

SESSION SUMMARY
2009 Kentucky General Assembly
Prepared for Members of the Kentucky Restaurant Association

(April 8, 2009)

Although 2009 was a "short" session, that description cannot be used for the list of issues that were discussed and debated by legislators this year. Before the midpoint of the 30-day session, the General Assembly had sent to the Governor two bills to address the state's budget woes in the current fiscal year by increasing two of the so-called "sin" taxes (alcohol and tobacco) and making additional cuts to state spending. Although an increase in the wholesale tax on alcoholic beverages was discussed, lawmakers chose to apply the sales tax to alcoholic beverages sold for off-premises consumption. By-the-drink sales at restaurants and other ABC-licensed facilities were already subject to the sales tax so the tax hike will not affect these businesses.

The Kentucky Restaurant Association (KRA) scored a key win when lawmakers did not pass menu labeling legislation introduced during the 2009 Session. Under terms of the bill, a chain restaurant affiliated with at least 10 other Kentucky operations, including food service establishments operated as a franchise, would have been required to list the calorie content of the items it offers for sale on the printed menu or menu board.

The demise of other legislation, including a bill to establish severe criminal penalties for the distribution and sale of contaminated food and another to breach the exclusive remedy provision of the workers' compensation system by permitting employee lawsuits, was also a positive outcome for KRA members.

More than 700 bills and nearly 400 resolutions were introduced during the 2009 General Assembly. Approximately 200 proposals were included on the Kentucky Retail Federation's "watch list." The following summary, arranged alphabetically by issue area, provides a narrative reflecting the activity on some of the key issues affecting KRA members. The electronic version of the KRA 2009 Session Summary includes links to the legislature's official website so you can easily access the bill summaries prepared by legislative staff and all action on the measure, as well as review the full text of the proposal.

Bills enacted during the 2009 Session will take effect on June 25 unless a specific effective date was included in the legislation or the legislation contained an emergency clause which makes it effective as soon as it is signed by the Governor.

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Alcoholic Beverage Sales Issues:

Taxes: Effective April 1, consumers who buy alcoholic beverages for off-premises consumption will be required to pay the six percent sales tax on their purchases. Package sales of beer, wine and distilled spirits had previously been subject only to the 11% tax levied at the wholesale level. On-premises sales, such as alcoholic beverages sold in restaurants and other by-the-drink licensed premises, were already subject to the sales tax. *(See Revenue & Taxation Issues for additional information on [HB 144](#))*

Sales to Minors: Police and prosecutors will have another tool to combat alcoholic beverage sales to minors when [HB 129](#) takes effect. This measure, introduced by Representative Susan Westrom (D-Lexington) at the request of the state ABC Department, clarifies that the prohibition on sales to minors extends to the licensee's employees and agents. The bill was amended on the House floor to include small farm wineries on the list of licensees that may permit a person under age 21 to be on its premises. Grocery stores, restaurants, hotels and drug stores are among the businesses currently listed.

Sampling Events: In early March, the Senate passed [SB 144](#) to permit distillers to hold sampling events on retail licensed premises and to increase the number of one-half ounce complimentary samples that may be provided from two to three per customer. The bill, introduced by Senate Licensing & Occupations Committee Chair Gary Tapp (R-Shelbyville), also required that product used for sampling be purchased from the retail licensee at no more than the normal selling price. The proposal cleared the Senate by a 30-7 margin. Although the bill was not reported out of the House Licensing & Occupations Committee, its provisions were incorporated into the Free Conference Committee Report (FCCR) for [SB 34](#), the state ABC Department's "housekeeping" bill that Senator Tapp also introduced. The House adopted the FCCR and passed the revised version of [SB 34](#) on March 13. No additional action was taken on the bill in the Senate, so it died on the session's closing day.

Election Day Sales: Another attempt by a Northern Kentucky lawmaker to open the door for the sale of alcoholic beverages on Election Day failed to win approval this year. Representative Arnold Simpson (D-Covington) introduced [HB 128](#) on the opening day of the 2009 Session. The bill would have authorized a local governing body such as a City Commission or Fiscal Court to adopt an ordinance setting the hours for sales during the time the polls are open. The House Licensing & Occupations Committee added language to empower local governments to also permit delivery of alcoholic beverages on Election Day before approving the bill on February 11. Although the bill was posted for consideration by the full House, it was never called for a floor vote.

DUI: Senator Ray Jones (D-Pikeville) continued his effort this year to make changes to the DUI law with the introduction of [SB 5](#). The bill proposed to reduce the blood alcohol content (BAC) level that triggers harsher penalties from 0.18 to 0.15. During the debate several years ago about lowering the BAC level from 0.10 to 0.08 for *per se* violations, KRA representatives encouraged lawmakers to focus on drivers with high BACs rather than criminalizing social drinkers. The 2009 bill also would have established a *per se* violation for drivers whose blood tests revealed the

presence of controlled substances although it established a defense if the driver took the controlled substance pursuant to a prescription and complied with the dosage restrictions. [SB 5](#) passed the Senate in early February but met the same fate as similar bills Senator Jones has introduced in previous sessions when it died in the House Judiciary Committee.

Despite efforts to add at least some of the DUI provisions to other bills moving through the legislative process, no changes to the current law were enacted.

Sales at State Parks: Despite the backing of House Speaker Pro Tem Larry Clark (D-Louisville) and the support of many tourism interests, legislation that would have made possible by-the-drink sales of alcoholic beverages at state parks was not enacted. [HB 308](#) would have permitted sales at state parks located in “wet” areas and authorized a local option election in the precinct in which the park is located in “dry” areas. The bill passed the House by a 54-35 margin in late February but it died in the Senate.

Wine “Carry in”: House Majority Caucus Chairman Bob Damron (D-Nicholasville) remains interested in a statutory change to empower ABC-licensed restaurants to permit customers to bring wine to the restaurant. However, he did not introduce legislation to amend the law during the 2009 Session.

Other ABC Issues: The state ABC Department’s “housekeeping” bill to update and correct technical differences in various sections of current law relating to alcoholic beverages also failed to gain final legislative approval. [SB 34](#) was amended in the House to add provisions relating to ignition interlock devices installed on the vehicles of drivers convicted of DUI offenses. The Senate refused to approve the House changes and a Free Conference Committee made up of both House and Senate members was appointed to resolve the differences. The committee agreed upon a revised version of the bill that also included other changes to the ABC laws. The Free Conference Committee Report (FCCR) incorporated the changes to the sampling law contained in [SB 144](#) and some changes to the DUI law long sought by Senator Ray Jones (D-Pikeville). Although the House passed the FCCR version of [SB 34](#), it was not acted on in the Senate. (*See Sampling and DUI sections above for additional information*)

ABC-related provisions were added to [HB 473](#), a state Cabinet reorganization bill, when it was considered by the Senate Licensing & Occupations committee. One of the changes would have eliminated an outdated requirement in the current law that requires a retail licensee to have a street level entrance. The amended bill cleared the Senate but died in the House without action on the Senate changes

Consumer Protection Issues:

Contaminated Food: Legislation was introduced this year to significantly increase the penalties for manufacturing or selling contaminated food. Under the terms of [HB 465](#), the adulteration or misbranding of any food, as well as the manufacture or sale of any adulterated or misbranded product, would be a Class D felony rather than a misdemeanor offense. In addition, the proposal specifically made violators subject to Kentucky’s criminal homicide and assault laws. The bill contained an amnesty provision for a food processing establishment that files a report

with the state regulatory agency within 24 hours of discovery of the problem and also runs an ad in the state's two largest newspapers identifying products that might be contaminated. The bill, sponsored by Representative Jesse Crenshaw (D-Lexington), was not acted on by the House Judiciary Committee.

Consumer Privacy: The original version of [HB 47](#) contained broad restrictions on the use and retention of the information a business obtains from a customer's driver's license or personal ID card. KRA's government affairs team worked with the bill's sponsor, Representative Brent Yonts (D-Greenville), to significantly narrow the bill's scope. The changes sought by the Federation were incorporated in a committee substitute approved by the House Transportation Committee. The revised bill limited the restrictions to those instances in which identification is necessary to receive a gift that has a minimum age requirement. The House passed the amended bill 93-0 and it was unanimously approved in the Senate Transportation Committee. However, [HB 47](#) was not called for a floor vote in the Senate so it failed to win final approval.

Credit & Collection Issues:

Gift Cards: Senator Julie Denton (R-Louisville) introduced a bill that would have exempted gift cards and gift certificates issued without an expiration date from the state's escheat law. [SB 85](#) was amended by the Senate Banking & Insurance Committee to make Kentucky's statutory provisions relating to gift cards, including the proposed escheat exemption, apply to all gift cards that consumers purchase rather than just those issued by a merchant.

The bill won unanimous approval in the Senate on March 2 and cleared the House Banking & Insurance Committee without a dissenting vote on March 10. Although it was never posted for a floor vote in the House, the provisions of [SB 85](#) were added to the economic development bill put forward by the Beshear administration when it was considered in the Senate Economic Development, Tourism & Labor Committee. A host of other changes were made in the version of [HB 229](#) that passed the Senate on March 13 and the bill died since the House never voted on the Senate changes. *(See Other Business Tax Credits/Incentives section of Revenue & Taxation Issues for additional information on [HB 229](#))*

Small Claims Court: Two House bills were introduced to increase the jurisdictional limit of Kentucky's small claims court but neither was approved. Representative Jimmy Higdon (R-Lebanon) proposed to raise the maximum to \$3,000 in [HB 19](#) while [HB 243](#), introduced by Representative Tom McKee (D-Cynthiana), called for a \$2,500 cap. The current limit on actions that can be brought in small claims court is \$1,500.

Representative Richard Henderson (D-Jeffersonville) also introduced legislation proposing a change in the law relating to small claims court. [HB 163](#) would have allowed a successful litigant to have his judgment collected by the court. It would have permitted the court to retain \$20 as a collection fee. The bill died in the House Judiciary Committee without a hearing.

Energy Issues:

State Energy Plan: An energy strategy devised by officials in the state Energy and Environment Cabinet was introduced by House Majority Floor Leader Rocky Adkins (D-Sandy Hook) as [HB 537](#). The legislation directed various state agencies to develop policies and programs to help attain a goal of meeting 25% of Kentucky's projected energy demand in 2025 from energy efficiency measures, conservation, renewable energy and biofuels. The agency proposal included a goal of eliminating 60% of the Commonwealth's use of foreign oil by 2025. It also called for increased use of transportation fuels derived from biofuels, compressed natural gas, coal-based liquids and electricity through hybrid vehicles. The bill cleared the House but Senate changes to the measure were not considered when the bill was returned to the House.

Energy-related Incentives: Several bills were introduced this year to provide additional energy-related tax incentives but none were enacted. Besides the biofuels incentives proposed in the administration's energy bill, Representative Jim Wayne (D-Louisville) proposed to exempt vegetable oil and used vegetable oil from the state motor fuels tax in [HB 224](#).

Environment & Growth Issues:

Development Restrictions: Representative Reginald Meeks (D-Louisville) continued his efforts to slow down development with the introduction of [HB 115](#). The proposal would prohibit the issuance of any building permit until the property owner or developer has completed a series of steps in order to verify that the property contains no human remains. The bill, similar to legislation he has sponsored in previous years, failed to win legislative approval.

Food Sales & Service Issues:

Menu Labeling: Legislation was reintroduced this year by Senator Denise Harper Angel (D-Louisville) to establish a state requirement for multi-unit restaurants and other food service establishments to provide certain nutritional information on their menus or menu boards. The specific provisions in [SB 133](#) differed somewhat from the legislation she sponsored in the 2008 Session. This year's version applied to establishments affiliated with at least 10 other facilities with the same name operating in the Commonwealth while the 2008 bill set a 20-unit threshold. In addition, [SB 133](#) required that the caloric content of standard menu items be listed rather than a broader range of nutritional information mandated by last year's proposal. Although [SB 133](#) was not considered in the Senate Health & Welfare Committee, the Senate did approve, by voice vote, a resolution sponsored by the Louisville lawmaker urging Congressional action on a federal menu labeling law. That resolution ([SR 76](#)) was not delivered to the House for further action since it does not have the force of law.

The Kentucky Restaurant Association has endorsed federal legislation that would extend the current labeling law for packaged food to prepared food and establish a single uniform standard for providing nutritional information to customers. Individual state mandates with

varying requirements would increase costs for chain operations and prove challenging in terms of compliance. KRA's representatives in Frankfort actively opposed [SB 133](#) on behalf of the association's members that would have been affected by the state menu labeling requirement.

Contaminated Food: Although it was not acted on, legislation was introduced this year to impose much harsher penalties for distribution of contaminated food. [HB 465](#) proposed to make the manufacture or sale of products that are adulterated or mislabeled a Class D felony. (See *Consumer Protection Issues for additional information*)

Food Service Inspections: The House approved a resolution encouraging the Kentucky Department of Public Health to consider requiring all food service establishments to post the scores from their most recent inspections at all public entrances as well as at pick-up windows. Middle school students from Vine Grove introduced the idea as a bill in the West Junior Kentucky Youth Assembly and Representative Tim Moore (R-Elizabethtown) sponsored the resolution. Since [HR 164](#) is a simple resolution without the force of law, it was adopted by voice vote on the House floor. Simple resolutions do not require action by the other chamber.

Food Allergies: Another simple resolution affecting food sales was also approved in the House. [HR 16](#), sponsored by Representative Derrick Graham (D-Frankfort), urges Congress to amend the federal food labeling law to include sesame as an allergen.

Goat Milk: Representative David Osborne (R-Prospect) sponsored legislation to set standards for the sale of unpasteurized goat milk and goat milk products but [HB 177](#) failed to win legislative approval. The bill would have required sales permits and warning labels on the products. It also established sanitary guidelines for milking areas along with sampling and testing requirements and contained a provision prohibiting local regulation beyond the state standards.

General Business Issues:

Civil Lawsuits: The legislature did not enact any substantive changes in the law regarding civil litigation including a proposal to permit a surviving spouse to sue for loss of consortium. [HB 382](#) was similar to legislation previously introduced in the wake of the Comair crash at Bluegrass airport. Bills to decrease the time for filing wrongful termination suits ([HB 498](#)) and to permit employee lawsuits under the current workers' compensation system ([HB 455](#)) also failed to win approval. (See *Labor & Workforce Issues for additional information*)

Two House bills proposed to limit civil liability for emergency services, including medical care, during a declared emergency. Neither [HB 253](#) nor [HB 434](#) won approval in the House Judiciary Committee.

Interest on Judgments: Two bills ([SB 104](#) and [HB 487](#)) were filed by GOP lawmakers to change the interest rate on judgments but neither passed. Current law sets the rate at 12 percent and both proposals would have required that the rate be set each year by the statutory calculation method used to establish other interest rates while setting a minimum rate of six percent.

Discrimination: Legislation put forward by the state Human Rights Commission proposed several modifications to the agency's handling of discrimination complaints beyond "housekeeping" changes. [HB 300](#) specifically authorized the Commission to mediate discrimination complaints and to recover its costs. It also expanded the timeline for the agency to review complaints in order to determine just cause. The bill was approved by the House in a 75-20 vote but died in the Senate State & Local Government Committee.

Representative Mary Lou Marzian (D-Louisville) reintroduced her proposal to expand the state's civil rights laws to prohibit discrimination based on sexual orientation and gender identity. [HB 72](#) was not considered by the House Judiciary Committee.

Breastfeeding Violations: Bills were introduced in both the House and Senate to establish penalties for anyone that violates a mother's right to breastfeed in a public location. Both [HB 214](#) and [SB 29](#) set monetary fines for offenses, including a higher fine amount for second and subsequent violations. Neither bill was enacted.

Legislative Review & Oversight: Several bills were introduced to increase the legislature's scrutiny of state government operations but no legislation won final passage. Creation of a General Assembly Accountability and Review Division was proposed by the leaders of both chambers. Senate President David Williams (R-Burkeville) introduced [SB 188](#) while House Speaker Greg Stumbo (D-Prestonsburg) sponsored [HB 540](#).

Senate Majority Leader Dan Kelly (R-Springfield) filed [SB 187](#) to establish standards and procedures for executive orders issued by the Governor and other statewide constitutional officers. The bill, which passed the Senate 36-2 in early March but died in the House, would have required that executive orders be filed electronically with the Secretary of State; that each order be reviewed by the legislature; and that the order expire 90 days after the end of the term of the person who issued the order.

Health Insurance Issues:

Health Insurance Mandates: Nearly a dozen proposals to mandate specific coverage by health insurance plans were introduced this session. None passed. Lawmakers filed bills requiring coverage for autism ([SB 54](#), [SB 74](#), [HB 190](#)), clinical trials for cancer treatment ([SB 102](#), [HB 30](#)), drug tests ([HB 78](#)), infertility services ([HB 453](#)) and birth control services ([HB 464](#)). In addition, proposals were filed to require health insurance plans to pay for dialysis services within 30 miles of the patient's home ([SB 19](#)) and to establish the reimbursement that insurers must pay for chiropractic services ([SB 40](#)).

Group Health Insurance: [HB 54](#), a bill affecting group health insurance plans, died in the final days of the 2009 Session. The measure specified that employees who were eligible for group health insurance from their employer would not be able to participate in Kentucky's high risk health insurance pool. The bill passed the House and was amended in the Senate to include language that clarified that group insurance plans could charge higher premiums for smokers. The Senate passed the amended version of [HB 54](#), but the House never called the bill for consideration of the Senate changes.

Labor & Workforce Issues:

Workers Comp: A major change in Kentucky's workers' compensation law was proposed again this session to breach the exclusive remedy provisions in the current statute. Representative Rick Nelson (D-Middlesboro) introduced [HB 455](#) in mid-February to permit employees to sue their employers for reckless conduct. Under current law, an employee's sole remedy for work-related injuries is within the workers' compensation system if he receives benefits. Although Representative Nelson was named to chair the House Labor & Industry Committee following the January House leadership changes, the bill was not acted on by the House panel.

The 5th edition of the AMA guidelines will continue to be used to determine impairment for the purpose of workers' compensation benefits as the result of passage of [HB 333](#). The bill, sponsored by Representative Brent Yonts (D-Greenville), originally proposed that the 5th edition permanently replace a later version of the guidelines (the 6th edition). Permanent use of the earlier version was also proposed in [SB 56](#) that was introduced by Senator Ray Jones (D-Pikeville). The final version of [HB 333](#) that was enacted calls for a one-year delay in implementing the most recent version of the guidelines. The 2008 General Assembly adopted legislation extending use of the 5th edition until July 2009 and this year's action continues use of the guidelines for an additional year.

No action was taken on a workers' compensation bill dealing with subrogation that was introduced by Representative Stan Lee (R-Lexington). [HB 167](#) proposed to include medical expenses paid under workers' compensation as costs an employer may recover from another person found liable for the claim.

Independent Contractors: Organized labor continued its effort to make it more difficult for a person to qualify as an "independent contractor" and to penalize employers for misclassifications. Bills were introduced in both the House and Senate to establish a presumption that a worker performing construction activities is an employee unless he satisfies a laundry list of requirements to establish his status as an "independent contractor." Both bills included a broad definition of "construction" that included maintenance work. No action was taken on [SB 136](#) but [HB 392](#) cleared the House 74-26 before it died in the Senate.

Wrongful Discharge Lawsuits: Freshman House member John "Bam" Carney (R-Campbellsville) introduced a bill to establish a two-year statute of limitations for civil actions relating to wrongful termination or wrongful discharge. Current law does not set a specific deadline for these actions so the five-year statute of limitations for actions on a "liability created by statute" is presumed to apply so employees have five years to file a lawsuit. [HB 498](#) was referred to the House Judiciary Committee but was not acted upon.

Immigration: As has been the case in the past several years, bills related to the eligibility of immigrants for employment were introduced but not enacted. [SB 174](#) and [HB 134](#) to require business holding state contracts to verify the status of their employees were not considered after their introduction. Two House bills were also introduced by Representative Rick Nelson (D-Middlesboro) to address illegal immigration. [HB 440](#) set standards for state contractors to use to

verify employment eligibility and permitted local enforcement of federal immigration laws. It died in the House Judiciary Committee. The House did pass [HB 441](#) to mandate that anyone contracting or subcontracting with a public agency use the federal employment verification system. However, the bill died in the Senate without a hearing.

Employee Leave: Three bills were introduced this session dealing with an employee's time off work. [HB 49](#) would have prohibited an employer from discharging or penalizing an employee who was the victim of a crime from taking time off from his job to attend court or other meetings associated with prosecution of the crime. Sponsored by Representative Joni Jenkins (D-Shively), the bill passed the House but died in the Senate.

Jury service was the topic of bills introduced by Senator Damon Thayer (R-Georgetown) and Representative Ron Crimm (R-Louisville). [SB 166](#) would have banned any requirement for an employee to use accumulated leave in order to serve on a jury. It also would have protected small businesses from major disruptions caused by employee jury service by prohibiting two or more people working for an employer with five or fewer workers from being summoned for jury duty at the same time. [HB 16](#) proposed to extend the interval for jury duty eligibility from 24 months to five years and to limit service time to 30 days when public offices are open rather than 30 "court" days. No action was taken on either measure in the Senate and House Judiciary Committees.

"Comparable Worth": Representative Mary Lou Marzian (D-Louisville) persisted in her campaign to enact "comparable worth" legislation with the introduction of [HB 33](#) during the 2009 Session. As previously proposed, this year's bill would have required employers to determine which jobs require the same level of skill, effort and responsibility and then provide equal pay to employees of both genders that hold these jobs. The bill was not acted on during the session.

Other Labor & Workforce Issues: Several other bills were introduced this year but none of these workforce-related measures were enacted. Senator Damon Thayer (R-Georgetown) proposed to make Kentucky a "Right to Work" state with the introduction of [SB 165](#). Legislation was proposed in both chambers ([SB 95](#) and [HB 72](#)) to prohibit discrimination in employment practices related to gender identity or sexual orientation. [SB 101](#) proposed to include dating partners, past or present, among the persons authorized to obtain a domestic violence protective order. Legislation introduced in the House ([HB 48](#) and [HB 375](#)) would have required that employer benefit programs that cover children be expanded to cover a child over the age of 18 that is incapable of caring for himself. Another House bill ([HB 22](#)) would have authorized a court to order payment of spousal maintenance by wage assignment or other direct payment method.

A variety of employer tax incentives were also proposed but not passed in the 2009 Session. [HB 10](#), the so-called Goodwill bill, proposed creation of a tax credit for the amount a business pays a non-profit agency for work performed by disabled workers while [HB 342](#) would have created a tax credit for hiring unemployed individuals. Employers would have been eligible for tax credits for wellness programs provided to their employees under the terms of [HB 111](#). (See *Revenue & Taxation Issues for additional information*)

Privacy & Security Issues:

Theft: A significant change was made in Kentucky's theft laws when the Senate passed the House version of [HB 369](#) on the final day of the 2009 Session. The legislation, introduced by House Judiciary Chair John Tilley (D-Hopkinsville) on behalf of the state Justice Cabinet, institutes higher penalties for theft when the value of the property stolen exceeds \$10,000 while also increasing the level at which theft becomes a felony offense from \$300 to \$500. [HB 369](#), which takes effect on June 25, also revises the law to specifically address organized retail theft (ORT).

The bill as introduced encompassed the recommendations for changes in the law crafted by the Kentucky Criminal Justice Council appointed by the Governor. In addition to raising the felony theft level to \$500, the Council proposed a graduated series of penalties for theft by unlawful taking. Stealing items valued between \$500 and \$10,000 would be a Class D offense; more than \$10,000 but up to \$60,000 a Class C felony and theft of property valued at more than \$60,000, a Class B offense under the Council recommendations. When the bill was considered by the House Judiciary Committee, the Class B offense was eliminated and the ORT provisions added.

The House also adopted a change to [HB 369](#) instituted by Representative Brent Yonts (D-Greenville) to require the court to declare a person convicted of theft ineligible for a driver's license if any amount of restitution remains unpaid. The revised legislation permits the court to authorize a hardship license so the defendant can work or attend school.

No action was taken on [HB 518](#) that proposed increasing the felony theft level to \$1,000.

Penal Code Reform: Although the 2009 General Assembly made changes to Kentucky's theft laws in [HB 369](#) and enacted other proposals designed to provide some relief to the rising costs of an overcrowded prison system, legislative review of the Penal Code has not ended. [SJR 12](#), introduced by Senator Gerald Neal (D-Louisville), was passed to continue the work of the Penal Code Subcommittee. The subcommittee of the Interim Judiciary Committee began meeting last fall and is charged with the task of reviewing current law and making recommendations for needed revisions.

Retail Trespass: Representative Eddie Ballard (D-Madisonville) reintroduced his proposal to establish the crime of retail trespass but it again failed to win legislative approval. [HB 282](#) would have made it illegal to be in the driveway or on the parking lot of a retail business without the intent to do business with the establishment. The bill would have required retailers to post signs warning potential violators of the rules for the use of the driveway or parking lot.

Record Expungement: For the first time in several years, no legislation was proposed to permit the expungement of felony records. However, Representative David Watkins (D-Henderson) introduced [HB 312](#) to increase the number of misdemeanor convictions that may be expunged. The bill was referred to the House Judiciary Committee but was not considered.

Federal REAL ID Act: Resolutions were introduced in both the House and Senate to prohibit the state Transportation Cabinet from implementing the federal REAL ID Act of 2005. Both [HJR 133](#) and [SJR 73](#) cited "unrealistic" requirements and the "significant" financial burden to taxpayers as reasons Kentucky should not comply. The resolution, sponsored by Representative Dottie Sims (D-Horse Cave), passed the House unanimously in early March but both measures died in the Senate

Transportation Committee. The Senate resolution was introduced by Senator Gary Tapp (R-Shelbyville).

Regulatory & Licensure Issues:

Fire Inspection Fees: Commercial businesses will not face a new fee for routine fire safety inspections since [HB 293](#) died on the final day of the 2009 Session. The bill was introduced by House Speaker Pro Tem Larry Clark (D-Louisville) at the request of the state Office of Housing, Buildings & Construction. It would have established a fee schedule based on the building's occupancy type for annual inspections performed by the State Fire Marshall or someone acting on his behalf. The proposed fee for business occupancies was \$100 but [HB 293](#) included a provision making it clear that a violation requiring additional inspections would continue to be subject to the existing law that permits a charge for the third or subsequent inspection needed to ensure that violations are corrected. After passing the House 81-10 on March 9, the bill was referred to the Senate Appropriations & Revenue Committee. When the bill was considered by that panel, it failed to garner the minimum number of votes for committee approval. It was later reassigned to the Senate Licensing & Occupations Committee but no additional action was taken before the session ended.

Elevator Maintenance: A proposal was introduced but not enacted to limit individuals who could install or work on an elevator or a fixed guideway system. [SB 155](#) would have allowed only a licensed elevator mechanic working under the direct supervision of an elevator contractor to perform the work. The bill also would have created an Elevator Safety Review Board and a state inspection program.

Revenue & Taxation Issues:

Alcohol & Tobacco Taxes: The legislature moved quickly this session to pass a measure to raise revenue to address the state's bleak budget situation. The General Assembly passed [HB 144](#) in early February and the Governor signed the measure on February 13. The bill was approved in the House by a vote of 66-34. The Senate, in turn, approved [HB 144](#) by a vote of 24-2 with one member abstaining.

The bill levies a 30-cent per pack increase in the state tax on cigarettes (taking the tax to 60 cents per pack), doubles the tax on snuff and other tobacco products and also extends the state's six percent sales tax to the retail sale of package wine, beer and liquor. The tax increases take effect on April 1.

As passed, [HB 144](#) is expected to generate \$180 million in new revenue in a full year, but estimated to provide the state with a \$52 million shot in the arm before the current fiscal year ends in June.

Several other proposals addressing taxes on alcohol were filed this session, but did not adopted, after lawmakers chose to use [HB 144](#) introduced by Speaker Greg Stumbo (D-Prestonsburg) as the vehicle for the tax increases. Representative Rick Nelson (D-Middlesboro) filed a proposal ([HB 166](#)) to increase the wholesale tax on alcoholic beverages from 11% to 20%.

Representative Hubert Collins (D-Wittensville) called for increasing the excise tax on beer and wine and subjecting package alcohol sales to the sales tax in his bill, [HB 237](#). Under its terms, the excise tax on a gallon of wine would go from \$1.92 to \$2.00 and the excise tax rate on a barrel of beer would rise from \$2.50 to \$6.20. Representative Don Pasley (D-Winchester) sponsored a bill ([HB 510](#)) to tax “alcopops,” fruit flavored alcoholic beverages, at the distilled spirits rate.

Other Tax Reform Issues: A number of other approaches to raise state General Fund revenues were introduced this session but failed to receive consideration. Representative Bill Farmer (R-Lexington) introduced a comprehensive tax reform bill that would have dramatically changed Kentucky’s tax structure. [HB 51](#) proposed to eliminate personal and business income taxes and replace the lost revenue by extending the sales tax to a broad range of services. Farmer’s bill would have subjected advertising and public relations, market research and polling services, security services, building repair and maintenance charges as well as the lease of commercial property to the sales tax. His proposal called for lowering the sales tax rate from 6% to 5%.

Representative Jim Wayne (D-Louisville) also introduced legislation to extend the sales tax to services. [HB 223](#) would have applied the tax to commercial linen services, janitorial services, security services, exterminating and pest control services and landscaping services. Unlike Farmer’s bill, [HB 223](#) did not lower the sales tax rate nor offer income tax relief beyond creating a state level earned income Tax Credit (EITC) set at 15 percent of the federal credit.

During the debate on [HB 144](#), many legislators pointed out that raising alcohol and cigarette taxes was a short-term fix for addressing the state’s revenue needs. Others, particularly those voting against the measure, cited their opposition to targeting only two industries to raise revenue. It was clear from the discussion that lawmakers have begun talking about broader revenue-raising measures including an increase in the state six percent (6%) sales tax. In fact, Representative Mary Lou Marzian (D-Louisville) filed a floor amendment to [HB 144](#) that would have left packaged wine, beer and liquor exempt from the state sales tax and instead increased the state’s current sales tax to seven percent. Marzian’s amendment was not called for a vote, but it may be a sign of things to come as lawmakers continue to seek more long-term solutions to the revenue shortfall.

Local Tax Authority/ Use of “Tourism” Taxes: The issue of amending Kentucky’s Constitution to remove the ban on local excise taxes such as a local sales tax was not the subject of any proposal introduced during the 2009 Session. The lack of a bill was not unexpected since there will be no General Election in 2009 and any proposed constitutional change could not be submitted to the voters until 2010. The issue remains a priority for the Kentucky League of Cities (KLC) and the organization is expected to push the issue next year. KLC is also likely to aggressively lobby for a change in current law to allow virtually all Kentucky cities to impose a local restaurant tax and to expand permitted uses of this revenue.

Motor Fuel Taxes: The General Assembly took action this session to shore up Kentucky’s road fund by passing legislation to prevent a four-cent per gallon decrease in the state’s gas tax that was slated to go into effect April 1, 2009. [HB 374](#) passed the legislature in conjunction with the road construction plan. The motor fuels tax is a major source of funding for road construction and maintenance.

[HB 374](#) raises the minimum “average wholesale price” (AWP) used to determine the tax amount and will prevent the gas tax from decreasing as scheduled. Kentucky’s motor fuels tax is calculated at 9 percent of the AWP of a gallon of gasoline. The “average wholesale price” is set each quarter based on market prices but the state statute sets a minimum AWP for the purposes of the calculation. Under the previous calculation, the state’s gasoline tax was scheduled to drop by four cents on April 1 due to the steep decline in gasoline prices over the last few months.

Small Business Tax Incentives: The bill introduced by Representative Tanya Pullin (D-South Shore) to provide tax incentives for small business owners who hire new employees and make additional investments in equipment failed to pass the General Assembly. [HB 26](#) would have created a nonrefundable Small Business Tax Credit for small businesses that create at least one new job and invest \$5,000 or more in qualifying equipment or technology. In the original bill, the total tax credit available was capped at \$5 million annually but a change was adopted in the House Appropriations & Revenue Committee to reduce the annual cap to \$3 million. The House further amended the original bill to impose a \$25,000 maximum credit per business and to redefine “small business” as a business with 50 or fewer employees. Under the original provisions of the bill, small businesses were defined as independently owned and operated businesses that employ fewer than 150 full-time employees or have gross annual sales of less than \$6 million. The amended version of [HB 26](#) unanimously passed the House but bogged down in the Senate. The Senate did, however, include the provisions of [HB 26](#), in a comprehensive economic development bill ([HB 229](#)) put forward by the Governor. [HB 229](#) passed the House and was amended in the Senate to include the small business incentive and other specific economic incentives before the bill was returned to the House for concurrence. The House failed to act on the amended version of the bill. *(See section below for additional information on [HB 229](#))* [HB 26](#) was strongly supported by the Small Business Caucus, a group of more than 40 organizations representing small businesses including the Kentucky Restaurant Association.

Representative Myron Dossett (R-Pembroke) also filed a bill offering tax breaks to small businesses. [HB 394](#) established a sales tax refund program that would have allowed new small businesses to receive a rebate of up to \$3,000 of sales tax collected. The bill limited eligibility for the refund to businesses with less than \$200,000 in annual receipts. [HB 394](#) never received a hearing in the House Appropriations & Revenue Committee.

Other Business Tax Credits/Incentives: Numerous other bills were filed to grant tax credits or other tax incentives to businesses. [HB 229](#), filed by Representative Tommy Thompson (D-Louisville) and backed by Governor Beshear, was a comprehensive measure that restructured many of Kentucky’s economic development incentive programs. The bill also offered specific incentives and tax credits for the motion picture industry. [HB 229](#) passed the House and an amended version that included the provisions of [HB 26](#) was adopted by the Senate. Ultimately, however, the bill failed to clear the legislature as the House did not act on the Senate changes on the final day of the 2009 Session.

Other business tax credits that were filed this session included: [SB 43](#) offering credits for contributions to the Career and Technical Education Accessibility Fund; [HB 10](#) creating a nonrefundable tax credit for amounts businesses pay for work performed by nonprofit agencies employing blind or disabled workers; [HB 111](#) establishing a tax credit for employers that provide

wellness programs for their employees and [HB 342](#) providing tax credits to employers who hire unemployed individuals. None of these proposals were adopted by the General Assembly.

Streamlined Sales and Use Tax Agreement: Kentucky will maintain conformity with the Streamlined Sales and Use Tax Agreement (SSUTA) by virtue of the passage of [HB 347](#). By being in compliance with the SSUTA, Kentucky receives voluntary payments from a number of SSUTA registered vendors. In the last fiscal year alone the state's portion of voluntary payments amounted to about \$17 million and these payments would be jeopardized if the state is not in compliance with the SSUTA. Specifically, the bill makes Kentucky law conform to the SSUTA regarding the definition of "digital property" and its treatment for sales tax purposes. The SSUTA is a multi-state compact aimed at achieving uniformity in state sales tax laws and collection of sales tax on goods shipped into Kentucky by out-of-state retailers.

Local Occupational Taxes: The General Assembly passed a measure to update Kentucky's local occupational tax laws to conform to the Internal Revenue Code provisions in effect on December 31, 2008. [HB 87](#) revises Kentucky statutes to reflect federal law changes. One other bill dealing with local occupational taxes was filed but failed to receive a hearing in the House Local Government Committee. [HB 442](#) would have removed the 1% cap on local occupational taxes in counties with a population of more than 30,000. The removal of the cap was contingent on the existence of a revenue sharing agreement between the county and any cities located within it.

The legislature also failed to consider a concurrent resolution directing a study of the current system of reporting and collecting local license and occupational taxes. [HCR 135](#) also asked that the study examine the feasibility of a centralized collection system. Local license and occupational taxes have been the subject of much discussion in recent years because of the complexity of collection and reporting. With 120 counties and more than 200 municipalities in Kentucky, business owners are often faced with filing returns in multiple jurisdictions in which they do business.

Miscellaneous Revenue & Taxation Issues:

Estate Tax: Representative Jim Wayne (D-Louisville) filed legislation to freeze the Kentucky estate tax exemption at the federal level that was in place on December 31, 2008. The effect of the bill, [HB 257](#), would be to preclude scheduled increases in the exemption scheduled in future years. The bill would also create a refundable earned income tax credit. The legislation died in the House Appropriations & Revenue Committee.

Apportionment: A bill to require the use of a single factor formula based on sales for the purpose of apportioning Kentucky taxable income also died in the House A & R Committee. [HB 483](#) was sponsored by the chairman of the committee, Representative Rick Rand (D-Bedford).

Transportation Issues:

Hardship Licenses: Two bills were introduced in the House to expand the instances in which a hardship driver's license may be issued but neither passed. [HB 213](#) proposed to allow a District Court to issue a hardship license for a person who lost his license for general traffic violations. Current law only permits DUI offenders to request a hardship license. If [HB 534](#) had become law, a person who lost his license following a conviction for vehicular manslaughter could also have applied for a hardship license two years after his license was revoked.

The only change in the law permitting the issuance of a hardship license to a non-DUI offender that was enacted this year was contained in the final version of [HB 369](#). Representative Brent Yonts (D-Greenville) offered an amendment to the administration's theft bill that revoked the driving privileges of a person who has not made court-ordered restitution. His proposal, which was included in the enacted bill, permits the court to authorize a hardship license to allow the defendant to work or attend school.

CDLs: No action was taken on [HB 443](#) that would have required the employer of a person holding a commercial driver's license to report the results of all positive drug and alcohol screening tests to the Kentucky Transportation Cabinet within three days of receiving the results. The proposed legislation also required a check of the Cabinet's CDL database before hiring a prospective employee.

Cell Phone Use: Legislation to limit the use of a cell phone and other devices while operating a motor vehicle was introduced but it met the same end as previous proposals when it died in the House Transportation Committee. House Minority Whip David Floyd (R-Bardstown) introduced [HB 41](#) to ban the use of any personal communication device while driving unless it was "hands free."

Other Transportation Issues: There were several proposals to change the DUI law, including [SB 5](#) and [HB 365](#), but no bill was ultimately approved. [HB 370](#) proposing state penalties for violation of the federal Unified Carrier Registration Act, also failed to pass. A similar fate met resolutions introduced in both the House and Senate ([HJR 133](#) and [SJR 73](#)) to prohibit the Transportation Cabinet from complying with the provisions of the federal REAL ID Act of 2005. *(See Alcoholic Beverage Sales Issues for additional information on DUI and Privacy & Security Issues for more information on bills restricting implementation of REAL ID Act)*