

SPECIALIZED SESSION SUMMARY
Prepared for Kentucky Restaurant Association Board of Directors
2008 Kentucky General Assembly
(Prepared May 28, 2008)

Kentucky's food service industry scored a major victory when members of the Kentucky General Assembly adjourned without enacting two tax bills that won approval in the State House. The first of these measures, HB 635, proposed to expand the authority for a local restaurant tax to cities of the third class meeting certain criteria. In addition, the bill would have allowed the meals tax revenue to be used to finance a much broader range of city services.

The second tax revenue-raising measure was approved by the State House in tandem with passage of the House version of the state budget bill. The provisions of HB 262 included an extension of the state sales and use tax to a variety of services used by businesses including security, commercial cleaning and commercial linen services. However, the tax package failed to win support in the State Senate and the final version of the budget (HB 406) contained no new or expanded taxes. The \$19 billion, two-year spending plan that won approval includes no additional funding for most state agencies, decreases the state tax dollars appropriated to public colleges and universities and relies heavily on savings anticipated by restructuring the state's debt and reducing state government employment by not filling positions vacated by an expected wave of retirements.

Although the session ended without action on several major issues, including an overhaul of the taxpayer-financed retirement system for public employees and teachers, several bills important to members of the Kentucky Restaurant Association were enacted. This list includes an energy bill (HB 2) that contains incentives, as well as low-cost loans, for private sector energy efficiency and an increase in the amount businesses can charge as a bad check collection fee (HB 426).

Of equal importance is the demise of legislation that would have negatively affected the industry. Among the bills that failed to win approval during the 2008 session were proposals to require menu labeling in chain restaurants (SB 211) and to open the door for additional litigation under Kentucky's workers' compensation system by breaching the "exclusive remedy" provisions of the current law (HB 282 and HB 624).

The listing below, arranged alphabetically by topic, provides a summary of activity on some of the key issues in which the KRA legislative team was involved. The electronic version of the Session Summary includes links to the official summaries and action update prepared by the legislative staff and allows you to access the full text of the legislation by way of links on the LRC website. You can

also access the various sections by going to the topic area in the index below and hitting Ctrl + click.

ISSUE INDEX

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Alcoholic Beverage Sales Issues:

Sales to Minors: Several bills were introduced to address the issue of the sale or purchase of alcoholic beverages by minors. One measure proposed to penalize the employee that makes a sale to a person under age 21. [SB 191](#), introduced by Senator Tom Buford (R-Nicholasville) at the request of the Kentucky Grocers Association, would have required that the Court levy the maximum fine on a clerk or server that is convicted of selling to a minor. A bill sponsored by Representative Sheldon Baugh (R-Russellville) was designed to help avoid underage sales of both alcoholic beverages and tobacco products. [HB 181](#) would have permitted an electronic scan of a driver's license or ID card to verify the age of the purchaser and allowed use of the scanner to be an affirmative defense to a sales violation. Neither bill was enacted.

Election Day Sales: Representative Arnold Simpson (D-Covington) made another attempt to allow the sale of alcoholic beverages on Election Day when he introduced [HB 178](#). The bill in its original version empowered the local governing body to adopt an ordinance establishing sales and delivery hours on days the polls are open for voting. However, the Northern Kentucky lawmaker convinced his colleagues who serve on the Licensing and Occupations Committee to approve a change authorizing Election Day sales and permitting local governments to "opt out." Although the bill was easily approved at a January 23 committee meeting, it was recommitted on January 25 and never taken up again by the panel.

Server Training: A proposal to mandate training of servers employed by businesses holding by-the-drink licenses was introduced in early March but not considered in the House Licensing and Occupations Committee. Representative Ruth Ann Palumbo (D-Lexington) was the sponsor of [HB 744](#).

Sampling Events: Senator Tom Buford (R-Nicholasville) introduced [SB 164](#) to permit the wholesaler or primary supplier of distilled spirits and wine to provide products that can be used in sampling events held on licensed retail premises. The proposal was not acted on by the Senate Licensing, Occupations and Administrative Regulations committee.

Other ABC Issues: Plastic beer bottles are expected to be offered for sale in Kentucky as a result of the passage of [HB 233](#) that revised the labeling standards for plastic containers. Bills were introduced in both the House and Senate ([HB 571](#) and [SB 255](#)) to open the door for the sale of alcoholic beverages by-the-drink at state parks but neither bill was considered in the committee to which it was assigned. Only the brewer or its designated agent will be able to sell beer kegs as "scrap" because of an amendment made to [HB 106](#) that requires a record of all purchases of products containing non-ferrous metal. Legislation was introduced by Representative Arnold Simpson (D-Covington) to allow the "licensed premise" of a business holding an ABC license to also include the sidewalk and other common areas but no action was taken on [HB 754](#). A proposal to create a DUI Task Force ([HCR 140](#)) also failed to win approval during the 2008 Session.

Credit & Collection Issues:

"Bad Check" Collections: Kentucky merchants, as well as County Attorneys, will soon be able to increase the fees they charge for their efforts in collecting on bad checks as a result of the passage of [HB 426](#). Representative John Vincent (R-Ashland) introduced the legislation that allows an increase in the maximum collection charge from \$25.00 to \$50.00. The bill was strongly supported by KRF and was actively lobbied by the Federation's Governmental Affairs team.

Representative Dottie Sims (D-Horse Cave) also proposed legislation regarding checks, yet later withdrew [HB 450](#). Passage of the bill would have required all checks provided by a financial institution to have the bank's telephone number printed on the face of the check.

Small Claims Court Jurisdiction: An attempt to increase the jurisdictional limit for Kentucky's small claims court resurfaced again this year, but failed to receive a hearing in the House Judiciary Committee. [HB 280](#), introduced by Representative Mike Harmon (R-Junction City) would have raised the current limit of \$1,500 to \$5,000.

Energy Issues:

Energy Efficiency Incentives: Building on the alternative fuel production incentives enacted during the 2007 Special Session, the 2008 General Assembly passed [HB 2](#) to encourage energy efficiency measures in both the public and private sectors. As introduced by House Majority Leader Rocky Adkins (D-Sandy Hook), the bill creates tax credits for the purchase of upgraded insulation and energy efficient windows and doors, as well as for installation of high efficiency furnaces, boilers and hot water heaters, including those fueled by propane in both residential and commercial buildings. The bill also requires that buildings constructed with state funds be designed to meet high-performance building standards and requires the use of “Energy Star” products to the extent feasible. [HB 2](#) also establishes a Center for Renewable Energy Research and Environmental Stewardship to promote energy efficiency and encourage the development of renewable energy.

The Senate incorporated the provisions of [SB 165](#), energy legislation sponsored by Senator Bob Leeper (I-Paducah), into [HB 2](#) when the legislation was considered by the Senate Appropriations and Revenue Committee. The additional provisions establish the *Kentucky Bluegrass Turns Green* program that creates a grant fund to help finance energy efficiency projects in the public sector and a low-interest loan program for private sector projects. The Senate version also authorized the issuance of \$50 million in bonds to support the grant program for government and school buildings and \$30 million for the loan program for privately owned buildings. The House concurred with the Senate changes and the tax credits will take effect for tax years beginning after December 31, 2008.

Alternative Fuels: Legislation was introduced in 2008 to expand the incentives for use of alternative fuels to include waste vegetable oil recycled for use in diesel-powered vehicles. [HB 214](#) also proposed to exempt the vegetable oil used in cars and trucks from the fuels tax. The bill was never considered in the Appropriations and Revenue Committee to which it was referred.

Another bill requiring state vehicles capable of using biofuels to refuel with ethanol or other biofuels also failed to win approval this session. [HB 529](#) was introduced by Representative Brad Montell (R-Shelbyville).

Environment & Growth Issues: *(Also see Revenue & Taxation section)*

E-Waste: A resolution sponsored by Senator Denise Harper Angel (D-Louisville) was passed directing the state Environmental and Public Protection Cabinet to issue a report and make recommendations regarding electronic waste disposal and recycling in Kentucky. [SJR 76](#) requires the Cabinet to provide a detailed analysis of e-waste programs and laws in place in other states in its report and to propose components of a comprehensive statewide system for electronic

waste disposal and recycling in Kentucky. The report is required to be submitted to the Legislative Research Commission by December 15, 2008.

Water Quality: In its original form, [HB 717](#) would have permitted creation of a Stream Mitigation and Restoration Authority in each watershed in the Commonwealth and given the new entities regulatory authority, including the power to establish TMDLs (total maximum daily loads) for waters within the area. KRF staff worked closely with House Majority Leader Rocky Adkins (D-Sandy Hook), the bill's sponsor, to make significant changes to the bill prior to its approval by the House Agriculture and Natural Resources Committee. The amended bill allows formation of the Authorities but expands the membership to include representatives of agriculture, development and industry. It also limits the authority of the new entities and specifies that the groups have no regulatory power with regard to water resources or water quality. Instead, the Authorities would help direct use of "in lieu of" fees paid by businesses holding Section 404 permits by identifying projects for funding through these fees.

Water quality was also the topic of legislation introduced by Senator Joey Pendleton (D-Hopkinsville). [SB 107](#) proposed to require that the data used by state regulatory agencies in review permit applications be less than three years old and be obtained and analyzed by certified sources. The legislation was designed to address concerns about permit decisions and other regulatory action being made based on out-of-date or unscientific data. After objections were raised by the state Department of Environmental Protection, including concerns that the provisions violated federal EPA standards, no action was taken on the bill by the Senate Agriculture and Natural Resources Committee.

Economic Development Incentives: Legislation was enacted this session making some changes to the Tax Increment Financing (TIF) program authorized by the 2007 General Assembly. Among its provisions, [HB 611](#) moved oversight for the program to the Kentucky Economic Development Financing Authority (KEDFA), the state entity that oversees other economic development programs.

Bills were also introduced, but not enacted, to change the makeup and direction of the state Economic Development Partnership Board ([HB 718](#)) and to sunset virtually all the existing economic development programs ([HB 748](#)). Another bill that failed to win approval was [SB 36](#), legislation sponsored by Senator Richie Sanders (R-Franklin) to reduce the minimum investment and minimum number of jobs required to be created to participate in existing incentive programs. *(Also see Tax Credits subsection under Revenue & Taxation section)*

Development Regulation & Restrictions: Representative Reginald Meeks (D-Louisville) again introduced legislation that would prohibit issuance of a building permit until the property owner or developer has completed a series of steps to determine that the property contains no human remains. [HB 296](#) was approved by

the House Local Government Committee but was recommitted to the House Appropriations and Revenue Committee where it died.

Another measure introduced was [HB 206](#) that would have specifically authorized local governments to regulate noise and dust associated with commercial developments in excess of 15 acres. The bill was not considered by the House committee to which it was referred. However, [HB 88](#) authorizing additional Kentucky cities to enact a local nuisance code was enacted this year. Under current law, cities of the first and second classes, as well as consolidated local governments, are empowered to eliminate public nuisances through the adoption of a local ordinance. Passage of [HB 88](#) extends the same authority to cities of the third and fourth classes.

Other Environmental Issues: When [HB 233](#) takes effect in July, plastic containers with layers of resin that are different than the primary resin of the bottle may be labeled with the primary code provided certain standards are met. The change is expected to result in the availability of plastic beer bottles for sale in Kentucky. Legislation was proposed this session to adopt California vehicle emission standards in Kentucky but [HB 271](#) failed to be considered by the House Natural Resources and Environment Committee.

Food Sales & Service Issues:

Menu Labeling: An attempt to require chain restaurants to provide dietary and nutritional information on all food items sold on menus and menu boards died in the Senate Health and Welfare Committee. [SB 211](#) would have applied to restaurants with 20 or more Kentucky locations. The bill specified that menu information contain the total number of calories, grams of saturated and trans fat, grams of carbohydrates and milligrams of sodium per serving.

Milk Pricing Regulation: Two proposals establishing a "Kentucky Milk Commission" were introduced but were not enacted. [SB 184](#) and [HB 623](#) would have created the Commission and authorized it to establish a milk pricing regulation system. According to the proposals, the Commission would have broad powers, including the power to issue administrative subpoenas, to carry out its responsibility. The legislation also imposed reporting requirements on dairy processors. Retail grocery stores expressed concerns about the creation of a state entity to establish milk pricing. Experience in other states with similar Commissions indicates that the resulting price regulation is oftentimes not in the best interest of the consumer. Both bills died in the Senate Agriculture and Natural resources Committee but are expected to be discussed over the interim.

Egg Sales: Legislation amending Kentucky's "egg law" easily passed the General Assembly. [SB 53](#) revises existing law to permit labels on egg packs to include a "best by" date instead of an expiration date and reduces the minimum type size. The legislation also increases fines for repeat violations. An identical bill, [HB 128](#), was introduced in the House but failed to pass.

Energy Drink Sales Restrictions: Lawmakers failed to act on a bill that would have prohibited the sale of "energy drinks" to individuals under the age of 18. [HB 374](#) died in the House Health and Welfare Committee.

KY-Grown Products: Two bills were enacted during the 2008 Session to promote the sale of Kentucky-grown food products. [HB 626](#) makes the *Kentucky Proud* program instituted by Agriculture Commissioner Richie Farmer a permanent promotion program within the state agency and creates an Advisory Council to assist in the program's administration. The legislation also authorizes the Department to provide grants to program participants if funds are available.

[HB 484](#) encourages the purchase of Kentucky-grown products by Kentucky colleges and universities that buy agricultural products. The bill makes it clear that school contracts with vendors or food service providers are subject to the state procurement code that requires the purchase of Kentucky-grown products if available at a competitive price.

Food from Cloned Animals: Members of the House approved [HR 237](#), a resolution that requests the Interim Joint Committee on Agriculture and Natural Resources to study the impacts of cloned meat, dairy and poultry on both agriculture and the food supply system. As a simple resolution, the measure does not require action by the Senate. Another proposal dealing with food from cloned animals, [HB 378](#), died in the House Agriculture and Small Business Committee. The bill called for the labeling of food derived from cloned animals.

General Business Issues:

Premises Liability: Legislation to address the burden of proof in "slip and fall" cases was again introduced this Session and again failed to be considered. [HB 346](#) sought to establish that a plaintiff must prove that the owner of the premises knew or should have known a peril existed in order to obtain damages. This bill would have codified previous case law that was overturned in the *Lanier* case.

Civil Lawsuits: Several other bills dealing with civil lawsuits were introduced but also failed to pass. [SB 247](#) and [HB 297](#) proposed to extend the right to file a claim for loss of consortium to a surviving spouse as part of a wrongful death

lawsuit. [HB 643](#) would have extended the statute of limitations for filing a lawsuit against a third party that a defendant names as a contributor to an injury.

Billboards: Once again, legislation was introduced this Session to allow the owner of a legally erected billboard to secure a permit from the state Transportation Cabinet that would authorize the pruning or trimming of trees, shrubs and other vegetation obscuring the sign. And once again the legislation failed to pass. [HB 582](#) did not receive a hearing in its committee of origin. A late-session attempt to attach the provisions of [HB 582](#) to another bill in the Senate also failed.

State Purchasing: The General Assembly enacted legislation to permit the substitution of items of equal value to meet contract specifications in state procurement contracts. [SB 100](#) provides small businesses more flexibility in bidding on state contracts. Another procurement measure, [SB 181](#), proposed to give businesses owned by a veteran preference in state contracts. The bill unanimously passed the Senate, but failed to receive a hearing in the House.

Discrimination: Two attempts to broadly expand Kentucky's civil rights laws to prohibit discrimination based on sexual orientation or gender identity were introduced this Session. [SB 55](#) and [HB 274](#), identical bills, covered discrimination in housing, public accommodation, financial services and employment. Both measures died without receiving a hearing.

Restroom Access: Legislation was adopted this Session to require retailers and other establishments open to the public to allow certain individuals access to private employee restrooms. [HB 594](#) requires businesses that do not have public restrooms to make their employee facilities available to persons with Crohn's disease and other inflammatory bowel conditions. The bill stipulates that the person requesting access to the facilities provide proof that they suffer from one of the qualifying conditions. Additionally, [HB 594](#) exempts businesses from the requirement if fewer than three employees are present at the time of the request to use the facilities. The bill provides further protection for businesses by exempting the business owner from liability if the person using the facilities is injured on the premises. Finally, [HB 594](#) contains a provision that clearly states that businesses do not have to make their employee restroom facilities handicapped accessible if they are not already required to do so.

City Classification: A resolution calling for the creation of a Task Force on Municipal Classification died in the Senate after receiving House approval. [HCR 8](#) directed the Task Force to examine the current municipal classification system and the process for reclassification. City classification is important because the classification of a city determines what powers are granted to local government.

For example, only cities of the 4th and 5th class are allowed to impose a restaurant tax. The current city classification system is loosely based on population but lawmakers frequently reclassify cities by legislation regardless of whether the city meets the population requirements.

Health Insurance Issues:

Mandated Benefits: As has been the trend in recent sessions of the General Assembly, numerous bills were introduced mandating health insurance coverage for certain conditions or specified health care providers. Among those passed this Session was [SB 96](#), legislation to require health benefit plans to provide coverage for colorectal cancer screenings in accordance with guidelines set by the American Cancer Society. Another mandated benefit that received legislative approval was [HB 316](#), requiring basic health insurance plans to provide coverage for mammograms. Basic plans, also called “mandate lite,” were created to offer a stripped down, more affordable health insurance plan that provided only basic health insurance coverage.

Fortunately, many other proposed health care mandates failed to receive legislative approval. Two controversial and expensive proposals were the focus of much debate during the Session. [HB 433](#), legislation that mandated coverage for kidney dialysis services provided by the patient’s choice of providers died in the Senate after clearing the House. [HB 148](#), legislation that set the insurance reimbursement rates for chiropractors by statute also died in the Senate. Attempts were made late in the session to revive these measures as amendments to other bills but these efforts also failed. Another measure, [HB 317](#), requiring insurers to cover the same basic healthcare costs associated with the course of cancer clinical trials that they would cover if the insured was not participating in the trial, also died as the Session drew to a close.

Dependant Coverage: Several proposals were introduced to extend the age for dependent children coverage under a health insurance plan. [HB 94](#) proposed to extend health insurance coverage to unmarried dependent children to age 30 while [HB 102](#) set the age limit at 26. Neither bill passed. The legislature did, however, enact a bill to require insurers to offer dependent coverage until age 25. [HB 440](#) allows the employer, or policyholder in the case of individual coverage, to decide whether to provide benefits to age 25 under the health plan.

ICARE: The General Assembly failed to reauthorize the ICARE program, a pilot program that offers financial incentives to eligible employers that offer health insurance to employees. [HB 533](#) also proposed to expand eligibility to employers with up to 50 employees. Lawmakers were unable to find the estimated \$6 million necessary to continue to fund the program over the two-year budget cycle.

Funding for the existing program runs out June 30, 2008. The bill passed the House but died in the Senate Appropriations and Revenue Committee.

Health Care Transparency: [HB 44](#), legislation to provide employers and consumers information about costs for health care services, as well as quality measures and outcomes of these services, passed the General Assembly. The bill requires certain health care providers to submit health care data to a state agency for posting on the agency's website.

Labor & Workforce Issues:

Immigration: Legislation dealing with illegal immigration received much attention but no action as members of the General Assembly filed a number of proposals dealing with unauthorized aliens. [HB 304](#) was the subject of several hearings by the House Judiciary Committee but ultimately the bill was not called for a vote. [HB 304](#) contained several law changes to crack down on illegal immigrants including requiring companies that hold government contracts or receive public money to verify the immigration status or citizenship of employees and a provision making identity theft for the purpose of gaining employment a felony. The bill would also have required local and state peace officers to enforce federal immigration laws. This provision was also the subject of [HB 95](#) and [HB 97](#), two proposals that died in the House as well. Finally, [HB 208](#), a proposal to allow state agencies to revoke a business or professional license of a person hiring an illegal immigrant, failed to receive a hearing in the House Labor and Industry Committee.

Workers' Compensation: This Session several lawmakers seemed to be determined to rewrite Kentucky's workers' compensation laws a sentence at a time. Fortunately these attempts were largely unsuccessful.

The most serious threat to Kentucky businesses was an effort to remove the "exclusive remedy" provisions included in current workers' compensation law. [HB 282](#) was filed by House Majority Caucus Chairman Charlie Hoffman (D-Georgetown) but was later withdrawn after the Federation and other business groups launched a grassroots' effort in opposition. A similar proposal, [HB 624](#), was filed by House Labor and Industry Chair Mary Lou Marzian (D-Louisville) but never received a hearing in the committee she chairs. These measures, if passed, would have permitted a worker to file a lawsuit against their employer for work-related injuries. Currently the sole remedy for work-related injuries is the worker's compensation system.

Other anti-business worker's compensation bills filed this Session included [HB 598](#) increasing maximum attorneys' fees; [HB 575](#) liberalizing the definition of "permanent disability"; [HB 597](#) creating a presumption of "work-related injury under certain circumstances and [HB 601](#) extending the time period for income benefits. All died in the House.

One workers' compensation bill that will become law is [SB 199](#). The original bill proposed to permanently delay use of the latest edition of the American Medical Association's "Guidelines to the Evaluation of Permanent Impairment" which offers lower impairment ratings in some categories, particularly back injuries. The document is used in determining the extent of work-related injuries and occupational disorders. According to existing law, the most recent edition is automatically adopted by the state. An amendment adopted in the Senate calls for a one-year delay in implementing the Sixth Edition, but gave the Executive Director of the Office of Workers' Claims the authority to implement the later version sooner if he determines it is needed. The enacted bill included the Senate changes and is a better alternative to the original bill and the companion bill, [HB 498](#), introduced in the House.

Lawmakers also approved [HB 534](#), workers' compensation legislation that would require the Executive Director of the Office of Workers' Claims to notify all employees if an employer's workers' compensation insurance has been canceled. The legislature also enacted a bill that would provide parity between self-insured workers' compensation funds, like the Kentucky Retail Federation's Self-Insured Fund (KRF-SIF), and commercial carriers. [HB 758](#) brings the investment guidelines required for self-insured funds in line with those set for commercial carriers and requires self-insured funds to purchase aggregate excess coverage if the fund balance is 30 percent or less of earned premiums. Both changes would allow funds like the KRF-SIF to remain competitive in the marketplace.

Independent Contractors: Legislation filed by Representative Greg Stumbo (D-Prestonsburg) to set stricter guidelines for the classification of an independent contractor died in the Senate Licensing, Occupations and Administrative Regulations Committee. The bill, [HB 654](#), effectively presumed that a person was an "employee" unless specific conditions were met. The bill also established penalties for employers found guilty of not properly classifying employees. KRF had concerns about the impact the bill may have had on law-abiding business owners that unknowingly find they are doing business with an uninsured or otherwise illegal independent contractor. An identical bill, [SB 256](#), was introduced late in the Session and never received a hearing in the Senate.

"Comparable Worth": The business community once again battled legislation establishing the concept of "comparable worth" in state labor law. [HB 382](#) would have required employers to pay employees of both genders equal pay for jobs that are different but require the same skill, effort and responsibility. [HB 382](#)

passed the House by a vote of 81-14 but died in the Senate State and Local Government Committee.

Other Workforce Issues:

Protective Orders: Two bills that would have allowed individuals to seek an emergency protective order (EPO) against a person he or she has dated died in their respective chambers. [SB 108](#) and [HB 161](#), if passed, could have created problems for employers if an employee filed for an EPO against a coworker that he or she has dated.

Unemployment Insurance for Military Spouses: Two similar measures affecting the ability of spouses of military personnel to collect unemployment insurance died in the House. [HB 116](#) and [HB 318](#) would have made it easier for military spouses to draw benefits if the unemployment was caused by a military transfer.

Reemployment of Military Personnel: Lawmakers did not consider a bill to grant additional reemployment rights to members of the military called to active duty. [HB 314](#) proposed to create state "military leave" rights beyond the existing federal requirements.

Background Checks: A bill to ratify the National Crime Prevention and Privacy Compact, which would organize an electronic information-sharing system among the federal government and contracting states to exchange criminal history records for noncriminal justice purposes died in the Senate. [HB 544](#) would have allowed the use of these records for any purpose authorized by state or federal law including background checks.

Privacy & Security Issues:

Identity Theft: Once again this year, legislation put forward by the Office of Attorney General to broaden Kentucky's identity theft laws by requiring notice of security breaches passed the House but was not acted on by the Senate Judiciary Committee. [HB 553](#) was introduced by Representative Robin Webb (D-Grayson) on February 15 and passed the House unanimously on March 18. KRF staff worked closely with staff in the Attorney General's Office and the bill sponsor both prior to its introduction and during committee deliberations to craft language that minimizes the impact on legitimate businesses while providing protection for the consumer.

As approved by the House, the bill set standards for businesses to follow when dealing with a customer's personal information, including restrictions on the use of a consumer's Social Security number. It also required notification to a person whose personal information is released in a security breach. At the urging of KRF, a provision was added to prevent unnecessary notice when a business determines there is little likelihood of harm to the consumer. [HB 553](#) also proposed criminal penalties, as well as a private cause of action, for "phishing" which occurs when the Internet is used to induce a person to provide information by representing that the requestor is another person. It also included a procedure for an ID theft victim to petition the Court for a determination of his status as a victim.

A separate bill was introduced by Representative Webb to address the use of personal information gathered by state government agencies and other public entities. [HB 591](#) was not acted on in the House State Government Committee to which it was referred.

Felony Records Expungement: Legislators again declined to pass legislation to allow persons convicted of certain Class D felonies to have their records expunged. [HB 31](#) was the latest proposal offered by House Democratic Whip Rob Wilkey (D-Scottsville) to allow for expungement. Wilkey has introduced similar legislation in each of the past several Sessions. [HB 31](#) passed the House but died in the Senate Judiciary Committee.

Penal Code Review: A joint resolution creating a legislative subcommittee to study the state's penal code easily passed the General Assembly. [SJR 80](#) was amended in the Senate Judiciary Committee to create a legislative subcommittee to review the code. The original version of the bill called for the formation of a commission made up of legislators, prosecutors, law enforcement personnel and corrections officials. The final version authorizes the co-chairs of the Interim Joint Committee on Judiciary, Senator Robert Stivers (R-Manchester) and Representative Kathy Stein (D-Lexington), to appoint a subcommittee and directs that a report be completed by December 1, 2008.

The discussions by the panel created by [SJR 80](#) are sure to include the possibility of increasing the felony theft level from its current level of \$300. The Federation has historically opposed any increases in the felony theft level, which would essentially amount to a cost-of-living increase for criminals. KRF staff will continue to monitor the issue, particularly as the legislative subcommittee begins its deliberations.

Registry of Metal Purchases: The General Assembly approved legislation that would require junkyards and other purchasers of nonferrous metals and objects containing nonferrous metals to maintain a registry of the purchases. That registry would have to identify the seller. [HB 106](#) was amended in Senate

committee to include a provision that would prohibit any sale of beer kegs to recyclers or scrap metal dealers except by the originating brewery.

Retail Trespass: A bill establishing the crime of “retail trespass” did not receive a hearing in the House Judiciary Committee. [HB 554](#) would have made it a crime to enter the driveway or parking lot of a business without intending to conduct business with the establishment. The measure was designed to crack down on “parking lot cruising.”

Regulatory & Licensure Issues:

Fire Inspection Fees: A bill establishing new fees for fire inspections of businesses died in the House Appropriations and Revenue Committee. [HB 728](#) was backed by the state fire marshal and was opposed by the Federation and other business groups. There is currently no charge for fire inspections of businesses.

Local Regulations: Two bills dealing with the regulatory authority of local governments were introduced this Session. One passed. [HB 88](#) permits additional cities to enact nuisance codes. The bill extends the privilege to cities of the 3rd and 4th class. Another measure ([HB 119](#)) capping the amount of civil penalties that a local government can assess for local code violations died in the Senate after unanimously clearing the House.

“Before You Dig” Law: The legislation that would return fines paid for violations of the state’s “Call Before You Dig” or “Call BUD” law to the unit of government whose official issued the citation passed the General Assembly. The original version of [HB 649](#) would have allowed virtually any peace officer to issue a stop-work order for violations of the “Call BUD” requirement but was amended in the House to address concerns raised by a number of organizations.

Revenue & Taxation Issues:

Biennial Budget: State lawmakers approved [HB 406](#), the budget bill that establishes the \$19 billion, two-year spending plan for state government, during the 2008 Session but passage of the FY 2008- FY 2010 budget did not come easily. During his January 29 Budget Address when Governor Steve Beshear unveiled his proposed budget, he called it “austere to the point of pain” but said his plan would put the state on “a path toward financial stability.” There was much speculation that the Governor’s proposal that called for a 12% decrease in funding for postsecondary education and less severe cuts in funding for a wide range of

state agencies and programs was, in part, designed to bolster Beshear's proposal for expanded gaming.

The final budget bill that won approval did not include increases in tobacco taxes or expansion of the sales tax to services frequently used by retailers and other businesses that were approved in the House. (*See Sales Tax on Services and Tobacco Taxes subsections below*). Nor did legislators pass Governor Beshear's plan to boost state revenues by allowing casino gaming at the state's racetracks and a few other locations within the Commonwealth. Instead, lawmakers relied on about \$85 million in savings anticipated by not filling state jobs vacated this year after an expected wave of retirements and by squeezing an additional \$14 million (\$7 million each year) from the state lottery proceeds. An additional \$50 million in revenues is being counted on by restructuring the state's debt.

Although not as drastic as the version presented by Governor Beshear in January, the final budget does require some belt tightening. It cuts funding for universities by three percent, provides only a one-percent raise for teachers and state workers and includes virtually flat funding for elementary and secondary education and many social service programs.

Many legislators, particularly House members, voiced opposition to the budget's spending cuts as well as the way the budget was crafted. The 21 state representatives who voted "no" on the final version of [HB 406](#) included House Appropriations and Revenue Chair Harry Moberly (D-Richmond), who voted against the budget for the first time in his 29-year legislative career.

Sales Tax on Services: On January 10, State Representative Jim Wayne (D-Louisville) introduced [HB 262](#), legislation proposing significant changes in Kentucky's tax system including the addition of golf course greens fees, membership fees for private golf and country clubs and a wide range of services as items to which the state's six percent sales and use tax would apply. Consumer services that would be subject to the sales and use tax included garment alteration and repair, landscaping, dry-cleaning, carpet cleaning and exterminating and pest control. The proposal also would have added several services used exclusively by businesses such as commercial linen, security, armored car and other janitorial work.

On March 11, the House Appropriations and Revenue Committee approved an amended version of the bill that included a smaller list of services that would be taxable and also included tobacco tax increases (*see Tobacco Taxes subsection below*). The services subject to the sales tax under the amended bill were commercial janitorial, armored car, security, chartered air and commercial linen, excluding uniforms. The revised bill passed the full House in a 50-45 floor vote on the same day that the House approved its version of the budget bill.

The Senate refused to go along with the House-passed tax package and instead used [HB 262](#) as a vehicle to propose creation of an income tax rebate for active duty military personnel and tax incentives to encourage film production in

the state. The Senate Appropriations and Revenue Committee passed a Committee Substitute for the bill that removed the original provisions and replaced them with the proposed tax cuts. That version passed the Senate unanimously on March 27 but it died in the House without action on the Senate changes.

Utility Tax: House Appropriations and Revenue Chairman Harry Moberly (D-Richmond) introduced [HB 257](#) to replace the “optional” utility gross receipts tax that local school districts are authorized to levy with a statewide utility tax of three percent beginning January 1, 2009. Under the proposal, the tax revenues would be dedicated for public school funding. The bill died in committee after a large public outcry, particularly from businesses in Louisville-Jefferson County where the school system does not currently impose a utilities tax.

Estate Tax: The House Appropriations and Revenue Committee added an amendment to [HB 566](#) offered by Committee Chair Harry Moberly (D-Richmond) to broaden the state’s estate tax to include estates worth more than \$3.5 million. The action came when committee members were considering the bill to create a state Earned Income Tax Credit for 350,000 low-income Kentuckians. Moberly told members of the panel that the estate tax change would provide funding to create a state EITC at 7.5% of the federal credit. After the change was approved, a floor amendment was filed by Representative Scott Brinkman (R-Louisville) to exclude qualified family businesses from the estate tax and the bill was never called for a floor vote in the House.

Local Sales Tax: At the urging of the Kentucky League of Cities, Representative Kathy Stein (D-Lexington) introduced [HB 361](#) proposing to amend Kentucky’s Constitution to authorize the legislature to enact laws allowing cities and counties to impose a local sales tax. The Federation called on its members to communicate with their legislators about the burden this would place on retailers who would be forced to serve as the tax collector for local governments in addition to the role they already play in collecting state sales tax revenues. KRF staff also made lawmakers aware of the potential problems that would result from varying tax rates among jurisdictions and no vote was taken during the committee meeting at which the bill was discussed. No further action was taken on [HB 361](#) during the 2008 Session but it’s likely the issue will resurface during the 2009 General Assembly.

Local Restaurant Tax: Legislation to allow third-class cities meeting certain criteria to levy a restaurant tax failed to win final approval during the 2008 General Assembly but its fate was not determined until the last day of the session. [HB 635](#), sponsored by Representative Rick Nelson (D-Middlesboro), passed the House in mid-March and was expected to die in the Senate Appropriations and Revenue

Committee. The bill was unexpectedly called during a special committee meeting on day before the veto break and, equally surprising, was presented to the committee by Senate Majority Floor Leader Dan Kelly (R-Springfield). The bill failed to receive the 10 votes it needed for approval but it was called again at a meeting later that day and passed after at least two members changed their "no" vote to a "yes." Calls to lawmakers during the recess by KRF members and members of the Kentucky Restaurant Association, a Federation affiliate member, contributed to the decision not to call the bill for a Senate floor vote when lawmakers returned to Frankfort.

Under provisions of [HB 635](#), in order to levy the tax, the third-class city must be in a county that is eligible to receive Appalachian Regional Commission funding and the county must produce between one million and two million tons of coal annually. These requirements meant that the bill would only apply to Middlesboro, the hometown of the sponsor. However, it would have set a precedent by expanding the authority for a local tax on prepared food purchased from restaurants or grocery delis to more than the fourth- and fifth-class cities that are currently permitted to levy the meals tax. In addition, [HB 635](#) proposed to allow cities to determine the use of most of the revenues rather than earmarking the funds for tourism promotion and development as current law does. That provision would undoubtedly made the local restaurant tax a more attractive method for cities to raise funds to finance a wide range of city services.

Other Local Taxes: Local license and occupational taxes were the subjects of several bills introduced during the 2008 General Assembly. Representative Robin Webb (D-Grayson) introduced legislation to limit the maximum rate for new fees or increases in existing fees ([HB 326](#)) and to require a legislative study of the current system of reporting and paying local occupational taxes ([HCR 203](#)). Northern Kentucky Representative Sal Santoro (R-Florence) filed [HB 729](#) to require the state Revenue Department to establish a centralized collection system for local occupational taxes that would be optional for use by taxpayers. Despite obvious legislative concern about the complexity and problems associated with the current system, none of the proposals were adopted.

Sales Tax Collection: A permanent cap of the collection allowance available to retailers for serving as the tax collector for the Commonwealth was approved with passage of [HB 538](#) during the 2008 Session. Current state law allows a retailer to deduct 1.75% of the first \$1,000 of state sales and use tax collected and one percent (1%) of the amount he collects in excess of \$1,000 from the tax before payment is remitted to the state Revenue Department to help defray the costs incurred in collecting the tax. However, the past several state budget bills have suspended that statute and limited the collection allowance to \$1500 per reporting period. [HB 538](#) makes the \$1500 cap permanent effective July 1, 2008.

Legislation was also approved this year requiring an out-of-state business or its affiliates that contracts with state government to register as a sales tax collector. [HB 609](#) also requires the out-of-state entity to collect the state sales and use tax on sales to customers located in Kentucky.

Tax Credits: Numerous proposals were introduced to create tax credits for expenditures ranging from those relating to employment or educational contributions to those designed to improve energy efficiency in the Commonwealth.

KRF was a leader in a broad-based coalition of business groups and advocacy organizations that worked with Representative Keith Hall (D-Phelps) to craft [HB 592](#) proposing creation of a state level Work Opportunity Tax Credit (WOTC) for Kentucky employers and a Kentucky Earned Income Tax Credit (EITC) for the working poor. The legislation was designed to offer employers incentives to hire the unemployed and disadvantaged while providing Kentucky's poorest citizens with an incentive to work.

The WOTC provision of the bill would have provided employers a tax credit of five percent of the first \$6,000 in wages paid to eligible workers. Eligibility mirrored the standards under the federal WOTC program. Employers that hire individuals eligible for participation in the federal program would automatically qualify for the state tax credit. Those benefiting from the Kentucky WOTC include food stamp recipients, Temporary Assistance to Needy Families recipients, those receiving supplemental security income benefits and those who live in a federally designated Empowerment Zone (EZ), Enterprise Community (EC) or Renewal Community (RC). These include Breathitt, Clinton, Jackson, Lee, Owsley and Wolfe counties and portions of Warren and Wayne counties. The state WOTC was projected to return \$12 million to Kentucky employers while creating jobs for Kentuckians.

The state EITC proposed in [HB 592](#) would have permitted low income Kentuckians to retain more of their earnings by creating a state EITC equal to five percent of the federal amount for which they are eligible. The state EITC would provide a return of \$30 million to Kentucky's poorest workers.

Although 25 lawmakers joined Hall as co-sponsors of the bill, the state's financial problems affected its chances of passage. The bill was unanimously approved by the House Economic Development Committee in early March but it was recommitted to the Appropriations and Revenue Committee where it died.

Bills proposing tax credits for small business that increase employment ([HB 38](#)), for contributions toward career and technical education programs ([SB 32](#)) and for amounts paid to nonprofit agencies for work performed by individuals with severe disabilities ([HB 21](#)) also failed to win final approval.

One measure that was enacted was [HB 2](#), energy legislation sponsored by House Majority Leader Rocky Adkins (D-Sandy Hook) that establishes tax credits for

specific energy efficiency installations made in Kentucky homes and commercial locations (*see Energy Issues section*).

SSUTA Compliance: The 2008 legislature enacted [HB 629](#) making changes in Kentucky law needed to keep the state in compliance with the SSUTA. The bill included a provision backed by the Federation that absolves a retailer from liability that arises because the retailer relied on erroneous information provided by the state Revenue Department in its taxability matrix.

Other Revenue & Taxation Issues:

Legislation was prefiled to eliminate the Limited Liability Entity Tax that is based on gross receipts or gross profits and replace it with a flat annual fee (\$175) but [HB 26](#) died in the House Appropriations and Revenue Committee without receiving a hearing. A similar fate met [HB 256](#) when it reached the Senate Appropriations and Revenue Committee. The bill, sponsored by House Committee Chair Harry Moberly (D-Richmond) would have made Kentucky a party to the Multistate Tax Compact that is designed to help determine tax liability for businesses operating in more than one state.

Another bill Moberly introduced, but later withdrew, was [HB 302](#) to require “unitary” businesses to use combined reporting for Kentucky corporate income tax returns. A resolution calling for a legislative study to consider the impact on Kentucky if the federal income tax was replaced with a federal consumption tax was introduced by Representative Mike Harmon (R-Junction City). [HCR 86](#) also directed that the study try to determine how much the state sales and use tax rate would need to be increased in order to eliminate the state income tax but no action was taken on the measure.

Tourism Issues:

Use of “Tourism” Tax Revenue: The bill to allow the city of Middlesboro to institute a restaurant tax ([HB 635](#)) also contained a provision to expand the permissible uses of restaurant tax revenues. The bill would have allowed restaurant tax revenues to be used to fund parks and recreation, “Main Street” renovation projects or for any other legally permissible purpose. Current law specifically dedicates restaurant tax revenues to supporting tourism-related activities. **HB 635** passed the House but died in the Senate.

School Start Date: A bill to prohibit a school district from beginning a school term before the third Monday in August unless the district obtained a waiver from the Kentucky Department of Education died in the Senate Education Committee. [SB 134](#) contained an exemption for districts that have adopted “year-round” calendars. The House failed to consider a simple resolution urging local Boards of

Education to seek input from interested stakeholders before approving a school calendar. [HR 5](#) died in the House Tourism, Development and Energy Committee.

Transportation Issues:

Employer Reporting of Positive Drug Tests: Bills were introduced in both the House and Senate to require employers to notify the state Transportation Cabinet if an employee holding a commercial drivers license tested “positive” on a drug test but neither bill was enacted. [SB 162](#) required that notice be made within three business days of receiving the test results while [HB 563](#) specified that notice to the state agency be made within five days.

Driving Restrictions: Representative Tom Burch (D-Louisville) again introduced legislation this Session to prohibit the use of cell phones while driving. His [HB 56](#) contained an exception for “hands free” systems but members of the House Transportation Committee still voted unanimously to pass over the bill rather than reporting it out of committee for consideration by the full House. The Senate Judiciary Committee did not act on [SB 116](#), legislation that would ban “text messaging”, as well as reading and writing, while operating a motor vehicle.

Overweight and Overdimensional Permits: No action was taken on [HB 651](#) to require that a hearing be held prior to the state Transportation Cabinet revoking an overweight or overdimensional permit.