

Session Summary
2021 KENTUCKY GENERAL ASSEMBLY

Prepared on May 6, 2021

Prepared for Members of the Kentucky Restaurant Association

It was expected that the 2021 session of the Kentucky General Assembly would be like no other, especially given that the 2020 legislative session ended with no visitors in the Capital Annex and legislators voting from their offices. Every year you hear from lobbyists and legislators alike that this session was like no other, but we can safely say that with COVID-19 restrictions, the passage of a budget in a 'short session' and the number of vetoes issued by the governor that this session was more than unique.

After the 2020 election, Republicans picked up seats to gain more than supermajorities in both the House and Senate. In the House, there are 75 Republicans and 25 Democrats, and in the Senate, there are 30 Republicans and 8 Democrats. It set the stage for a political struggle with Gov. Andy Beshear regarding his handling of COVID-19, especially the restrictions put in place to mitigate the spread of the virus.

It is for this reason that the General Assembly acted quickly in the 30-day session to pass legislation that would limit the governor's executive authority, especially during declared emergencies. This includes HB 1 that would allow a business to fully operate without restrictions so long as they followed the CDC or state guidelines, whichever is least restrictive. Also, SB 1 passed limiting executive orders declaring a state of emergency to 30 days unless approved by the General Assembly. Once the General Assembly passed this legislation after the first 6 days, Beshear quickly vetoed the bills, and the GOP supermajority flexed its muscle by overriding the vetoes. Beshear fought back immediately heading to Franklin Circuit Court, asking Judge Phillip Shepherd to issue an injunction against the implementation of the legislation because it could lead to a worsening public health crisis, which Shepherd granted. So now the issue heads to higher courts where it will likely be decided by the Kentucky Supreme Court.

The 2021 legislative session marked a banner year of success for the Kentucky Restaurant Association with several key victories. This includes the successful passage of take-home alcohol with the passage of SB 67. Sponsored by Senate Licensing & Occupations Chair John Schickel (R-Union), SB 67 allows restaurants and other by the drink licensees to sell alcohol by the drink and by the package to customers in conjunction with food for delivery or carry out. Additionally, the legislature passed HB 190 that allows restaurants to continue raw grocery sales without any requirement for additional food permit fees. Due to the COVID-19 global pandemic and the capacity restrictions, the federal government approved the Paycheck Protection Program (PPP), but due to an interpretation from the Kentucky Department of Revenue, expenses paid for with PPP funds would not have been tax deductible, without the passage of HB 278. Sponsored by Rep. Patrick Flannery (R-Olive Hill), the bill allows for the deductions of expenses paid for with PPP funds, saving restaurants significant tax liabilities that could have been incurred without its passage.

Finally, the legislature on the last two days finally passed legislation that would provide limited legal liability protections for entities operating during the COVID-19 global pandemic. Gov. Beshear let the bill become law without signing the measure, so it is in effect today. Senate Bill 5, sponsored by Senate President Robert Stives (R-Manchester), lowers the negligence

standard from ordinary negligence to gross negligence during the declared emergency. For essential service providers including restaurants, they would receive the governmental immunity for providing essential services during the global pandemic.

There were also successes in what did not pass this session, and for the first time in a number of sessions, an expansion of the restaurant tax or a local sales tax was not proposed. But restaurants need to be prepared for the 2022 legislative session, because local government organizations like the Kentucky League of Cities will likely push for expanded revenue options, including a restaurant tax.

The session summary is organized by issue topics and each link below will take you the sub-topic of links.

ISSUE INDEX

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ALCOHOLIC BEVERAGE SALES ISSUES

Take-Home Alcohol: In 2020, prior to the General Assembly adjourning early as the COVID-19 pandemic started, the legislature allowed restaurants to sell take-home alcohol by the package and by the drink to customers commensurate with the amount of food purchased for delivery or carryout. This was helpful for restaurants as they managed the effects of capacity restrictions, curfews and dining room closures. With the extended ‘declared state of emergency’ related to COVID-19, restaurants faced prolonged hardships; in order to help restaurants navigate their way through these challenges and survive for a successful future, the General Assembly passed **SB 67** which allows customers to purchase alcohol by the drink or by the package, in conjunction with food for carry out or delivery. Restaurants cannot sell alcohol in bulk quantities, and can only sell what a reasonable person would purchase with meals if physically present in a restaurant.



There were concerns about federal transportation funding being jeopardized, so language was added similar to “wine-to-go” that requires the beverages be in bags or sealed containers giving law enforcement the ability to determine if the product has been tampered with. The product must also be stored away from the driver and passenger, in a trunk or out of reach of passengers in the car. Another change was to require a delivery driver to be 21 years of age or older, but no signage is required to be on the delivery vehicle. The legislation passed the Senate Licensing & Occupations Committee and then the Senate. Once it moved to the House the

legislation moved quickly and headed to the governor's desk. He signed the measure and because it contained an emergency clause, the legislation is in effect today.

[Click here to read SB 67](#)

Local Alcohol Regulatory Fees: House Bill 179, sponsored by Rep. Phillip Pratt (R-Georgetown), would allow counties containing a city with a population of 20,000 or less to enact a local alcohol regulatory fee up to 5%. The local alcohol regulatory fee is to be used to cover increased law enforcement needs when communities legalize alcohol sales. Counties described above were not authorized to enact such fees, and cities with the fees argued that it gave an unfair advantage to counties without the fee because it incentivized alcohol businesses to locate in the county. Of course, if cities were worried about unfair competition, they could repeal the local alcohol regulatory fee all together. Regardless, the legislation was being pushed by some county judges and was passed, signed into law, and will go into effect prior to June 29, 2021.

The General Assembly also passed language clarifying that the state sales tax is not applied to the local alcohol regulatory fee when the fee is passed on to the customer and itemized on the receipt.

House Bill 249 – the revenue bill – included this language and it should be a help to restaurants and retailers as it will mean the customer will ultimately pay less for alcoholic beverages.

[Click here to read HB 179](#)

[Click here to read HB 249](#)

Microbreweries: For the last two years, microbreweries have tried to pass legislation that would change statutorily mandated contract provisions between beer distributors and microbrewers. **Senate Bill 15** would also allow craft brewers to self-distribute up to 2,500 barrels annually directly to a restaurant or retailer. An agreement was reached between the beer distributors and the microbrewers after months of negotiations. Once the agreement was reached, the legislation easily passed the General Assembly and was signed by the governor.

[Click here to read SB 15](#)

Age-restrictions on Alcohol: A northern Kentucky city mayor testified to the Interim Joint Committee on Licensing & Occupations that the restriction prohibiting anyone under the age of 20 and a day from bussing tables with alcoholic beverages or simply delivering alcohol to customers in restaurants was creating a labor shortage in his community. Therefore, Sen. John Schickel (R-Union) introduced **SB 69** that would allow those under-age to at least interact with alcoholic beverages in some ways. The measure did not receive a committee vote.

[Click here to read SB 69](#)

Wine corkage: Senate Bill 176 would have allowed customers to bring their own bottles of wine into a restaurant, and restaurants would be allowed to charge a corkage fee. The measure was referred to the Senate Licensing & Occupations Committee, but it never received a committee vote.

[Click here to read SB 176](#)

Retail Package Sales at Hotels and Restaurants: Senate Bill 108, sponsored by Sen. Paul Hornback (R-Shelbyville), would have allowed restaurants and hotels to sell up to 2,000 bottles of alcohol by the package under its NQ2 license. The issue was discussed in the 2020 interim where economic development advocates in Frankfort raised concerns about the unavailability of package licenses in the region located in the heart of bourbon country. The bill did not pass this session.

[Click here to read SB 108](#)

COVID-19 license revocation: Health departments and other licensing agencies were given the authority to assess fines and revoke licenses of businesses for non-compliance with the Healthy at Work guidance established to mitigate the spread of COVID-19. Some legislators raised concerns about the harshness of these penalties and revoking a business license, including licenses to sell alcohol.

Rep. Lynn Bechler (R-Marion) introduced **HB 360** that would require all agencies to return any fines and penalties collected from businesses due to violations of the COVID-19 guidance. It would have also required agencies return of any business permit or license that was revoked for not properly following the guidance. The bill passed the Small Business & Technology Committee but failed to pass the House floor.

Strident critic of Gov. Andy Beshear and his efforts to address COVID-19, Rep. Savannah Maddox (R-Dry Ridge) introduced **HB 143** that would have prohibited any state agency from denying a license or permit application of a business for non-compliance with COVID-19 guidance. The Secretary of Labor would have been prohibited from enforcing the guidance on any business. The bill was not referred to any committee.

[Click here to read HB 143](#)

[Click here to read HB 360](#)

Military Driver License: Rep. Bill Wesley's (R-Ravenna) **HB 277** did successfully pass the legislature this session. As enacted, the legislation considers out-of-state driver's licenses as valid driver's licenses in Kentucky for military personnel, spouses, and military children residing and driving in Kentucky. This is similar to legislation that passed for college students who temporarily reside in Kentucky while attending school from another state. The legislation does not contain an emergency clause and therefore will become law June 29, 2021.

[Click here to read HB 277](#)

Direct ship clean-up: In the 2020 legislative session, the General Assembly passed sweeping legislation that allows any manufacturer of alcohol to directly ship alcoholic beverages to consumers (HB 415 RS 2020). A distiller, winery, or craft brewer may direct ship limited quantities to consumers. The Department of Alcoholic Beverage Control issued regulations that would not allow fulfillment centers to ship products on behalf of a manufacturer because the law didn't allow it. Distilleries pushed for changes to the law and therefore House Licensing &

Occupations Chair Adam Koenig (R-Erlanger) introduced **HB 415**. The bill would allow fulfillment centers to ship on behalf of manufacturers, but it also made other changes. It allowed distillery gift shops to skip the wholesaler, meaning that retailers may not have distillery gift shops as an option for the purchase of retail-to-retail sales when a bourbon product is not available. In 2020, one concern retailers had about authorizing direct-to-consumer sales is that the retailer would not have access to bourbons, especially rare or craft bourbons. Koenig added a provision that would allow retailers to purchase products from other retailers, including distillery gift shops, so long as the products have gone through a wholesaler. If distillery gift shops sales were no longer going through the wholesaler, retail-to-retail sales from distillery gift shops would no longer be an option.

Additionally, the legislation as introduced would have allowed distilleries to sell the product below the wholesale price, meaning that they would have been able to give the product away for free. Before HB 415 left the House, a floor amendment was added that would fix both these items, expanding retail-to-retail sales options and prohibiting direct shippers from selling the product below the wholesale cost. The legislation limits the regulatory authority of the ABC to only develop an application for a direct shipper's licensee. The bill passed the House, moved quickly through the Senate, was signed by the governor, and because it had an emergency clause, it is now in effect.

[Click here to read HB 415](#)

CONSUMER PROTECTIONS ISSUES

Personal Information Privacy: Senate Judiciary Committee Chairman Whitney Westerfield (R-Crofton) introduced legislation that would prohibit any first-party or third-party website from collecting, storing, or using data collected from a connected device without the expressed permission of the consumer (**SB 190**). Any violator of the statute would be required to pay a \$500 fine for each offense. The bill was referred to the Senate Economic Development & Labor Committee, but it did not receive a hearing.

In the House, **HB 408**, filed by Rep. Lisa Willner (D-Louisville), would have required companies who use, collect or sell consumer data to develop a policy informing customers of the process for collecting data and how the data is used. It would also require an opt-out provision for adult consumers and prohibit the sale of a consumer's information for anyone under the age of 16, unless the consumer or guardian opted-in. Notice that a consumer's data could be sold must be posted on the website, along with the opt-out policy. A business would be prohibited from discriminating against customers opting-out of data collection and the attorney general would be responsible for enforcement of the law. The bill was introduced but was never referred to a committee.

Another bill introduced in the Senate would have required companies to develop a policy on a retention schedule for the collection and storage of biometric information, including retina scans and fingerprints. The business could not sell any biometric data, and the business could be required to pay damages in amounts of \$1,000 to \$5,000. **Senate Bill 278** was referred to the Senate Economic Development Committee, but it was never heard.

[Click here to read HB 408](#)

[Click here to read SB 190](#)

[Click here to read SB 278](#)

Doxing: Preventing doxing is an issue that has been heavily discussed in recent years and this session was no different. Doxing is when someone intentionally posts personal information of an individual online with the intent to cause harm. It led to the introduction of multiple bills to try and prevent doxing, some that could have impacted retailers.

House Bill 520, introduced by Rep. John Blanton (R-Salyersville), would allow state and federal law enforcement officials to request to public agencies that their personal information not be sold. It would prohibit data brokers from releasing the personal information of these officials and family members, and the broad definition of data brokers would include any entity who collects, assembles, or maintains personal information. The measure contemplated no process for informing data brokers that the law enforcement official or family member requested that their personal information not be released. The penalties for violating the law would include a private right of action and criminal penalties. The Federation raised concerns about the broad nature of the legislation and requested changes. The bill was referred to the House Judiciary Committee where it remained until the end of the legislative session.

Unfortunately, some of the provisions of that legislation were added to **SB 48**, once the measure reached the House floor. Senate Bill 48, as introduced and as it passed the Senate would have simply allowed the personal information of law enforcement officials be exempt from open records law if the law enforcement official requested that the information remain private. In the House, Blanton filed a floor amendment on SB 48 that was very similar to HB 520. ‘Data brokers’ was removed from the bill, but it still would establish a private right of action and other penalties for persons who intentionally released the personal information of law enforcement officials and family members. After concerns were raised, the legislation did not include any civil or criminal penalties. The Kentucky Press Association raised objections to the measure, but the House and Senate adopted the amendments on SB 48. The press continued to push back against the bill and Beshear vetoed the bill arguing that it was not necessary because of another doxing bill that passed. The legislature had already adjourned, and therefore they could not override the veto and it will not become law.

One bill on the issue of doxing did become law. **Senate Bill 267**, sponsored by Sen. Wil Schroder (R-Wilder), would create a class A misdemeanor for anyone who intentionally releases personal information of someone, and if the release of information results in serious physical harm, it is a class B misdemeanor. The person intentionally releasing information can be held civilly liable as well. It is limited to communications that originate in Kentucky. The bill was signed by the governor after it passed both chambers.

[Click here to read HB 520](#)

[Click here to read SB 48](#)

[Click here to read SB 267](#)

CRIMINAL JUSTICE & LOSS PREVENTION ISSUES

Wage Theft: In response to the BlackJewel mining company bankruptcy, where employees were owed back wages, legislation filed in the House would have created a criminal offense of ‘wage theft’. **House Bill 63** would have established a Class A misdemeanor for failure to pay wages less than \$500. Failure to pay between \$500 and \$10,000, would be a Class D felony, and

any wages over \$10,000 which are not paid would have been a Class C felony. Included in the creation of the new crimes would have been a recordkeeping requirement for all employers; failure to comply with the recordkeeping requirements would have resulted in a civil penalty of no more than \$1,000. This bill was prefiled by the sponsor, but failed to receive a committee posting, and died.

[Click here to read HB 63](#)

Felony Theft: Legislation increasing the felony theft threshold passed both chambers and was signed into law this session. The Kentucky Retail Federation worked closely with the bill sponsor and other interested parties to ensure that if there was going to be an increase to the felony theft level, it would include an aggregation provision to help protect retailers against organized retail theft. The bill now makes theft between \$500-\$1,000 a Class A misdemeanor, and theft over \$1,000 would be a Class D felony. Included in **HB 126** is the ability to aggregate two or more misdemeanor theft offenses occurring over a three-month period to be combined to reach the \$1,000 felony theft threshold. The ability to aggregate the offenses was a key component for retailers.

[Click here to read HB 126](#)

Decriminalization of Recreational Marijuana: As marijuana legalization continues to pass in other states, Kentucky has still not taken the first step toward passage of such a law. That has not stopped advocates and legislators from trying. Two measures filed in the House, **HB 461** and **HB 467**, would have removed the crime of possession of less than one ounce of marijuana and established a regulatory scheme for recreational marijuana. The measure also would dedicate the licensing fees for marijuana distributor and retailers be earmarked for the pension fund. Neither of these measures addressed how employers could enforce work-place safety drug policy for the use of what would be a legal product. The measures did not receive a hearing in committee.

[Click here to read HB 461](#)

[Click here to read HB 467](#)

Jury Flexibility in Sentencing: Another criminal justice related bill would have impacted sentencing for criminal cases, including theft crimes. **Senate Bill 224**, sponsored by Sen. John Schickel (R-Union), would have allowed a jury to determine if a sentence of a Class D felony conviction would be too harsh a punishment, and if the jury did so, the conviction would automatically be reduced to a Class A misdemeanor. The jury could have also determined if sentencing for a persistent felony offender was too harsh and they could lessen the sentence. The bill was referred to the Judiciary Committee early in the Session and was never given a hearing.

[Click here to read SB 224](#)

DEVELOPMENT & GROWTH ISSUES

Billboards: The Transportation Cabinet once again has the ability to regulate billboards after **HB 328** was signed into law. A recent court ruling threw out the Transportation Cabinet's legal authority to regulate outdoor advertising, because the cabinet was separating billboards on-premises from those where an entity is being paid a fee by a third party. This led to an increase of unregulated billboards going up across the state. The bill regulates advertising devices, including digital signs, when a person or entity receives compensation from a third party for the advertising device. A floor amendment created a permit fee of no more than \$250 for initial permit and \$100 for annual renewal. A second Senate floor amendment in the Senate was adopted that will allow the Transportation Cabinet to regulate on-premise signs that advertise for the entity on the premise, but these signs would not be subject to the permit fee.

[Click here to read HB 328](#)

West End Development in Louisville: A bipartisan effort created a tax increment financing (TIF) district to benefit development and revitalization in the West End of Louisville, including nine traditional African American neighborhoods. Senate President Robert Stivers (R-Manchester) along with Sen. Gerald Neal (D-Louisville) introduced **SB 100** and **SB 125** after conversations with West End residents in the wake of the death of Breonna Taylor. Senate Bill 100 would create the West End Opportunity Partnership and SB 125 would create a tax increment financing district within these nine West Louisville neighborhoods that would dedicate revenues received from property taxes, sales taxes and other local revenue sources for redevelopment of the area, including housing and business redevelopment: Parkland, Shawnee, Park DuValle, Russell, Portland, California, Chickasaw, Park Hill and Algonquin.

Current residents of these neighborhoods would receive property tax breaks to curb gentrification. In addition to the TIF, SB 125 would create a West End Opportunity Partnership redevelopment fund where the state would provide a \$10 million appropriation once the new entity raised \$20 million in private funding. Companion legislation was filed in the House by Rep. Ken Fleming (R-Louisville) (**HB 588**) (**HB 587**) and a bipartisan, bicameral effort pushed the issue.

After languishing throughout the session, there was a big push in the final two days of the session to get this legislation across the finish line. The General Assembly did give final passage to HB 321, which was amended to add the creation of the West End Opportunity Partnership and the TIF. The appropriation of \$10 million to the newly created partnership was included in HB 556. The governor did sign HB 321 and only vetoed sections of HB 556 unrelated to the West End Opportunity Partnership and the new TIF.

[Click here to read HB 321](#)

[Click here for SB 100](#)

[Click here for SB 125](#)

[Click here for HB 588](#)

[Click here for HB 587](#)

Blighted properties: The legislature overrode Beshear's veto of **SB 105** that tackled blighted and abandoned property. The law creates a mechanism to transform abandoned and blighted buildings into productive sites and be resold to revitalize communities. The law defines a property as blighted or abandoned if it is vacant for one year with repeated code violations and

other criteria, and a court could appoint a conservator if it meets at least three of the conditions defining abandoned or blighted property. The local government could then file a petition to appoint a conservator to bring the property up to code. Even if a court appoints a conservator, the owner would still be obligated for all taxes and liens on the property.

Beshear vetoed the bill saying while its goal was laudable, he said it makes it too easy for property to be seized, and the one-year waiting period could make the elderly, ill or nursing home residents targets of losing their property.

[Click here to read SB 105](#)

Right to a clean and healthy environment: Rep. Josie Raymond (D-Louisville) filed **HB 107** which proposed a constitutional amendment before the voters that Kentuckians have a right to a clean and healthy environment, including clean air, pure water and ecologically healthy habitats. It also states that the Commonwealth is a trustee of the environment and shall conserve and maintain them for the benefit of all the people. The bill was never assigned to a committee.

[Click here to read HB 107](#)

Encroachment of right-of-way: House Bill 199, which states that people cannot encroach or allow an encroachment on state-maintained highways without an encroachment permit from the Department of Highways, became law without the governor signing the legislation. If the Department of Highways determines that an encroachment that has not received a permit is unsafe or interferes with the convenient and continuous use and ability to maintain a road, the department will issue a violation and relocate the encroachment within seven days. If not moved, the department will relocate the encroachment and can levy fines on the owner of the encroachment.

[Click here to read HB 199](#)

ENERGY & ENVIRONMENT ISSUES

Energy Choice: Last year, legislators unsuccessfully attempted to preempt local governments from banning the use of any utility service regulated by the Public Service Commission (PSC). In the 2021 session, House Natural Resources Chair Rep. Jim Gooch (R-Providence) again filed a bill that as introduced would make it illegal for local governments to outlaw specific energy sources regulated by the PSC. **House Bill 207**, also known as the ‘ban the ban’ bill, started in the House where it passed with a floor amendment, suggested by local government advocates, which clarified that local governments may still regulate utilities through planning and zoning ordinances and municipal utilities they are affiliated with or have ownership in. **House Bill 207** was again amended in the Senate by a



committee substitute adding language to include propane as a protected energy source. The committee substitute was carefully crafted to ensure that propane was included as protected energy source, but not subject to regulatory authority of the PSC. In the Senate, the bill also received a title change from “AN ACT relating to utility service” to “AN ACT relating to energy source availability” to reflect the inclusion of propane and recognizing that it is not a ‘utility’. These changes were adopted on a bipartisan basis and eventually concurred with in the House and signed into law by Gov. Beshear.

[Click here to read HB 207](#)

Plastics Bans: Two measures, one in the House (**HB 260**) and another in the Senate (**SB 58**) would have prohibited the use of plastic bags, straws and Styrofoam containers, with few exceptions. The companion bills would have also prohibited the intentional release of gas filled balloons into the atmosphere. Starting July 1, 2026, all retailers would have been prohibited from providing customers with a plastic bag at the point of sale, this would not have included produce bags or plastic used in meat packaging. Starting July 1, 2024, no plastic straws could be given to a customer unless the customer requested the straw, and the sale of Styrofoam beverage and food containers would have been prohibited. Any person or retailer violating this would have been subject to a fine of \$100 per day. Neither of these measures were given a hearing or assigned a committee.

[Click here to read HB 260](#)

[Click here to read SB 58](#)

Right to Clean and Healthy Environment: Rep. Josie Raymond (D-Louisville) proposed a constitutional amendment that would have established the right of the people to have a clean and healthy environment. **House Bill 107** would have designated the Commonwealth as the trustee for conservation and maintenance of the environment. The potential consequence would be to require the General Assembly to think of the environmental impacts of all legislation. The proposed amendment will not be on the ballot in 2022 as the bill never received a committee posting or a hearing.

[Click here to read HB 107](#)

PFAS: Two legislative actions were filed this year to address per- and polyfluoroalkyl substances (PFAS), man-made chemicals that are often used in the industrial production of many goods; one action was to raise awareness, the other to regulate. **House Bill 559**, which died in the House without a committee assignment, attempted to increase the regulatory requirements surrounding PFAS, by allowing the Energy and Environment Cabinet to promulgate regulations around the acceptable amounts of PFAS in drinking water.

A resolution was also filed in the House to “...raise awareness of the dangers of PFAS substances and the need for a PFAS Action Plan.” **House Resolution 82**, Rep. Kevin Bratcher (R-Louisville), also failed to receive a hearing in the House before the General Assembly adjourned Sine Die.

[Click here to read HB 559](#)

[Click here to read HR 82](#)

Task Force on Stream Mitigation Fund: In an attempt to help preserve the wetlands of Kentucky, **SB 261** was filed to create a comprehensive In-Lieu-Fee program for projects that had unavoidable disruption to wetland areas of Kentucky. Amended in the Senate by a committee substitute, the bill would have removed the creation of the In-Lieu-Fee program, and instead create a taskforce to report annually to the General Assembly the function of the current mitigation fund, including the balance of the fund, and the mitigation liabilities. This bill would have impacted new construction projects and economic development in the Commonwealth; there was no fiscal impact report attached to the bill. The measure passed out of the Senate, but it failed to receive a hearing in the House where it died.

[Click here to read SB 261](#)

FOOD SALES & SERVICE ISSUES

Business Operational During COVID-19: Legislators expressed frustration with the governor's restrictions on businesses operating for in-person services. Some felt that the restrictions on capacity limits for restaurants was too much and others were concerned about the long-term impacts of prolonged 'lock-downs' would have on certain industries.

House Bill 1, sponsored by Rep. Bart Rowland (R-Tompkinsville) was filed in response to Gov. Beshear's more restrictive public health measures. In essence, **HB 1** would allow any business to operate without restrictions regardless of the governor's Executive Orders or a declaration of emergency. This measure, which passed both chambers, was vetoed, then the veto overridden by the General Assembly, allows businesses that follow the CDC Guidelines or state guidelines, whichever is least restrictive, to operate in-person services without any restrictions, such as capacity limits or curfews. The business must have an operating plan on file that is compliant with the guidelines, and a business is allowed to adopt a plan written by a trade association on its behalf. Subsequent to the veto override, Gov. Beshear s filed, and won, a request for an injunction, barring the implementation of HB 1 and other bills that would restrict the executive branch authority.

House Bill 360, as introduced, would have provided relief for businesses who were issued fines or who had their permits and licenses revoked as a result of violating the state Healthy at Work guidance. First, it would have refunded to any business fines assessed as a result of non-compliance with the COVID guidance. In addition, it would have reinstated any permit or license revoked for violation of any state or local guidance. These could include food permits issues by health departments or a license to sell alcoholic beverages, but it failed to pass this session. Rep. Lynn Bechler (R-Marion) filed this measure in hopes to refund businesses who were fined for violating Healthy at Work Guidance that was constantly changing and interpreted differently by the various agencies enforcing COVID-19 guidance; it passed the House Small Business & Technology Committee but died when it was abruptly referred to the House Appropriations & Revenue Committee, where it remained until the end of the legislative session.

Similarly, **House Bill 143** which would have prohibited the denial or suspension of a business's food permit or alcohol by-the-drink licenses for noncompliance with any of the governor's executive orders relating to COVID 19 failed to receive a committee hearing.

[Click here to read HB 1](#)

[Click here to read HB 143](#)

[Click here to read HB 360](#)

Raw Grocery Sales: The sale of raw grocery items by restaurants was temporarily granted to restaurants by Senate Bill 150 in the 2020 legislative session, in recognition that restaurant operations could be hampered due to the global pandemic. The temporary measure allowing for the sales of raw grocery items without mandating restaurants obtain an additional retail food permit, would have expired when the governor revoked the declaration of emergency. **House Bill 190**, sponsored by Rep. John Blanton (R-Salyersville), contained a negotiated House Floor Amendment after some legislators expressed concerns that the legislation was too broad. The amendment limited the sale of grocery items to no more than 25% of gross annual sales of the restaurant. The bill contained an emergency clause and took effect upon the governor's signature.

[Click here to read HB 190](#)

Plastics Ban: Two measures, one in the House (**HB 260**) and another in the Senate (**SB 58**), would have prohibited the use of plastic bags, straws and Styrofoam containers, with few exceptions. The companion bills would have also prohibited the intentional release of gas-filled balloons into the atmosphere. Starting July 1, 2026, all retailers would have been prohibited from providing customers with a plastic bag at the point of sale, not including produce bags or plastic used in meat packaging. Starting July 1, 2024, no plastic straw could be given to a customer unless the customer requested the straw, and the sale of Styrofoam beverage and food containers would have been prohibited. Any person or retailer violating this would have been subject to a fine of \$100 per day. Neither of these measures were given a hearing or assigned a committee.

[Click here to read HB 260](#)

[Click here to read SB 58](#)

Food Truck Regulation: Senate Bill 208 sought to preempt local governments from regulating food truck operations, except in very limited ways. In addition to restricting local governments from regulating food trucks, it would have limited the regulations the Cabinet for Health and Family Services could apply to food trucks. It would have prohibited state regulations from limiting where a food truck could be located, including a prohibition on mandating a distance requirement from a restaurant, limiting the number of food trucks that could operate in the state, or requiring the permitting or licensing of employees. Local governments would have been even further restricted in what they could regulate, including only being able to require one employee operating the food truck be required to complete a food safety course. The measure was not assigned a committee and never received a hearing in the Senate. Local government organizations were opposed to the legislation because it would have preempted local government regulation and restaurants had concerns that it would create an unlevel playing field giving food trucks an advantage over bricks and mortar establishments.

[Click here to read SB 208](#)

GENERAL BUSINESS ISSUES

Emergency Declarations: The statute giving the Executive Branch broad powers to operate has mostly been used for weather-related events until the public health crisis that is COVID-19 struck the Commonwealth. Gov. Andy Beshear used the Declaration of Emergency statute to implement capacity limits for public-facing businesses, mask mandates and suspend multiple statutes including alcohol license fees and many others. Both the Republican House and Senate were anxious to return to a legislative session where they could act to show Beshear and constituents how they would operate during the declared emergency and both chambers acted quickly to address their concerns.

In the House, **HB 1** would allow businesses with an operating plan on file to remain open for in-person services regardless of any executive orders or executive actions. The business would be required to follow CDC or state guidelines, whichever is least restrictive and would be required to post the plan in an obvious place. No state agency could enforce guidelines stricter than those prescribed in the legislation. The House passed the legislation along party lines and the bill headed to the Senate. Again, the measure passed the chamber along party lines and headed to the governor's desk. Beshear vetoed the measure and the General Assembly quickly overrode the veto, but the bill is still not in effect even with its emergency clause because Franklin Circuit Court granted an injunction requested by Beshear. This was not the only bill to suffer this fate.

The Senate passed **SB 1** that would limit executive orders, regulations, or other executive actions issued during a declared emergency to 30 days, unless the General Assembly reauthorized the order. If the General Assembly is not in session, the governor would be required to call the legislature into a special session in order for them to take action. The Executive Orders during a declared emergency that would be limited to 30 days are those that place restrictions on in-person meetings and functions such as schools, businesses, political and religious gatherings, and mandatory quarantine orders. Local governments could extend Executive Orders of this type, but the order extending the emergency restrictions must include a date when the orders would end, and it could only apply for that local government. The governor would be prohibited from declaring a new emergency based on the same or similar facts. The General Assembly would have the authority to terminate Executive Orders by passing a joint resolution. A governor would be able to suspend certain statutes, but they must specify exactly which statutes they are suspending and the order to suspend such statutes must be approved by the attorney general. Current law gives only the governor the ability to seize goods or restrict sale of certain goods, but SB 1 narrows that authority to only in instances of shortage of the products.

Also in the Senate, **SB 2** was introduced that would change the process for emergency regulations and give the legislative committee of jurisdiction the ability to determine if an actual emergency exists. An executive branch agency would need to provide documentary evidence of an imminent threat to public health and safety, loss of federal or state funds, or to meet a legal deadline. The timeline for these would be within 270 days of the administrative regulation being filed.

The bills passed both chambers, were vetoed with the vetoes overridden and Beshear immediately requested injunctive relief in Franklin Circuit Court, which was granted. After the injunction was issued the General Assembly continued to act by passing **HJR 77** that would automatically expire certain executive actions — including the mask mandate, but let some continue for 30 days and others continue for 90 days. It was an attempt to demonstrate to the courts that the General Assembly can act quickly and purposefully when necessary. This

resolution is also enjoined by the courts as the injunction applies to not only the specific bills stated in the lawsuit, but also any future legislation that addresses the same topics. It is likely that these issues will be decided by the Kentucky Supreme Court, but the question remains whether they will be completed in time to give relief for businesses from the COVID-19 operational restrictions. Some of the bills contain a ‘severability clause’ meaning that the court could find portions of the laws unconstitutional, but other provisions remain in effect.

These were not the only measures introduced to limit the governor’s authority during a declared emergency. Multiple bills in the House and Senate were introduced to limit the timeframe of executive orders issued to address a declared emergency, including **HB 13** that would have limited them to 28 days, **HB 171** would have limited them to 15 days, and **SB 24** would have proposed a constitutional change to require the General Assembly to convene if the governor declares an emergency. None of these advanced or became law. **House Bill 15**, sponsored by Rep. Savannah Maddox (R-Williamstown), would have required executive orders during declared emergencies to be narrowly construed in scope and duration and limited to the actual emergency itself. Private businesses would have been allowed to seek damages that may occur due to the executive orders issued during the declared emergency, and any executive order related to an infectious disease could not last longer than 21 days. Other measures tried to address concerns in other ways including **SB 213** that would have invalidated the original executive order related to the COVID-19 emergency, **HB 526** would have prohibited executive orders in emergencies from inhibiting businesses, and **SB 264** would prohibit any ban on evictions during declared emergencies, but again none of these measures made it across the finish line. The only other bill that did get movement but ultimately did not pass was **HB 217** that would have restricted public health agency actions in declared emergencies and prohibit restrictions on liberty, but it died in the Senate State and Local Government Committee after passing the House.

[Click here to read HB 1](#)

[Click here to read HB 13](#)

[Click here to read HB 15](#)

[Click here to read HB 171](#)

[Click here to read HB 217](#)

[Click here to read HB 526](#)

[Click here to read HJR 77](#)

[Click here to read SB 1](#)

[Click here to read SB 2](#)

[Click here to read SB 24](#)

[Click here to read SB 213](#)

[Click here to read SB 264](#)

Repeal Mask Mandate: Sponsored by Sen. Adrienne Southworth (R-Lawrenceburg), **SB 158** would have nullified Beshear’s Executive Order mandating the wearing of masks in response to the COVID-19 crisis. It did not advance, but it demonstrated the Republicans strong urge to have say in the COVID-19 emergency.

[Click here to read SB 158](#)

Court Jurisdiction: House Bill 3, sponsored by House Judiciary Chair Ed Massey (R-Hebron), would allow plaintiffs wanting to file a lawsuit challenging a statute, executive branch action or regulation to file suit in the judicial circuit in which they live, instead of Franklin Circuit Court as is currently required. The General Assembly has long complained about bias in Franklin Circuit Court and have suggested changing the requirement that these cases be filed in Franklin Circuit Court. Originally the legislation required a three-judge panel selected by the Chief Justice of the Supreme Court, none of whom could reside in the district. The three-judge panel quickly became controversial and ultimately it was changed to require lawsuits challenging laws and executive actions to be filed in home circuit of the plaintiff. Gov. Beshear again took out the veto pen, but the legislature quickly overrode the veto. The bill contains an emergency clause and is in effect today.

[Click here to read HB 3](#)

Constitutional Amendment – Legislative Sessions: Speaker of the House David Osborne (R-Prospect) filed **HB 4** that as introduced proposed to amend the Constitution to eliminate the constitutional adjournment dates for the legislature in odd and even year sessions and allow the General Assembly to meet an additional 10 extra days if three-fifth's majority of each chamber approves. It passed the House and moved to the Senate where the proposal was amended to allow the legislature to meet an additional 12 days and instead of a vote of each chamber, it requires a proclamation by the Speaker of the House and Senate President. The constitutional question will be on the ballot in 2022 when legislators are on the ballot for reelection as required by the Constitution.

The General Assembly passed enabling legislation if the constitutional amendment is approved by the voters. **Senate Bill 181** would still set the adjournment date of the regular sessions: 30-day sessions would end March 31 and for 60-day sessions the date would be April 15. The most significant change in the enabling legislation is that any legislation introduced prior to the prescribed adjournment date above would be held over to the interim, meaning that legislation would never die. Again, SB 181 only takes effect if the constitutional amendment giving the General Assembly 12 rolling legislative days is approved by the voters.

[Click here to read HB 4](#)

[Click here to read SB 181](#)

Legislative Oversight Committee: House Bill 6, sponsored by Rep. Lynn Bechler (R-Marion), expands the authority of the legislative oversight statutory committee. Currently called the Program Review and Investigations Committee, it serves to review the programs of the government or investigate acts of impropriety by government officials. The new Legislative Oversight Investigations Committee will now be allowed to investigate more individuals, including former state government employees and businesses contracted with the state. The committee will maintain its subpoena power. The bill passed both Chambers along party lines and was vetoed by the governor. The General Assembly did act to override the veto and because the legislation contained an emergency clause it is in effect now.

[Click here to read HB 6](#)

Limited Legal Liability Protections: One of the top priorities for retailers was the passage of legislation that would provide legal liability protections from frivolous lawsuits that may be filed because of COVID-19 and retailers' mitigation efforts. Retailers operating during the global pandemic were doing so in a storm of constantly changing public health guidance from multiple agencies across federal, state, and local governments. It was a constant refrain during the interim – make sure that retailers receive protections from potential lawsuits. During the 2020 legislative campaigns, Republicans in the House and Senate both expressed support for such protections, but the question remains – how to do you provide these protections given Kentucky's Constitution and legal precedents establishing jural rights?

The House approach was **HB 10** that provided a defense of rebuttable presumption for public-facing businesses operating during COVID-19 declared emergency. House Bill 10 quickly passed out of the House chamber but was not acted upon in the Senate.

Instead, the Senate took a different approach with Senate President Robert Stivers (R-Manchester) filing that at its core provided two different types of protections for retailers. First, it would lower the negligence standard for premise liability from an ordinary negligence to a gross negligence standard. Secondly, for those services specified in the bill as essential, they would receive governmental immunity under the operating essential services. These governmental protections would have applied during any declared COVID-19 declared emergency not just emergency. The bill underwent changes in the Senate that limited the measure to just the existing declared emergency and then it was sent to the House. The House made some changes of its own in



the Judiciary Committee and they were not favorable to retailers. The Federation requested additional changes to enhance the protections and the House complied and subsequently passed a measure that would provide limited legal liability protections during the declared emergency for essential service providers, including grocers, restaurants, pharmacies, fuel retailers and pharmacists. They would receive governmental immunity and other non-essential businesses would receive protections through lowering the premise liability standard making it a gross negligence standard. Beshear let the bill become law without his signature and it is in effect today because it contained an emergency clause.

[Click here to read HB 10](#)

[Click here to read SB 5](#)

Legislative Commission on Race: Senate Bill 10, sponsored by Sen. David Givens (R-Greensburg), creates a commission on race within the legislature. The Commission on Race and Access to Opportunity shall study issues and develop reports on economic and educational inequality, criminal justice, health, social welfare and any issues impacting minority communities. The Commission will be comprised of 13 members, four of which would come

from the private sector. The bill initially easily passed the Senate and received bipartisan support until the House removed the executive director of the Human Rights Commission from serving on the legislative commission. It was signed by the governor and will go into effect June 29, 2021.

[Click here to read SB 10](#)

Damages to Small Business During Emergency: Continuing the theme of pushing back against Beshear's management of the COVID-19 pandemic, Rep. Mark Hart (R-Falmouth) introduced **HB 104** that would have allowed small businesses defined as those having gross revenues of \$1 million or less to sue the government for harm done to their businesses as a result of executive orders closing businesses or reducing capacity. The legislation languished in the Committee on Committees.

[Click here to read HB 104](#)

Ballot initiatives: House Bill 498, sponsored by Rep. Josie Raymond (D-Louisville), proposed to amend the Constitution to allow for voter-initiated ballot measures. Voters would be able to submit statutory changes during an election cycle where questions would be placed on the ballot for voters to ultimately decide if the laws would be changed. The measure did not advance this session and died in the Committee on Committees.

[Click here to read HB 498](#)

HEALTH INSURANCE ISSUES

Insulin co-pay cap: The cost of insulin has been greatly discussed during the last two legislative sessions, and a measure that would cap the cost of a 30-day supply of insulin to \$35 passed the General Assembly and was signed by the governor. **House Bill 95** will take effect Jan. 1, 2022. Pharmacist and legislator Rep. Danny Bentley (R-Russell) was the sponsor of the bill.

Two other measures did not pass this session that would have impacted the co-pay cost of a monthly supply of insulin as well. **Senate Bill 110** would have created an emergency insulin program funded by insulin manufacturers and cap the cost of insulin to \$35 for a monthly supply. Additionally, **HB 123** would have eliminated co-pay requirement for insulin all together. Neither of these measures were heard in committee.

[Click here to read HB 95](#)

[Click here to read HB 123](#)

[Click here to read SB 110](#)

Incentivized Lower-Cost Healthcare Services: Sponsored by Senate Health & Welfare Committee Chair Ralph Alvarado (R-Winchester), **SB 119** would require health insurers to develop an incentive program for patients willing to seek non-emergency care from a healthcare provider willing to receive lower reimbursements than other providers. The bill was referred to the Senate Banking & Insurance Committee, but never received a hearing.

[Click here to read SB 119](#)

Balance Billing: Sometimes referred to as surprise billing or out-of-network billing, the concept is where a patient goes to a non-participating provider to receive care and then gets a ‘surprise bill’ when the non-participating provider bills for the usual and customary charge for the service. It has been a topic of discussion in the Commonwealth and across the country. Sen. Alvarado has led the charge on the issue and was expected to push the measure in the 2021 session, but the federal government passed legislation addressing the issue and Alvarado agreed to wait and see the progress and implementation of the federal bill. **Senate Bill 19** was referred to the Senate Banking & Insurance Committee, but it did not receive a committee hearing.

[Click here to read SB 19](#)

Telehealth: House Bill 140, sponsored by Rep. Deanne Frazier (R-Richmond), makes permanent some of the telehealth measures put in place during the declared emergency related to COVID-19 that allowed patients to access healthcare services through telehealth. Healthcare providers would be reimbursed according to in-person reimbursement rates for an array of healthcare visits. The bill passed both chambers, even with some opposition from health insurers, and was signed by the governor.

[Click here to read HB 140](#)

Payment of Health Insurance Costs: Some non-profits provide financial assistance to patients to ensure continuation of health insurance coverage allowing patients to afford to receive medical care by allowing non-profits or state and federal government to pay for services on behalf of the insured. Health insurers argued that providers were using this as an inducement to get care from a specific provider, but the advocates of the measure said it was not true and some health insurers had stopped allowing these non-profit organizations to pay premiums on their behalf, leaving some without health insurance coverage. Sen. Alvarado successfully passed **SB 44** and it was signed by Gov. Beshear and allows non-profits and other specified entities the ability to pay on behalf of the insured health insurance premiums, co-pay, or co-insurance.

[Click here to read SB 44](#)

Prescription drug coupons: Senate Bill 45 and its House companion bill, **HB 114**, would require commercial health insurers to accept prescription drug co-pay assistance cards to count towards deductibles, co-insurance, co-pays and out-of-pocket costs. Some health insurers implemented policies that prohibited co-pay assistance from pharmaceutical manufacturers or non-profits from counting towards a patient’s deductible. Many of these medications are high-cost prescription drugs and the patient cannot afford them without the help. Senate Bill 45 would only apply to commercial plans and if there was not a generic equivalent drug on the market available. It passed the Senate and the House and was signed by the governor. It will take effect Jan. 1, 2022.

[Click here to read HB 114](#)

[Click here to read SB 45](#)

Prior authorizations – Substance Use Disorder: Medication-assisted treatment for substance use disorder has been touted as a vital outpatient healthcare option for those suffering from substance use disorder. Some health insurance plans require prior authorization, utilization reviews or step-therapy before a patient can receive coverage for medication-assisted treatment therapies. To address this, **SB 51** and **HB 102** were introduced, but it was SB 51 that made it through to the end. The bill would prohibit health insurers, including Medicaid managed care organizations, from requiring prior authorizations for medication-assisted treatment services. Advocates argued that the utilization review requirements delayed care that forced patients back to using. The bill delays the effective date of the legislation until Jan. 1, 2022.

[Click here to read HB 102](#)

[Click here to read SB 51](#)

Mandated Health Insurance Benefits: There were many health insurance mandates filed that did not advance. This includes health insurance benefit mandates – coverage of preexisting conditions and other Affordable Care Act mandates (**HB 11**), requirements that health insurers cover the cost of mailing or delivering prescriptions (**HB 117**), alternative treatments of chronic pain (**HB 119**), birth control (**HB 201**), breast feeding equipment (**HB 296**), and prosthetics and orthotics (**HB 530**).

All of these bills were sponsored by one or more members of the Democratic minority, making them even less likely to move.

[Click here to read HB 11](#)

[Click here to read HB 117](#)

[Click here to read HB 119](#)

[Click here to read HB 201](#)

[Click here to read HB 296](#)

[Click here to read HB 530](#)

Bridge Insurance Task Force: Sponsored by House Speaker Pro Tem David Meade (R-Stanford), **HJR 57** requires the Cabinet for Health & Family Services to create a task force to study the feasibility of implementing a bridge insurance program through the Medicaid managed care organizations as allowed in the Affordable Care Act, to cover those not eligible for Medicaid but unable to afford health insurance on the private market. The Federation will have a seat on the Task Force, which starts meeting in July and will conclude in December of 2021.

[Click here to read HJR 57](#)

LABOR & WORKFORCE ISSUES

Minimum wage: House and Senate Democrats continue to push legislation that would mandate a minimum wage increase for employees, including an increase in tipped employees' wages, but the Republican-controlled Senate and House have not moved the legislation forward. In the Senate, Sen. Reggie Thomas filed **SB 41** that would increase the minimum wage to \$15 per hour by July 1, 2026. The first proposed increase in the bill was \$9.25 starting July 1, 2022.

Tipped employees' wages would have started at \$2.13 as of the effective date of the legislation and increased to \$7.25 by July 1, 2026. In the House, a similar measure was filed that would increase the minimum wage to \$15 per hour by July 1, 2028, and raise the tipped wage to \$4.90 by July 1, 2024 (**HB 34**). Both SB 41 and HB 34 would allow local governments to set minimum wages higher than the state minimum wage.

Another bill filed by Rep. Jeff Donahue (D-Louisville) would require any company receiving state tax incentives, economic development incentives or any state tax breaks to pay its employees a living wage of no less than 130% of the federal poverty level. The bill was not referred to a committee.

Local minimum wage: Rep. McKenzie Cantrell (D-Louisville) filed **HB 358** that would allow local governments to increase the minimum wage above the state minimum wage for those employers located in the local governmental jurisdiction. The bill was never referred to a committee.

Minimum wage for essential workers: The only minimum wage legislation that advanced to a committee this session was **SB 284**, sponsored by Senate Minority Floor Leader Morgan McGarvey (D-Louisville) that would require employers with gross revenues of a billion dollars in food, agriculture, energy, transportation, and logistic sectors to pay employees a minimum wage of \$15 per hour during declared emergencies. The bill was referred to the Senate Economic Development Committee, but never received a hearing.

[Click here to read HB 34](#)

[Click here to read HB 358](#)

[Click here to read SB 41](#)

[Click here to read SB 284](#)

Unemployment Insurance As a result of the COVID-19 pandemic, the Kentucky General Assembly and the governor made changes to the unemployment system that would allow more Kentuckians to be eligible for unemployment insurance during the declared emergency, and the Beshear administration suspended the requirement that individuals search for work during the global pandemic and eliminated the seven-day waiting period. The increase in unemployment claims due to the public health restrictions taxed the unemployment system in multiple ways and led the General Assembly to pass legislation to address the problems that arose.

Unemployment Overpayments: As the unemployment insurance program was opened to those employed in roles not typically eligible for unemployment, new problems occurred, including those who received either a payment when they were not eligible for the benefit or those who received an overpayment, and who were subsequently required to return the proceeds. Gov. Andy Beshear stated that due to the federal program rules, without a state statutory change, there was nothing that could be done except require those inappropriately receiving the benefit to repay the state. The General Assembly sought to address this concern and multiple bills were filed specifically allowing the Secretary of the Labor Cabinet to waive the repayment of excess unemployment insurance funds. **Senate Bill 7**, sponsored by Sen. David Givens (R-Greensburg) included the waiving of overpayments of UI and other changes. Other bills were filed, but did not pass, include (**HB 240** and **HB 468**)

Unemployment Tax Rates: As a result of business closures due to public health measures required to mitigate COVID-19, many employees were left unemployed and while the UI Trust

fund was at its highest level prior to the start of the pandemic, it was quickly depleted, and Kentucky was left with no other option except to borrow more than \$800 million from the federal government. When the state takes a loan for UI from the federal government, employers' UI tax rates increase to pay back the loan. Prior to the COVID-19 pandemic, employers were paying the lowest tax rate or the 'schedule A' tax rate. Starting Jan. 1, 2021, employers were set to move to the highest tax rate or 'schedule E.' When the General Assembly returned for the start of the 2021 legislative session, they passed **HB 1**, which included a provision to freeze the UI tax rate for all employers for 2021 to the Schedule A rate. It passed and while the legislation was vetoed by the governor due to other provisions contained in the legislation, it was ultimately overridden by the legislature. Subsequently Beshear requested a legal injunction in the matter, and it was granted, but the UI language was allowed to remain in effect.

In addition to HB 1, the legislature also passed **HB 413** that makes multiple changes to unemployment insurance including mandating the use of the taxable wage base from 2020, set the UI tax rate to the more favorable schedule A tax rate for 2021 and 2022, pause any employer surcharge assessment for 2021 and 2022, and prohibit employer reserve accounts from being charged for COVID-19 unemployment related claims. The bill also creates an Unemployment Insurance Task Force within the General Assembly. Beshear line-item vetoed the prohibition on surcharge assessments for 2022, the taxable wage being set at 2020 taxable wage base for 2022 and the schedule A tax rate for 2022. Essentially the employer protection provisions for the second year were line-item vetoed, but employers have protections for 2021. The General Assembly did not take up the line-item vetoes and so the bill was delivered to the Secretary of State without protections for 2022. The legislation does contain an emergency clause, so it is in effect now.

Unemployment Benefits Expansion: House Democrats filed two bills that would increase unemployment insurance benefits (**HB 78** and **HB 406**.) Both bills would prohibit the disqualification from unemployment benefits for domestic violence victims who leave employment due to abuse, domestic violence, or stalking, but HB 406 would have gone further to significantly increase unemployment insurance benefits to all beneficiaries and increase UI taxes on employers. It would remove the requirement that any workers compensation benefits not be included in the UI benefit calculation and allow employees to collect both workers compensation and UI benefits simultaneously. Additionally, it would have created an alternative wage base calculation for those not meeting existing wage base calculations to receive benefits. Employers would have been required to pay additional UI taxes starting in 2023. For employees, the benefits would have been expanded to increase the minimum benefit to \$100 from \$35 and add a \$25 benefit per dependent into unemployment benefits. Finally, the bill would have reformulated the employer UI tax calculation. The bill did not move forward and therefore died.

Unemployment Offices: Former Gov. Matt Bevin closed many unemployment insurance offices when Kentucky's unemployment rate dropped significantly. With the increase in the number of the unemployed, many legislators raised concerns about the lack of in-person unemployment offices for constituents to access. To address this concern, Rep. Scott Sharp (R-Ashland) introduced **HB 367** that would require the Secretary of the Labor Cabinet to open unemployment offices when the unemployment rate exceeds 5%. The bill passed the House and was referred to the Senate Economic Development Committee, but it was never taken up by the committee. The House still had concerns about the lack of in-person unemployment services and amended SB 146 to add a requirement for the opening of 12 unemployment offices across the state based on the areas where the unemployment rate exceeds 5%. The bill contains an

emergency clause and is in effect now. Beshear acted quickly to sign the legislation and open unemployment offices for in-person services.

Unemployment Insurance Integrity: **Senate Bill 7**, sponsored by Senate President Pro Tem David Givens (R-Greensburg), addressed the issue of overpayment of unemployment insurance benefits and those who received benefits even though they were ineligible to receive the benefits. The bill immediately allows the Secretary of the Labor Cabinet to waive overpayment of unemployment benefits during the declared emergency related to COVID-19. This means that beneficiaries will not be required to pay back benefits.

Starting July 1, 2023, the unemployment insurance office will be required to put in certain integrity measures to ensure that those applying for benefits are eligible. The cabinet would be required to use national employment databases to check eligibility and prevent overpayment concerns, and a two-factor authentication requirement will be established to enhance security of applicants' information. The secretary would be allowed to develop regulations to recover improper overpayments of benefits. They will be required to provide employers with electronic notice of unemployment benefit requests and appealed decisions would be final after 35 days instead of 20 days. The bill contains an emergency clause, and it is in effect now as a result of the governor signing the legislation.

Unemployment Insurance Federal Loan: As a result of the high unemployment rates due to closures of businesses to mitigate the public health effects of COVID-19, the state was required to obtain a loan from the federal government. In order to pay back that loan, employers would face a significant increase in UI taxes. In the final days of the legislative session, **House Bill 382** was amended to appropriate \$575 million to pay back significant amounts of the federal loan by using federal funds available to the state through the American Rescue Plan Act. The governor did sign the legislation, so the funds are appropriated for the upcoming fiscal year and it will significantly help mitigate employers' UI tax increases.

Unemployment Insurance Fraud: Across Kentucky, employers and residents alike received notices of a claim for UI benefits that were fraudulent and some even received actual payment of UI benefits as scammers from across the country try to take advantage of the UI's system accountability standards being lowered due to policymakers' goal to ensure the unemployed can receive benefits quickly during the declared emergency. In order to address the growing problem of fraud, Rep. Myron Dossett (R-Hopkinsville) filed **HB 593** that made UI fraud of more than \$100 a Class D felony during the COVID-19 declared emergency. The bill did not move because the provisions were added to **HB 553**, which was further amended on the House floor to remove controversial provisions and limit the subject of the bill to only UI fraud. It passed the House and was referred to the Senate Judiciary Committee. The committee never took up the measure so it failed to pass. Beshear continues to attempt bureaucratic actions to reduce fraud as it is a growing problem nationwide.

Return to Work: Beshear issued an executive order suspending the requirement that those receiving unemployment insurance benefits continue to demonstrate that they are actively seeking employment. As more people get vaccinated, businesses are struggling to hire sufficient employees to keep up with demand, and the legislature attempted to prohibit the governor from suspending the requirement that an able-bodied person continue to search for employment while receiving benefits. A floor amendment was filed on **SB 126** to require the return-to-work searches, but when the floor amendment was called, it was ruled out of order due to a procedural issue and therefore it was never adopted by the full House. Beshear has implemented the requirements to search for work while receiving unemployment, starting May 9.

[Click here to read HB 1](#)
[Click here to read HB 78](#)
[Click here to read HB 240](#)
[Click here to read HB 367](#)
[Click here to read HB 382](#)
[Click here to read HB 406](#)
[Click here to read HB 413](#)
[Click here to read HB 468](#)
[Click here to read HB 553](#)
[Click here to read HB 593](#)
[Click here to read SB 7](#)
[Click here to read SB 126](#)

Worker Protections: Every session, multiple bills are filed to expand worker protections and this session was no different. Even though none of these measures passed, it is important to note that one measure did receive bipartisan support.

Sexual Orientation and Gender Identification: In the Senate, Minority Floor Leader Morgan McGarvey (D-Louisville) filed **SB 269** that would prohibit discrimination in hiring and employment based on a person's sexual orientation or gender identification. While the bill did not advance this legislative session, it is important to note that three Senate Republicans – including one member of Senate leadership – cosponsored the bill. In the House, two companion measures were filed and sponsored by Democrats that did not move either (**HB 116** and **HB 130**).

Punitive Damages for Civil Rights Violations: **House Bill 93**, sponsored by Rep. Patti Minter (D-Bowling Green) would have made employers found in violation of employees' civil rights protections liable for punitive damages in addition to actual damages. The legislation did not advance in the 2021 legislative session.

Disability Bill of Rights: Sponsored by Rep. Mark Hart (R-Falmouth) **HB 160** would have created a disability person's bill of rights and required payment of fair wages for those disabled. The bill died because it was not referred to a committee.

Smoking Status: Current law prohibits employers from discriminating against an employee based on their smoking status. An employer cannot ask a job applicant if they smoke or use tobacco. Sen. John Schickel (R-Union) has for many years filed legislation that would eliminate this provision and allow employers to inquire about a potential employee's tobacco use. **Senate Bill 258** was referred to the Senate Judiciary Committee, but it never received a hearing. Schickel argues that employer healthcare costs are high due to smoking rates and that employers should be able to manage these costs by hiring employees who do not use tobacco.

Weight Discrimination: Rep. Josie Raymond (D-Louisville) filed **HB 66** that would have prohibited employers from discriminating against an employee or in hiring based on weight. The bill never advanced in this session.

Salary History: **House Bill 35** would have prohibited employers from asking about a job applicant's salary history. Supporters argued that it is discriminatory to request this information, but the bill died in the House Committee on Committees.

[Click here to read HB 35](#)

[Click here to read HB 66](#)
[Click here to read HB 93](#)
[Click here to read HB 116](#)
[Click here to read HB 130](#)
[Click here to read HB 160](#)
[Click here to read SB 258](#)
[Click here to read SB 269](#)

Employer-mandated vaccinations: Sen. Adrienne Southworth (R-Lawrenceburg) introduced **SB 98** that would prohibit employers from discriminating against employees who refuse to receive any vaccine and prohibit employers from requiring vaccinations as a condition of employment. The measure was assigned to the Senate Health & Welfare Committee, but it did not receive a committee hearing. **Senate Bill 8** sponsored by Sen. Mike Wilson (R-Bowling Green) did pass, but it did not prohibit employers from requiring vaccinations. Instead, it said that for any vaccination that arises from a declared state of emergency, persons could claim conscientious objections and be exempt from any mandated vaccine. It would not apply to other vaccinations. The bill passed both chambers and is now law.

[Click here to read SB 8](#)
[Click here to read SB 98](#)

Paid Employee Leave: In recent years, more and more legislation has been filed that would require paid leave for various reasons. This session was no exception, but only one of the measures passed.

Adoption leave: If an employer provides any leave for birth parents, the employer must offer the same amount of leave to adoptive parents of children up to age 10 is now the law after **HB 210** passed and was signed by the governor. The bill would not apply to adoption of grand children or fictive kin adoptions. The leave for adoptive parents must be the same amount of time and pay as birth parents.

Family Care Leave: **House Bill 131** would have required employers to provide up to 12 weeks of unpaid family care leave for employees to take care of sick family members. The employers would have also been required to ensure that when the employee returned from leave that they would have the same or similar job at the same rate of pay. The bill did not get referred to a committee.

Child bereavement Leave: Legislation filed in the House would have required employers to provide child bereavement leave for employees suffering the loss of a child up to one year old and it would have included miscarriages and stillbirths. The bill was part of a package of bills proposed by House Democrats to advocate for women. **House Bill 284** did not advance this session.

Paid sick leave: **House Bill 32** would have required employers to provide employees with paid sick leave 90 days after employment. If adopted, the legislation would have allowed an hour of paid sick leave to be accrued for every 30 hours worked. The employee could use it for themselves if they suffered from an illness or to care for a loved one. The bill died in the House Committee on Committees.

Court Appearance Leave: **House Bill 45** would have prohibited employers from retaliating against an employee for taking leave to appear in a legal proceeding. Employers would have been required to set out policies for notice of leave, but the measure did not advance in the 2021 legislative session.

[Click here to read HB 32](#)

[Click here to read HB 45](#)

[Click here to read HB 131](#)

[Click here to read HB 210](#)

[Click here to read HB 284](#)

Ban the Box: Rep. George Brown (D-Lexington) has once again introduced legislation that would prohibit employers from asking on an initial job application about an applicant's criminal history. **House Bill 228** is commonly referred to as 'ban the box' legislation and has been adopted in many states and local communities across the country. The bill did not move forward this session and it died in the House Committee on Committees.

[Click here to read HB 228](#)

OSHA Standards: The Labor Cabinet filed regulations in the summer of 2020 that would add additional occupational safety and health standards for employees that many employers raised concerns about because it would likely lead to increased worker compensation claims. After complaints were raised from employers, the Administrative Regulatory Review Subcommittee found the regulation deficient.

To address the concerns of the employers, the General Assembly passed two bills. The first, **SB 65**, would make the deficient regulation related to enhanced worker safety measures null and void. The second bill, **HB 475**, would prohibit any future workplace safety measures that were more restrictive than the federal OSHA standards. Beshear vetoed the measure arguing that it could create unsafe workplaces, but the General Assembly overrode the veto, and the bill is now law. It only impacts future workplace safety regulations and does not impact current state OSHA regulations that are in place today.

[Click here to read HB 475](#)

[Click here to read SB 65](#)

Certificate of Employability: Second chance employment is a buzzword policy issue in Kentucky and **HB 497** was a bill aimed at getting those convicted of crimes who have completed their sentences back into the workforce. Sponsored by Rep. Kim Moser (R-Taylor Mill) the bill would give those convicted of a crime who completed their sentence along with job training or a GED, a certificate of employability for employers to use as a measure that the person is ready and trained to return to work. As introduced, the measure would have created a private right of action against employers who did hire these individuals and continued to employ them if they reoffended, but this provision was removed prior to its final passage. When a prisoner is released, the prison is required to issue them a document that provides information on their criminal history, training and educational attainment while in prison and information on violations while imprisoned. The individual would provide this information to a potential

employer as a demonstration of employability. If the individual re-offended, the certificate of employability would be revoked. The bill did pass the House and Senate and was signed by the governor, it will go into effect June 29, 2021.

[Click here to read HB 497](#)

REGULATORY & LICENSURE ISSUES

Raw Grocery Sales: After restaurants were temporarily granted the ability to sell raw groceries during the pandemic in the 2020 session, they now permanently have that right after **HB 190** became law. Restaurants were given that ability last year to help with reduced capacity, and that would have expired whenever the emergency declaration ends. Now, they can sell unprepared food items without having to obtain additional food permits. The measure, filed by Rep. John Blanton (R-Salyersville), was amended in the House to limit the percentage of sales of grocery items by restaurants to 25% of gross annual revenue. The bill had an emergency clause and took effect upon becoming law.

[Click here to read HB 190](#)

Sale of Personal Protective Equipment: A bill requiring state agencies to purchase personal protective equipment (PPE) made in America died in the Senate after passing the House. **House Bill 214** was filed after a shortage of PPE left everyone scrambling to find enough when the COVID-19 pandemic began. There would be an exception to purchasing American-made PPE if no American company makes the specific PPE or none could be purchased at that time. A committee substitute and committee amendment stated the legislation would only apply to public agencies with the exception of health care providers and state and university affiliated hospitals.

The legislation set civil penalties for purchasing non-American made PPE starting at \$1,000 for the first offense and increasing to \$20,000 on a third offense. The bill sailed through the House 88-7, but died in the Senate Economic Development, Tourism and Labor Committee.

[Click here to read HB 214](#)

Posting Administrative Regulations Online: Administrative regulations will now be in an electronic format after **HB 429** was signed by the governor. The law allows the Legislative Research Commission to create an all-electronic administrative regulatory process for agency promulgations, register publication and regulatory amendments. If filing and notification requirements are not available in the administrative regulation management application LRC chooses, then a paper-based process will be used.

[Click here to read HB 429](#)

OSHA Restrictions: Kentucky can no longer have any OSHA restrictions more restrictive than federal requirements after lawmakers overrode Beshear's veto of **HB 475**. The governor vetoed the bill saying it would make it harder to target regulations to specific dangerous conditions for Kentucky's workers. Supporters of the bill said it was important for

businesses which operate in more than one state to follow one uniform OSHA rule, and Kentucky now joins 29 other states that have passed such legislation. A House floor amendment did ensure the Cabinet would promulgate and enforce regulations pertaining to public employees. This new law does not impact any current Kentucky OSHA regulations that are stricter than the federal requirement; this bill solely impacts the adoption of new regulations.

[Click here to read HB 475](#)

COVID-19 Executive Actions: Among the many veto overrides of legislation targeting executive power was **House Joint Resolution 77** that allows some executive actions taken to address the COVID-19 global pandemic to remain in effect, and others would expire immediately and still others would be time-limited by either 30 or 90 days. HJR 77 is in response to the Franklin Circuit Court's ruling that an injunction should be placed on SB 1, that applies in any declared emergency, to demonstrate that the General Assembly does recognize that relaxing some laws to allow businesses to operate during the challenges of COVID-19 should remain in effect and that the legislature can respond quickly enough to manage the current declared emergency. If the court rules against the governor, some orders will be extended 30 days, others for 90 days, while others would expire. Among those that would expire are the mask mandate and capacity limits at restaurants.

[Click here to read HJR 77](#)

Assistance Dogs: Sen. Jimmy Higdon (R-Lebanon) again filed **SB 57** that prohibits the misrepresentation of assistance dogs and allow officers to investigate. Anyone misrepresenting an assistance dog would be punishable by a fine of no less than \$250. And once again, the bill did not move as it was not heard in committee.

The bill states a person is guilty of misrepresenting an assistance dog to obtain rights or privileges afforded to disabled persons accompanied by an assistance dog; takes a dog into a public place where animals are not permitted while the dog is wearing a cape, vest, special leash other identification that implies the dog is an assistance animal; and a peace officer can make an inquiry of the person accompanied by the dog. Refusing to answer questions creates presumption of guilt and the officer can issue a citation. This year, the legislation did not include a provision allowing retailers to ask for documentation that the animal is a service animal.

[Click here to read SB 57](#)

Licenses, Permits during COVID pandemic: A pair of House bills that would have offered relief to businesses that were denied or had licenses and permits revoked during the COVID-19 pandemic both failed to get out of the House.

House Bill 360 got a hearing and was reported out of the Small Business and Information Technology Committee, but was then recommitted to the Appropriations and Revenue Committee. Rep. Lynn Bechler's (R-Marion) bill would require the state to reimburse fines a business incurred during the pandemic, along with restoring licenses revoked for not following state guidelines. He said mandates made by the governor or local officials do not have the force of law because they were not approved by the General Assembly.

The second bill was **HB 143** that would have prohibited the denial or suspension of any food or drink license for failing to comply with a governor's executive order relating to COVID-19. Filed by Rep. Savannah Maddox (R-Dry Ridge), the bill was not assigned to a committee.

[Click here to read HB 143](#)

[Click here to read HB 360 Committee Sub, Floor Amendment](#)

Executive powers burdening businesses: Rep. Bobby McCool (R-Van Lear) filed **HB 526** that would have prohibited executive orders or administrative regulations from burdening the right to own or operate a business, including excessive fees and taxes. It also would have prohibited orders or regulations from violating religious beliefs, bear arms, protect selves or property, or use materials or natural resources for heat, cooling or electricity. It was not assigned to a committee.

[Click here to read HB 526](#)

PFAS Prohibitions: Rep. Nima Kulkarni (D-Louisville) filed **HB 559** that would ask the Energy and Environment Cabinet to establish regulations that would set maximum levels of PFAS chemicals, or perfluoroalkyl and polyfluoroalkyl, in drinking water, discharges in the Commonwealth's waters and monitor those levels. PFAS are used in a variety of consumer and industrial products, such as food packaging and heat-resistant, non-stick cooking surfaces. The bill was not assigned to a committee.

House Resolution 82 was also introduced to raise awareness of the dangers of PFAS substances and the need for a PFAS action plan, sponsored by Rep. Kevin Bratcher (R-Louisville). No action was taken.

[Click here to read HB 559](#)

[Click here to read HR 82](#)

Mask Mandate: Sen. Adrienne Southworth (R-Frankfort) filed **SB 158** that would prohibit a state action requiring facemasks be worn statewide because of a virus, including COVID-19. The bill was in response to executive action Beshear has taken to require facemasks be worn in public places, such as businesses and restaurants. The legislation did make an exception for health care practitioners. The bill was assigned to the Senate Health and Welfare Committee but was never heard.

[Click here to read SB 158](#)

REVENUE & TAXATION ISSUES

Property Assessments: During the 2020 Interim session, a PVA Task Force was convened with the intent of developing policy changes to increase funding for PVA offices. But the issues discussed in the task force were more comprehensive and included complaints from PVAs about property tax appeals filed by 'big box' retailers. The PVAs call it dark store theory, but that is not an accurate description of how they want to assess property. Essentially, PVAs want to assess commercial properties based not on the entire real estate market, but instead on who the

tenant of the property is, trying to build an income tax into property taxes. One of the co-chairs of the task force, Rep. Randy Bridges (R-Paducah), filed legislation that would require all properties to be assessed based on their ‘highest and best use.’ And the definition of highest and best use was the assessment that resulted in the highest property tax assessment. **House Bill 135** was pushed by the PVAs, and the Federation was the primary opponent to the legislation. It was referred to the House Appropriations and Revenue Committee where it appeared it might get a hearing. We continued to oppose the legislation, meeting with House Appropriations & Revenue Committee members and the bill never moved any further.

The PVAs were also pushing legislation that would increase funding for their offices (**HB 368**). Taxing districts that use the assessment of the PVAs to generate property tax revenue would be required to pay PVAs up to 1% of the assessed value of the property. This creates concerns for retailers because it incentivizes PVAs to assess all property at the highest possible value in order to get the maximum amount of revenue for PVA office operations. The bill was referred the House Appropriations & Revenue Committee, but it did not get a hearing.

In the Senate, **SB 103** was filed that would require property owners to have a valid email address on file with the PVA. The bill was sponsored by Sen. Robby Mills (R-Henderson) and was placed on the agenda for the Senate State and Local Government Committee, but it was abruptly removed from the agenda.

[Click here to read HB 135](#)

[Click here to read HB 368](#)

[Click here to read SB 103](#)



Paycheck Protection Programs Loans: Due to the COVID-19 global pandemic and the continuing capacity restrictions, the federal government approved the Paycheck Protection Program (PPP), but because of an interpretation from the Kentucky Department of Revenue, expenses paid for with PPP funds would not have been tax deductible without the passage of **HB 278**. Sponsored by Rep. Patrick Flannery (R-Olive Hill), the bill allows for the deductions of expenses paid for with PPP funds, saving businesses that accepted PPP loans significant tax liabilities that could have been incurred without the passage of HB 278. A similar measure (**SB 265**) was proposed by Sen. John Schickel (R-Union) but was not acted upon since HB 278 was moving.

[Click here to read HB 278](#)

[Click here to read SB 265](#)

Comprehensive Tax Reform: Rep. Lisa Willner (D-Louisville) once again filed comprehensive tax reform legislation, but it did not take a single step forward. **House Bill 356** as introduced would have lowered the state property tax rate to \$.122 per hundred of assessed value, eliminate lower property tax rates on heavy equipment, increase tobacco and vapor products tax to \$1.56 per 20 cigarettes or its equivalent, add sales tax to additional services, increase the allowable family tax credit to 138% of federal poverty level, increase the LLET tax rate, reinstate three-factor apportionment for determining corporate income taxes, change the

standard for Mandatory Unitary Combined Reporting from a water edge standard to worldwide and sunset tax credits. Willner is following in the footsteps of her predecessor, Rep. Jim Wayne, by continually introducing comprehensive tax reform. While sweeping tax changes did not occur in the 2021 legislative session, that doesn't mean that House and Senate Republicans don't want to achieve comprehensive tax reform, it's just likely that it won't look like HB 356. Rumors continue to swirl that discussions are under way on comprehensive tax reform for the 2022 legislative session. It is likely to propose moving to a more 'consumption-based' tax model and trying to eliminate corporate taxes. Time will tell if the legislature accomplishes this goal, as many have attempted but none have succeeded.

[Click here to read HB 356](#)

Board of Tax Appeals Reorganization: Former Gov. Matt Bevin's administration reorganized the Board of Tax Appeals, the Crime Victims Compensation Board and the Claims Commission into one board called the Board of Claims. Beshear reorganized these agencies into three separate entities and a floor amendment filed to **SB 162** codified this change into statute. The Board of Tax Appeals is responsible for hearing local property tax assessment appeals in addition to appeals on other tax issues.

[Click here to read SB 162](#)

Sales Tax Exemptions: Every year multiple sales and use tax exemptions are proposed, and this session was no different, although there were fewer bills filed this year likely due to the fact that it is a non-budget year. **House Bill 49**, sponsored by Rep. Danny Bentley (R-Russell), would have exempted incontinence products prescribed by a healthcare practitioner from the sales and use tax. Two other measures filed by House Democrats were aimed at easing the tax burden on women by exempting feminine hygiene products from the sales and use tax (**HB 110**) and the other measure (**HB 288**) would have exempted breast pumps from the state sales and use tax. None of these measures advanced this session.

[Click here to read HB 49](#)

[Click here to read HB 110](#)

[Click here to read HB 288](#)

Recall Petitions for School Taxes: The Jefferson County Board of Education proposed a significant property tax increase above the 4% revenue growth allowed by law. Quickly, a recall petition campaign began, was certified by the County Clerk as valid and placed upon the ballot. The petition was challenged in court and thrown out by the judge when it deemed that the petition did not have enough signatures after hundreds were thrown out as invalid. The property tax increase went into effect.

After those opponents failed to recall the increase and put it on the ballot due to a lack of required signatures, Rep. Kevin Bratcher (R-Louisville) wanted to address this and proposed **HB 133** that as introduced would have required 100 signatures to place a question on the ballot asking voters if they wanted to approve or disapprove a school property tax increase.

As Bratcher's bill moved through the process, it was amended to require the signature of either 5,000 registered voters or 10% of the number of votes cast in the last presidential election, whichever is least. It would also change the information required on the petition to only include the signatory's birth month instead of the current birthdate requirement. The bill became law without the governor's signature. The bill takes effect June 29, 2021.

[Click here to read HB 133](#)

Appropriations: In the 2020 legislative session, the General Assembly opted to only authorize a one-year budget because of concerns that revenues may drop and not rebound due to the COVID-19 pandemic and therefore be unable to meet the budgetary promises of the second year of the biennium. Passing a budget in a 30-day legislative session could have been a significant challenge, but with Republican supermajorities in both chambers there was relatively little disagreement. Additionally, revenues did not drop as predicted. Still the General Assembly passed a fairly austere budget, limiting teacher salary increases and spending on other big-ticket items. **House Bill 192** sponsored by House Appropriations & Revenue Chair Jason Petrie, was introduced as Beshear's proposed budget which did have significant funding increases for education and other budget areas including child protective services.

The House went back to the budget that passed in the 2020 legislative session as its starting point and didn't stray far from it. It was passed quickly in order to get it to the Senate for their review and changes to quickly convene a budget conference committee, which they did and create a proposal that was still very fiscally conservative and placed a large amount of funds in the budget reserve trust fund. Gov. Andy Beshear made 20 line-item vetoes in the budget and the legislature overrode all but three of those vetoes.

But the General Assembly was not finished spending funds yet. Toward the end of the session, the U.S. Congress passed the American Rescue Plan Act (ARPA) which will infuse more than \$2.5 billion into state coffers and it includes some flexibility. At the time the legislature was passing a budget, guidance on the funds was not available. Regardless, they did take the time to find agreement with the Beshear administration at least on a few issues. In **HB 405**, which started out as the claims bill, where it expends funds owed by the state to specific parties, was amended at the end of session to spend some of the federal funds most recently appropriated. Some of the items were vetoed by the governor, but in this unique instance, the vetoes were not overridden.

House Bill 382 appropriated \$575 million of the funds from the federal American Rescue Plan Act to go toward paying the federal loan required to keep up with growing unemployment insurance costs. Without this infusion of cash, employers would have been required to pay high unemployment insurance taxes.

[Click here to read HB 192](#)

[Click here to read HB 382](#)

[Click here to read HB 405](#)

Market place providers: **House Bill 249** served as the revenue bill for the state budget process this session. Included in the legislation was a provision that allowed marketplace providers and third-party sellers from those platforms 60 days to start collecting sales taxes. Brick-and-mortar retailers are required to start paying sales tax on the initial day they begin

operating. The Department of Revenue made this request arguing that it was necessary for the Streamline Sales Tax Agreement. The provision is part of the final version of HB 249 that was adopted.

[Click here to read HB 249](#)

Tax Expenditures: Rep. Ken Fleming (R-Louisville) continues to lead the Task Force on Tax Expenditures, which evaluates all tax expenditures to see if they are relevant and examine if they were costing the state too much in lost tax revenue. Tax expenditures are tax exemptions or tax credits that through the years have been created in statute. In an effort to rein in tax expenditures he filed **HB 575** that would eliminate several. The bill doesn't eliminate tax exemptions on groceries or prescription drugs, but it does eliminate tax exemptions on voluntary remediation tax credits for properties requiring environmental clean-up, favorable property tax treatment for agricultural land, property tax exemption for certain vehicles, employer tax credits for hiring the unemployed and those getting GEDs, and many more. The bill was referred to the House Appropriations and Revenue Committee but it never received a committee hearing.

Another measure filed by a House Democrat would have required reporting of all tax expenditures and review by the General Assembly four years after the tax credit or exemption is adopted by the General Assembly. **House Bill 128** would have required the House Appropriations and Revenue Committee to make recommendations on tax expenditures in the 30-day session before a new budget would be adopted. The bill died in the Committee on Committees.

House Bill 249, the revenue bill, usually serves as a cleanup measure matching the budget bill. This session the measure was amended to add several new tax credits including expanding the historic preservation tax credit, the film tax credit and a major recycling tax credit. The bill was line-item vetoed by the governor, but the legislature overrode the veto.

[Click here to read HB 128](#)

[Click here to read HB 249](#)

[Click here to read HB 575](#)

Tax on Vapor Products: In the 2020 legislative session, the General Assembly adopted a significant tax increase on e-cigarettes. In addition to the tax on the nicotine containing liquid, the tax measure taxed the hardware used to consume the vapor product. **House Bill 249** included a provision to rectify this situation and eliminate the tax on the hardware when the hardware is sold separately. The bill did pass and it goes into effect on July 1, 2021. House Bill 85 was prefiled with the exact same language that was adopted in HB 249, therefore it did not move in the process.

[Click here to read HB 249](#)

Small Business COVID Relief Fund: When Gov. Andy Beshear delivered his combined State of the Commonwealth and Budget address, he proposed **HB 191** that would have created a small business relief program for retailers and restaurants suffering from COVID-19 restrictions. The proposal would have allowed these businesses to receive a grant of up to \$20,000 to make up for loss of revenue. The business would be required to have 50 or fewer employees, demonstrate

a loss of revenue due to COVID and could not be a business that had received a grant previously under the Beshear Administration-created Restaurant Relief Fund. This fund only allowed impacted restaurants to receive up to a \$10,000 grant but they would have still been prohibited from receiving the additional \$10,000 that other businesses would be able to get. The bill was referred to the House Appropriations & Revenue Committee, but the \$240 million price tag raised concerns among legislative leaders and did not move.

[Click here to read HB 191](#)

West Louisville Development Fund and Tax Increment Financing: Senate President Robert Stivers (R-Manchester) along with Sen. Gerald Neal (D-Louisville) introduced **SB 100** and **SB 125** with the aim of revitalizing the West End of Louisville, where nine historically African American neighborhoods are located. Spurred through conversations with West End residents in the wake of Breonna Taylor’s death, SB 100 would create the West End Opportunity Partnership, and SB 125 would create a tax increment financing district within these nine West Louisville neighborhoods that would dedicate revenues received from property taxes, sales taxes and other local revenue sources for redevelopment of the area, including housing and business redevelopment. Current residents of these neighborhoods would receive property tax breaks to curb gentrification. In addition to the TIF, SB 125 would create a West End Opportunity Partnership redevelopment fund where the state would provide a \$10 million appropriation once the new entity raised \$20 million in private funding. Companion legislation was filed in the House by Rep. Ken Fleming (R-Louisville) (**HB 588**) (**HB 587**) and a bipartisan, bicameral effort pushed the issue. In the final two days of the legislative session, the General Assembly did give final passage to **HB 321**, which was amended to add the creation of the West End Opportunity Partnership and the TIF. The appropriation of \$10 million to the newly created partnership was included in **HB 556**. The governor did sign HB 321 and only vetoed sections of HB 556 unrelated to the West End Opportunity Partnership and the new TIF.

[Click here to read SB 100](#)

[Click here to read SB 125](#)

[Click here to read HB 321](#)

[Click here to read HB 556](#)

[Click here to read HB 587](#)

[Click here to read HB 588](#)

Publication of Taxpayer Guidance: House Bill 330, introduced by Rep. Patrick Flannery (R-Olive Hill), would have required the Kentucky Department of Revenue to regularly publish opinions and guidance it issues to taxpayers at least every 120 days. The bill did not get referred to committee, so it died.

[Click here to read HB 330](#)

Remote Workers Tax Credit/Data Centers: Legislation aimed at encouraging large data centers to locate in Kentucky was amended to include a remote worker’s tax credit for those choosing to locate in Kentucky and work remotely (**HB 372**). The remote worker would receive a tax credit of \$5,000 for the first tax year locating in Kentucky and then it would lessen by

\$1,000 each year and end after five years. The tax credit would not be refundable. The tax credit would be weighted based on the population density of the community the remote worker lives. If they live in a community with a population density of less than 62 people per square mile, they would receive 100% of the tax credit and if they lived in the most populous community, they would receive 80%, unless the remote worker located in an opportunity zone they would receive 100% of the credit.

The legislation passed on the last day of the session, leaving it vulnerable to veto from the governor. And that is exactly what he did, vetoed the measure arguing that it was too costly for future budgets of the Commonwealth.

[Click here to read HB 372](#)

Tax Filing Deadlines: House Bill 321 passed the House Appropriations & Revenue Committee where it was amended to ensure that taxpayers in Kentucky would receive the benefit of a delayed tax filing deadline if and only if the federal government adopted a delayed tax filing date. The IRS has delayed tax filings at the federal level until May 15 and Kentuckians paying taxes will have the same benefit. It did pass both chambers and was signed by the governor.

[Click here to read HB 321](#)

Gas Tax: Advocates for a gas tax worked extremely hard this session pushing the passage of a gas tax, but once again came up short as the General Assembly failed to give final passage to any such legislation. In Kentucky, the gas tax is based on the average wholesale price of gas and the tax fluctuates as the wholesale price increases and decreases. These revenues are dedicated to funding road construction and repair, and road fund revenues have continually decreased over the last several years as the average cost of a gallon of gas has decreased and more recently, fewer people on the roads driving as states issued stay at home orders due to COVID-19. A measure filed by House Budget Review Subcommittee Chair Sal Santoro (R-Florence), **HB 561**, would have shifted the gas tax away from a percentage of the wholesale price to .346 cents per gallon, which proponents argue would make the road fund more predictable. Additionally, every year the rate would increase based on the percentage increase in National Construction Cost Index. An annual increase could be no more than 10% and the same for any annual decrease. Electric vehicles would pay a \$150 fee that would increase \$1 for each 2-cent increase in the gas tax, but the fee couldn't drop below \$150. High fuel efficiency vehicles would pay a highway preservation fee of up to \$40 based on fuel efficiency. Driver record fees would double to \$6, as would annual registration fees. The bill was referred to the House Appropriations & Revenue Committee, but it was never acted upon.

House Bill 508, introduced by Jim DuPlessis (R-Elizabethtown) would have set a base tax rate of 24.6 cents per gallon and the tax rate would automatically increase every year based on the National Construction Highway Cost Index 2.0 version that would increase the tax on gasoline annually based on increased road usage. It would also create an annual fee for electric and hybrid vehicles, and the scale would be a sliding scale based on the weight of the vehicle itself. The fee would be adjusted annually just like the fee for gasoline. The bill never actually moved forward, but the issue was heavily discussed and it was thought that a 10-cent increase in gasoline taxes would be added to a revenue bill. That never came to fruition and so the legislation died once session ended.

House Bill 451 would have created transportation improvement districts that could be created by state or local governments within a certain region of the state that could be a multiple county region. The purpose of the district would focus on building and constructing infrastructure projects like roads, bridges and rail for a specific community. The transportation improvement district would be a special purpose government entity and have the authority to levy a special assessment on property located in the district to pay for the projects. House Budget Review Subcommittee Chair Santoro (R-Florence) was the sponsor of this legislation, but it did not take a single step towards passage this session.

[Click here to read HB 451](#)

[Click here to read HB 508](#)

[Click here to read HB 561](#)

Local Alcohol Regulatory Fee: House Bill 249 was amended in the Senate to add language stating that if a local city or county has a local alcohol regulatory fee, the sales tax cannot be applied to that fee so long as the fee is passed onto the consumer and it is clearly marked on the customer's receipt. The bill passed and is a major victory for retailers and consumers.

[Click here to read HB 249](#)

TRANSPORTATION ISSUES

Gas Tax: Although two bills to increase the gas tax were filed early in the session, neither could garner enough support to be heard in committee. **HB 561**, would have increased the gas base tax to \$.346 cents per gallon, adjusted annually, based on the National Highway Construction Cost Index and similarly establish an annual registration fee of \$150 on electric and hybrid vehicles. The registration fee would go up \$1 for each \$.002 cents increase in the gas tax. The bill would also have capped the trade-in value of cars to \$25,000. The tax would be paid by the dealer and then added to the selling price paid by the consumer.

House Bill 508 planned to increase the gas tax to \$.24 cents per gallon, adjusted annually, based on the National Highway Construction Cost Index as well as establish an annual registration fee on electric vehicles. Any nonhybrid electric vehicles that weigh less than 10,000 pounds would be subject to \$150 annual registration fee. Tying the gas tax to a national metric and reassessing annually would mean Kentuckians could see increases in the gas tax more frequently. The assessment on electric vehicles is a growing idea to capture their road usage since they don't fill up gas tanks.

The Kentucky Chamber of Commerce and other group pushed for legislators to consider a gas tax increase to improve infrastructure. Opponents of the measure were equally vocal calling on legislators not to raise taxes in the middle of a global pandemic.

Another bill, **HB 451**, that was filed and also did not go anywhere would have allowed a county government or three contiguous county governments to establish Transportation Improvement Districts. These districts would be a special purpose governmental entity and could impose and collect assessments to pay for transportation projects in the district.

[Click here to read HB 508](#)

[Click here to read HB 561](#)

[Click here to read HB 451](#)

Distracted driving: Representative James Tipton (R-Taylorsville) filed a bill that would have cracked down on use of smartphones and communication devices while driving. It would have prohibited the use of such devices while operating a motor vehicle and drivers under the age of 18 would be prohibited from using any form of a device including a standalone device. It would also apply to a person with a commercial driver's license. The bill was never assigned a committee and died at the end of session.

[Click here to read HB 387](#)