on a loadable payment card. As with prior law, cash payments for copper purchases are prohibited. See La. R.S. 37:1973(A) and (C).

**Clerks of Court - Electronic Signatures**  
Filed with Secretary of State  
SCR 6 by Sen. A.G. Crowe urges and requests that the Louisiana State Law Institute study and make recommendations concerning the feasibility and legal and practical ramifications, including consideration of the possible financial impact, of requiring clerks of court in Louisiana to accept electronic signatures on documents filed with them. The resolution notes that currently at least one parish (Jefferson Parish) allows attorneys to electronically file and sign documents.

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**BAD BILLS THAT DID NOT PASS**

**HB 362 by Rep. Mickey Guillory** would have increased contractor lien periods under the Private Works Act. Specifically, the bill would have increased the time period for subcontractors and laborers having a claim or privilege against a contractor and an owner of property they performed work on to file a statement of their claim or privilege. If notice of the contract was properly and timely filed in the manner provided for under the Private Works Act, the time period would have increased from 30 to 60 days after the filing of notice of termination of the work. The bill also would have increased the time period for general contractors to file a statement of claim or privilege from 60 to 120 days after the filing of notice of termination of the work. For claims arising out of a general contract, notice of which was not filed, the bill would have increased the time period for contractors and subcontractors, and other parties having a claim or privilege under R.S. 9:4801 and 4802, from 60 to 120 days as well. If passed, this bill could have resulted in delayed loan closings on new construction. LBA was opposed to this bill and it was defeated in the House Civil Law Committee.

**HB 581 by Rep. Patrick Connick** as originally filed would have given employers the right to refuse compliance with creditor garnishment orders if they determined that their employee’s gross income was less than 125% of the annual amounts set forth pursuant to the U.S. federal poverty guidelines. In committee these provisions were deleted from the bill and it was amended to increase the minimum amount of employee income that is exempt from garnishment from 30 times to 40 times the federal minimum wage. LBA opposed the legislation in committee and the bill was defeated by the House Civil Law Committee. LBA was concerned about any changes to the garnishment law that would inhibit creditors from being able to collect on a debt, as well as the negative effect that such a change could have on the ability of lower income borrowers to receive credit.

**SB 98 by Sen. Ben Nevers** as originally filed provided that beginning January 1, 2014, Louisiana citizens no longer would have been able to apply for and obtain a motor vehicle certificate of title in person by going to, and waiting in line at, their local office of motor vehicles (OMV). Instead, citizens would have
been required to make application for a certificate of title through a public tag agent licensed by and contracted with the office of motor vehicles, or by mailing an application to the OMV. This bill was very concerning to LBA as community banks often make application for certificates of title in person at the OMV. An LBA supported amendment was added in committee to allow banks to drop off applications at the OMV for later processing. Even with such an amendment, LBA still had concerns about the idea of limiting title services available from the OMV for Louisiana citizens and effectively steering people to use fee-charging public tag agents. After passing the Senate committee, Sen. Nevers opted not to pursue this legislation.

**SB 137 by Sen. Conrad Appel** would have mandated the escrow of retainage for commercial construction contracts in the amount of $500,000 or more. This bill would have taken away the ability of sophisticated parties to a commercial construction contract to freely negotiate terms of the contract. The result of the bill would have been to take funds out of the control of lenders and make commercial construction deals more costly. If passed, some lenders likely would have required borrowers to self-fund the expected escrowed retainage up-front when the loan was closed. If loan funds had been used to fund the retainage escrow account - then interest would have accrued on the escrowed funds - thus increasing the cost of the project. LBA, among other groups were strongly opposed to this bill. Sen. Appel ultimately decided not to pursue the legislation. This bill was similar to legislation introduced by Sen. Appel last year that was defeated.