

Memorandum 2021-36

**Emergency-Related Reforms:
Survey of Reform Legislation**

In 2020, the Commission¹ decided to request general authority to study emergency-related reforms. Assembly Concurrent Resolution 24 (Chau), which is currently before the Legislature, would grant that authority.

In anticipation of the likely passage of that resolution, the staff decided to do a survey of the legislation proposed to address the COVID-19 pandemic, both in California and in several other states. That research was conducted by Alexandra Azad, a third-year student at the UC Davis School of Law. Ms. Azad also prepared a summary report, which is attached.

This is an informational memorandum. No Commission actions are required in response to it. The staff believes that it would be premature, at this time, to make any final decisions to study particular emergency-related topics. There are two reasons for that. First, as noted above, the Legislature has not yet granted the Commission the necessary authority. Second, and perhaps more importantly, there is a good possibility that the Commission will be assigned a major new study in 2022, which would probably consume a large share of the Commission's resources.² For those reasons, decisions about possible emergency-related study topics should probably be postponed until the Commission considers its next New Topics and Priorities memorandum.

DISCUSSION

In reviewing the issues addressed in the attached report, the staff suggests that Commissioners keep the following considerations in mind:

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See ACR 95 (Cunningham & Wicks); see also Memorandum 2021-35.

- (1) Is an issue so specific to the current emergency that it may have little relevance to other types of emergencies?
- (2) Has the issue been adequately addressed already in California?
- (3) Are there other entities that are better-situated to address the issue because they have greater expertise and regulatory authority?
- (4) Are the issues more political than legal? In other words, do the issues rest on fundamental policy choices that are better made by elected representatives than a technical and politically neutral body like the Commission?

Viewed in that way, the staff does not see a lot of promising ideas for Commission study in the attached report.

Unsurprisingly, the great majority of the topics addressed by state legislatures had to do with the particulars of the current emergency, an infectious disease pandemic. Many of the reforms focused on the public health response, promoting measures to reduce the spread of COVID-19 (e.g., PPE availability, medical staffing, social distancing, masking requirements, testing, contact tracing, vaccination).

The first two considerations listed above apply to those kinds of reforms. They are specific to the present emergency and may not have relevance beyond it, and it seems likely that they have already been adequately addressed by the Legislature (at least for the current emergency).

That said, some of the issues addressed by those COVID-specific reforms could have some application to a broader class of disasters. For example, any easily transmissible deadly disease could necessitate public health responses like social distancing, testing, contact tracing, and measures to guarantee the adequacy of medical personnel and supplies. **There might be some room for the Commission to do some good by laying a statutory groundwork for such responses in the future.**

Other state reforms addressed the severe collateral consequences of the pandemic (e.g., unemployment, housing vulnerability, distance learning, disruption of the courts and other critical social institutions), or its effect on particular vulnerable groups (e.g., nursing home residents, minority populations).

Reforms of that type might well be relevant to other kinds of disasters. For example, wildfires and drought could cause serious economic problems for those whose homes or livelihoods are affected. The increasingly severe effects of climate change would seem to make such disasters more likely in the future.

However, those issues seem to implicate the third and fourth of the considerations listed above. Many such reforms affect interests that are represented by industry groups and regulated by the state. They may involve a large body of regulatory law and carefully balanced policy compromises. Such matters are probably best left to the regulators, experts, and affected groups to resolve.

Other reforms raise fundamentally political questions that are best answered by the People's representatives. For example, how should the state react to a pending wave of evictions due to disaster-caused economic dislocation. Should that burden be shifted to landlords, through an eviction moratorium? Should the state absorb the cost, by making rent payments? If a severe drought sharply reduces water resources, how should those resources be divided between agriculture, fisheries, wildlife, and cities? There is no objectively correct answer to such questions. They must be answered based on the values of the People. In our system, that is expressed through the elected Legislature and Governor.

In the staff's view, the Commission is most effective when it works on issues that have no natural constituency (i.e., there are no stakeholder groups pressing for particular results) and require technical care and creativity to address.

All of this should be given more thought before the Commission considers its next New Topics and Priority memorandum. At that time, if the Legislature has granted the necessary study authority and the Commission is not consumed by a direct assignment of greater scope and urgency, the staff will try to identify some potential emergency-related reforms that would thread the various needles described above.

Respectfully submitted,

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INTRODUCTION

The COVID-19 pandemic posed a number of serious practical challenges. Medical systems were overwhelmed; many could not work due to shelter-at-home orders; children were required to use teleconferencing to attend school; and the judicial system was disrupted, as were many other routine governmental and social functions.

In many ways, existing law did not provide sufficient support or flexibility to address those problems. This led to a great deal of statutory law-making in 2020 and 2021, aimed at reforming the law to support the unprecedented emergency needs. Broadly, those reforms covered issues of housing, health, education, government operations, employment, and economic support. The report below is divided into the same categories.

Many reforms were specific to the particulars of the present COVID-19 health emergency. Those reforms are unlikely to have general relevance to future emergencies.

Others had more general effects, addressing the kinds of problems that result from the interruption of work and education, the disruption of public services, and the need to support emergency responders.

This report summarizes the most relevant legislation enacted by various states to address the pandemic. The underlying research was conducted primarily using the National Conference on State Legislature's database on State Action on Coronavirus (COVID-19).¹ This database compiled legislation related to COVID-19 starting in 2020 and could be searched by state, topic, keyword, year, status, or primary sponsor. The database also provided an easy way to determine which states had been most active in enacting statutory reforms to address the emergency. That information was used to determine which states' statutes to include in this report.

The first section of the report describes legislation in California. The second section covers the four other states that had the most reform legislation: Massachusetts, Minnesota, New Jersey, and New York.

Both parts of the report are divided into the general categories of housing, health, education, government operations, employment, and economic support. Those categories are further subdivided by topic.

This report is descriptive only. It does not analyze the merits of any of the statutes that it describes.

¹ <<https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx>>.

CALIFORNIA

This section of the report summarizes the COVID-response bills that the California Legislature considered in 2020, as well as the bills that were enacted in 2021.

HOUSING

Housing Stability

Tenants, Homeowners, and Small Landlords

To protect vulnerable residents from eviction or homelessness, the Legislature appropriated funds from the National Mortgage Special Deposit Fund. The funds were to be used to provide housing counseling services and mortgage assistance to qualified California households.² This bill also allocated money for qualified legal services projects and support centers to provide eviction defense or other tenant defense assistance.

The Legislature then enacted the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act and the COVID-19 Tenant Relief Act. Those measures prevented the eviction of tenants for failure to pay rent due to financial hardship caused by COVID-19 and imposed liability on landlords who tried to evict tenants who had submitted a declaration of financial distress.³

Protections were also provided to a first lien mortgage or deed of trust secured by residential real property that met certain criteria.

The Legislature extended those reforms in 2021 and added further protections to prevent rental debt due to COVID-19 from being held against renters, prohibit the sale or assignment of unpaid rental debt, and establish a program to provide rental assistance using federal funds.⁴

However, the Legislature also limited the ability of a city or county ordinance, resolution, regulation, or administrative action to create a grace period for the repayment of COVID-19 rental debt.⁵

The Legislature considered, but did not enact, legislation that would require the Department of Housing and Community Development to create an online portal to receive specified information from landlords regarding their residential tenancies, to disseminate that information to the general public, and accept COVID-19 rental assistance payments from federal or state funds.⁶

² 2020 Cal. Stat. ch. 15.

³ 2020 Cal. Stat. ch. 37.

⁴ 2021 Cal. Stat. ch. 2.

⁵ 2021 Cal. Stat. ch. 5.

⁶ AB 2406 (Wicks) (2020) (not enacted).

Mobilehome Residents

The Legislature also addressed mobilehome residents who were facing issues of eviction and potential homelessness due to the pandemic. The COVID-19 Tenant Relief Act extended eviction protections to mobilehome owners.⁷

In addition, the Mobilehome Residency Law was amended to (1) require mobilehome park owners who attempted to change the use of their parks to produce reports to residents that included a replacement and relocation plan and (2) require a legislative body to approve or deny such a change in use, taking into account the impact on overall housing availability in the area.⁸ This bill also prohibited exemptions from rent control in mobilehome parks from applying to rental agreements entered into on or after the start of the pandemic.

The Legislature considered, but did not enact a measure that would have granted mobilehome owners forbearance on certain loan payments for up to 180 days.⁹

Students

The Legislature also considered the importance of housing security for students during the pandemic. This was done through the enactment of a bill that authorized the allocation of surplus lottery funds to community colleges for the purpose of providing housing and food assistance to community college students.¹⁰

Utility Payments

The economic downturn that followed the pandemic also prevented many California residents from making utility payments. To prevent eviction due to nonpayment of rent or utility charges, the Legislature enacted the COVID-19 Tenant Relief Act, which allowed tenants to submit declarations of financial hardship that protected them from eviction until a specified date.¹¹ The Legislature also allowed electronic corporations to file applications requesting the Public Utilities Commission to issue financing to make up for under-collection without increasing rates for customers.¹²

The Legislature considered, but did not enact, measures that would have prohibited irrigation districts or water districts from terminating residential or small commercial electrical or water services for nonpayment during the pandemic, as well as authorizing public water systems to reduce water charges imposed on customers impacted by COVID-19.¹³

⁷ 2020 Cal. Stat. ch. 37.

⁸ 2020 Cal. Stat. ch. 35.

⁹ AB 1436 (Chiu) (2020) (not enacted).

¹⁰ 2020 Cal. Stat. ch. 294.

¹¹ 2020 Cal. Stat. ch. 37; 2021 Cal. Stat. ch. 2.

¹² 2020 Cal. Stat. ch. 253.

¹³ AB 2887 (Bonta) (2020) (not enacted); AB 2095 (Cooper) (2020) (not enacted).

Homelessness

Although much of the above legislation attempted to prevent an increase in homelessness through eviction prevention, the Legislature also enacted and considered other bills that directly addressed existing homelessness in California. One of these bills required that funds from the CARES Act be used to provide housing for individuals and families experiencing homelessness.¹⁴

The Legislature considered, but did not enact, a statute to create a rental registry online portal giving specified information from landlords about available tenancies, which would then be disseminated to the general public in an attempt to curb homelessness during COVID-19.¹⁵

Housing Development

The Legislature also addressed issues of homelessness and affordable housing availability during the pandemic by enacting legislation that encouraged new emergency housing development. This legislation applied certain shelter crisis provisions, which exempted developments from environmental regulations, to any county or city in California that declared a shelter crisis.¹⁶ Another bill similarly exempted from environmental regulations any project designed to provide housing for individuals or families experiencing homelessness and impacted by the pandemic.¹⁷

HEALTH

Healthcare

Healthcare Facilities

As COVID-19 cases and deaths climbed, the Legislature focused its attention on healthcare facilities across the state.

To ensure that skilled nursing facilities were adequately and appropriately using increased Medicaid payments, legislation was enacted to authorize the Department of Public Health to audit those facilities in connection with the COVID-19 health crisis.¹⁸

The Legislature also required skilled nursing facilities to report each death related to a disease that is the subject of a declared emergency and to have a full-time dedicated Infection Prevention staff member.¹⁹ This bill also required the

¹⁴ 2020 Cal. Stat. ch. 15.

¹⁵ AB 2406 (Wicks) (2020) (not enacted).

¹⁶ 2020 Cal. Stat. ch. 147.

¹⁷ 2020 Cal. Stat. ch. 15.

¹⁸ 2020 Cal. Stat. ch. 13.

¹⁹ 2020 Cal. Stat. ch. 287.

Department of Public Health to post information related to those deaths on its website weekly.

To lower the risk of transmission of COVID-19 to short-term inpatients, a temporary program was created to facilitate the transition of eligible individuals in inpatient facilities for less than 90 days to other settings.²⁰

The Legislature considered, but did not enact, legislation requiring a health facility to limit the possible introduction of an infection that is the subject of a declared health related state of emergency or local emergency into the facility by indefinitely postponing routine medical appointments and prohibiting visitor access.²¹ This legislation would have also required health facilities to institute universal precautions and source control procedures based on scientific evidence.

Healthcare Workers: Personal Protective Equipment (“PPE”)

The Legislature enacted a bill to require that public and private employers of workers in general acute care hospitals supply certain frontline employees with PPE and establish and implement procedures for determining PPE quantity and consumption.²² The Legislature further required healthcare employers to maintain a supply of new, unexpired PPE in the event of a future declared state of emergency.²³

Telehealth

Following the stay-at-home order, telehealth services were widely used to reduce direct contact between patients and providers. The Legislature considered, but did not enact, a number of measures to facilitate use the use of telehealth services. Those bills would have authorized relationships between federally qualified health centers or rural health centers and patients to be established through synchronous or asynchronous telehealth visits;²⁴ established the “Project ECHO” program, aimed at establishing pediatric behavioral telehealth clinics for the patients of children's hospitals to address their mental health needs stemming from the pandemic;²⁵ and expanded internet access through grants to increase affordability of internet access in underserved and low-income communities.²⁶

Medi-Cal

In order to protect low-income Californians who would otherwise be unable to receive or pay for adequate healthcare, the Legislature enacted a bill that greatly

²⁰ 2020 Cal. Stat. ch. 300.

²¹ AB 2604 (Carrillo) (2020) (not enacted).

²² 2020 Cal. Stat. ch. 313.

²³ 2020 Cal. Stat. ch. 301.

²⁴ AB 2164 (Rivas) (2020) (vetoed).

²⁵ AB 2464 (Aguiar-Curry) (2020) (not enacted).

²⁶ AB 570 (Aguiar-Curry) (2020) (not enacted).

expanded Medi-Cal coverage throughout the state.²⁷ This legislation extended coverage for services related to COVID-19 to uninsured individuals and required the Department of Health Care Services to seek any federal approvals to maintain sufficient access to covered Medi-Cal benefits for the duration of the pandemic.

Public Health

Vulnerable Groups

To ensure that vulnerable populations particularly at risk during the pandemic were protected, the Legislature considered statutes aimed at addressing these groups' particular health concerns.

In recognition of the unique susceptibility of the LGBTQ community to economic and health impacts, the Legislature enacted legislation requiring reporting on cases of communicable diseases to include data relating to the sexual orientation and gender identity of individuals diagnosed with coronavirus.²⁸

The Legislature considered, but did not enact, a bill that would have established the COVID-19 Support Services and Resiliency for Children Program. That program would have awarded grants to qualifying schools and other entities to provide support services for children and families, particularly those living in poverty or in communities of color, most negatively impacted by the pandemic.²⁹ This program would have provided health, mental health, social, and academic support services.

The Legislature approved a bill to provide emergency food assistance during the public health emergency to low income and undocumented Californians. However, that bill was vetoed for fiscal reasons.³⁰

Workplace Exposure to COVID-19

The Legislature enacted a statute that would (1) direct the Division of Occupational Health and Safety to prohibit work at places of employment that constitute an imminent hazard to employees due to the risk of exposure to COVID-19, and (2) require employers to provide notifications of worksite exposure to employees and public health authorities.³¹

To further protect the health of workers, the Legislature established COVID-19 supplemental sick leave for food sector workers, employees of healthcare providers, emergency responders, and employees of private businesses of over 500 employees.³²

²⁷ 2020 Cal. Stat. ch. 12.

²⁸ 2020 Cal. Stat. ch. 183.

²⁹ AB 875 (Wicks) (2020) (not enacted).

³⁰ AB 826 (Santiago) (2020) (vetoed).

³¹ 2020 Cal. Stat. ch. 84.

³² 2020 Cal. Stat. ch. 45; 2021 Cal. Stat. ch. 13.

School Exposure

In anticipation of the return of in-person school instruction in 2021, the Legislature enacted mandatory reporting requirements for school administrators.³³ This legislation required school administrators to notify local health officers of positive COVID-19 cases on campus, as well as requiring educational entities to report certain information relating to in-person activities to the Department of Public Health and to post COVID-19 safety plans on their websites.

Healthcare Education and Workforce

In order to ensure the adequacy of the healthcare workforce, the Legislature authorized nursing programs to waive certain clinical experience requirements during the pandemic, allowing the progression of nursing students to continue in the face of a public health emergency.³⁴

The Legislature considered, but did not enact, statutes to do both of the following:

- (1) Require an evaluation of the adequacy of the local health department infrastructure and make recommendations for future staffing in the face of the public health emergency.³⁵
- (2) Create a regional pipeline program for community college students to pursue premedical training and enter medical school in order to address the shortage of primary care physicians in the state and the disparities in access to care in underserved communities.³⁶

COVID-19 Testing

The Legislature also considered two, bills related to COVID-19 testing, both of which were vetoed by the Governor. Those bills would have done the following:

- (1) Required the Government Operations Agency to appoint a working group to explore (a) the use of verifiable health credentials, which could be used for returning to work, and (b) immunity certificates, for communication of COVID-19 test results.³⁷ This bill was vetoed for fiscal reasons.
- (2) Required direct-to-consumer genetic testing companies to provide consumers with privacy policy information and to obtain consumers' express consent for the use of their data.³⁸ This bill was vetoed for being overbroad and having possible unintended consequences.

³³ 2021 Cal. Stat. ch. 10.

³⁴ 2020 Cal. Stat. ch. 282.

³⁵ AB 3224 (Rodriguez) (2020) (not enacted).

³⁶ SB 1110 (Hurtado) (2020) (not enacted).

³⁷ AB 2004 (Calderon) (2020) (vetoed).

³⁸ SB 980 (Umberg) (2020) (vetoed).

Contact Tracing

As cases spread rapidly throughout the state, the Legislature considered, but did not enact, two bills aimed at improving the ability of the state to trace those infected with COVID-19 and prevent the further spread of the virus. Those bills would have done the following:

- (1) Established the Technology Assisted Contact Tracing Public Accountability and Consent Terms Act, which would have required participating businesses or public health entities to issue public reports containing information about individuals whose personal information was collected, used, or disclosed.³⁹
- (2) Prohibited data collected, received, or prepared for contact tracing from being used, maintained, or disclosed for any purpose other than contact tracing efforts.⁴⁰

Vaccines

In anticipation of the rollout of COVID-19 vaccines, the Legislature authorized pharmacists to independently initiate and administer COVID-19 vaccines approved or authorized by the FDA under specified circumstances.⁴¹ The Legislature further recognized the necessity of teachers' health and safety following school reopenings and thus required the Government Operations Agency to prioritize vaccinations for educators.⁴²

The Legislature considered, but did not enact, a bill that would have prohibited requiring evidence of vaccination.⁴³

EDUCATION

Distance Learning

Following the stay-at-home order, the Legislature quickly introduced laws to accommodate distance learning, waive various attendance and testing requirements, ensure the continued functioning of special needs programs, establish learning continuity and attendance plans, and appropriate funds to support distance learning and mitigate learning loss.⁴⁴

³⁹ AB 1782 (Chau) (2020) (not enacted).

⁴⁰ AB 660 (Levine) (2020) (not enacted).

⁴¹ 2020 Cal. Stat. ch. 123.

⁴² 2021 Cal. Stat. ch. 10.

⁴³ AB 327 (Kiley) (2021).

⁴⁴ 2020 Cal. Stat. ch. 3; 2020 Cal. Stat. ch. 24; 2020 Cal. Stat. ch. 110; 2021 Cal. Stat. ch. 10.

Technology

As education moved online, the “digital divide” presented practical obstacles to providing low income and underserved students with adequate remote instruction. To increase access to technology necessary for distance learning, the Legislature expanded the definition of “instructional materials” authorized to be purchased through state lottery funds. The expanded definition included laptops and devices that give students internet access.⁴⁵

Internet Access

Bills were also introduced to address disparate levels of internet access throughout the state. One enacted bill required the establishment of a statewide open-access “middle-mile” broadband network to provide an opportunity for “last-mile” providers, “anchor institutions,” and tribal entities to connect to broadband networks to facilitate high-speed broadband service.⁴⁶ This bill further established the Broadband Loan Loss Reserve fund to allow local governments, school districts, and nonprofits to finance local broadband services themselves.

The Legislature considered, but did not enact, bills that would have expanded internet access through grants to increase affordability of internet service plans in low-income and underserved communities, required the California Research Bureau to study ways to close the digital divide, and required internet service providers to file emergency operations plans to ensure reliable access to communications in the face of a public emergency.⁴⁷

Academic Performance

The pandemic interrupted the education of millions of students whose academic performances likely suffered as a result. Bills were enacted to address this by doing the following:

- (1) Grant students more flexibility by extending probationary periods for failing students that allow them to continue to participate in extracurricular and cocurricular activities.⁴⁸
- (2) Authorize high schools to retroactively grant high school diplomas to high school students in good academic standing who were unable to complete graduation requirements due to COVID-19.⁴⁹

The Legislature considered, but did not enact, a bill to establish the COVID-19 Support Services and Resiliency for Children Program, which would have

⁴⁵ 2020 Cal. Stat. ch. 110.

⁴⁶ 2021 Cal. Stat. ch. 156.

⁴⁷ AB 570 (Aguiar-Curry) (2020) (not enacted); AB 2626 (Bauer-Kahan) (2020) (not enacted); SB 1058 (Hueso) (2020) (not enacted).

⁴⁸ 2020 Cal. Stat. ch. 64.

⁴⁹ 2020 Cal. Stat. 66.

provided grants to schools to provide academic support services, such as tutoring and mentoring, to pupils negatively impacted by COVID-19.⁵⁰

PreK-12 Programming

After School, Summer School and Childcare Programs

The Legislature also moved to address childcare and after school programs impacted by the pandemic, reimbursing state-subsidized childcare programs physically closed during the pandemic that remained operational through a distance learning program.⁵¹ To ensure adequate access to childcare, the Legislature appropriated funds to provide financial assistance to childcare programs, the families they serve, and the families of essential workers.⁵²

The stay-at-home order also forced closures of after school programs and summer school programs receiving federal or state funding. In order to provide the flexibility these programs needed to continue to serve pupils during the pandemic, the Legislature waived or greatly reduced various programming attendance requirements.⁵³

Health and Safety

Food Insecurity, Housing, and Mental Health

The financial impact of the pandemic resulted in greater food insecurity issues for students across the state. In response, the Legislature enacted statutes to provide more flexibility for community colleges to spend surplus lottery funds on the housing and food needs of their students, as well as requiring on-campus food pantries or distributions.⁵⁴

The Legislature considered, but did not enact, two other bills that addressed the food insecurity needs of preK-12 students. One proposed bill would have required continued school meal distribution for needy pupils throughout the pandemic.⁵⁵ The other would have provided support for the housing and mental health needs of students through the COVID-19 Support Services and Resiliency for Children program.⁵⁶

⁵⁰ AB 875 (Wicks) (2020) (not enacted).

⁵¹ 2020 Cal. Stat. ch. 24; 2020 Cal. Stat. ch. 110.

⁵² 2020 Cal. Stat. ch. 24; 2021 Cal. Stat. ch. 81.

⁵³ 2020 Cal. Stat. ch. 24.

⁵⁴ 2020 Cal. Stat. ch. 294; 2020 Cal. Stat. ch. 25.

⁵⁵ AB 2887 (Bonta) (2020) (not enacted).

⁵⁶ AB 875 (Wicks) (2020) (not enacted); SB 1396 (Wilk) (2020) (not enacted).

Reporting Requirements

In anticipation of a return to in-person instruction in 2021, the Legislature enacted legislation to impose certain mandatory reporting requirements on school administrators.⁵⁷ This legislation required school administrators to notify local health officers of positive COVID-19 cases on campus, as well as requiring educational entities to report certain information relating to in-person activities to the Department of Public Health and to post COVID-19 safety plans on their websites.

School Reopenings

To ensure the health and safety of students, teachers, and administrators on campus following school reopenings, the Legislature enacted statutes aimed at appropriating funds to pay for personal protective equipment and school facility cleaning.⁵⁸ The Legislature further provided grants to local educational agencies to reopen schools with functional ventilation systems.⁵⁹

Educators

Credentials

Traditional in-person credentialing examinations became impracticable, unsafe, or impossible for educators following the stay-at-home order. In response to this, the Legislature had to ensure that teachers who were otherwise qualified but unable to meet certain credentialing requirements due to the pandemic were still able to educate students throughout the state. The Legislature addressed this through statutes that extended the validity of teaching credential scores and waived certain teaching credential requirements that could not be met during the pandemic.⁶⁰

Vaccinations

In recognition of the necessity of teachers' health and safety following school reopenings, the Legislature required the Government Operations Agency to prioritize vaccinations for educators.⁶¹

Higher Education: Workforce

As employment rates declined, the Legislature considered legislation aimed at increasing future employment rates and mitigating the economic and social impact of a diminished workforce. In addition to reforms discussed under "Healthcare"

⁵⁷ 2021 Cal. Stat. ch. 10.

⁵⁸ 2020 Cal. Stat. ch. 3.

⁵⁹ 2020 Cal. Stat. ch. 372.

⁶⁰ 2020 Cal. Stat. ch. 24; 2020 Cal. Stat. ch. 110.

⁶¹ 2021 Cal. Stat. ch. 10.

above, the Legislature approved a bill to create a pilot project to enhance the regionally focused statewide business training center network of community college contract education centers. However, that bill was vetoed by Governor Newsom for fiscal reasons.⁶²

Liability

The Legislature considered, but did not enact, bills aimed at exempting preK-12 schools and institutions of higher education, as well as their officers and employees, from liability for injury related to COVID-19 or for acts or omissions in response to COVID-19.⁶³

GOVERNMENT OPERATIONS

Legislative Operations

Resolutions and Constitutional Amendments

In order to allow itself to continue to promulgate much-needed legislation during the pandemic, the Legislature took steps to accommodate remote legislative operations. The Senate amended its rules to provide flexibility to functions in the Senate during a state of emergency.⁶⁴ The Assembly adopted a similar resolution allowing Assembly Members at a high risk from COVID-19 to vote by proxy.⁶⁵

The Legislature considered, but did not approve, a proposed amendment to the California Constitution to permit members of the Legislature to remotely attend and vote in legislative proceedings or vote by proxy during a declared state of emergency.⁶⁶

Local Government

To ensure that local governments were similarly able to conduct themselves effectively during the pandemic, the Legislature enacted legislation that prevented any existing laws from prohibiting a county board or multijurisdictional assessment board from conducting hearings remotely.⁶⁷

⁶² AB 1457 (Cervantes) (2020) (vetoed).

⁶³ AB 1384 (O'Donnell) (2020) (not enacted); AB 1759 (Salas) (2020) (not enacted).

⁶⁴ S.R. 86 (Atkins) (2020); 2020 Cal. stat. res. ch. 15.

⁶⁵ H.R. 100 (Calderon) (2020) (adopted).

⁶⁶ C.A. 25 (Mullin) (2020) (not enacted).

⁶⁷ 2020 Cal. Stat. ch. 107.

Legislative Oversight of Executive Authority

The Legislature considered, but did not enact, legislation to curtail the Governor's emergency powers during the pandemic.⁶⁸

Elections

To facilitate voting, while still protecting public health, the Legislature enacted legislation that required election officials to mail ballots to every registered voter for the general election, allowed each voter to vote by mail, extended the deadline for the receipt of mail-in ballots, and provided flexibility to counties to adjust voting procedures to accommodate COVID-19.⁶⁹

The Legislature considered, but did not enact, a statute to limit the scope of persons who could return a mail-in ballot for another person.⁷⁰

Judiciary

To facilitate the continuity of judicial operations, the Legislature enacted a bill that allowed the Chairperson of the Judicial Council to issue orders authorizing multiple courts to hold court sessions anywhere within the county, transfer civil cases to another county, or extend the time periods for bringing an action to trial if the Chairperson determined emergency conditions threaten the orderly operation of the courts.⁷¹

The Legislature also enacted a bill to require that parties to litigation accept electronic service of notice or other documents and electronically serve notice or other documents.⁷² This bill further allowed deponents or other parties to not be physically present, authorized deponents or deposing parties to elect to have deposition officers attend by phone or other electronic means, and extended deadlines for continuances or postponements of trial dates during a state of emergency. In anticipation of the influx of future attempts to collect rental debt due to the pandemic, the Legislature also enacted a bill to grant small claims courts jurisdiction over any actions for the recovery of COVID-19 rental debt, regardless of the amount demanded.⁷³

Criminal Justice

The Legislature considered, but did not enact, legislation to do the following:

- (1) Establish the Coronavirus Alternative Adjudicative Program, which would have required courts to dismiss accusatory pleadings if the defendant was

⁶⁸ ACR 46 (Kiley) (2021).

⁶⁹ 2020 Cal. Stat. ch. 4; 2020 Cal. Stat. ch. 31.

⁷⁰ SB 1163 (Nielson) (2020) (not enacted).

⁷¹ 2020 Cal. Stat. ch. 76.

⁷² 2020 Cal. Stat. ch. 112.

⁷³ 2020 Cal. Stat. ch. 37.

not convicted of a violent felony and did not commit further crimes after he or she was released.⁷⁴

- (2) Establish an emergency preparedness task force within the Department of Corrections and Rehabilitations to evaluate the preparedness of the correctional system in the event of future emergencies.⁷⁵

In addition, a bill vetoed by the Governor would have established the California Reentry Commission, which would have been required to prepare and develop a new health and safety agency for the reentry population, provide grants to reentry service providers, conduct a review of reentry barriers, and review current state criminal justice policies.⁷⁶

EMPLOYMENT AND LABOR

Unemployment Benefits

As economic conditions worsened, the Legislature acted quickly to provide employees laid off due to COVID-19 with temporary federal-state emergency financial support, while prohibiting unemployment compensation benefits from being charged against reserve accounts of employers.⁷⁷

Occupational Safety

Workers' Compensation: COVID-19 Infection and Death

For purposes of workers' compensation, the Legislature expanded the definition of a workplace injury to include COVID-19 infection, creating a rebuttable presumption of eligibility for first responders, healthcare workers, and the employees of employers with 5 or more employees.⁷⁸

The Legislature considered, but did not enact, a bill to shield small businesses from liability to employees who contracted COVID-19 in the workplace.⁷⁹

Workplace COVID-19 Outbreaks

To ensure the occupational safety of workers, the Legislature authorized the division of Occupational Health and Safety to prohibit work at places of employment that constituted an imminent hazard to employees due to the risk of

⁷⁴ SB 315 (Hertzberg) (2020) (not enacted).

⁷⁵ AB 2876 (Waldron) (2020) (not enacted).

⁷⁶ SB 369 (Hertzberg) (2020) (vetoed).

⁷⁷ 2020 Cal. Stat. ch. 22; 2021 Cal. Stat. ch. 5.

⁷⁸ 2020 Cal. Stat. ch. 85.

⁷⁹ AB 1842 (Salas) (2020) (not enacted).

exposure to COVID-19 and required employers to provide notifications of worksite exposure to employees and public health authorities.⁸⁰

COVID-19 Information: Outreach and Dissemination

To protect agricultural workers, the Legislature enacted a bill that required the Division of Occupational Safety and Health to (1) disseminate information in English and Spanish on best practices for COVID-19 infection prevention, and (2) work with community organizations to conduct outreach to agricultural workers to disseminate information on best practices and COVID-related employment benefits, including PSAs on Spanish radio stations and signage.⁸¹

The Legislature considered, but did not enact, a bill aimed at requiring proclamations, materials, and announcements made by the Governor regarding a state of emergency to be disseminated in specified languages.⁸²

Workforce and Public Health

Personal Protective Equipment

Faced with rising cases among essential workers and healthcare workers, the Legislature enacted statutes aimed at ensuring PPE use among workers and maintaining adequate PPE supply. These statutes required public and private employers of general acute care hospitals to provide PPE to employees, ensure PPE use, and maintain PPE stockpiles for the near future.⁸³ Other statutes focused on future emergencies, requiring the Department of Public Health to establish a PPE stockpile for healthcare and essential workers and required other health care facilities and employers to maintain inventories of unexpired PPE in the cases of another future emergency similar to COVID-19.⁸⁴

Sanitation

To further public health, the Legislature enacted legislation that imposed sanitation and handwashing requirements on food sector workers.⁸⁵

The Legislature considered, but did not enact, a bill that would have given a tax credit to small businesses as an incentive to buy cleaning and sanitizing supplies.⁸⁶

⁸⁰ 2020 Cal. Stat. ch. 84.

⁸¹ 2020 Cal. Stat. ch. 212.

⁸² AB 1107 (Chu) (2020) (not enacted).

⁸³ 2020 Cal. Stat. ch. 313.

⁸⁴ 2020 Cal. Stat. ch. 301.

⁸⁵ 2020 Cal. Stat. ch. 45.

⁸⁶ AB 2496 (Choi) (2020) (not enacted).

Employee Needs

Sick Leave

The Legislature provided COVID-19 supplemental sick leave for food sector workers, employees of healthcare providers, emergency responders, and employees of private businesses of over 500 employees.⁸⁷

The Legislature considered, but did not enact, legislation to provide similar protections to independent contractors and day laborers, as well as providing more flexible work schedules to employees.⁸⁸

Childcare

The Legislature appropriated funds to provide state-subsidized childcare to essential workers.⁸⁹

The Legislature considered, but did not enact, legislation that would authorize financial benefits to workers taking time off to care for children whose schools had been closed due to COVID-19.⁹⁰

Job Creation and Rehiring

In order to encourage job creation, the Legislature enacted and considered several bills aimed at encouraging reemployment of laid-off Californians. This was done by awarding tax credits to small businesses that increased hiring, requiring employers to provide laid-off employees with information about job positions and offer positions based on a preference system, and prohibiting employers from taking adverse action against former employees who attempt to enforce these rehiring rights.⁹¹

ECONOMIC SUPPORT

Businesses and Other Sectors

Businesses were hit hard by the pandemic, as many small business owners did not have the resources to accommodate new safety requirements or the customer base to break even. In order to protect these businesses, the Legislature considered several bills aimed at small businesses and other industries uniquely impacted by the pandemic.

⁸⁷ 2020 Cal. Stat. ch. 45; 2021 Cal. Stat. ch. 13.

⁸⁸ AB 3887 (Bonta) (2020) (not enacted); AB 3196 (2020) (Kiley) (not enacted).

⁸⁹ 2020 Cal. Stat. ch. 6.

⁹⁰ 2020 Cal. Stat. ch. 24; SB 843 (Chang) (2020) (not enacted).

⁹¹ 2020 Cal. Stat. ch. 41; 2021 Cal. Stat. ch. 16.

Small Businesses

The Legislature enacted a bill that allowed a credit against the personal income and corporate income taxes for small business employers that increased hiring during the pandemic.⁹² The Legislature also enacted a bill that established the Small Business COVID-19 Relief Grant Program to assist small businesses affected by the pandemic through the administration of grants.⁹³

The Legislature considered, but did not enact, several other bills to economically assist small businesses through the pandemic. Those bills would have had the following effects:

- (1) Require the California Infrastructure and Economic Development Bank to provide zero-interest loans directly to small businesses and nonprofits affected by an emergency.⁹⁴
- (2) Create credits for small businesses and nonprofits that purchased cleaning and sanitizing supplies, or provide those businesses and nonprofits affected by the pandemic with an earned income tax credit.⁹⁵
- (3) Create a rebuttable presumption that pandemic-related damage to a business was the direct cause of a business interruption for insurance coverage purposes.⁹⁶
- (4) Exempt small businesses from liability for injury or illness due to COVID-19.⁹⁷

Other Sectors Impacted by the Pandemic

The Legislature also singled out other sectors facing unique challenges posed by the pandemic. To aid licensees most severely impacted by the pandemic, the Legislature enacted bills that waived certain licensing fees and requirements for barbering, cosmetology, and alcoholic beverage control licensees.⁹⁸

The Legislature considered, but did not enact, a more expansive version of support for licensees, requiring any state agency issuing any business license to establish a process for a person or business experiencing economic hardship due to an emergency caused by a virus to defer fees required for licensing.⁹⁹

⁹² 2020 Cal. Stat. ch. 41.

⁹³ 2021 Cal. Stat. ch. 7.

⁹⁴ AB 2887 (Bonta) (2020) (not enacted).

⁹⁵ AB 2496 (Choi) (2020) (not enacted); AB 1842 (Salas) (2020) (not enacted).

⁹⁶ AB 1552 (Ramos) (2020) (not enacted).

⁹⁷ AB 1035 (Ramos) (2020) (not enacted).

⁹⁸ 2021 Cal. Stat. ch. 9; 2021 Cal. Stat. ch. 11.

⁹⁹ SB 1168 (Morrell) (2020) (not enacted).

The Legislature considered, but did not enact, three bills aimed at economically supporting specific industries and sectors such as farms, the research sector, schools, and local governments.¹⁰⁰

The Legislature considered, but did not enact, a bill that would have prevented disciplinary action against professional licensees and businesses (other than medical professionals) for violation of public health orders.¹⁰¹

Individuals

The Legislature further extended resources to the millions of individuals in the state who were struggling financially during the pandemic. To ensure that recipients of the federal loan forgiveness under the CARES Act, the Paycheck Protection Program, the Health Care Enhancement Act, and the Paycheck Protection Program Flexibility Act did not face unintended economic consequences, the Legislature passed legislation that excluded those loans from gross income for state income tax purposes.¹⁰² When the Legislature authorized one-time stimulus payments to low-income Californians, these payments were also excluded from gross income.¹⁰³

The Legislature considered a bill that would have provided low-income and undocumented Californians with prepaid cards to be used for food during the state of emergency. However, the bill was vetoed for budgetary reasons.¹⁰⁴

Consumer Concerns

As various emergency items like masks, pulse-oximeters, and cleaning supplies became essential and in high demand, the Legislature focused its attention on price gouging, enacting legislation making it a crime for a person, contractor, business, or other entity to sell goods or services at a price a certain percentage higher than the price charged by that person prior to a declaration of emergency.¹⁰⁵

The Legislature considered, but did not enact, a bill that would have required businesses to accept cash from consumers, even during a declared state of emergency, unless public health directives urged otherwise.¹⁰⁶

OTHER STATES

¹⁰⁰ AB 2173 (Dahle) (2020) (not enacted); AB 2493 (Choi) (2020) (not enacted); AB 2707 (Holden) (2020) (not enacted).

¹⁰¹ AB 54 (Kiley) (2021).

¹⁰² 2020 Cal. Stat. ch. 39; 2021 Cal. Stat. ch. 17.

¹⁰³ 2021 Cal. Stat. ch. 8.

¹⁰⁴ AB 826 (Santiago) (2020) (vetoed).

¹⁰⁵ 2020 Cal. Stat. ch. 339.

¹⁰⁶ SB 926 (Hill) (2020) (not enacted).

This section covers legislation considered by the state legislatures of Massachusetts, Minnesota, New Jersey, and New York in 2020 and 2021.

HOUSING

Housing Stability

Along with broad moratoriums on evictions due to nonpayment of rent during the pandemic, state legislatures also considered a number of bills to protect the millions of Americans at risk of losing their housing.

One state is considering broader protections, such as restricting repossession of motor vehicles and mobilehomes, as well as prohibiting certain limited for-profit housing companies from voluntarily dissolving or semi-privatizing.¹⁰⁷

Another bill would protect property owners in actions to recover possession of real property during a state of emergency by allowing previous employment to be used to demonstrate ability to pay.¹⁰⁸

To ensure that renters and homeowners, among other groups, receive adequate information on the state-sponsored COVID-related programs available to them, one bill would require a comprehensive list of such programs to be published online on a single webpage.¹⁰⁹

Another bill would protect vulnerable individuals by providing rental assistance to disabled individuals unable to pay rent because of the pandemic, without requiring a certification of risk of eviction.¹¹⁰

One legislature considered, but did not enact, a bill that would have established a presumption of eligibility for public housing for those who lost employment due to a non-essential business shutdown due to the pandemic.¹¹¹

Tenant Protections

States also considered a number of laws specifically aimed at tenants more vulnerable to housing insecurity due to the pandemic. In order to allow tenants with little monetary flexibility to make their rent payments, one state enacted legislation requiring landlords to allow tenants to make rent payments on credit cards during the coronavirus emergency.¹¹²

¹⁰⁷ N.Y. SB 2849 (Thomas) (2021) (pending); N.Y. SB 6325 (Kavanagh) (2021) (pending).

¹⁰⁸ N.Y. AB 3502 (Hevesi) (2021) (pending).

¹⁰⁹ N.Y. AB 7808 (Simon) (2021) (pending).

¹¹⁰ N.Y. SB 1243 (Benjamin) (2021) (pending).

¹¹¹ N.Y. SB 8324 (Bailey) (2020) (failed).

¹¹² 2021 N.J. Stat. ch. 149.

Other bills would provide rent freezes for all tenants, low income elderly persons, or persons with disabilities.¹¹³ Other forms of tenant protections currently under consideration by state legislatures would establish confidentiality of court records regarding eviction actions initiated during the pandemic, allow tenants to utilize security deposits to pay rent during a state of emergency, create dispute resolution processes for security deposit use, permit tenants to terminate leases early under certain circumstances, and prohibit evictions of rent-regulated tenants where tenants were unable to meet occupancy requirements due to the pandemic.¹¹⁴

Tenant and Property Owner Relief: Taxation

Legislatures have also been considering bills aimed at supporting homeowners and tenants during the pandemic through tax policy. Several state legislatures are considering establishing income and property tax credits and relief during the pandemic to struggling residential tenants and property owners.¹¹⁵ Another law attempts to assist property owners financially by allowing property owners to pay their property taxes without interest and in installments during the pandemic.¹¹⁶

Landlords

With eviction moratoriums in place, legislatures also turned their attention to the concerns of landlords, many of whom lost significant income from coronavirus tenant protections allowing nonpayment of rent. To assist landlords during the pandemic, state legislatures are considering bills that would provide landlords who have lost income due to loss of rental income with tax credits or tax payment extension periods, as well as other financial relief in the form of loans and grants.¹¹⁷

Some legislatures are also considering more aggressive approaches to protect landlords, such as limiting the moratorium on evictions to owners of a specified number of residential units, requiring the early expiration of the eviction moratorium, and enhancing penalties against tenants who do not pay rent despite not facing any financial hardship.¹¹⁸

¹¹³ Mass. HB 4718 (Sabadosa) (2020) (failed); N.Y. AB 10328 (Reyes) (2020) (failed); N.Y. SB 6776 (Salazar) (2021) (pending).

¹¹⁴ N.J. AB 4463 (Quijano) (2021) (pending); N.Y. SB 4785 (Ramos) (2021) (pending); N.Y. SB 2000 (Jackson) (2021) (pending); N.Y. AB 3155 (Epstein) (2020) (pending); N.Y. AB 619 (Rosenthal) (2021) (pending).

¹¹⁵ Minn. HF 2386 (2021) (Nelson) (pending); N.Y. AB 6630 (Barclay) (2021) (pending); N.Y. SB 8390 (Benjamin) (2020) (failed); N.Y. AB 10361 (Mosley) (2020) (failed).

¹¹⁶ SB 3731 (Ortt) (2021) (pending).

¹¹⁷ N.J. 3357 (Stack) (2021) (pending); N.Y. SB 2993 (Hareckham) (2021) (pending); N.Y. SB 5629 (Tedisco) (2021) (pending); N.Y. AB 10255 (Niou) (2020) (failed).

¹¹⁸ N.Y. AB 8122 (Brabenc) (2021) (pending); N.J. SB 3675 (Testa) (2021) (pending).

Health and Safety

To protect the health of tenants and homeowners during the pandemic, one state is considering bills that would prohibit any in-person showings of residential properties during a declared state of emergency.¹¹⁹ Another state is considering legislation ensuring that emergency occupancy protocols apply to short-term rentals, such as hotel rooms, as well.¹²⁰

Homelessness

The pandemic exacerbated problems facing homeless Americans. In order to address this, state legislatures considered a number of bills to protect the vulnerable unhoused population.

One state is attempting to establish a Bill of Rights for persons experiencing homelessness, which would grant broad protections, including adequate access to health care and shelter during an emergency.¹²¹ To ensure that homeless persons still receive access to public programs, another state's bill would require homelessness prevention agencies to remain open during public health emergencies.¹²² To protect the health of homeless individuals and stop the spread of COVID-19 among the unhoused population, another bill would require homeless individuals and families to be placed in private rooms with private bathrooms in hotels, motels, dormitories, and other living facilities for the duration of the state of emergency.¹²³ An additional bill would require social distancing room configurations in homeless housing.¹²⁴

HEALTH

Medical and Frontline Workers

Emergency Compensation and Recognition

To ensure that medical workers' contributions during the pandemic were recognized, several state legislatures attempted to provide these health professionals with additional economic support. Some currently pending bills would establish emergency hazard pay, emergency sick leave, emergency wage conditions, tax credits and deductions, and loan forgiveness programs for frontline workers, paramedics, nurses, ambulance workers,

¹¹⁹ Mass. HB 1449 (Vitolo) (2021) (pending).

¹²⁰ N.J. AB 4220 (Lampitt) (2020) (pending).

¹²¹ Mass. SB 142 (Rausch) (2021) (pending).

¹²² N.J. SB 3729 (Stack) (2021) (pending).

¹²³ N.Y. AB 3521 (Hevisi) (2021) (pending).

¹²⁴ N.Y. SB 2919 (Addabbo) (2021) (pending).

personal care workers, home health workers, and other emergency medical workers during the pandemic.¹²⁵

Emergency Preparedness

Legislatures also had to ensure that the health care workforce was adequately prepared and able to respond to such an unprecedented emergency. Some of these bills specifically target work groups such as nurses or home care workers and would require employers to institute public health emergency and infection control training programs.¹²⁶ Others focus on ensuring that states have sufficient health care workers to respond to the emergency. One state enacted a bill permitting the expedited licensure of mental health professionals during a state of emergency.¹²⁷ Other bills would allow licensing by endorsement for out-of-state nurses to render aid to other states, allow unlicensed individuals to perform certain nursing tasks during the state of emergency, or establish volunteer programs for volunteers to provide free non-medical quality of life services to individuals hospitalized with COVID-19.¹²⁸

Liability

State legislatures also enacted bills providing liability protections for various health care workers, health care facilities, and volunteer organizations during the coronavirus pandemic.¹²⁹ Other bills would extend similar protections to disaster volunteers, addiction service providers, dental workers, and Good Samaritans rendering first aid.¹³⁰

Public Health

Vulnerable Populations

Legislatures are examining and providing additional protections to certain groups facing unique challenges due to the COVID-19 pandemic. One enacted bill establishes a task force to determine how and why the pandemic disproportionately affects that state's minority and vulnerable populations, as well as the short- and long-term consequences of the pandemic on those

¹²⁵ Mass. SB 1168 (Collins) (2021) (pending); Mass. SB 1621 (Moore) (2021) (pending); Mass. HB 756 (Santiago) (2021) (pending); Mass. HB 1993 (Hendricks) (2021) (pending); Mass. HB 2055 (Tyler) (2021) (pending); Minn. SF 1006 (Port) (2021) (pending); Minn. HF 7 (Lippert) (2020) (failed); N.Y. SB 425 (2021) (Hoylman) (pending); N.Y. SB 3320 (2021) (Kaminsky) (pending); N.Y. AB 3870 (2021) (Burke) (pending); N.Y. SB 4373 (Martucci) (2021) (pending); N.Y. SB 6424 (Rivera) (2021) (pending); N.Y. SB 8194 (Hoylman) (2020) (failed); N.Y. SB 8196 (Griffo) (2020) (pending).

¹²⁶ Mass. SB 4040 (Friedman) (2021) (pending).

¹²⁷ 2021 N.J. Stat. ch. 94.

¹²⁸ Minn. HF 2073 (Kiel) (2021) (pending); N.Y. SB 8569 (Skoufif) (2020) (failed); N.Y. SB 8268 (Felder) (2020) (failed).

¹²⁹ 2020 N.Y. Stat. ch. 56; 2020 Mass. Stat. ch. 64.

¹³⁰ Mass. SB 1521 (Rush) (2021) (pending); Minn. SF 512 (Benson) (2021) (pending); N.Y. SB 8391 (Harckham) (2020) (failed); N.Y. AB 10714 (Rules Cmte.) (2020) (failed); N.Y. SB 2050 (Sanders) (2021) (pending).

communities.¹³¹ Additional states' bills would require examinations into the impact of the pandemic on Black and Latinx individuals with autism, persons with substance use disorders, persons with intellectual and developmental disabilities, and incarcerated individuals.¹³²

Faced with a deadly virus that was particularly dangerous for immunocompromised and elderly individuals, state legislatures focused special attention on the protection of those groups through policy. This was done through legislation that would establish reporting requirements regarding coronavirus cases and deaths in long-term care facilities, special screening requirements, private enforcement and causes of action, infection control procedures, a hospice and assisted living bill of rights, and consumer protections for those living in assisted living.¹³³

One state further enacted a bill requiring residential health facilities to submit annual pandemic emergency plans.¹³⁴ Additional bills would deny admission of COVID-19 positive nursing home patients until they receive negative tests, establish rules and regulations requiring testing at nursing homes, and publicly disclose the results of nursing home inspections.¹³⁵

Criminal Penalties

To discourage individuals from violating public health orders, one state is considering bills that would make it a crime to (1) make a credible threat to infect another with COVID-19, (2) violate executive orders, rules, or regulations during an emergency requiring social distancing or prohibiting gatherings, and (3) fail to disclose a COVID-19 infection when contacting first responders.¹³⁶

Mask Requirements

To limit transmission of the virus, legislatures also focused on legislation surrounding face coverings. Legislatures are considering bills that would allow entities to require face masks for entry, designate not wearing face coverings in a

¹³¹ 2021 N.J. Stat. ch. 106.

¹³² Mass. HB 477 (Barber) (2021) (pending); Mass. HB 2127 (Santiago) (2021) (pending); N.Y. SB 6294 (Mannion) (2021) (pending); N.Y. AB 6394 (Gottfried) (2021) (pending).

¹³³ Mass. HB 2635 (Balsler) (2020) (failed); Minn. SF 935 (Dibble) (2021) (pending); Minn. HF 32 (Houseley) (2020) (failed).

¹³⁴ 2020 N.Y. Stat. ch. 114.

¹³⁵ N.Y. AB 750 (Rosenthal) (2021) (pending); N.Y. AB 1010 (Bronson) (2020) (failed); N.Y. SB 1177 (May) (2021) (pending).

¹³⁶ N.J. SB 2361 (Corrado) (2021) (pending); N.J. SB 2372 (Goapl) (2021) (pending); N.J. SB 2957 (Cyran) (2021) (pending).

store or on public transportation a fineable offense, and require or provide face masks for voters at public polling places.¹³⁷

Other legislation would *limit* mask requirements during the pandemic. These measures would limit requirements to wear face masks in the workplace, remove any requirements for children to wear face coverings in youth sports, and prohibit mask requirements for vaccinated individuals.¹³⁸

Contact Tracing

To further protect the public health and track the spread of COVID-19 throughout their states, legislatures have considered a number of bills aimed at contact tracing and protecting individual privacy during the pandemic. Some bills would have established contact tracing and provided law enforcement agencies with addresses of COVID-19 positive individuals.¹³⁹ One state enacted a bill requiring contact tracers to be representative of the cultural and linguistic diversity of the communities they serve.¹⁴⁰

To protect individual privacy during contact tracing efforts, one enacted bill established specific confidentiality requirements for contact tracing.¹⁴¹ Another state attempted to protect privacy by prohibiting mandatory contact tracing and tracking of employee health during the pandemic.¹⁴²

Testing

Legislatures have also considered bills to ensure adequate access to, and availability of, COVID-19 testing. These bills would establish statewide rapid COVID-19 testing, require workers at mass vaccination sites to receive rapid COVID-19 tests, create a testing bill of rights, provide grants to small employers to assist in establishing testing for employees, and permit uninsured individuals to receive free testing.¹⁴³ One state is attempting to place some limits on testing requirements by prohibiting any bans on travel in- and out-of-state and testing upon entry into the state.¹⁴⁴

¹³⁷ Minn. HF 10 (Jordan) (2020) (failed); N.Y. SB 1005 (Kaminsky) (2021) (pending); N.J. AB 4453 (Caputo) (2021) (pending); N.J. SB 5714 (Dancer) (2021) (pending); N.Y. SB 4728 (Ramos) (2021) (pending).

¹³⁸ Minn. SF 2197 (Utke) (2021) (pending); Minn. SF 2450 (Draheim) (2021) (pending); N.J. SB 3832 (Corrado) (2021) (pending).

¹³⁹ Minn. HF 4579 (Liebling) (2020) (failed); Minn. HF 43 (Johnson) (2020) (failed); N.Y. SB 8362 (Serrano) (2020) (failed).

¹⁴⁰ 2020 N.Y. Stat. ch. 115.

¹⁴¹ 2021 N.Y. Stat. ch. 62.

¹⁴² Minn. HF 164 (Scott) (2020) (failed).

¹⁴³ Mass. HB 3780 (Gouveia) (2021) (pending); Mass. HB 491 (Gouveia) (2021) (pending); Minn. S.F 4500 (Benson) (2020) (failed); N.Y. AB 737 (Gottfried) (2021) (pending).

¹⁴⁴ Mass. HB 482 (Durant) (2021) (pending).

Treatment

As various treatments for this newly discovered virus became available, one state has considered a number of bills that specifically addressed these new treatments. These bills would require healthcare providers to inform particularly vulnerable COVID-19 positive patients of the option for monoclonal antibody treatments and insurance companies to provide coverage for those treatments.¹⁴⁵ To incentivize individuals who have previously tested positive with COVID-19 to donate convalescent plasma to clinical laboratories or blood banks, this state also attempted to establish a tax credit to plasma donors.¹⁴⁶

Vaccinations

Vaccine Distribution and Administration

As vaccines became more readily available in 2021, legislatures enacted and considered several bills concerning the speedy distribution of vaccines across their states.

To ensure that vaccines are being distributed equitably, states are considering a number of bills concerning the distribution of vaccines to certain populations. These bills would require vaccines to be distributed equitably to vulnerable and minority populations, require on-site vaccine availability to persons aged sixty-five and older residing in certain health facilities, prioritize vaccination appointments for those seventy-five and older, mandate the vaccine for residential healthcare facilities, and prohibit elected officials from being given priority for the vaccine over vulnerable populations, first responders, or healthcare workers.¹⁴⁷ Other bills attempt to streamline the pre-registration process, create outreach programs to disseminate information on vaccine availability, establish state-operated vaccination sites in counties with a minimum population, and develop mobile vaccination programs for large employers.¹⁴⁸

To ensure that vaccines could be administered to millions of people as quickly as possible, state legislatures also passed and considered legislation regarding vaccine administration. Several states enacted and considered bills explicitly authorizing dentists, retired nurses, optometrists, and medical assistants to administer COVID-19 vaccinations.¹⁴⁹ One state is also considering a bill

¹⁴⁵ N.Y. AB 4585 (2021) (Rajkumar) (pending); N.Y. AB 7076 (Abinanti) (2021) (pending).

¹⁴⁶ N.Y. SB 8186 (Hoylman) (2020) (failed).

¹⁴⁷ Mass. SB 1515 (Rausch) (2021) (pending); Minn. SF 2051 (Klein) (2021) (pending); N.J. SB 3886 (Beach) (2021) (pending); N.Y. AB 6581 (Zebrowski) (2021) (pending); N.Y. SB 4113 (Comrie) (2021) (pending); N.Y. SB 4530 (Helming) (2021) (pending).

¹⁴⁸ Mass. SB 1454 (Lesser) (2021) (pending); Mass. SB 1424 (DiZoglio) (2021) (pending); N.J. S.B 3699 (Gopal) (2021) (pending); N.Y. SB 5295 (Reichlin-Melnic) (2021) (pending); N.Y. SB 5716 (Brooks) (2021) (pending).

¹⁴⁹ 2021 Minn. Stat. ch. 4; N.J. AB 5212 (Conaway) (2021) (pending); Mass. S.B 1426 (DiZoglio) (2021) (pending); 2021 N.J. Stat. ch. 101; N.J. SB 3355 (O'Scanlon) (2021) (pending).

requiring small pharmacies to assist in facilitating the state response to public health emergencies, including the administration of the coronavirus vaccines.¹⁵⁰ To ensure that more individuals are eligible for the vaccine, other bills hope to expand vaccine eligibility to residents based on employment or occupation regardless of whether that resident is employed outside of the state, as well as authorize certain minors to consent to vaccines.¹⁵¹

In order to encourage as many people to get the vaccine as possible, legislatures considered and enacted bills aimed at providing incentives to medical providers to administer and individuals to receive the vaccine. To ensure that medical providers were not discouraged from administering the vaccine due to cost concerns, one state enacted a bill increasing the medical assistance reimbursement rate for the administration of the vaccine.¹⁵² To incentivize individuals to receive the vaccine, some states are considering establishing tax credits for individuals who receive the vaccine and requiring employers to provide paid sick leave to all employees who obtain the vaccine.¹⁵³ Another state has enacted a bill establishing time off for public employees to receive the vaccine.¹⁵⁴

Concerns and Limitations

Along with the expedited rollout of the new coronavirus vaccines came concerns regarding the safety of those vaccines and the burden certain requirements place on individual liberties. As such, states are considering a number of bills that aim to protect vaccinated and unvaccinated individuals.

Vaccinated Individuals

To protect vaccinated individuals, some states are considering bills that (1) require reporting of adverse events in connection with COVID-19 immunizations, and (2) protect vaccine registry information from discovery and other disclosure.¹⁵⁵

Vaccine Fraud

As it became clear that many unvaccinated individuals across the country were attempting to skirt around vaccination requirements and rules using false vaccine cards, legislatures acted quickly to address this issue. These currently pending bills hope to prevent vaccination fraud by establishing criminal penalties for the

¹⁵⁰ N.J. SB 3716 (Gopal) (2021) (pending).

¹⁵¹ N.Y. SB 4648 (Reichlin-Melnic) (2021) (pending); Minn. SF 2553 (Eaton) (2021) (pending).

¹⁵² 2021 Minn. Stat. ch. 8.

¹⁵³ Mass. HB 2865 (Day) (2021) (pending); N.J. AB 5674 (Huttle) (2021) (pending).

¹⁵⁴ 2021 N.Y. Stat. ch. 77.

¹⁵⁵ Mass. HB 498 (Orrall) (2021) (pending); N.Y. SB 6541 (Rivera) (2021) (pending).

production, sale, and use of false vaccination cards, as well as establishing vaccination fraud prevention and public awareness programs.¹⁵⁶

Unvaccinated Individuals

Legislatures are considering a number of bills that specifically aim to protect unvaccinated individuals from perceived invasions of privacy and individual liberty. Some of these bills would require consent for vaccination, impose criminal penalties for consent coercion, prohibit mandatory immunization and submission of immunization or test results, prohibit requiring vaccine “passports,” prohibit the state from requiring private businesses to only admit vaccinated individuals, prohibit discrimination against unvaccinated individuals, and prohibit requiring immunization for schools, transportation, travel, employment, or entering public buildings.¹⁵⁷

Healthcare Providers and Facilities

States also directed their attention to healthcare providers and facilities to ensure that both those providers and their patients were adequately supported through the pandemic. To prevent patients from bearing the burden of non-medical expenses, one state is considering a bill prohibiting healthcare providers from charging patients for non-medical expenses such as personal protective equipment and increased cleaning and sterilization costs.¹⁵⁸

In consideration of the challenges facing various healthcare providers, states have considered a number of bills aimed at economically supporting those providers through the pandemic. Some of these bills would establish grants for home and community-based service providers, provide payments to dental providers generally, and assist in covering the cost of personal protective equipment.¹⁵⁹ One state is also considering granting certain civil immunities to for-profit healthcare facilities and systems during the state of emergency.¹⁶⁰

Pharmacists

Legislatures have also considered bills addressing pharmacists and pharmaceutical access during the pandemic. These bills would establish specific protocols for individuals receiving positive COVID-19 tests and modify

¹⁵⁶ N.J. SB 3692 (Scutari) (2021) (pending); N.J. A.B 5203 (Huttle) (2021) (pending).

¹⁵⁷ Minn. HF 1245 (Lucero) (2021) (pending); Minn. SF 1589 (Gruenhagen) (2021) (pending); Minn. SF 2430 (Pratt) (2021) (pending); N.J. SB 3674 (Testa) (2021) (pending); N.J. SB 3681 (Holzapfel) (2021) (pending).

¹⁵⁸ Mass. HB 488 (Galvin) (2021) (pending); N.Y. AB 4602 (DiPietro) (2021) (pending).

¹⁵⁹ Minn. HF 1175 (Lippert) (2021) (pending); Minn. HF 2 (Benson) (2020) (failed); Minn. SF 4512 (Utke) (2020) (failed).

¹⁶⁰ N.J. 3804 (Vitale) (2021) (pending).

prescription refill requirements during an emergency to provide individuals with adequate access to life-saving drugs.¹⁶¹

Insurance

To ensure that individuals can still receive and afford adequate healthcare during the present health emergency, legislatures are also considering a number of bills that address the insurance industry. These bills would require insurance coverage for individuals experiencing post-coronavirus disease syndrome, individuals who became unemployed due to the pandemic, individuals receiving care via telehealth, and individuals requiring COVID-19 testing, treatment, and quarantines.¹⁶² Legislatures are also considering requiring dental insurers to provide credits for reduced usage during the pandemic, extending insurance payments and medical debt collection payments, and prohibiting insurers from cancelling individual policies due to nonpayment of premiums.¹⁶³ One state further considered a bill prohibiting life insurance providers from limiting or excluding coverage in the event of a death resulting from the pandemic.¹⁶⁴

EDUCATION

Learning Loss Mitigation

One pending bill would establish a three-year pilot program to provide participating students an additional year to address learning loss and missed opportunities in extracurricular activities caused by the pandemic.¹⁶⁵

Health and Safety

PPE and Testing

One bill would require the state to enter into a contract for PPE and COVID-19 testing kits for purchase by institutions of higher education, and another would require the state to reimburse non-public schools for state-mandated COVID-19 testing.¹⁶⁶ Another bill would require COVID-19 vaccinations for certain post-secondary students in that state.¹⁶⁷

¹⁶¹ Mass. HB 2523 (Jones) (2021) (pending); Minn. HF 4565 (Bahner) (2020) (failed).

¹⁶² Mass. HB 1105 (Gouveia) (2021) (pending); Mass. HB 4717 (Sabadosa) (2020) (failed); N.J. SB 2559 (Gopal) (2021) (pending); Minn. SF 1160 (Rosen) (2021) (pending); Minn. HB 4416 (Schultz) (2020) (pending).

¹⁶³ N.J. AB 4538 (Lampitt) (2021) (pending); N.Y. AB 1595 (Gottfried) (2021) (pending); N.Y. 1753 (Gottfried) (2021) (pending); N.J. AB 3920 (Bramnick) (2020) (pending.)

¹⁶⁴ Minn. SF 20 (Howe) (2020) (failed).

¹⁶⁵ N.J. SB 2383 (Sarlo) (2020) (not enacted).

¹⁶⁶ N.J. SB 3152 (Pou) (2020) (not enacted); N.Y. SB 3833 (Addabbo) (2021) (pending.)

¹⁶⁷ N.Y. SB 6541 (Hoylman) (2021) (pending).

Insurance Coverage

To protect those attending school graduations during the pandemic, another enacted bill required insurance coverage for students and school employees attending school graduation exercises in July and August of 2020.¹⁶⁸

Educators and Employees

Tenure

In consideration of educators, one state’s legislature introduced a bill providing automatic “effective” ratings for school district employees who were not evaluated during the pandemic, in order to protect their tenure achievement timeline.¹⁶⁹

Sick Leave

One bill directs special attention to employees of public institutions of higher education and would provide a paid leave of absence for employees who cannot work due to COVID-19.¹⁷⁰

Higher Education Students: Financial Support

State legislatures have considered bills to support college students financially throughout the pandemic. Multiple states considered suspending the accrual of student loan interest, the collection of student debt, or all student loan payments during a covered period related to the pandemic.¹⁷¹ Another bill would establish a scholarship program for students who worked essential jobs during the pandemic.¹⁷²

State legislatures are additionally considering requiring institutions of higher education to refund students for housing credits, boarding charges, or school meal plans used or charged for the period of time schools were closed during the pandemic.¹⁷³ Other bills would provide relief to higher education students who receive state financial aid through the waiver and adjustment of various eligibility requirements during the state of emergency.¹⁷⁴ Another bill would similarly protect students receiving state financial aid by suspending the accrual of interest on college loans in deferment or forbearance.¹⁷⁵ None of these bills has yet passed.

¹⁶⁸ 2020 N.J. Stat. ch. 56 .

¹⁶⁹ N.J. AB 3629 (Caputo) (2021) (pending).

¹⁷⁰ N.J. AB 5563 (Downey) (2021) (pending).

¹⁷¹ N.J. AB 3974 (Moen) (2021) (pending); N.Y. SB 1740 (Skoufis) (2021) (pending); N.Y. AB 10261 (Ortiz) (2020) (not enacted); Mass. HB 4728 (Domb) (2020) (not enacted).

¹⁷² N.Y. AB 6637 (Frontus) (2021) (pending).

¹⁷³ N.Y. AB 2372 (Hyndman) (2021) (pending); N.J. SB 2411 (Cryan) (2021) (pending); N.J. SB 2706 (Gopal) (2021) (pending).

¹⁷⁴ N.J. AB 3946 (Jasey) (2021) (pending).

¹⁷⁵ N.J. AB 3947 (Moen) (2021) (pending).

GOVERNMENT OPERATIONS

Legislative Operations: Legislative Oversight of Executive Authority

In order to address the issues presented by the pandemic as quickly as possible, governors across the country used their authority to pass executive orders providing immediate emergency relief. In response to this, however, some legislatures have attempted to limit or eliminate that executive authority. Some of these limits would require approval to extend the duration of a peacetime emergency, require the governor to transmit weekly reports to the legislature regarding the emergency, eliminate the powers of a governor to issue directives to respond to state disasters, or nullify any governor's order to address an emergency when the governor violates that same order.¹⁷⁶

Elections

In addition to extending various deadlines for primary, general, and municipal elections and expanding absentee and mail-in voting options, one state legislature attempted to decrease the number of signatures necessary for petitions and independent nominations within counties in which COVID-19 cases are present. That bill was unsuccessful.¹⁷⁷

Judicial Operations

Health and Safety

To ensure the safe and efficient operation of judicial proceedings throughout the pandemic, legislatures considered many bills addressing the judicial process. Some of these bills concerned the health and safety of those involved in the court system, excusing the elderly or those with health problems from jury duty, requiring the Department of Health to develop rules protecting the public and court employees from COVID-19, and authorizing electronic appearances before grand juries.¹⁷⁸ One state enacted a bill authorizing electronic hearings on felony complaints.¹⁷⁹

¹⁷⁶ Minn. SF 4 (Osmek) (2021) (pending); N.Y. AB 1172 (Buttenschon) (2021) (pending); N.Y. SB 2246 (Helming) (2021) (pending); N.J. AB 4255 (Webber) (2021) (pending).

¹⁷⁷ N.Y. AB 10160 (Sayegh) (2020) (failed).

¹⁷⁸ N.Y. SB 949 (Gaughran) (2021) (pending); N.Y. AB 2293 (Jacobson) (2021) (pending); N.Y. SB 8891 (Bailey) (2020) (failed).

¹⁷⁹ 2020 N.Y. Stat. ch. 123.

Prospective Lawyers

Legislatures also considered the impact of the pandemic on law school graduates who had not yet passed the bar examination. In recognition of unique challenges faced by prospective lawyers in 2020, one state considered a bill that would have temporarily allowed recent law graduates and those who have failed the bar exam one or more times to practice law with legal aid organizations.¹⁸⁰ Another similar bill would have temporarily admitted recently-graduated attorneys or bar examinees into the bar and provided that they may be permanently admitted if they remained in good standing and worked a designated number of hours.¹⁸¹ These bills, however, were unsuccessful.

Criminal Justice

Legislatures also considered and enacted bills regarding the criminal justice system. To lower prison populations, which were uniquely susceptible to widespread COVID-19 outbreaks, one state enacted a bill requiring public health emergency credits to be awarded to certain inmates to reduce their sentences.¹⁸² Another bill would have required the release of detained pretrial individuals who posed no risk to their communities, although this bill was unsuccessful.¹⁸³ In recognition of the challenges young offenders face during the public health emergency, one enacted bill accelerated the rescinding of juvenile delinquency fines and made post-incarceration supervision discretionary during the pandemic.¹⁸⁴

EMPLOYMENT AND LABOR

First Responders, Frontline Workers, and Other Essential Workers

Hazard Pay

State legislatures considered and enacted various bills focused on the health and safety of the workforce, particularly frontline workers and first responders. Some states considered amending existing hazard pay laws, requiring hazard payment to essential workers during the state of emergency and defining any amount of time a public safety official was incapacitated or unable to perform their duties due to COVID-19 as on-duty time.¹⁸⁵

¹⁸⁰ N.Y. SB 8648 (Hoylman) (2020) (failed).

¹⁸¹ N.Y. SB 8827 (Hoylman) (2020) (failed).

¹⁸² 2020 N.J. Stat. ch. 111.

¹⁸³ Mass. HB 4652 (Sabadosa) (2020) (failed).

¹⁸⁴ 2021 N.J. Stat. ch. 50.

¹⁸⁵ Mass. SB 1621 (Moore) (2021) (pending); N.Y. AB 10358 (2020) (pending).

Health and Safety: Mental Health

Legislatures also considered the mental health needs of first responders and other frontline workers. In consideration of the trauma that many of these workers were experiencing during the pandemic, one state directed the commissioner of mental health to create a workgroup and report regarding frontline worker trauma.¹⁸⁶

States are also currently considering a number of other bills regarding frontline and first responder trauma. These bills, which are all currently pending, would require healthcare facilities to screen healthcare workers, first responders, and other frontline workers for symptoms of post-traumatic stress disorder related to the pandemic, provide those workers with psychiatric service dogs, and establish a public awareness campaign concerning programs and services for those workers.¹⁸⁷

Other Benefits

In consideration of the essential work performed by first responders during the pandemic, legislatures attempted to reward those first responders. One enacted bill ensured that volunteer firefighters and volunteer ambulance workers received credits toward their length of service award programs throughout the pandemic.¹⁸⁸

Additional benefits given to first responders and frontline workers would have included tax credits equal to the entire amount of income tax imposed upon them, additional days of personal time, or financial aid grants for student essential workers, although none of these bills has yet been successful.¹⁸⁹

In consideration of the sacrifices made during the pandemic by police, firefighters, and public employees, one state legislature extended eligibility for accidental disability and death benefits to those employees who contracted severe coronavirus or the family members of employees who died due to coronavirus.¹⁹⁰ Another bill, if passed, will extend similar accidental death benefits to the families of teachers who die due to coronavirus.¹⁹¹

Unemployment Benefits

As large numbers of employees across the country became unable to work, state legislatures considered a number of bills related to unemployment benefits. One bill would have required every employer liable for unemployment contributions to

¹⁸⁶ 2021 N.Y. Stat. ch. 33.

¹⁸⁷ N.J. SB 2490 (Bucco) (2020) (pending); N.J. SB 2491 (Bucco) (2020) (pending); N.J. SB 2492 (Bucco) (2020) (pending); N.Y. SB 8608 (Carlucci) (2020) (failed).

¹⁸⁸ 2020 N.Y. Stat. ch. 113.

¹⁸⁹ N.Y. SB 8196 (Griffo) (2020) (failed); N.Y. AB 11136 (Rules Cmte.) (2020) (failed); N.Y. SB 958 (May) (2021) (pending).

¹⁹⁰ 2020 N.J. Stat. ch. 54.

¹⁹¹ N.J. AB 5011 (Wimberly) (2021) (pending).

inform each employee whose work schedule or employment status has changed due to the pandemic of the right to file for unemployment.¹⁹² To provide more support to employees, another bill would have allowed employers to participate in a shared work program, which would allow employees to work at a reduced work schedule and collect partial unemployment benefits, retroactively to the date of the coronavirus declared emergency.¹⁹³ In consideration of the unique challenges facing non-profit organizations during the pandemic, another state legislature attempted to assist non-profits to provide for coronavirus unemployment benefits to their employees.¹⁹⁴ None of these bills passed.

In order to support those who may not otherwise be able to collect unemployment benefits, some legislatures considered legislation to allow unemployment support to independent contractors, sole proprietors, partners in partnerships, freelancers, tipped employees, gig economy employees, and secondary school students.¹⁹⁵

One state legislature attempted to establish a Temporary Wage Unemployment Program to expand unemployment benefits to those not otherwise eligible and reimburse employers for those payments, although this bill was vetoed for budgetary reasons.¹⁹⁶

In order to expand eligibility for unemployment benefits and increase available unemployment funds, another state attempted to establish a tax on residents with a specified amount or more in net assets, and direct that revenue to provide workers traditionally excluded from wage protection programs with unemployment benefits.¹⁹⁷ In consideration of employees' health concerns, one bill would permit unemployment benefits in the case of voluntary separation from employment during the pandemic for persons over the age of sixty-five or persons with health conditions that put them at risk.¹⁹⁸ None of these unemployment expansion bills has yet been successful.

Job Creation and Recovery

State legislatures considered several bills aimed at job creation following the economic devastation caused by the pandemic. Some states have attempted to incentivize rehiring through tax credits, providing tax credits to small employers who rehire employees previously laid off due to the pandemic and employers who hire and retain local employees for at least two years following the conclusion of

¹⁹² N.Y. AB 10358 (Carroll) (2020) (failed).

¹⁹³ N.Y. SB 8242 (Gounardes) (2020) (failed).

¹⁹⁴ Mass. HB 4723 (McMurty) (2020) (failed).

¹⁹⁵ Mass. HB 4648 (Ways and Means Cmte.) (2020) (failed); Mass. HB 4746 (Livingstone) (2020) (failed); Minn. HF 4623 (Lislegard) (2020) (failed).

¹⁹⁶ N.J. AB (Sumter) (2021) (vetoed).

¹⁹⁷ N.Y. AB 10414 (Rules Cmte.) (2020) (failed).

¹⁹⁸ N.Y. AB 10400 (DenDekker) (2020) (failed).

the state of emergency.¹⁹⁹ An attempt to establish an industry-targeted unemployment task force, which would provide unemployment assistance, job training, and job development assistance to individuals who were previously employed by an industry experiencing high unemployment rates, failed.²⁰⁰

Workers' Compensation

Supplemental Benefits

In consideration of the family members of essential employees, one legislature is considering a bill that would provide workers' compensation supplemental benefits for surviving dependents of those essential employees who died in the course of employment.²⁰¹

Limitations

To limit the number of employees receiving benefits, one bill, if passed, will prohibit the payment of workers' compensation for injury related to COVID-19 except in circumstances of gross employer negligence.²⁰²

Retirement and Pensions

Retirement

One state enacted a bill delaying certain mandatory retirement requirements for police officers during a declared state of emergency.²⁰³ Another state, in an attempt to streamline the workforce and save costs, tried to provide a temporary retirement incentive for certain public employees.²⁰⁴

Pensions

In consideration of public employees who were furloughed due to the pandemic, one state is considering a bill entitling those employees to any pension service credits they would have received had they been employed full time.²⁰⁵ Other bills attempt to provide public employees negatively impacted by the shutdown with zero interest pension loans or suspend pension loan repayments until a year after the end of the public health emergency.²⁰⁶

¹⁹⁹ N.J. AB 5764 (Benson) (2021) (pending); N.Y. SB 3596 (Bailey) (2021) (pending).

²⁰⁰ N.Y. SB 8312 (Kennedy) (2020) (failed).

²⁰¹ N.J. AB 3998 (2021) (Murphy) (pending).

²⁰² N.J. AB 4496 (2021) (DePhillips) (pending).

²⁰³ 2020 N.Y. Stat. ch. 46.

²⁰⁴ N.J. SB 8151 (Martinez) (2020) (failed).

²⁰⁵ N.Y. SB 1094 (Kaminsky) (2021) (pending).

²⁰⁶ N.J. AB 4141 (Mukherji) (2020) (pending); N.J. SB 3315 (Stack) (2021) (pending).

ECONOMIC SUPPORT

Businesses

As stay-at-home orders were enforced and businesses were unable to meet their financial needs, legislatures considered and enacted bills to economically support and protect businesses that were hit especially hard by the pandemic.

Several states considered bills specifically targeting alcoholic beverage manufacturers and sellers. Some states enacted bills expanding take-out and delivery options for alcoholic beverages to allow delivery and consumption of alcoholic drinks off-premises.²⁰⁷ One of these bills further exempted alcohol used by distilleries in the production of hand sanitizer from alcoholic beverage taxes.²⁰⁸ Another currently-pending bill would provide tax credits to brewers, liquor retailers, and wholesalers for unsalable product and purchases of equipment.²⁰⁹

State legislatures have further considered supporting event centers, bars, restaurants, urban and suburban small businesses, out-of-state businesses providing COVID-19 relief, and other businesses that lost income due to emergency closures through grants, loans, and tax relief.²¹⁰

Business Operations

Legislatures also recognized the importance of allowing businesses to continue to operate during the pandemic. As such, these legislatures attempted to pass bills that made specific allowances for businesses to operate with certain safety measures in place. These bills included allowances for entertainment and retail activity, retail food handlers, and other low-risk businesses.²¹¹ To protect public health and safety, another enacted bill limited the return of certain retail food items purchased during the state of emergency.²¹² In order to further support restaurants struggling to generate enough income, two states also enacted and considered bills limiting service fees charged to restaurants by third party takeout and delivery apps during the state of emergency.²¹³ In recognition of the financial strain placed on businesses, another bill would exempt businesses and professional services from telemarketing restrictions during the state of emergency.²¹⁴

²⁰⁷ 2020 Mass. Stat. ch. 118; 2021 N.J. Stat. ch. 33.

²⁰⁸ 2021 N.J. Stat. ch. 33.

²⁰⁹ Minn. SF 2064 (Bigam) (2021) (pending).

²¹⁰ Minn. SF 1419 (Housely) (2021) (pending); Minn. HF 1514 (Sandstede) (2021) (pending); N.J. SB 3890 (Gopal) (2021) (pending); N.J. SB 3060 (Holzapfel) (2020) (pending); Minn. SF 4599 (Mathews) (2020) (failed); N.Y. AB 5054 (Stern) (2021) (pending); Mass. HB 484 (Frost) (2021) (pending).

²¹¹ N.J. SB 2522 (Sarlo) (2020) (pending); Minn. S.F 4547 (Weber) (2020) (failed); Minn. SF 4507 (Franzen) (2020) (failed).

²¹² 2020 N.J. Stat. ch. 16.

²¹³ 2020 N.J. Stat. ch. 42; N.Y. AB 10408 (Rosenthal) (2020) (failed).

²¹⁴ N.Y. SB 6967 (Gaughran) (2021) (pending).

Liability Protections

Legislatures also considered several bills concerning the liability of various businesses operating during the state of emergency. Many of these bills would grant broad immunity from liability related to COVID-19 injury to individuals, businesses, corporations, manufacturers and sellers of COVID-19 supplies, youth sports leagues, and senior planned real estate associations.²¹⁵ Another bill would create a presumption for persons and entities in legal actions relating to the pandemic that those persons or entities met the standard of care required with regard to coronavirus.²¹⁶

Individuals

State legislatures considered a number of bills meant to provide those struggling financially during the pandemic with relief and assistance. One legislature considered a broad bill suspending all student loan, mortgage, auto loan, credit card, and utility payments for ninety days in response to the pandemic, although this bill was unsuccessful.²¹⁷ This state further attempted to limit banking interest rates during a declared state of emergency, but this bill similarly failed.²¹⁸

Some state legislatures are considering bills requiring refunds or credits for pandemic-related cancellations of transient spaces (i.e. rooms and homes reserved through Airbnb or VRBO), travel and airline cancellations, event venue charges, and membership fees.²¹⁹

Additionally, states are considering bills to prohibit negative credit reporting on consumers suffering financial distress due to the pandemic.²²⁰ Other bills would require automobile insurers to issue credits and lower rates for reduced driving, as well as require insurers to refund premiums for all policyholders negatively impacted by the pandemic.²²¹ To further protect individual financial security, states are also considering bills exempting personal funds and financial assistance provided during the pandemic from civil seizure and money judgments.²²²

²¹⁵ Minn. HF 688 (Lucero) (2021) (pending); Minn. SF 745 (Limmer) (2021) (pending); N.J. SB 2822 (Connors) (2020) (pending).

²¹⁶ N.J. SB 3890 (Gopal) (2021) (pending); N.J. AB 4279 (Schaer) (2020) (pending).

²¹⁷ N.Y. AB 10261 (Ortiz) (2020) (failed).

²¹⁸ N.Y. SB 8814 (Metzger) (2020) (failed).

²¹⁹ N.J. SB 2345 (Cyrano) (2021) (pending); N.Y. SB 2052 (Sanders) (2021) (pending); N.J. SB 2896 (Gopal) (2020) (pending); N.Y. SB 5905 (Parker) (2021) (pending).

²²⁰ Mass. HB 415 (Kelcourse) (2021) (pending); N.J. AB 3949 (Giblin) (2021) (pending); N.Y. AB 559 (Rozić) (2021) (pending).

²²¹ N.J. SB 2422 (Rice) (2020) (pending); N.Y. AB 871 (Carroll) (2021) (pending).

²²² N.J. AB 4900 (Schaer) (2020) (pending); N.Y. SB 1585 (Sanders) (2021) (pending).