



AMY HEASLET
Executive
Vice President/
General Counsel,
Tennessee Bankers
Association

STAY UP-TO-DATE

Stay up-to-date through *This Week* and our legislative update calls during session. TBA also invites member banks' in-house counsel to join our Bank Lawyers Committee. Contact Amy Heaslet to learn more at ahaslet@TNBankers.org.

TBA presents three bills, pushes back against sales tax burden shifting to banks

As we enter the second full month of legislative session, it continues to be proven that the business of the General Assembly can carry on despite COVID-19 and limitations on in-person business. Leading up to session, there was some uncertainty about what session would bring; specifically, whether groups would pursue full legislative agendas or streamline their initiatives due to limited ability to attend hearings and lobby in-person.

The uncertainties of session, however, were quickly cleared up as bills began to be filed in early January and groups started reaching out to TBA to discuss their initiatives. No one seemed to be letting the pandemic slow down their work, even on issues that have been controversial and met with resistance in the past.

TBA stands in similar posture—continue pursuing our legislative agenda just like any other session. With three of our own bills this year, we will modestly increase the state's homestead exemption; update the state's trust laws; and extend the time a bank may hold non-real property from six months to 12 months. Initial feedback from legislators and other groups whom these bills may affect indicates TBA should not encounter much, if any opposition, in passing them.

But as I have mentioned several times prior, it's oftentimes more difficult to defeat someone else's bill than to pass your own. This year will be no different. The legislation that has much of our focus is one that would prohibit interchange fees from being charged on the sales and use tax portion of retail transactions. The legislation was brought for the second year in a row by a coalition of businesses—grocery stores, convenience stores, big box retailers, and some in hospitality—that primarily argue that they collect these taxes and remit them to the state without any compensation for their work.

Seems like an easy bill to defeat, right? Just explain that the payments systems are not capable of segregating the tax amount from the sales price at the point of sale; that interchange supports the use of plastic, which guarantees 100% payment to the retailers while the bank bears the costs of fraudulent transactions; and this would make Tennessee the only state in a complex national payments network to allow for this.

However, it's not so easy. Legislators heard last year from a strong grassroots network of retailers from across the state and they are sympathetic to their arguments, including that this would save small business thousands of dollars each year, if not more.

At a time when many retailers are struggling financially due to the pandemic, the notion of passing legislation to help cut down on business's operating costs could be very appealing. But this legislation that would simply shift the cost burden of sales tax collection from retailers to banks is not a viable solution.

I've heard from some proponents and the sponsor of the bill that they just want to have a conversation about the issue, but we are not taking this issue lightly. It was difficult to defeat last year and if we sit back and do not express opposition, it could pass. And if it doesn't pass this year, I expect it will become a perennial issue. Our approach is to have as strong of a showing of opposition as possible in hopes the retailers and legislators will retreat from putting this bill up for a vote this year and years to come.

To do this, we need the help of every banker. Please continue to stay engaged on this issue and call your legislators to explain the complexities of the payments systems and necessity for banks to receive interchange fees to offset the costs of issuing and servicing plastic cards, which are of great benefit to consumers and retailers. 🇺🇸