

2018 Session in Summary

This year was particularly difficult, given the focus on pensions and tax reform. More than 800 bills and resolutions were introduced. 194 bills passed.

Items that impact the banking industry, directly or indirectly, are summarized below. A more Comprehensive summary will be emailed to all members. A concise list of all other legislation is located just beyond the banking summaries. Each bill, unless it contains an emergency clause will go into effect 90 days from the end of session. If you need more information on any of these bills, please contact Debra Stamper at dstamper@kybanks.com.

- I. [HB11](#) – Uniform Power of Attorney. This change brings Kentucky’s POA statutes more in line with other states and adopts [KRS Chapter 457](#) cited as Uniform Power of Attorney Act. While this Chapter should be studied carefully and ensure and that your policies and procedures are the same, notable provisions under the statutes. Include:

The new POA Chapter applies to all powers of attorney **except**:

- A power that is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;
- Generally, the power to make health care decisions (KRS 311.621-.643);
- Proxy or other delegation to exercise voting rights or management rights with respect to an entity;
- A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose;
- A power for reciprocal insurers;
- A power given by a member of the U.S. Armed Forces (KRS Chapter 384); and
- A power for the temporary delegation of parental rights (KRS 403.352-.353).

A POA must be signed in the presence of 2 *disinterested witnesses* by the principal or in the principal’s conscious presence by another individual directed by the principal to sign the principal’s name on the POA (the POA must include an explanation as to why this is the method of signing). The principal’s signature is presumed genuine if acknowledged before a notary. This only applies to POA’s executed on or after 7/14/18.

POA’s from out of state are valid in Kentucky if, when it was executed, its execution complied with the law of the jurisdiction designated by the POA or the law of the jurisdiction where it was executed.

A photocopy or electronically transmitted copy of an original POA has the same effect as the original.

A POA is effective immediately UNLESS the principal provides in the POA that it becomes effective at a future date or upon the occurrence of a future event or

contingency. If it becomes effective upon the occurrence of a future event or contingency, the principal may authorize one or more persons to determine, in writing, that it has occurred. If the POA becomes effective upon incapacity, it becomes effective upon a determination, in writing, by a physician, an APRN, a psychologist licensed or certified under KRS Chapter 319, or a licensed or certified social worker or employee for the Cabinet for Health and Family Services OR an attorney-at-law or a judge that the principal is incapacitated.

A POA terminates when:

- The principal dies;
- The principal becomes incapacitated, if the POA is not durable;
- A court appoints a limited conservator, conservator, limited guardian, or guardian UNLESS the court specifically provides the POA remains in effect;
- The principal revokes the POA;
- If the POA was recorded for convey or release property, the principal revokes in accordance with KRS 382.370;
- The POA provides that it terminates;
- For a POA that specifically states a purpose, the purpose is accomplished;
- Or the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the POA does not provide for another agent.

An Agent's authority terminates when:

- The principal revokes the authority;
- The agent dies, becomes incapacitated, or resigns;
- An action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the POA provides otherwise; or
- The POA terminates.

Under this section, termination of an agent's authority is NOT EFFECTIVE as to the agent or another person that, without actual knowledge of the termination or actual knowledge of incapacity (if the POA is not durable), acts in good faith under the POA, unless otherwise invalid or enforceable (i.e. fraud). The execution of a POA does not revoke a POA previously executed by the principal, unless the subsequent POA specifically provides. Agents have a specific duty to take necessary actions against co-agents or predecessor agents who are believed by an agent to have violated a fiduciary responsibility.

A person (or entity) asked to accept a POA has the authority to file an action in District Court to review and construe a POA and or agent's conduct.

If a person (or entity) is asked to accept an acknowledged POA, the person may request as additional evidence (if they chose) at the principal's expense (if the request is made within 7 days of presentment), and may rely upon, an agent's certification under penalty

of perjury of any factual matter concerning the principal, agent or POA; an English translation if part of it is in another language other than English; an opinion of counsel as to any matter of law concerning the POA if the person making the request provides in writing the reason for the request.

The POA must be accepted (or a certification, translation, or attorney's opinion requested) within 7 business days after presentation of the POA for acceptance. Once the requested and allowed additional evidence is received, the POA must be accepted no later than 5 business days after receipt of such certification, translation, or counsel opinion.

A POA is not required to be accepted if:

- You would not otherwise be required to engage in a transaction with the principal in the same circumstances;
- Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;
- The person has actual knowledge of the termination of the agent's authority or of the POA before exercise of the power;
- A request for certification, a translation, or an opinion of counsel is refused;
- The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, translation, or counsel opinion has been requested or provided;
- The person makes, or has actual knowledge that the person has made, a report to the Cabinet for Health and Family Services stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or person acting for or with the agent.

If a person (or entity) refuses a POA in violation of this Chapter, the penalties include attorney's fees and costs.

POA's may be in tangible or electronic form, in accordance with the definitions in this Chapter).

KRS sections impacted: Chapter 457. Action Necessary: Amend procedures.

- II. [HB46](#) – Emergency Credit Freezes. This bill made clarifying amendments, but no significant changes as they directly impact banks. KRS sections impacted: Chapter 367. Action Necessary: *None*

- III. [HB93](#) – Financial Exploitation. This statute defines “financial exploitation” and allow financial institutions more flexibility in protecting customers from the same. The statute is self-explanatory. It must be noted, however, that the statute appears to allow the bank to notify “any third party...reasonably associated with the specified adult”—this, however,

could conflict with federal privacy requirements and/or account terms and conditions. KRS sections impacted: [365.245](#). Action Necessary: *Amend procedures, as necessary*.

- IV. [HB369](#) – Contract Interest Rate. The current law under 360.010 set the legal rate of interest in Kentucky in contracts and otherwise. Although these contract rates are not necessarily applicable to banks because of the “most favored lender” doctrine applied by both federal and state law, there was confusion in some lawsuits as to the rate allowed once the contract is assumed by another, is in default and/or after judgment. This is clarified by the language in this bill. First, it provides that parties who assume the contract are subject to the interest rate conveyed by the contract. Additionally, it is provided that the interest rate (even if variable) will continue after default and shall apply to any judgment on that contract. Finally, it creates a new section of Chapter 371 ([KRS 371.190](#)) which provides that debt is not extinguished as a result of lender’s bookkeeping write down requirements. KRS sections impacted: 360.010 and Chapter 371.190. Action Necessary: *Amend procedures, as necessary*.
- V. [HB394](#) – Unclaimed/Abandoned Property. Repeals existing escheat laws and adopts the Uniform Unclaimed Property Act, under [KRS Chapter 393A](#). Although the entire Chapter has been changed to the Uniform Act, the sections that apply specifically to banks are summarized here.

Note that “property” is defined to include “an amount *distributable* from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit-sharing, employee-savings, supplemental-unemployment insurance, or a similar benefit...” Additional statutes are added to add specification to these typically protected accounts. See KRS 393A.050-060.

The “presumed abandoned” (escheat) period for traveler’s checks is 15 years; for money orders, 7 years; for all other property 3 years, with some caveats. For instance, interest bearing, demand, savings, or time deposit accounts considered abandoned must be placed into an interest-bearing account assignable to the State Treasurer and paid to the Treasurer unless claimed by the owner (with any accrued interest in the assignable account) within 10 years. Wages, commissions, bonuses or employee reimbursements are presumed abandoned at 1-year. There are special rules for UTMA accounts, under which the property has not been transferred to the minor. The abandonment period is 3 years after the date a second consecutive mailing has been sent (within 30 days after the first mailing) by first class mail to the custodian and returned undeliverable; or 3 years after the first mailing is sent if a second mailing is not sent within 30 days; or 3 years after the date from which the custodian was required to transfer the property to the minor. If the bank does not send first class mailings to the custodian, they must attempt to contact the custodian through e-mail within 2 years of last contact with the custodian. If the bank does not have an email address

or the email is returned undeliverable or no response is received within 30 days, the bank must attempt to contact the custodian by first class mail within 30 days.

Property in a safe-deposit box is considered abandoned 5 years after the expiration of the lease on the box or any other date that the lessor is allowed by Kentucky law to enter the box and remove or dispose of contents without the owner's consent.

Requirements for annual reports are contained in KRS 393A.220-.260.

Within 180 to 60 days before the filing of the annual report the bank (all holders) must send a notice to the owner of presumed abandoned property by first class mail and email (if applicable) if the property has a value of more than \$50. KRS 393A.280 contains the required contents of the notice.

Holders of property presumed abandoned may be examined for compliance.

KRS sections impacted: Chapter 393A. Action Necessary: *Review and amend procedures.*

- VI.** [SB 139](#) – Property Ownership Documents. Defines “Full Name” for purposes of real estate documents—gives three options. Provides that county clerk shall accept the document for filing even if not consistent with the name requirements. Limits newspaper publication for motor vehicles to one county rather than statewide. KRS sections impacted: [KRS 382.135](#); [186A.190](#). Action Necessary: *Amend procedures.*

HB1—Child Welfare
HB2—Workers’ Compensation
HB3—Essential Workplace Ethics Curriculum in Kentucky Schools
HB4—Peer Review Activities in Health Care
HB5—Guardianship of Disabled Persons
HB22—Restriction on Drone Use
HB30—Suicide Prevention Training
HB33—Bicycle Use on Roadways
HB64—Traumatic Brain Injury Treatment for Veterans
HB68—Law Enforcement Support Programs
HB69—Service Delivery Improvements for Managed Care Networks
HB70—Sex Offender Registration
HB71—Distribution of Sexually Explicit Images
HB74—Pawnbroker Requirements
HB81—Disabled Parking Permits
HB84—Organ Donation
HB92—Jail Canteen Profits
HB96—Fire Related Crime Investigation
HB100—Building Industry Licensure
HB101—Sex Crimes
HB114—TVA “in-lieu-of” Tax Payments
HB116—Jails
HB120—Child Pornography
HB122—Fire Department Reporting Requirements
HB124—Substance Abuse Disorder Treatment
HB128—Holocaust Education in School
HB132—Financial Literacy Education in School
HB133—Transportation of Agricultural Commodities
HB136—Microbreweries
HB138—Boards of Adjustment
HB140—Law Enforcement and Firefighters Foundation
HB142—Distribution of School Funds
HB146—Administrative Reorganization
HB147—Seizures Response Plans for School
HB148—Provision for Hospice Disposal of RX’s
HB150—Food Banks
HB153—Exemptions for Certain Overweight Agricultural Trucks
HB157—Elections and Caucus Campaign Committees
HB158—Life Insurance for Public Employees
HB164—Charitable Gaming and Raffles
HB167—Abandoned Infants
HB168—Railroad Crossing
HB169—Gang Activity
HB176—Ambulance Driver Disclosures
HB177—CPA Licensure
HB185—Death in the line of duty Benefits

HB187—Dyslexia Screening
HB191—Consumer Protection in Eye Care
HB193—Criminal Assault
HB198—Contingency Fee Personal Service Contracts by state agencies
HB200—Executive Budget
HB201—Transportation Cabinet Budget
HB202—Road Projects Budget
HB203—Judicial Branch Budget
HB204—Legislative Budget
HB207—Cell Phones in Jail
HB213—Data Sharing of Certain Drug Monitoring
HB218—Autism Benefits
HB220—Marketplace Contractors
HB223—City/county Public Housing Program Oversight
HB241—Commercial Weights and Measures
HB244—Administrative Reorganization
HB246—Medication Assisted Therapy
HB252—Unemployment Compensation
HB259—Pari Mutual Tax
HB260—Professional Licensure
HB261—Mining
HB263—Home Based Food Products for Sale
HB264—Administrative Reorganization
HB265—Budgetary/Pension Items
HB270—County Boards of Election
HB275—Special Deputies
HB277—Motor Vehicle and Operator Licensure
HB281—CDL Proprietary Education
HB289—Disproportionate Share Hospital
HB290—Allow Home School Teams to Compete against Public Schools
HB291—National Guard
HB302—Administrative Reorganization and Public Records Requests
HB305—Administrative Reorganization
HB306—STABLE Kentucky Accounts
HB307—Mechanical Systems
HB310—Electronic Submission of Certain Agency Reports
HB314—Kentucky OSH Boards
HB319—Business Opportunity for Veterans
HB323—Insurance Crimes
HB324—Criminal Trespass
HB327—Statutorily Required Fees
HB329—Assistance Animals
HB334—Budget Items
HB343—Certificates of Free Sale
HB345—Surplus Lines of Insurance
HB348—Judicial Organization

HB356—Sex Offender Registrants
HB360—State Agency Children
HB362—Employer Participation in State Pension Funding
HB363—Public Assistance Reform
HB366—Revenue/Budget
HB367—Dyslexia
HB370—Property Redevelopment
HB373—Disclosure of Body Camera Footage
HB381—Elections, Vacancies, and Filings
HB385—Design/Build Project Funding
HB388—Workers Compensation Funding Commission
HB398—Physical Therapist Licensure
HB400—Shipment of Alcoholic Beverages
HB402—Payment of Overage Refunds to Insurers
HB424—Kentucky 911 Services
HB427—Nursing
HB429—Administrative Reorganization
HB430—Administrative Reorganization
HB431—Administrative Reorganization
HB434—Section 529 Savings
HB443—Nonprofit Corporations
HB444—Health Care Facilities
HB454—Abortion
HB463—Pharmacy Benefits
HB464—Credit for Reinsurance
HB475—Caller Identification Services
HB476—Compensatory Time for Certain Law Enforcement
HB487—Revenue/Budget; Pension Issues; Expanded Service Tax Base; Tax Filing Changes
HB497—Physician’s Assistants
HB512—Qualifications of Officers
HB513—Wastewater Treatment
HB517—Grandparent Visitation
HB527—Stability for Foster Children
HB528—Joint Custody of Minor Children
HB530—Personalized License Plates
HB557—Economic Development
HB586—Teacher Certification
HB592—Agency Organization
HB606—CDL Licensure
SB5—Pharmacy Benefits through Medicaid
SB6—Safe Disposal of Controlled Substances
SB19—Sex Crimes
SB30—Crime Victim’s Rights
SB37—Reinstatement of Drivers License for Certain Inmates
SB48—Child Brides
SB56—Non-Voting Members of the Kentucky Horse Racing Commission

SB57—Cause of Action Against Terrorist
SB61—Murray State Capital Project
SB68—Dissolution of Marriage, Award of Attorney’s Fees
SB70—Appropriation for UofL Capital Project
SB71—Health Education
SB73—Pilot Program for Performance Based Professional Development of Teachers
SB78—Electrician Licensing
SB86—University Capital Projects
SB88—Prohibition on the Imposition of required City Expenditures, except in Certain Instances
SB91—City Financial Accountability
SB96—Administrative Reorganization
SB97—Municipal Annexation
SB98—Entertainment Destination Center License
SB101—School District Vacancies
SB104—Natural Gas Pipeline Safety
SB106—Blow Drying Services
SB108—Child Support Enforcement of Health Care Coverage
SB109—Sex Crimes
SB110—Quota Licenses for Alcoholic Beverages
SB112—Telehealth Services
SB116—Commercial Motor Vehicles
SB119—Cervid Meat Processors
SB122—Motorcycle Safety Education
SB123—Permission for Additional Nursing Facilities/Beds
SB126—Administrative Reorganization
SB129—Administrative Reorganization
SB130—Campus Crime Reporting
SB131—Administrative Reorganization
SB132—Administrative Reorganization
SB133—Inmates Rights
SB137—Hearsay Exemption
SB138—Administrative Reorganization
SB140—Commissioner of Education Notifications
SB142—Telecommunicator Training
SB144—Audits of County Officers
SB150—Executive Branch Ethics
SB151—Pension Provisions
SB152—Teacher Compensation
SB160—Sale of Consumer Goods During Emergency
SB181—Sex Offender Registrants
SB182—All Terrain Vehicles
SB200—Kentucky Communications Network Authority
SB201—Services for Children and Transition-Age Youth
SB202—Council on Postsecondary Education
SB203—Public Private Partnership Projects
SB204—Income Tax Checkoff Programs to Include CASA

SB210—Possession of Firearm by a Felon

SB211—Administrative Reorganization

SB228—Student Athlete Agents

SB249—Oil and Gas Hearings

SB250—Hepatitis C Screening