



## 2022 Session in Summary

Even though the General Assembly tried to bring regular standards to the 2022 Legislative Session it was still different. Attendance at committee meetings were still allowed to be either remote or in-person participation, for both legislators and those testifying. Lobbying efforts were still more difficult as some legislators did not make themselves available except by pre-scheduled appointment. A number of staff members at the Capitol have retired, requiring us to get to know many new names and faces and many of the legislators are still pretty new to the process—meaning it will take a while to get back to normal or that they will create a new normal within the boundaries of the law. Being an even numbered year, this is considered a “long” Session, which included many budget discussions. Regardless of whether a Session is long or short wheels spin all Session, but most of the work always gets done in the last few weeks.

This year there were more than 1500 bills and resolutions drafted and 240 bills passed.

Bills that impact the banking industry are summarized below—only the portion that impacts banks is summarized. Each bill, unless it contains an emergency clause will go into effect 90 days from the end of session, July 18, 2022. If you need more information on any of these bills, please contact Debra Stamper at [dstamper@kybanks.com](mailto:dstamper@kybanks.com).

### 1. SB135 – COUNTY CLERKS AND ELECTRONIC FILING AND TITLE SEARCHES.

County clerks must have electronic filing and search capabilities in place by the dates below:

- By June 30, 2023, **ALL** county clerks must be set up to accept electronic filings.
- By June 30, 2024, **ALL** county clerks must have of the following items ready for online searches:

#### **Filed on or after June 30, 1994:**

- a. Deeds
- b. Mortgages
- c. UCC fixture filings
- d. Plats of subdivided property
- e. Covenants, conditions, and restrictions related to real property
- f. Easements
- g. Leases
- h. POAs
- i. Land Contracts
- j. Wills
- k. Affidavits regarding title to property

#### **Filed on or after June 30, 2004:**

- l. Child support liens

#### **Filed on or after June 30, 2009:**

- m. Judgment liens
- n. Recoupment and unemployment liens
- o. Lis pendens notices

**Filed on or after June 30, 2014:**

- p. Federal and state tax liens
- q. Civil penalty liens

**Filed on or after June 30, 2019:**

- r. Homeowner's association or condo liens
  - s. Bail Bonds
- By June 30, 2026, searchable documents a. through k. listed above must include those filed on or after June 30, 1966.

Even though state funds (HB1) have been provided to assist county clerks' offices with obtaining the equipment, software and labor to establish the portals necessary for the new portals, they may pass through any amount they are required to pay for maintaining the portal. They may not, however, charge more than the third-party costs for maintaining the portals, as those costs are defined by statute.

The County Clerk's Association, under new leadership, agreed that counties which were further along in the electronic process would offer guidance to those which are not.

2. SB150 – **WESTERN KENTUCKY DISASTER RECOVERY. Emergency Clause included for effective date.**

This new law provides that a state fund will be created and maintained until July 1, 2024 to assist governments and agencies, utility providers and school districts located in areas named in a Presidential Declaration of Emergency to cover certain expenses suffered as a result of December 2021 tornadoes. In order to receive assistance, the eligible entities must have applied for other available financial assistance and insurance coverage.

This law provides for a \$200M Western Kentucky Risk Assistance Fund which allows Kentucky's depository institutions (defined as a bank or savings association with a physical presence in Kentucky) to make commercial loans to businesses in the areas impacted by the December 2021 tornadoes. Once a lender has approved and provided funding for the loan, it may apply for access to the Fund for the first 25% (up to \$1M) of any loss suffered on the loan.

This was a fantastic accomplishment we were happy to work tirelessly on during the last days of the Session with Senator Jason Howell, who represents District 1 covering Calloway, Crittenden, Fulton, Graves, Hickman, Lyon and Trigg counties.

Some details are as follows:

- The underwriting and approval process is completely up to the lender.
- The lender can use its own application and note.
- The loan can apply to businesses with an existing or proposed business in the impacted areas.
- The loan can cover any related construction costs, including: contract bonds and insurance needed during construction; architectural and related costs; utility installation costs; business startup operation costs, such as labor, furnishings and inventory; and other reasonable expenses.
- If a lender cannot take on the full amount of the loan or decides not to make the loan at all, it must forward the application and any other documents to a NFP cooperative (such as HOPE of Kentucky) for further consideration.
- Access to the fund will be made by application to the Cabinet for Economic Development once the loan has been approved and completely funded. \*\*The Cabinet has not yet provided a form for application.
- Applications for access to the Risk Fund will be accepted on loans originated before December 31, 2027.
- The borrower must spend the funds within 3 years of the final approval by the lender, unless an extension is necessary and beyond the control of the borrower or the lender.
- The borrower must apply for all other available assistance, such as federal disaster relief or insurance and pay proceeds to the lender to reduce amounts owed on the commercial loan.

- The statute defines in Section 5(2) how to determine when a loss is suffered by the lender within 5 years from the date of origination. \*\*The Cabinet for Economic Development will create a form for reporting losses.
- If the lender receives more than 75% compensation on a commercial loan AFTER having received funds from the Risk Fund, the amount over 75% must be repaid to the Cabinet.

### 3. SB180 – CREATION of EDUCATION AND LABOR CABINET

This newly formed Cabinet will include among other things a number of Offices and Departments already in existence, including the Department of Workers' Claims and the Department of Workplace Standards. The Secretary of this new Cabinet will be appointed at the will of the Governor and the exact role will be developed over time, presumably at the direction of the then sitting Governor.

### 4. SB205 – PENALTIES RESULTING FROM ENERGY BOYCOTTS.

The first topic covered by the new law is divestiture of publicly traded holdings:

The Treasurer will create an online list of all “financial companies” that have engaged in “energy company boycotts.” A “financial company” is defined as “a publicly traded financial services, banking or investment company.” An “energy company boycott” is defined as “without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: 1. Engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy **and** does not commit or pledge to meet environmental standards beyond applicable federal and state law; **or** 2. Does business with a company described in subparagraph 1...” The terms “financial services,” “banking” and “investment company” are not defined, which creates some problems in knowing who is covered.

The Treasurer can, basically, rely on whatever information is made available publicly or privately and can ask a financial company to verify whether or not it is boycotting. Surprisingly, the statute does not require the Treasurer to ask financial companies to verify, but if the verification request is sent out and a financial company does not respond, it is **presumed to be engaging** in an energy company boycott.

The Treasurer will update the list at least annually.

Any state governmental entity which owns direct or indirect holdings in a listed financial company must notify the Treasurer within 30 days of the list publication and send a notice to the listed financial companies that they are listed and that the state governmental entity must divest itself of the holdings in that company if the financial company does not cease the boycott within 90 days or clarify its activities if it is not a boycott. If the Treasurer is thereafter satisfied that the financial company is not engaged in an energy company boycott, the company is removed from the list. Otherwise, the state governmental entity must divest itself of holdings, unless the state governmental agency would suffer a loss beyond its benchmark; or if compliance with this law “would be inconsistent with its fiduciary responsibility.”

Each year the Treasurer will publish a list of all divested holdings.

The second topic covered by this new law is prohibited government contracts:

A state governmental entity is prohibited from entering into a contract of \$100,000 or (even if the entity only pays part of the cost) with any company (definition of “company” does not include sole proprietorships) “unless the contract contains a written certification from the company that it: (a) Does not engage in energy company boycotts; and (b) Will not engage in energy company boycotts during the term of the contract.” \*\*\*\* This provision does not apply if “the requirements are inconsistent with the governmental entity’s constitutional,

statutory, or fiduciary duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.” Hmmmm? That is surely full of loopholes and interpretation.

There is no doubt that there will be lawsuits in this law’s future.

#### 5. HB4 – UNEMPLOYMENT BENEFITS

More delineated restrictions are applied to the availability of unemployment benefits.

Notably, an employer “may” notify the unemployment cabinet online (through a newly created portal) that an applicant refused a job offer or failed to appear for an interview.

Additionally, employers may submit plans to participate in a “shared employee” arrangement in order to help reduce unemployment.

#### 6. HB7 – ATM USAGE FOR EBT CARDS

Penalties can be charged against any recipient of EBT Card benefits, if they use an ATM to withdraw cash and are found to use the cash for something other than allowable assistance expenses. The law does not mention any specific role for banks, but expect that banks will be asked to provide ATM information, if available.

#### 7. HB8 – REVENUE MEASURES.

Peer-to-peer car sharing programs must receive a certificate from the Department of Vehicle Regulation. While the provisions relating to taxation of peer-to-peer programs is not of concern to banks, you may want to consider adding a provision to your contracts that prohibit such a use of secured vehicle or require notice to the bank.

The maximum Rehabilitation of Certified Historic Structures tax credit allowed on owner-occupied property has increased from \$60,000 to \$120,000 and the maximum tax credit allowed on all other property has increased from \$400,000 to \$10,000,000. Additionally, the provision that allows such credits to be transferred to banks has been corrected and is now allowed again.

A transferrable tax credit is now allowed on qualifying, voluntary environmental remediation property.

A change to third-party tax purchaser law has been made that requires third-party tax purchasers to notify all mortgagees of the fact that they have purchased the tax certificate within 50 days of the purchase by certified mail! They must also notify mortgagees at least 45 days before an action is filed to enforce the tax certificate.

Tax protests on real property assessments must be made within one year. If a ruling is not made within one year after filing, the department must accept the taxpayer’s protest.

The language regarding taxation for financial services was removed from the final bill.

## 8. HB170 – SETTLEMENT OF MINOR’S CLAIMS.

This law clarifies who can settle claims of minors if a guardian or conservatory has not been appointed. This person acting on behalf of a minor must attest that this is the best compromise that can be reasonably obtained and must deposited “into a restricted savings or other restricted investment account that only allows withdrawals” pursuant to a court order; upon the minor’s age of majority; or, upon the minor’s death, or in an annuity.

## 9. HB274 – TRANSPORTATION IMPROVEMENT DISTRICTS

Transportation improvement districts may be created by cities with a population of at least 20,000 or by a group of 3 contiguous counties. The governing body of the district may provide for construction or repair of infrastructure, and hold public hearings. Bonds may be issued through the district for projects approved. These bonds are specified as lawful investments for financial institutions. Bonds may be secured with any trust company or bank with trust powers. It does not appear that any funds of these districts would be considered public funds subject to collateralization rules, but we will verify that once the law is codified.

## 10. HB284 – MOTOR VEHICLE TITLE APPLICATION AND REGISTRATION SYSTEM.

The first topic covered is the electronic filing system as follows:

The Transportation Cabinet must create an electronic title application and registration system which allows submission electronically by January 1, 2024.

The system must:

- a. Collect all information necessary to comply with 186A.060;
- b. Collect and transmit all fees and use tax required;
- c. Accept electronic signatures
- d. Be secure.

The electronic filings will be transmitted by an “approved entity,” which includes banks to the appropriate county clerk (where the purchaser lives or where the dealer is located). The county clerk has until 3pm the next business day to accept or reject the application.

If your bank wants to become an approved entity you must fill out an application establishing that you are eligible and pay a \$150 fee.

The Transportation Cabinet can contract with third parties to provide the software necessary to integrate the online electronic processing. The third-party software company will be authorized to assess and collect an “online transaction fee” for each filing.

The second topic covered is the proper treatment of title lien statements as follows:

The clerk must use the information presented on the title lien statement to document the security interest on the certificate of title. The clerk must enter the lien information in the Transportation Cabinet’s system.

If the clerk sees a "lien pending" note on the request for a certificate of title, but no title lien statement is attached, the clerk must enter the name and address in the system and the fact that the lien is pending. The certificate of title will not be issued until the title lien statement is filed or 30 days has passed. A late title lien statement can be filed and a new title issued after the passage of the 30 days.

The security interest effected by the title lien statement is perfected when "the security interest attaches in accordance with KRS 355.9-203 if the secured party submits a properly completed title lien statement with application for the first title or, in the case of property previously titled in the name of the debtor, within thirty (30) days of attachment. Otherwise, the security interest shall be deemed perfected at the time that the title lien statement is submitted."

**11. HB321 – TITLE LIEN RELEASES.**

Temporary tags for motor vehicles will be valid for 60 days.

Also, if a certificate of title on a manufactured home that is being surrendered in order to convert it to real estate has a lien on the title, the affidavit of conversion presented to the clerk must be accompanied by a release of the lien OR an affidavit signed under oath by the attorney who satisfied the liens noted on the Kentucky certificate of title, attesting that all liens noted on the Kentucky certificate of title have been paid."

**12. HB474 – CYBER SECURITY FOR INSURERS.**

Insurers, as of January 1, 2023 are required to follow planning regulations established for protecting private information from a cyber security event and for notifying clients. Financial institutions that are compliant with Gramm-Leach-Bliley are considered in compliance with this law.

**13. HB494 – STUDENT LOAN SERVICERS.**

Student loan servicers must be licensed and operate in compliance with this law and regulations. Banks are exempt.

**14. HB523 – PRIOR LIENS OF REAL ESTATE PURCHASERS.**

This law provides that a mortgage granted to a purchaser shall have priority over any prior liens against that purchaser.

**15. HB642 – MORTGAGE LOAN INDUSTRY**

This does not apply to bank mortgage operations, but if you are affiliated with a licensed Mortgage Loan Company or Mortgage Loan Broker, this may be of interest. A number of fees and other standard requirements have been changed, but the law will also allow the use of "alternate work locations" for employees. This appears to be designed to allow some mortgage lending employees to work from home in certain instances and with specific limitations.