

Memorandum

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Re: Kentucky Legislative Update

Political Backdrop

The first week of the 2021 session for the Kentucky General Assembly has been a whirlwind, to say the least. As expected, numerous bills aimed at curbing Governor Andy Beshear's executive authority during an emergency have been filed and given priority in both the House and Senate. During the COVID-19 pandemic, the Democratic Governor has issued numerous executive orders restricting businesses and individuals. The Republican supermajority in the House and Senate have taken immediate steps in the beginning of session to address what they believe to be an overreach of executive authority.

Among the bills filed with the intention to curb the Governor's executive authority, House Bill 1, which prohibits the Governor from shutting down any business that is adhering to CDC guidelines, and House Bill 4, which amends the Kentucky Constitution to allow the General Assembly to extend legislative sessions, appear to be the priorities for the House. Both have passed the House and are scheduled for a floor vote in the Senate. In the Senate, Senate Bill 1, which limits emergency executive orders to 30 days unless extended by the General Assembly, passed the Senate and is scheduled for a floor vote in the House. Further, Senate Bill 2, which requires more public input and legislative control over emergency administrative regulations, awaits a floor vote in the House.

In conjunction with the limitations on the Governor, both the House and Senate have proposed COVID-19 liability relief bills. Senate Bill 5, which provides liability protections for owners of premises (forward-facing businesses) during an emergency, will likely be taken up for a vote in

committee soon. House Bill 10, which is scheduled for a House floor vote, provides a defense to civil liability to a person who acts in good faith while operating a business during a state of emergency for ordinary negligence for a personal injury resulting from alleged or actual exposure to COVID-19 provided the person acts as an ordinary, reasonable, and prudent person would act under similar circumstances. In addition, House Bill 1, discussed above, also waives interest and penalties on unpaid employer contributions under the unemployment insurance program until December 31, 2021.

Delivered to the Governor, already, for his acceptance or likely veto are: HB 2 and SB 9 dealing with abortion; HB 5 dealing with reorganizations; and HB 1, SB 1 and SB 2 discussed above.

This session is a short 30-day session; however, the legislature will be convening additional days on January 9, 11, 12 and 13 to address and likely pass priority bills and, possibly, the budget in both the House and Senate. The legislature passed a one year budget last year due to financial uncertainties and will need to pass a budget for fiscal year 2022. After that, the legislature will be in recess until February 2 and must, according to the Kentucky Constitution, adjourn no later than March 30.

Below is a chart of bills we are tracking on your behalf. We will provide a more detailed analysis of the key bills in the coming days.

Activity on Issues of Interest

Retirement:

Set Dollar Amount – Rep. DuPlessis. HB 8 changes KERS to make employer liability a set dollar amount rather than a percentage.

Dual Employment – Rep. Tipton. HB 52 provides that if a member is working in a regular full-time hazardous duty position in the KERS or CERS and is simultaneously employed in a nonhazardous position that is not considered regular full-time with a different participating employer, the member shall participate solely as a hazardous duty member and shall not participate under the nonhazardous position unless he or she makes an election within 30 days of taking employment in the nonhazardous position.

Actuarial Analysis – Rep. J. Miller. HB 69 would amend KRS 6.350 to establish additional standards and requirements for the completion of the actuarial analysis required for bills pertaining to state-administered retirement systems, including a projection of costs/savings over a 30-year period rather than 20 years.

Death Benefit Calculation – Rep. J. Miller. HB 87 would apply the alternate death benefit calculation options as written prior to 2009 legislation for deaths occurring prior to retirement and implement a 10% cap on credible compensation growth during a members last five years of employment, among other things.

Omnibus KTRS Revisions – Rep. J. Miller. HB 113 would make numerous changes to KTRS.

Move New LRP and JRP Members – Rep. Tipton. HB 121, among other things, revises KERS to institute a hybrid cash balance plan and create a new section to close the Legislators’ Retirement Plan (LRP) and Judicial Retirement Plan (JRP) to new members effective July 1, 2021, and to provide that new legislators and judges shall participate in KERS for the duration of their service.

Environment & Energy:

Clean & Healthy Environment – Rep. Raymond. HB 107 would create a Constitutional right to a clean and healthy environment.

Fair Sewer Charges – Rep. Fischer. HB 124 would prohibit a sanitation district from imposing any fee, tax, surcharge, or other charge for the provision of service to a property unless the property is connected to a sanitary sewer owned or maintained by the sanitation district, there is an approved plan to connect the property to a sanitary sewer owned or maintained by the sanitation district within five years, the property discharges storm water to a storm sewer or storm water improvement owned or operated by the sanitation district, the sanitation district's storm sewer controls storm water that flows to the property, or the person responsible for the charge has contracted with the sanitation district to provide the service; allow the Act to be cited as the “Ensuring Fair Sewer Charges Act.”

Rate Affordability – Rep. Hatton. HB 127 would, among other things, include rate affordability when determining fair, just and reasonable utility rates.

Pesticides and Mosquito Control Application – Rep. McPherson. HB 236 would mandate a program for regulating application and notice of application of pesticides for lawn care and mosquito control.

City Utility Boards – Rep. Johnson. HB 238 would allow city utilities boards to consist of either three or five members, and to specify the appointment of nonresident utility commission members for utility commissions consisting of three members and five members.

Waste Disposal Expansion Notice – Sen. Embry. SB 98 would list all the types of facilities under the definition of “waste disposal facility” and prohibit issuance of a permit to construct or expand a waste disposal facility that will result in substantial additional capacity absent submitting notice of intent to be licensed to the local county fiscal court where the facility is located.

Operations:

Venue for Constitutional Challenges – Rep. Massey. HB 3 establishes the venue for constitutional challenges to statutes, executive orders, regulations, and other cabinet or department orders and establishes procedures for selecting a panel of three Circuit Judges from across the state to hear those challenges. HB 3 passed House, was received in the Senate and assigned to Judiciary. It has two readings.

Medical Marijuana – Rep. Nemes. HB 136 would legalize and regulate medical cannabis.

Regulation Impacts – Rep. Fischer. HB 144 requires legislative ratification of any administrative regulation having a major economic impact.

Water Fluoridation – Rep. Hart. HB 159 allows local government entities and special districts to void implementation of the water fluoridation programs administered by the Cabinet for Health and Family Services by legislative action.

U.S. Preference for PPE – Rep. Koch. HB 214 mandates that personal protective equipment purchased or leased in Kentucky be manufactured or produced in the United States.

Blockchain Technology Taxation – Rep. Rudy. HB 230 defines various terms relating to commercial mining of cryptocurrency using blockchain technology, provides sales and use tax exemptions on the tangible personal property directly used and the electricity used in commercial mining of cryptocurrency as of the date of approved application.

Emergency Regulation Limitations – Sen. West. SB 2 limits the power of the executive branch to promulgate emergency regulations. This “priority” bill passed the Senate and House in five days and has been delivered to the Governor.

Liability Protection – Sen. Stivers. SB 5 provides liability protection for owners of premises and refines the immunity of the state, private persons, volunteers, professional engineers and architects, and persons providing essential services during a declared emergency. This “priority” bill is in Senate Economic Development, Tourism, & Labor and has two readings.

Constitutional Amendment to Limit Damages – Sen. Alvarado. SB 17 would propose an amendment to Section 54 of the Constitution of Kentucky to allow the General Assembly the power to limit noneconomic damages for injuries resulting in death or for injuries to persons or property, and the power to provide statutes of limitation.

Limit Medical Damage Costs – Sen. Meredith. SB 54 limits the amounts recoverable for medical costs in tort actions.

Nullify Regulations Found Deficient – Sen. West. SB 65 nullifies administrative regulations that became effective after being found deficient during the 2020 legislative interim.

Medical Cannabis – Sen. West. SB 92 creates various new sections to define terms and exempt the medicinal cannabis program from existing provisions in Kentucky law to the contrary. The Department of Alcoholic Beverage and Cannabis Control would implement and regulate the medicinal cannabis program.

Civil Rights:

Traits Historically Associated with Race – Rep. Scott. HB 43 prohibits discrimination against persons based upon a “protective hairstyle” or other traits historically associated with race.

Punitive Damages – Rep. Minter. HB 93 allows recovery of punitive damages for civil rights violations.

Sexual Orientation or Gender Identity – Rep. Minter. HB 116 prohibits discrimination based upon sexual orientation or gender identity.

Sexual Orientation or Gender Identity – Rep. Willner. HB 130 prohibits discrimination based upon sexual orientation or gender identity.

Employment:

Paid Sick Leave – Rep. Stevenson. HB 32 requires employers to provide earned paid sick leave to employees; provides that employees earn paid sick leave upon the date of hire and can use the leave after being employed for 90 days; sets forth allowable uses of earned paid sick time; designates how notice of need to use sick time is provided by employees.

Paid Parental Leave – Rep. Raymond. HB 33 requires employers with 50 or more employees to provide 12 weeks of paid parental leave for an employee who has been employed for at least one year; allow an employee to waive the paid parental leave.

Minimum Wage – Rep. Jenkins. HB 34 establishes a state minimum wage higher than the federal standard.

Previous Salary or Wages – Rep. Roberts. HB 35 makes it a discriminatory employment action if an employer asks questions about previous salary or wages, relies on previous salary when setting a new salary, or refuses to hire if an applicant does not provide previous salary, with certain exceptions.

Living Wage – Rep. Donohue. HB 40 requires any employer doing business in Kentucky that receives governmental incentives or subsidies to pay its employees a living wage.

Public Employee Organization – Rep. Donohue. HB 41 allows public employees to organize, associate collectively, or strike.

Leave Associated with a Crime – Rep. Sorolis. HB 45 prohibits employers from discharging or retaliating against an employee who is a crime victim when the employee takes leave to attend proceedings associated with a crime.

Paid Leave for Birth or Adoption – Rep. Nemes. HB 54 allows employees of the Commonwealth a paid leave of absence of 12 weeks for the birth or adoption of a child and to establish requirements for the paid leave of absence.

Prevailing Wage – Rep. Gentry. HB 55 creates a prevailing wage law for all public works projects.

Collective Bargaining – Rep. Wheatley. HB 56 allows employees of the Commonwealth to collectively bargain.

Medical Benefit Payments – Rep. Raymond. HB 59 requires an employer to pay for medical benefits at the time of injury and thereafter during disability instead of 780 weeks.

Employer Theft of Wages – Rep. Tackett Laferty. HB 63 creates a crime for employer’s theft of wages if there is a failure to pay all wages due, receives a rebate or refund of an employee; also provides the Labor Cabinet expanded authority for inspection and enforcement for employee wages and expands record keeping requirements for employers.

Discrimination Based on Weight – Rep. Raymond. HB 66 establishes additional protections against employment discrimination based on weight.

Unemployment Insurance Disqualifications – Rep. Kulkarni. HB 78 prohibits disqualification from unemployment insurance benefits for workers unemployed due to domestic violence, sexual assault, or stalking.

Family Care Leave – Rep. Stevenson. HB 131 prohibits employers from preventing an employee to take family care leave; to entitle employee to family care leave for the birth of a child or to take care of a family member and establish parameters.

Increase KRS Disability Benefits – Rep. Blanton. HB 139 increases duty-related disability benefits from retirement systems.

Same Policies for Birth and Adoptive Parent – Rep. Heavrin. HB 210 requires employers to provide the same leave policies to adoptive parents as they provide to birth parents.

“Ban the Box” – Rep. Brown. HB 228 would prohibit employers from considering or requiring disclosure of prior criminal history as part of the initial job application; title the Act “Ban the Box - The Criminal Record Employment Discrimination Act.”

Waive Unemployment Overpayment Debts – Rep. Kulkarni. HB 240 would waive unemployment insurance overpayment debts if recovery would be against good conscience and the overpayment was due to agency error or not due to fraud by the recipient.

Prohibit Required Immunization – Sen. Girdler. SB 37 prohibits required immunization of any person by any state agency or instrumentality; prohibit any immunization of an employee by an employer.

Increased Minimum Wage – Sen. Thomas. SB 41 establishes an increased state minimum wage.

Prohibit Discrimination for Declining Immunization – Sen. Southworth. SB 98 would prohibit employers from discriminating against an individual who declines immunization or requiring immunization as a condition of employment.

Attached please find a spreadsheet summarizing the status of bills we are tracking on your behalf. Please do not hesitate to contact us with any questions you may have.

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