



2021 Legislative Review/ Preview Report

01 INTRODUCTION

01 REMOTE LEGISLATURES/
SESSION EXPECTATIONS

02 TELEHEALTH

03 BROADBAND

04 REMOTE WORKER TAXATION

05 OMNIBUS PRIVACY

06 DIGITAL ADVERTISING TAXES

08 MORTGAGE LENDING,
SERVICING & TENANCY
TERMINATION

09 DIVERSITY AND INCREASED
PARTICIPATION NATIONALLY

11 STATE INDEX



The effects of COVID-19 have changed the way so many of us live our day to day lives and it has dramatically changed so many aspects of our society. This coming year we will all be facing a new set of challenges, opportunities and a new federal landscape. One of the biggest challenges will be in understanding how state legislatures are deciding to meet across the country, the weaknesses in our broadband infrastructures, and taxation of remote employees in a time when so many of us have gone remote. Omnibus privacy bills and digital advertising tax bills promise to continue to be a factor in states. Foreclosures and evictions reached an all-time high and led to new legislation. Also, reflecting on the important civil rights moments of the last year, 2021 promises to bring us an extremely diverse presidential cabinet and further waves of change.

REMOTE LEGISLATURES/SESSION EXPECTATIONS

Throughout 2020, state legislatures scrambled to keep members and the public safe from COVID-19. Thirty-six states and **Puerto Rico** either introduced or enacted bills aimed at continuing legislative operations while lockdowns, gathering restrictions and state emergencies are in place. Several states enacted bills or adopted resolutions that allow for remote meetings of the legislature and electronic voting by members. **Arkansas, California, Oklahoma** and **Rhode Island** adopted measures that allow members to vote by proxy in legislative proceedings during a declared state of emergency. **California, Colorado, Hawaii, Illinois, Kentucky, Massachusetts, Minnesota, Nevada, New Mexico, New York, North Carolina, Pennsylvania, Vermont** and **Wyoming** all passed measures relating to remote legislative participation and meetings. The uncertainty that surrounded statehouses during the year will undoubtedly continue into 2021. **Vermont** and **Washington** have already decided to begin the 2021 session remotely, according to [Seven Days](#) and [Crosscut.com](#), respectively.

Texas, a state not in session during 2020, is already anticipating challenges for 2021. According to the [Texas Tribune](#), the House is already considering remote voting options as well as requiring visitors to schedule appointments if they want to visit the statehouse in person. Rep. Charlie Geren, R-Fort Worth, stated “We’re going to plan for an outbreak in the Capitol. I think we have to.” There are continuing discussions about how virtual committee meetings may not provide the public with as much access as in-person meetings – current rules do not allow committees to meet virtually. The state constitution, along with several others, require legislatures to meet in person. Nothing is set in stone yet, but it seems likely that lobbyists and the general public will have restricted access to the statehouse.

There have been discussions about state legislatures limiting or capping the legislation that can be considered during the upcoming session. However, **Virginia** is the only state to have passed such a measure. [HR 517](#) set limits and established a schedule for the Assembly’s 2020 Special Session I that was held from July 17 to August 18. The resolution capped each member at three bills. It remains to be seen if other states will adopt similar resolutions for the upcoming 2021 session.



TELEHEALTH

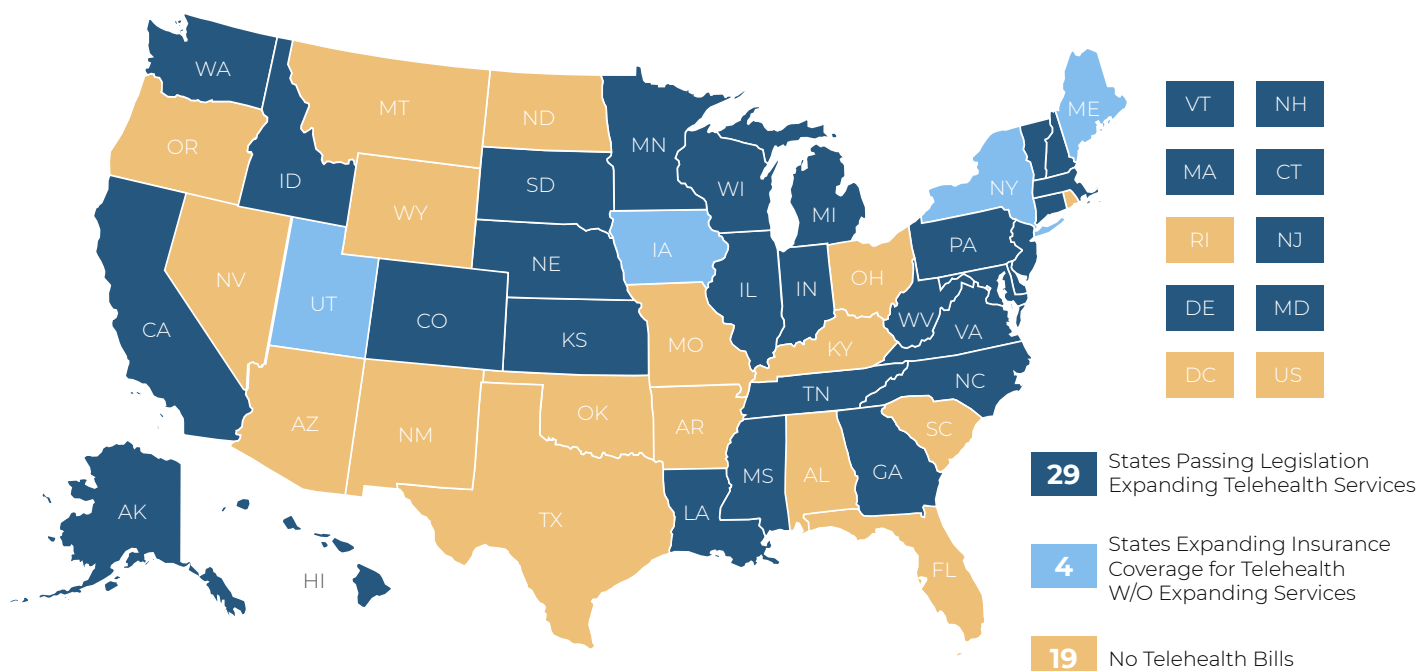
Telehealth was the signature legislative healthcare issue this year – the major risks associated with in-person visits to doctors’ offices and hospitals created a sudden, massive and urgent need for the treatment of patients outside of the traditional office setting. State legislators stepped up and responded in a big way, enacting a staggering number of bills compared to previous years, during what were largely remote or truncated legislative sessions. To date, 67 telehealth bills have been enacted across 33 states, compared to only 31 during the previous year.

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Telehealth bills mainly came in two flavors this year – those aimed at expanding the availability and services provided through telehealth, and those requiring health plans to provide equal coverage for telehealth visits. Bills expanding the availability of services were a primary focus of legislators, with a smaller but significant number aiming to provide parity in insurance coverage.

States which passed legislation expanding telehealth services in 2020 include: **Alaska, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, New Jersey, North Carolina, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia and Wisconsin.**

Telehealth Service Bills 2020





States passing legislation to provide insurance coverage for telehealth services include **Alaska, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Nebraska, New Hampshire, New York, North Carolina, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia** and **Wisconsin**.

Through 2020 state legislators managed to make telehealth one of the year's biggest priorities, passing more than double the amount of legislation as previous years. With the pandemic continuing to rage on across the nation, telehealth will be at the top of lawmakers' agendas when legislatures begin to convene again in January – be it remotely or in person.

BROADBAND

Broadband deployment has been a popular issue for state lawmakers in recent years; however, the coronavirus pandemic made broadband access a necessity for remote work and education. Nearly double the amount of bills with broadband provisions were filed in 2020 compared to 2019 and over 100 bills with broadband provisions were enacted across 40 states in 2020. Issues the states tackled included use of CARE Act funds to deploy broadband, incentives for deploying broadband and who can provide broadband services.

According to [PEW Trusts](#), the CARES Act included a provision designating \$150 billion to state, local and tribal governments to cover pandemic related costs. States have used the funds to increase access to digital learning, expand telehealth services, create additional public wi-fi points and create or expand broadband grant programs. The report, [Governor Strategies to Expand Affordable Broadband Access](#), by the National Governors Association, describes how states allocated CARES Act funding for broadband. This includes \$300 million in **Alabama** for remote learning; \$85 million in **Iowa** for expanding telework, telehealth and remote learning; \$275 million in **Mississippi** for broadband, including \$150 million to school districts; and funding in **South Dakota** to provide internet service at no cost to eligible students for the school year.

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In addition to the grant programs, states are also encouraging broadband providers and local governments to expand broadband access with tax incentives. **Louisiana** [HB 69/Act 35](#) created a state and local sales and use tax rebate on fiber-optic cable equipment used to distribute fixed and mobile broadband networks to eligible rural unserved areas.



Mississippi [HB 1729](#) extends the sales, income, franchise and ad valorem tax incentives for telecommunications enterprises related to deployment of broadband until July 1, 2025. **Wisconsin** [AB 344/Act 128](#) exempts qualified broadband service property from the property tax.

In addition to providing funding and incentives for broadband deployment, states are relaxing rules to allow municipalities and electric cooperatives to provide broadband. **Alaska, Arizona, Indiana, Pennsylvania** and **South Carolina** are some of the states that authorized local governments or electric cooperatives to provide broadband services in 2020. Additionally, in last month's election, voters in several cities, including Denver, **Colorado**, and Chicago, **Illinois**, approved referendums supporting municipal broadband. [Reuters](#) reports that in Chicago, nearly 90 percent voted in favor of a proposal to ensure internet access in all community areas.

FOCUS anticipates that broadband will continue to be a hot issue in states during the 2021 session as legislators feel pressure from their constituents to make sure everyone that needs it has access to the internet. Legislation and bill drafts filed for the 2021 session include **Montana** [LC 62](#), a property tax exemption for fiber optic and coaxial cable, and **Texas** [HB 425](#), relating to the use of the universal service fund for the provision of broadband service in rural areas.

REMOTE WORKER TAXATION

Historically, workers who live in one state and commuted across state lines to their employer, have been taxed by both states, with some home states providing tax relief in other areas to limit the tax burden on a single employee. Working across state lines has not been a new issue and states have provided reciprocity in many cases.

According to the [New Jersey Division of Taxation](#), New Jersey offers tax credits equal to the amount a worker has paid in the state of **New York**. However, this is not the case for New Jerseyans who work in **Pennsylvania**, as state agencies have their own interstate tax agreement that allows individuals to pay taxes in the state of their residence. According to the [Tax Foundation](#), **Arkansas, Connecticut, Delaware** and **Nebraska** have implemented similar "convenience rules" like New York and Pennsylvania. These states are likely to continue embracing such rules and other states may look to implement them in their efforts to stave off revenue declines.

New Jersey has taken the first steps in reviewing their tax structure for remote workers with the introduction of [SB 3064](#). The bill, which would require the state treasury to report on the fiscal impacts of the current tax structure, passed the Senate 35-0 on October 29 and was received in the Assembly on November 5, where it is pending in the State and Local Government Committee. According to [Insider NJ](#), one of the bill's primary sponsors, Sen. Paul Sarlo, D-Woodridge, who is the deputy majority leader in the Senate and is the chair of the Senate Budget and Appropriations Committee, stated that the "transition of New



Jersey workers to telecommuting is something [they've] been watching for a long time” and that “the substantial tax implications of this shift...has been supercharged as a result of COVID-19.” Companion bill [AB 4897](#) was introduced in the Assembly on October 29 and is also pending in the State and Local Government Committee. Its primary sponsor is Asm. Ronald Dancer, R-Cream Ridge, who is the deputy minority leader in the Assembly.

The ongoing taxation battle of remote workers is playing out between **New Hampshire** and **Massachusetts**. On October 19, New Hampshire filed a [suit](#) in the U.S. Supreme Court against Massachusetts after that state’s Department of Revenue finalized a plan to tax out-of-state workers that are working remotely. The Department of Revenue published and approved a [final rule](#) imposing Massachusetts’ 5.05 percent income tax on the earnings of New Hampshire residents. Republican Gov. Chris Sununu [stated](#) that “Massachusetts cannot balance its budget on the backs of [New Hampshire] citizens...”.

As second and third waves of the pandemic roll across the country, telework will most likely be the new normal for non-essential employees; and states will continue their tug of war on the taxation of such workers. However, these taxes were originally imposed under the assumption that out-of-state commuting workers benefited directly from the state in which they worked, such as the use of its roads and government services. But this reasoning crumbles if a remote worker never steps foot in the state, as noted by Professor Daniel Shanske in the [Columbia Journal of Tax Law](#). His recommendation is that it is time for states to update their tax laws to better reflect the reality of the work world today, and suggested states consider shifting to an apportionment method of taxing the incomes of “virtual” workers similar to interstate businesses.

OMNIBUS PRIVACY

The COVID-19 pandemic pushed a number of issues off the front page in many states and privacy was no exception. While more states than ever considered consumer data privacy legislation, no state besides **California**, which passed [Proposition 24](#) creating the California Privacy Rights Act, was successful in passing privacy legislation. The privacy measure, which will go into effect in 2023, creates the California Privacy Protection Agency to enforce the new law that allows consumers to stop businesses from sharing their personal information and prohibits businesses from retaining customers’ personal information longer than necessary.

Despite continuing COVID-19 challenges, consumer data privacy will continue to be a key issue in many states over the next year. In **Washington**, which failed once again to pass privacy legislation, lawmakers are gearing

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up for another iteration of the Washington Privacy Act. The [latest proposal](#) would give consumers the right to access, correct, delete, transfer or opt out of the processing of their personal data. **Virginia** is also likely to introduce legislation based on Washington's efforts. **New York** will also attempt to pass broad privacy legislation in 2021. Current privacy proposals, that have not advanced this session, would require opt-in affirmative consent before a person, firm or corporation uses video, voice, likeness and all other personal data, biometric data and location data for the purpose of advertising, data mining or generating commercial or economic value.

Legislation is also expected in **Texas** following the release of the final interim [report](#) of the Privacy Protection Advisory Council on September 4. The council was tasked with studying laws governing privacy and protection of information linked to a specific individual, technological device or household and to make recommendations to the legislature concerning privacy and protection of Texans' information. The council recommends that any privacy proposals should consider a new and appropriate balance between additional consumer privacy protections and data security within a fair regulatory and compliance privacy framework. Other states that may consider privacy legislation include **Montana**, **New Jersey** and **Oregon**.

DIGITAL ADVERTISING TAXES

The increased pressure the ongoing pandemic is putting on states' budgets may provide increased traction for arguably unpopular tax schemes that have been proposed in recent years but have so far failed to be implemented. One such scheme includes imposing taxes on digital advertising services. In 2020, **Maryland**, **Nebraska** and **New York** each considered measures that would have imposed taxes explicitly on digital advertising, while **South Dakota** briefly looked at repealing the existing sales tax exemption for advertising services and the **District of Columbia** toyed with expanding its tax base to include advertising services and personal data sales.

On May 7, **Maryland** Republican Gov. Larry Hogan vetoed [HB 732](#), which would impose a "first of its kind" digital advertising tax. In his [veto letter](#), Governor Hogan stated that "it would be unconscionable to raise taxes and fees" during a global pandemic and economic crash. However, the issue is supported by Democrats in the state's legislature, who currently hold a supermajority in both chambers and could override the governor's veto. According to the [Baltimore Business Journal](#), a coalition of businesses and chambers of commerce, called [Marylanders for Tax Fairness](#), is working to dissuade the legislature from taking such action. The tax could potentially raise \$250 million in its first year and is primarily aimed at "large technology companies;" however, opponents compare the proposed tax to a similar law implemented in France and believe the cost of the tax will simply be passed along to small businesses and consumers. According to an October 7 [legal alert](#) by the law firm Eversheds Sutherland, vetoes are typically handled in the first days of Maryland's legislative session, leaving little time for advocates on either side of the issue to sway legislators. There is also an outstanding question as to the possible invalidation of veto overrides



conducted through online meetings outside of the state's capitol.

In **Nebraska**, [LB 989](#) died in the Revenue Committee upon the legislature's adjournment. According to the [fiscal note](#) for the bill, it was estimated that the tax would have contributed almost \$26 million to the state's general fund during its first year. The bill was sponsored by Sen. Justin Wayne of Omaha. In **New York**, Asm. Latrice Walker, D-Brooklyn, introduced [AB 10706](#) on July 1 and the bill was referred to the Assembly Ways and Means Committee, where it remained pending upon the legislature's recess. This bill is the companion to [SB 8056](#) and would create the digital ad tax act (DATA tax). Digital advertising services would be defined as "advertisement services on a digital interface... that use personal information about the people the ads are being served to." This bill would impose a tax on the annual gross revenues of a person derived from digital advertising services in the state. The tax would apply to persons with a global annual gross revenue of \$100 million or more and the tax rate would vary between 2.5 percent and 10 percent of the assessable base for a person, increasing based on their global annual gross revenues. SB 8056 remained pending in the Senate Budget and Revenue Committee after it was amended on March 19.

On July 6, the **District of Columbia** Council released [proposals](#) regarding budget modifications for 2021. One of the proposals would have added the sale of advertisements and personal data to the list of goods and services subject to sales tax at a rate of three percent; however, Democratic Mayor Muriel Bowser pushed back on the proposal and urged the council to avoid tax increases, reports the [dcist](#). In **South Dakota**, [HB 1284](#), as introduced on February 6, would have repealed the sales tax exemption for advertising services; however, this provision was removed by the House Taxation Committee during a February 20 hearing.

The majority of states are likely to turn to an old standby: "sin taxes."

While controversial proposals like the ones above are likely to pop up again in a handful of states (for example, a [draft bill](#) that would define and tax digital advertising services separately from advertising services is being circulated in **Washington**), it is unlikely to turn into a full game of whack-a-mole across the nation for stakeholders that are in opposition. The majority of states are likely to turn to an old standby: "sin taxes." As the [Texas Tribune](#) points out, "It's the easiest category to tax," and with more states legalizing recreational cannabis sales, that particular pool may be getting deeper.



MORTGAGE LENDING, SERVICING & TENANCY TERMINATION

Throughout 2020, the mortgage lending and servicing industry has faced challenges across the country considering the COVID-19 pandemic. From foreclosure and evictions moratoriums, rules on unlawful detainer, mortgage furloughs and forbearance, new financial protections measures and more, mortgage lenders and servicers have had to move fast to stay with these new laws and rules. In 2020 alone there have been 237 bills considered that regarded eviction moratoriums and 54 foreclosure moratorium bills, such as **Vermont** [SB 333](#) and **Massachusetts** [HB 4647](#). Much of this legislation will extend these moratoriums into 2021.

Appraisal Management Companies

In 2020, 98 bills concerning appraisal management companies were considered in 38 states, the **U.S. Congress** and the **District of Columbia**. Of these bills, 21 have been enacted and no bills will carry over for further consideration in 2021. No bills concerning appraisal management companies have been prefiled for the upcoming 2021 session yet.

Foreclosure

There were 578 bills concerning foreclosure that were considered in 45 states, the **U.S. Congress**, **Puerto Rico** and the **District of Columbia** in 2020. Of these bills, 69 have been enacted and at least one bill concerning foreclosure moratoriums has been prefiled for the upcoming 2021 sessions in **New Hampshire**.

Vacant Property Upkeep

In 2020, 143 bills concerning vacant property upkeep were considered in 30 states and the **U.S. Congress**. Of these bills, 11 have been enacted and no bills will carry over for further consideration in 2021. No bills concerning vacant property upkeep have been prefiled for the upcoming 2021 session so far.

Reverse Mortgages

There were 67 bills regarding reverse mortgages considered in 2020 in 14 states; of these bills 15 have been enacted. So far, no bills will be carried over into 2021 and no bills have been prefiled as of yet for the 2021 session.



Electronic Notary

In 2020, 107 bills concerning electronic notary were considered in 30 states. Of these bills, 28 bills have been enacted. No bills will be carried over into 2021 and one bill, **Florida SB 228**, has currently been prefiled for the 2021 session.

Evictions & Tenancy Termination

There were 565 bills related to evictions and tenancy termination introduced during the 2020 session in 48 states, the **U.S. Congress**, the **District of Columbia** and **Puerto Rico**. Of these, 81 bills were enacted, and zero will be carried over into 2021. Currently there are six bills that have been prefiled for the 2021 session in **Arkansas, Missouri, New Hampshire** and **Virginia**.

DIVERSITY & INCREASED PARTICIPATION NATIONALLY

Following a summer where we faced a pandemic that overwhelmingly affected black populations, native populations and persons of color, we were faced with the recorded murder of George Floyd by the hands of the police and coming face to face with the brutalities that many persons of color face in our society. The societal discussions have trickled down into our homes and opened discussions about representation everywhere. That upheaval was reflected in the results of the election, and protests led to impressive feats of organizing voters in a year filled with massive early, mail-in voting.

The presidential election was a week-long event in the United States, and most of it has been covered extensively by all news sources. What we do know, is that record-breaking participation from maligned populations swayed the results of the election. Stacey Abrams' work registering disenfranchised voters through her organization Fair Fight turned Georgia blue for the first time since 1992, according to [CNN](#). Increased participation among native and indigenous populations in states like **Arizona** were critical votes in a state that has not supported a democrat for president since 1996, reports [Associated Press](#).

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In 2020, 66.7 percent of eligible voters in the United States voted, according to [statista](#), reaching a 50 year high and shattering the 62 percent record from the 2008 election of President Barack Obama. **Minnesota** reached the highest turnout rate at 79.9 percent.

The federal picture hasn't yet fully come into focus due to two runoff Senate elections that will take place in early January in Georgia. The results of those elections will greatly affect the power balance in the Senate.

While the U.S. Senate still remains in flux, the Biden administration has been making appointments that have promised to create the most diverse presidential administration in history. Kamala Harris will make history as the first woman vice president, as well as being the daughter of immigrants, and being of Jamaican and South Asian descent. As cabinet announcements continue to roll in, it is true that we are seeing the most “diverse cabinet in history” being formed, reports [CNN](#). What is clear, is as we begin to see a light at the end of the pandemic, that discussions of racial equity and representation will continue to be important topics both in leadership and legislation into 2021 and beyond.



A

Alabama 3
Alaska 2, 3, 4
Arizona 4, 9
Arkansas 1, 4, 9

C

California 1, 2, 3, 5
Colorado 1, 2, 3, 4
Connecticut 2, 3, 4

D

Delaware 2, 3, 4, 10
District of Columbia 6, 8, 9

F

Florida 9

G

Georgia 2, 3, 9, 10

H

Hawaii 1, 2, 3

I

Idaho 2, 3
Illinois 1, 2, 3, 4
Indiana 2, 3, 4
Iowa 3

K

Kansas 2, 3
Kentucky 1

L

Louisiana 2, 3

M

Maine 3
Maryland 2, 3, 6
Massachusetts 1, 2, 5, 8
Michigan 2, 3
Minnesota 1, 2, 3, 10
Mississippi 2, 3, 4
Missouri 9
Montana 4, 6

N

Nebraska 2, 3, 4, 6, 7
Nevada 1
New Hampshire 2, 3, 5, 8, 9
New Jersey 2, 4, 5, 6
New Mexico 1
New York 1, 3, 4, 6, 7
North Carolina 1, 2, 3

O

Oklahoma 1
Oregon 6

P

Pennsylvania 1, 2, 4
Puerto Rico 1, 8, 9

R

Rhode Island 1

S

South Carolina 4
South Dakota 2, 3, 6, 7

T

Tennessee 2, 3
Texas 1, 4, 6, 7

U

United States 5, 8, 9, 10
Utah 3

V

Vermont 1, 2, 3, 8, 10
Virginia 1, 2, 3, 6, 9

W

Washington 1, 2, 3, 6, 7
West Virginia 2, 3
Wisconsin 2, 3, 4
Wyoming 1