

2021 Session in Summary

Every year we report just how notable the legislative session has been for one reason or another and the 2021 Legislative Session is no different. With COVID-19 still a major concern, committee meetings were hybrid, using both remote and in-person participation. However, no live audience was allowed and individuals wishing to speak on issues raised were required to do so via technology or receive special permission to attend in person. Lobbying efforts were also restricted. Without open access to the Capitol and the annex, discussions with legislators were scheduled on zoom and/or conference calls. That resulted in a number of bills (not just banking bills) moving faster, or slower, than they would in a year when legislators were able to hear the full story. In addition, the General Assembly was primarily focused on COVID-19 issues, powers of the Governor during emergencies (and what constitutes an emergency) and the budget. Regardless, there were more than 1200 bills and resolutions drafted and 206 bills passed.

Bills that impact the banking industry are summarized below. Each bill, unless it contains an emergency clause will go into effect 90 days from the end of session, May 30. If you need more information on any of these bills, please contact Debra Stamper at dstamper@kybanks.com.

1. **SB5 – COVID Liability.** SB5 is a tricky bill.

It is designed to protect some businesses and all premises owners from liability for certain COVID-19 related claims occurring on or after March 6, 2020.

With regard to premises owners, SB5 protects them from liability “for any alleged injury, loss, or **damage to persons or property** arising from a COVID-19 claim” and expressly states that premises owners do not “owe a duty to protect from or warn about any risk related to or caused by COVID-19.” In order to benefit from the protection of this law, the premises owner must follow “all orders and guidelines related to a COVID-19 declared emergency issued by the Governor or any state agency, the President of the United States or any federal agency or a local governmental agency” and “any specific guidelines related to a COVID-19 declared emergency adopted by a state agency that governs the industry.” The protection of SB5 does not apply if the injury results from “gross negligence, or wanton, willful, malicious, or intentional misconduct.”

The protection of essential service providers is slightly different. The bill lists a number of industries which are defined as “essential service providers.” “Financial institutions” are included in that list. The express language of SB5 provides that essential service providers “shall not be liable for **any COVID-19 claim**,” unless the essential service provider actions show “gross negligence, or wanton, willful, malicious, or intentional misconduct.”

The difference between the protections provided for premises owners (**damage to persons or property**) and essential service providers (**any COVID-19 claim**) is significant because ‘any claim’ could include things like contract issues.

SB5 is also interesting because it does not appear to protect businesses which are not either premises owners nor essential service providers. So, for example, a mall owner would be protected as a premises owner but the leasing business owners would not unless they were also essential.

SB5 is not likely to protect covered businesses/owners from all litigation, however, as the issue of whether the defendant acted in accordance with any executive order will be subject to debate, as well as the issue as to whether the defendant's actions were "gross negligence, or wanton, willful, malicious, or intentional misconduct."

2. **SB11 – Criminal Damage to Rental Property.** SB11 creates new categories of criminal mischief as follows:

"A person is guilty of criminal mischief in the first degree when, having no right to do so or any reasonable belief that he or she has such right, he or she ...As a tenant, intentionally or wantonly defaces, destroys, or damages residential rental property causing pecuniary loss..." .

If the loss is \$1000 or more, it is first degree; more than \$500, but less than \$1000, it is second degree; and less than \$500 is third degree.

3. **SB62 – Commercial Quadricycle.** Provides that commercial quadricycles are not motor vehicles.

4. **SB105 – Abandoned and Blighted Property.** This is a bill that has been discussed and negotiated for many sessions. It sets forth a process by which certain abandoned/blighted property can be rehabilitated and sold, or demolished and the real estate sold. The benefits to this type of legislation includes retention of neighboring property values and recovery of unpaid and future property taxes.

Under the language of the bill a property, which may be commercial or residential, may be designated as "abandoned and blighted" if three or more of the seven listed conditions can be established. Those seven conditions include unfit for use; noncompliance with code violations; material increase of fire risk; attractive nuisance, etc. Once established a conservator will be assigned by the court if the conservator prepares all necessary information, including a sworn statement that the property: has not been legally occupied in the last 12 months; has not been listed for sale in the last 60 days; is not currently in foreclosure; has been owned by the current owner for more than six months; and, **if subject to an outstanding mortgage, the lienholder has waived their right to stop the proceedings.** Further, lienholders must receive notice.

The process by which abatement of issues is then taken is very specific and potentially very costly. There certainly may be times when a creditor is willing to get the loan out of its portfolio. But, even if a creditor waives their right to stop the proceedings, they may still participate in the notice and comment process of the conservator's plans.

Because funds will be needed to abate or destroy the property, it is unlikely that there will be sufficient fund to pay all lienholders in the order of priority established by the bill. Therefore, it is very important that bank staff and attorneys are aware of this new process and evaluate the benefits and costs of participation.

5. **HB1 – Reopening the Economy.** This provides that any business, school, not-for-profit etc., may "remain open and fully operational for in-person services so long as it adopts an operating plan that:" meets or exceeds the least restrictive of CDC or executive guidance; fosters safety (including social distancing); posted at the physical entrance and on the website. There are other provisions regarding specific businesses unrelated to banking.

6. **HB172 – Real Estate Appraisers Board.** Requires that investigators for the Board must have a general appraisers license and at least 5 years experience. Requires that complaints must be filed with the Board within 5 years of the transmittal of the appraisal or review OR within 2 years of a judicial disposition in which the appraiser provided testimony. (Does not apply to complaints that the appraiser was not qualified to render the appraisal or review).

7. **HB210 – Mandated Adoption Leave.** Employers must allow the same benefits to newly adoptive parents of children under the age of ten as they allow to birth parents or, absent a birth benefit, no less than 6 weeks. This does not apply to certain adoptions by family members or foster parents.

8. **HB231 – State Depositories.** Clarifies that all Kentucky chartered or national banks and thrifts are eligible state depositories if the Treasurer has not specifically designated a list of allowed state depositories. This bill further provides that the collateral pledged by state depositories must be sufficient to cover deposits in excess deposit insurance as valued on the last business day of each quarter. The list of acceptable collateral has been modified to include real estate owned by the state depository. State depositories may seek permission by the State Investment Commission to forgo collateralization by providing a surety bond covering 80% of the deposits not covered by FDIC insurance.

9. **HB278 – Tax Treatment of PPP Loans.** Provides that state tax treatment of PPP loans will be consistent with the treatment of the same by federal law.

10. **HB325 – Treatment of CBD Products.** Authorized CBD processors shall be treated by the state as food or cosmetic manufacturers. Their products must bear the specifically required labeling.

11. **HB413 – Unemployment Insurance Trust.** For the years 2021 and 2022, this bill freezes the taxable wage base and tax rate to that of 2020, and provides that no surcharges will be assessed. Benefits paid because of the pandemic will be charged to the pooled funds and not to individual employers' reserve accounts.

12. **HB435 – Notice of Claims Against Estates.** Repeals the statute of limitations that was passed last year (8 months) and returns it to that before 2020 (6 months after appointment or personal representative /2 years after death).

13. **HB475 – State OSHA Laws and Regulations.** Kentucky laws and regulations may not be more restrictive than federal OSHA laws and regulations.

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