

# SESSION SUMMARY

## 2014 KENTUCKY GENERAL ASSEMBLY

Prepared for Members of the Kentucky Restaurant Association

April 17, 2014

*Kentucky restaurant owners breathed a collective sigh of relief at the stroke of midnight on April 15 when the General Assembly ended its 2014 Session without enacting proposed changes in the state's minimum wage law that would have increased wages required to be paid both tipped and non-tipped employees. Intense lobbying efforts by the Kentucky Restaurant Association (KRA) and other business groups helped secure the defeat of both minimum wage bills, as well as the demise of legislation proposing to change Kentucky's workers' compensation law to increase benefits and raise attorney fees. KRA scored another big win this year when "restaurant tax" legislation was not introduced during the 2014 Session.*

*A KRA-backed measure to increase accountability and transparency regarding local regulatory fees being levied on the sale of alcoholic beverages in many local communities was enacted this year. In addition, the association succeeded in adding provisions to the city classification bill that passed to insure that its provisions did not authorize anymore cities to impose either the ABC regulatory tax or a local restaurant tax.*

*The following narrative summary is arranged alphabetically by issue area and provides information about key legislation affecting Kentucky's food service industry that lawmakers considered this session. The electronic version of KRA's 2014 Session Summary includes links to the legislative website so you can easily access additional information about specific bills. These links provide the complete summary prepared by legislative staff and a chronological list of actions on the legislation. You can also access the complete text of each bill or resolution by way of the link.*

### ISSUE INDEX

[Alcoholic Beverage Sales Issues;](#)  
[Consumer Protection Issues;](#) [Energy, Environment & Growth Issues;](#)  
[Food Sales & Service Issues;](#) [General Business Issues;](#) [Health Insurance Issues;](#)  
[Labor & Workforce Issues;](#) [Privacy & Security Issues;](#)  
[Regulatory & Licensure Issues;](#) [Revenue & Taxation Issues;](#)  
and [Transportation Issues](#)

#### **Alcoholic Beverage Sales Issues**

**Local Fees:** Representative Dennis Keene (D-Wilder), chair of the House Licensing and Occupations Committee, introduced legislation backed by KRA and other industry groups to prevent misuse of local alcoholic beverage regulatory fees. The final version of [HB 415](#) that passed both chambers and was signed by the Governor represented an agreement between businesses that sell alcoholic beverages and the local governments that levy the local tax.

Only cities that are classified as third- or fourth-class cities and the counties containing these cities are authorized to levy the regulatory fee to recover additional costs incurred by the

local government following a vote to approve the sale of alcoholic beverages within the community. As more and more local governments began imposing the fee, industry representatives became concerned about the amount of money being raised and how the funds were being used. The fee, based on gross receipts which causes it to function much like a local sales tax, has been set at eight percent (8%) in several communities. KRA was one of the groups that filed an open records request to secure information about the revenues generated and expenditures made.

Responses to the information requests clearly revealed there was no uniform process used to set the fee or to track expenditures. [HB 415](#) corrects the situation by providing both transparency and accountability regarding the local regulatory fees. Provisions of the bill mandate that money raised by the fee be placed in a separate account and require an audit of the account each year. It also calls for the state Alcoholic Beverage Control (ABC) Department to issue regulations providing direction for estimating additional expenses the local government will incur. The estimate will be used to set the fee for the first year it is levied, but in subsequent years, the fee will be based on actual expenditures in the previous year. [HB 415](#) also contains provisions under which the local government would forfeit its right to levy the fee if it violates the law by using the money for other purposes.

**Local Regulations:** In 2013, problems in the West End led Louisville's Metro Council to restrict the hours in which package sales are allowed throughout Jefferson County. Representative Darryl Owens (D-Louisville) introduced a bill to allow local governments to designate "alcohol impact areas" within their communities in which additional restrictions on the sale of alcoholic beverages would apply. Under the provisions of [HB 278](#), criteria for the designation include chronic public inebriation, unnecessary litter or waste or illegal activity associated with the sale or consumption of alcoholic beverages. The legislation establishes a process by which a local ordinance could be passed to serve as a petition to the state ABC Board requesting specific limitations that would apply to sales within the area. The bill was referred to the House Licensing and Occupations Committee and approved by that panel in mid-March. Although Owens filed floor amendments to limit the bill's scope to Louisville/Jefferson County and to establish a procedure allowing ABC-licensed businesses to petition for removal of the restrictions, [HB 278](#) was never acted on by the full House.

**Sales Hours:** Legislation sponsored by Representative Steve Riggs (D-Louisville) included language to specifically authorize small cities within Jefferson County to set sales hours. Officials from the City of Jeffersontown testified that [HB 102](#) is needed so that Sunday sales of alcoholic beverages can be authorized to begin at 11:00 a.m. for businesses located within the city. Other Louisville area businesses that are licensed by the metro government are authorized to sell by-the-drink beginning at 11:00 a.m. on Sunday. The bill passed the House in early February but provisions were added in the Senate changing the timing of local option elections. Current law prohibits a local option vote from being scheduled at the same time as a regular election. [SB 194](#) had previously cleared the Senate to remove the prohibition and actually require that the local option election be held concurrent with either a primary or general election unless the individuals initiating the petition paid the costs of the election. After that legislation stalled in the House, its provisions were added to [HB 102](#). The House refused to agree to the Senate change and a conference committee was appointed. No resolution was reached so both proposals died.

**Sale of "Weak Cider":** One of the provisions contained in the "housekeeping" bill initiated by the state Department of Alcoholic Beverage Control ([SB 83](#)) defines "weak cider" as

a fruit-based beverage that contains less than seven percent (7%) alcohol and classifies it as a malt beverage. This change in the law allows any business licensed to sell beer to also sell these products. [SB 83](#) has been signed by the Governor after winning legislative approval.

**Local Option Elections:** The Senate once again this year approved legislation related to the timing of local option elections by requiring that the election be scheduled on the same day as a primary or general election in order for the government to cover the election costs. Under the terms of [SB 194](#), introduced by Senator Ernie Harris (R-Crestwood), the committee or group initiating the petition for the local option election would be responsible for the costs of an election held on a day other than a regular election day. The bill passed the Senate but was not acted on by the House Licensing and Occupations Committee, so its provisions were added to another bill affecting alcoholic beverage laws ([HB 102](#)) when that legislation was considered on the Senate floor. The House did not concur with the Senate amendment and neither issue won final legislative approval.

House Speaker ProTem Larry Clark (D-Louisville) finally succeeded in his quest to expand the sale of alcoholic beverages within the state parks system. [HB 475](#) was enacted this year to allow a local option election in the precinct or precincts containing a state park. If approved by the voters, by-the-drink sales would be permitted at the park's lodge or its golf course.

**DUI:** Several bills were introduced this year to stiffen penalties for those convicted of driving under the influence including [HB 14](#) that proposed to lower the threshold for impaired driving from 0.08 to 0.05. None of the measures passed.

**Other ABC Issues:** Needed corrections to the current law regarding changes to the state licensing system that passed in 2013 were contained in [SB 83](#). The bill, introduced by Senator John Schickel (R-Union) at the request of the state regulatory Board, has been signed by Governor Beshear. Legislation was also introduced this year to deal with "bicycle trolleys" that are propelled by passengers. [HB 86](#) proposed to exclude these passengers from being considered "operators" of the vehicle and allow them to drink on the trolley. The bill cleared the House by a 61-29 margin but died in the Senate Transportation Committee. Another measure that failed to win final approval this year was [SB 60](#) that would have removed the statutory prohibition on guns in establishments that sell alcoholic beverages including bars.

## Consumer Protection Issues

**Security Breach Notification:** Lawmakers approved two separate measures setting standards for consumer notification when a security breach occurs. [HB 5](#) focuses on information gathered by public agencies while [HB 232](#) is designed to deal with personal information held by private sector entities.

[HB 5](#) was initiated by State Auditor Adam Edelen, and it was introduced by Representative Denny Butler (D-Louisville). The bill specifically addresses cybersecurity issues involving state and local governments but also includes provisions affecting "nonaffiliated third parties" which include businesses that receive information from an agency pursuant to a contract or agreement. KRA's government affairs team worked with the Auditor's Office and the bill sponsor to address some concerns with the bill's language as it passed the House. The bill was amended in the Senate to address these and other concerns, and the House concurred in the Senate changes.

KRA's lobbyist also worked closely with the sponsor of [HB 232](#), Representative Steve Riggs (D-Louisville), to craft changes to the original bill that was introduced including the addition of a "harm" trigger for breach notification. [HB 232](#) requires private businesses to notify customers of a security breach that has caused or is likely to cause identity theft or fraud against a Kentucky resident. Any business or person conducting business in the state would be bound by the bill's provisions that provide options for the means of notification.

**BPA Restrictions:** Representative Mary Lou Marzian (D-Louisville) reintroduced her proposal to ban the use of bisphenol-A (BPA) in certain consumer products. This year's legislation ([HB 147](#)) proposed a prohibition on the use of BPA in reusable food and beverage containers as well as in containers for baby food and infant formula. The bill was referred to the House Health and Welfare Committee and was reported favorably. It was posted for consideration by the full House in late February, but it was not called after a floor amendment was filed by Representative Jim Gooch (D-Providence) to prohibit a state ban until the FDA bans the use of the product. Marzian's 2013 bill was also passed by the House Health and Welfare Committee before dying without consideration by the full House.

## **Energy, Environment & Growth Issues**

**Renewable Energy Portfolio:** A measure was introduced again this year calling for a Renewable Energy Portfolio Standard in Kentucky. [HB 195](#) would have required that a portion of the electricity generated or purchased by Kentucky utilities be renewable energy and that the percentage required increase each year. The bill authorized utilities to recover any additional costs that they incur because of the renewable standard. However, the Public Service Commission would determine the cost recovery methodology.

**Cost Recovery For Natural Gas Refueling Stations:** [HB 560](#), a bill to establish a process whereby a natural gas utility may recover part of the cost of building infrastructure for fueling stations for natural gas used as a transportation fuel, died in the House Tourism Development and Energy Committee without a hearing.

**Development Incentives:** Several bills were introduced this year that could affect commercial development within the Commonwealth. [HB 542](#) was enacted and makes it easier for mixed-use projects to qualify for tax-increment financing and its incentives in both Lexington and Louisville. [HB 282](#) proposed to allow retail development in urban renewal areas to qualify for sales tax incentives, but the bill did not pass. Another measure that was approved was language added to [HB 445](#) that broadened the certified rehabilitation tax credit to include work done on certified historic properties in Lexington and Louisville. The proposal to make the tax credit refundable, rather than non-refundable, was introduced as [HB 258](#), but it did not pass.

## **Food Sales & Service Issues**

**Tourism Taxes:** Despite the fact that the Kentucky League of Cities (KLC) continues to identify expansion of the restaurant tax as one of the group's legislative priorities, no bill was filed this year to either allow more cities to levy the tax or to broaden the permitted use of restaurant tax revenues. Instead, KLC focused on passage of legislation overhauling the city

reclassification system. [HB 331](#) was enacted, but its provisions do not allow any city that did not have the power to levy a local restaurant tax as of January 1, 2015, to impose the tax.

Bills were filed this year to allow Louisville to use its bed tax revenues to renovate the downtown convention center ([HB 401](#)) and to authorize Lexington to increase its transient room tax by 2.5 percent with the money being used, in part, to upgrade Rupp Arena ([HB 544](#)). The legislation pertaining to Louisville passed but [HB 544](#) died in the Senate.

**Health Department Regulatory Authority:** Senate Majority Leader Dan Seum (R-Louisville) again introduced a measure to remove the regulatory authority of local health boards whose members are appointed, not elected. [SB 88](#) would have transferred the board's regulatory authority to the local legislative body. The bill was filed in response to local health regulations that are more stringent than state standards in several areas including food safety, sanitation and smoking bans. The bill did not pass.

**GMO Labeling:** Both the pros and cons of genetically engineered foods were addressed in legislation filed in the House this year. In late February, State Representative Mary Lou Marzian (D-Louisville) introduced [HB 441](#) to require labeling of any food containing or processed through genetically modified organisms. No action was taken on the bill after its referral to the House Health and Welfare Committee. However, the House did act on a resolution introduced by Representative Terry Mills (D-Lebanon) citing the role of genetically modified crops in maintaining an adequate food supply. [HR 175](#) was adopted on the House floor on March 21.

**BPA Ban:** Reusable food and beverage containers as well as those holding baby food and formula would be among the items banned from containing bisphenol-A (BPA) under the provisions of [HB 147](#). The bill was approved by the House Health and Welfare Committee but was not voted on by the full House after a floor amendment was filed to prohibit banning any product or its component unless it is also banned by the FDA.

## **General Business Issues**

**Classification of Cities:** A complete overhaul of the system Kentucky uses to classify cities will take effect on January 1, 2015, under provisions of [HB 331](#) that was approved by both the House and Senate. The bill will change the current six-level classification system to a two-class system that includes cities of the first class and "home rule" cities. Cities with an alderman form of government will be classified as a city of the first class, and only Louisville currently fits that category. All other cities will be classified as "home rule" cities.

The bill's sponsor, Representative Steve Riggs (D-Louisville), insisted that the legislation maintain each city's power, including its taxing authority, as it currently exists. Current law establishes a city's powers based on its classification. For example, only cities of the fourth and fifth classes are permitted to levy a restaurant tax, and only those of the third and fourth class can impose an alcoholic beverage regulatory fee.

Legislation also passed to reclassify nine cities under the current system. [HB 398](#) will change the classifications and the powers of these cities when the legislation takes effect this summer. Six cities of the fifth class will be reclassified. Five will be changed to cities of the fourth class—Kuttawa (Lyon County), Williamstown (Grant County), Crestwood (Oldham County), Russell Springs (Russell County), and Louisa (Lawrence County)—which would allow them to

levy a local regulatory fee if alcoholic beverage sales are allowed in the city. The other fifth-class city that is being reclassified is Columbus (Hickman County), and it will change to a sixth-class city. Three sixth class cities will also have their classifications changed. Booneville (Owsley County) and Wayland (Floyd County) will become fourth class while Clarkson (Grayson County) will change to a city of the fifth class.

Although the reclassification would normally allow imposition of a restaurant tax, the "snapshot in time" used in [HB 331](#) regarding the restaurant tax only allows cities that had authority to levy the local "meals" tax on January 1, 2014, to enact the tax under the new classification system. Since the reclassification of these three cities will not take effect until mid-summer, they will not be granted authority to enact a restaurant tax. However, the date used for other provisions was August 1, 2014, so Booneville and Wayland will be permitted to levy the local alcoholic beverage regulatory fee.

**Proposed Constitutional Amendments:** Several bills proposing Constitutional Amendments were filed during the 2014 session but none of them, including [HB 399](#) to open the door for a local sales tax, will be on the November ballot. [SB 195](#), introduced by Senate President Robert Stivers (R-Manchester), proposed to amend the Kentucky Constitution in order to shorten future legislative sessions to five days in odd-numbered years and to 45 days in even-numbered years. Currently, the legislature meets for 30 days and 60 days, respectively. The proposed change would also allow the General Assembly to call itself into special session for no more than 10 days in a biennium.

Another Senate measure ([SB 1](#)) proposed a Constitutional Amendment to allow the legislature to stop an administrative regulation proposed by an agency. This would apply to the interim period between sessions as well. Both [SB 195](#) and [SB1](#) passed the Senate, but they died in the House Elections and Constitutional Amendments Committee.

Expanded gaming received attention again this session. [HB 67](#) and [SB 33](#) both proposed a Constitutional Amendment to allow for expanded gaming. [HB 67](#) was accompanied by enabling legislation in the form of [HB 68](#). [HB 584](#) was filed as well, and this bill proposed an amendment to recognize the legislature's authority to allow additional forms of gaming. All three bills died in the committees to which they were assigned.

**Patent Trolling:** Senator Chris McDaniel (R-Latonia) filed a bill that would make a bad-faith assertion of patent infringement (patent trolling) a violation of the Consumer Protection Act. "Patent troll" is the commonly-used term that describes a person or company who attempts to collect licensing fees or other damages from businesses by alleging patent infringement. Oftentimes, patent trolls will send a letter to a company demanding payment and threatening legal action. In some cases, a patent troll will actually file a lawsuit and the defendant, faced with the cost of litigation, settles rather than bear the cost of fighting the action in court. [SB 116](#) passed the full Senate, but it died in the House Judiciary Committee after concerns were raised about the state's authority to regulate in this area. Federal legislation on this issue is pending action in Congress.

**Lawsuits Regarding Contracts:** Representative Brent Yonts (D-Greenville) filed legislation this session regarding lawsuits involving written contracts. [HB 369](#) changes the statute of limitations for actions on written contracts from 15 to 10 years, putting it closer in line with other states. The bill which was supported by several business groups, passed the House in early March and finally cleared the Senate after lawmakers returned from the veto break.

**Interest Rate on Judgments:** [SB 214](#) was introduced this session by Senator Chris Girdler (R-Somerset) to revise the calculation of interest rates on judgments. It also proposed to disallow interest on awards for punitive or exemplary damages. [SB 214](#) died in the Senate Judiciary Committee without a hearing.

**Whistleblower Legislation:** Two bills were introduced this session dealing with monetary rewards for whistleblowers. [HB 335](#), introduced by House Speaker Greg Stumbo (D-Prestonsburg), authorizes a civil action for false claims against the state by both the Attorney General and private individuals and includes a "bounty hunter" provision allowing the person bringing the suit to keep part of the award. The bill died in the House Judiciary Committee.

The second bill, [HB 438](#), originally proposed to establish a program whereby tax fraud whistleblowers receive a monetary reward, but before winning approval in committee, it was significantly amended. The approved version calls for a study of the advantages and disadvantages of such a program. It passed the House, but the bill died in the Senate Appropriations and Revenue Committee.

**Legislative Ethics:** The Legislative Ethics Commission's recommended changes to Kentucky's law were approved by both chambers. In addition to implementing a "no cup of coffee" rule for legislators, [HB 28](#) revises some rules regarding campaign contributions. KRA members that employ lobbyists or operate PACs should be aware that the bill prohibits a legislator from accepting contributions from these sources during a session. Other provisions of the bill put a \$50 limit on promotional items that can be provided to a legislator or legislative candidate and make advertising related to a legislative issue a reportable expense. The bill specifically includes Internet and other electronic communications as well as the costs of bulk mailings within the definition of "advertising."

**Anti-Discrimination:** Bills were introduced in both chambers to ban discrimination based on sexual orientation or gender identity. No additional action was taken on either [HB 171](#) or [SB 140](#).

## **Health Insurance Issues**

**Mandated Benefits/ Coverage:** Several bills affecting healthcare benefits and coverage were introduced during the 2014 session. [HB 190](#) proposed to require health insurance plans to cover genetic testing for breast or ovarian cancer in certain individuals. [HB 306](#) would have allowed the purchase of health benefit plans across state lines and permit the formation of pools when negotiating for such plans while allowing them to be mandate-free. Both bills died in the House Banking and Insurance Committee.

[HB 126](#) passed both chambers and includes provisions to require that health insurance plans charge the same copayments or deductibles for patient-administered anti-cancer medication as they do for those administered by a healthcare provider. Plans will be deemed compliant if the co-pay is no greater than \$100. A bill specifying the terms of health coverage for refills of prescription eye drops gained final legislative approval as well; [SB 118](#) was filed by Senator Julie Denton (R-Louisville). The effective date for both bills has been set at January 1, 2015.

[HB 362](#) was designed to address limitations on health plan participants using out-of-state providers under their out-of-network benefits. The bill was amended in the House Banking and Insurance Committee to require that insurers that limit their out-of-network coverage to services

provided within the Commonwealth to also offer a plan that allows the use of out-of-state providers. After clearing the House, the bill was further amended in the Senate Banking and Insurance Committee with provisions regarding preauthorization of non-formulary drugs. The full Senate did not act on the bill but the provisions regarding out-of-network services were added to [SB 148](#) in the House. However, the Senate did not take action on the amended bill so statutory changes on either issue were not enacted

**Health Exchange Funding:** During the interim, representatives of the Kentucky Health Benefit Exchange told lawmakers that they planned to fund the operations of the Exchange with the current assessment on health insurance premiums used to pay for Kentucky Access, a state program for uninsurable individuals. Representative Tom Burch (D-Louisville) introduced [HB 505](#) to establish the Office of the Kentucky Health Benefit Exchange and to transfer the Kentucky Access Program and its funding mechanism to that office. The bill died in the House Health and Welfare Committee. Since the legislation failed to pass, it is unclear how the state plans to fund the Exchange after federal funding expires on December 31, 2014. The Kentucky Access Program was dissolved with the implementation of the federal Affordable Care Act (ACA) on January 1, 2014. The assessment will continue, however, to pay off pending claims in the program.

Two other bills were filed this session dealing with the Kentucky Access assessment. [HB 421](#) proposed to exempt policies that cover acquired brain injuries from the levy. It was withdrawn by the sponsor in early March. A Senate measure, [SB 236](#), died in the Senate Banking and Insurance Committee. It proposed to create the Kentucky Clinical Health Trials Fund and diverted the Kentucky Access assessment to the fund.

## **Labor & Workforce Issues**

**Minimum Wage:** Just days before the start of the 2014 Session, House Speaker Greg Stumbo (D-Prestonsburg) announced that he would sponsor legislation to increase Kentucky's minimum wage and said the bill would be [HB 1](#) to denote the priority he placed on its passage. The legislation was introduced on the first day of the session and included increases identical to the federal minimum wage hike proposed by President Obama. Its provisions called for the state minimum wage that is currently tied to the federal rate to rise to \$8.10 on July 1, 2014, to \$9.15 on July 1, 2015 and then to \$10.10 per hour on July 1, 2016. In addition, [HB 1](#) included "comparable worth" provisions requiring equal pay for jobs determined to be "equivalent" under standards set by the state Labor Cabinet.

To help secure votes for the bill, Stumbo filed a floor amendment to expand the number of businesses that are exempt from the state minimum wage by increasing the threshold for coverage from a minimum sales volume of \$95,000 to \$500,000. In early February, the House adopted the amendment and passed the bill by a vote of 54-44 that largely followed party lines. Minority Leader Jeff Hoover (R-Jamestown), armed with information provided by KRA and the Kentucky Retail Federation, spearheaded the floor fight against the bill, warning his colleagues that its passage would result in fewer private sector jobs and increased expense for schools and other government employers. Hoover was joined by several other House Republicans in speaking against the bill as well as Democrat Fitz Steele (D-Hazard). Representatives Steele and Bob Damron (D-Nicholasville) were the only Democrats that voted "no." All but four of the 46 House GOP members opposed the bill. The four voting "yes" were Representatives Dwight Butler (R-Harned), C.B. Embry (R-Morgantown), Jimmy Stewart (R-Flat Lick) and Jill York (R-Grayson).



The coalition of business groups that included KRA ramped up their efforts in opposition to the bill as it reached the Senate. When the 2014 Session ended, [HB 1](#) had died without being acted on by the Senate.

In the waning days of the session, Stumbo attempted to resurrect the issue by filing his bill's provisions as a floor amendment to an unrelated measure ([SB 99](#)), but that bill also failed to win approval before the legislature adjourned.

Senator Jerry Rhoads (D-Madisonville), one of the Senate's three-member minority leadership team, also introduced minimum wage legislation this year. [SB 215](#) proposed the three-step increase in the state minimum wage included in [HB 1](#) but also included the provisions of [HB 191](#) that would require higher "cash wages" for tipped employees. No action was taken on the bill after it was assigned to the Senate State and Local Government Committee.

**Tip Credit:** In addition to [SB 215](#), "tip credit" legislation was also introduced in the House this year. On the same day they passed the minimum wage legislation filed by the Speaker, House members approved legislation introduced by Representative Will Coursey (D-Benton) to raise the "cash wage" that Kentucky employers are required to pay tipped employees. [HB 191](#) proposed to increase the "cash wage" requirement from \$2.13 to \$3.00 per hour on July 1, 2014. It also called for an annual increase equal to the lesser of 95 cents or the amount needed to bring the cash wage requirement to 70 percent of the state minimum wage. Current law guarantees employees that regularly receive tips the minimum wage but allows employers a "tip credit" that permits tips received by the employee to be counted. The effect of [HB 191](#) would be to reduce the tip credit allowed by increasing the minimum "cash wage" required to be paid. The bill cleared the House by a 57-40 margin, but it died in the Senate as well.

**Comparable Worth:** Representative May Lou Marzian (D-Louisville) introduced a bill that deals exclusively with creation of a "comparable worth" standard to be used in determining wage discrimination again this year. [HB 148](#) contained provisions like those in [HB 1](#) through which "equivalent jobs" would be determined under rules set by the state Labor Cabinet and wage differentials for employees in these jobs would be illegal.

**Workers' Compensation:** Legislation proposing both major and minor changes in Kentucky's current workers' compensation system was introduced during the 2014 Session. Senator Tom Buford (R-Nicholasville) once again filed a bill crafted by a group of plaintiff's attorneys to significantly increase their fees and the benefits for injured workers. However, no action was taken on [SB 136](#) or a similar bill introduced in the House ([HB 507](#)) by Representative Kevin Sinnette (D-Ashland).

A less ambitious "pro-labor" proposal was put forward by Senator Julian Carroll (D-Frankfort) in the form of [SB 137](#). That legislation would have extended the duration of income benefits to age 70 or five years after the date of the injury and doubled the current cap on attorney fees. Current law stops income benefit payments at the normal Social Security age of the injured worker or two years after the time of injury, whichever is later, and caps attorney fees at \$12,000. [SB 137](#) also included an escalator provision under which the maximum attorney fees could be increased each year based on the state's average weekly wage. No action had occurred on the bill until mid-March when it was reassigned to the Senate Banking and Insurance Committee that Buford chairs. A call to action by its members was issued by a number of business groups that resulted in an explosion of calls to members of the Senate by Kentucky employers. The bill was then sent back to the Senate Appropriations and Revenue Committee where it died.

Meanwhile, an employer-backed workers' comp bill also failed to win final legislative approval. [SB 63](#), sponsored by Senator Chris McDaniel (R-Latonia), would have restricted use of the Special Fund assessment paid as part of an employer's premium to finance the state Labor Cabinet's operations. Approximately 40 percent of the money generated by the assessment is being transferred to the state agency rather than being reserved to pay claims. As introduced, [SB 63](#) proposed to eliminate any transfer of the assessment proceeds to fund Cabinet programs and also directed the Division of Workers' Compensation to "aggressively" attempt to settle existing Special Fund claims. Because of the potential impact on the state budget, the provision banning the transfer was removed and replaced with language requiring regular reporting to a legislative panel about all transfers and the use of the money by the cabinet. The revised bill cleared the Senate in early March but was not considered in the House Labor and Industry Committee to which it was referred.

Two more modest proposals concerning workers' compensation were enacted. [HB 349](#) eliminates some mandatory annual filings by employers, including articles of organization and tax returns, and simply requires that the information be provided upon request. The final version of [HB 84](#) included language previously introduced as [HB 467](#) by Representative Mike Denham (D-Maysville). It requires that by the end of 2015, an e-mail notification system be established through which notification will be made if a specific business has cancelled its workers' compensation coverage.

**Right to Work:** House Minority Floor Leader Jeff Hoover (R-Jamestown) was joined by 27 other House Republicans in sponsoring a Kentucky "Right to Work" bill. [HB 496](#) proposed to prohibit mandatory membership in or financial support of a labor organization as a condition of employment. A hearing on the bill in the House Labor and Industry Committee turned into a pro-union rally for the bill's opponents, and the bill failed to make it past that panel.

**Criminal Background Checks:** As in previous sessions, bills were introduced to expand the scope of criminal records that can be expunged provided a person has completed his sentence and has not been convicted of additional crimes. Three bills were introduced this year to allow the conviction of a Class D felony or series of Class D felonies arising from a single incident to be omitted from a person's criminal record five years after completion of the sentence. [HB 64](#), sponsored by Representative Darryl Owens (D-Louisville), passed the House in mid-February but died in the Senate Judiciary Committee. Two Senate felony expungement bills—[SB 107](#) filed by Senator Jimmy Higdon (R-Lebanon) and [SB 145](#) introduced by Senator Ray Jones (D-Pikeville)—also failed to clear the Senate panel.

The bill that appeared to be on its way to passage was [HB 355](#), sponsored by Representative Wilson Stone (D-Scottsville). It proposed to allow the expungement of multiple misdemeanors after the five-year waiting period. Under current law, only the record of a single misdemeanor crime can be masked. [HB 355](#) passed the House and was approved by the Senate Judiciary Committee. However, the Senate panel added provisions related to traffic schools operated by a county attorney's office and the House did not act on the Senate changes, resulting in the death of the bill.

The current expungement standard has caused some people involved in the criminal justice system, including the Justice Cabinet Secretary, to refer to it as an "economic death sentence" because of the impact of a past criminal record on future employment opportunities. Senator Gerald Neal (D-Louisville) filed a bill this year to prohibit an employer from denying a job to an applicant because of his criminal record unless the crime was related to the job. Neal withdrew [SB 56](#) before any action was taken on the proposal.

**Tax Credits for Hiring:** Two bills were introduced in the House to create tax credits to encourage hiring by Kentucky businesses, but neither was adopted. [HB 10](#) was the latest version of the legislation dubbed the “Goodwill” bill because it would create a credit for employers who contract with a nonprofit organization for services performed by blind or disabled individuals. [HB 321](#) proposed a credit for hiring a previously unemployed individual.

**Employee Misclassification:** Northern Kentucky Senator John Schickel (R-Union) tried again this year to help establish a bright line to distinguish between employees and independent contractors with the introduction of [SB 81](#). The legislation was backed by a broad coalition of business groups, but the bill died after its provisions were significantly altered by the House. The original bill established criteria that must be met by a person providing services as a contractor, subcontractor or as a direct seller in order to qualify as an independent contractor and required the Labor Cabinet to provide training regarding classification of employees. The bill cleared the Senate in early March and was assigned to the House Labor and Industry Committee. That panel stripped the original provisions from the bill and replaced them with a requirement for various state agencies to execute information sharing agreements to help identify private sector employees that had been misclassified as independent contractors. The changes were approved by the full House, and [SB 81](#) was returned to the Senate where it died without Senate action on the House revisions.

**Domestic Violence Orders Involving Employees:** Legislation was introduced again this year to extend eligibility for domestic violence protective orders to individuals who have been or are involved in a dating relationship. [HB 8](#) passed out of the House Judiciary Committee during the first week of the session but was recommitted after floor amendments dealing with abortion were filed. No further action was taken on the bill, and [SB 68](#) was not considered by the Senate Judiciary Committee to which it was referred. Kentucky is reportedly one of the few states without this provision in its law, but concerns have been raised about its impact on employers if the business employs both parties and the order restricts contact between the individuals.

**Leave for Crime Victims:** [HB 242](#) represented another “repeat” issue since legislation containing similar provisions had been introduced in previous sessions. The bill required an employer to allow an employee to take leave—accrued vacation time, personal leave time, compensatory time, sick leave time or unpaid time off—to attend court or other proceedings relating to prosecution of a crime in which the employee or a member of his family was the victim. [HB 242](#) passed the House but died in the Senate Economic Development, Tourism and Labor Committee.

## **Privacy & Security Issues**

**Felony Theft:** Legislation was introduced to raise the felony theft level from \$500 to \$1,000, but Representative Gerald Watkins (D-Paducah) withdrew [HB 54](#) after meeting with Kentucky Retail Federation staff and listening to the industry’s objections.

**Cyber-Security/ Breach Notification:** Protection of personal information gathered by government agencies and private sector businesses was the impetus behind two House bills that were enacted this year. [HB 5](#) was initiated by State Auditor Adam Edelen and introduced by Representative Denny Butler (D-Louisville). While its focus is on information held by state and

local governments, its provisions also will impact businesses that receive information from an agency pursuant to a contract or agreement, defined in the bill as “nonaffiliated third parties.” Both [HB 5](#) and [HB 232](#) that regulates the private sector include standards for notification when a security breach occurs. KRA’s government affairs representative worked closely with the sponsor of [HB 232](#), Representative Steve Riggs (D-Louisville), to craft changes that set more reasonable timeframes for notice; require breach notification only if there has been or is likely to be identity theft or fraud against a Kentucky resident and eliminate the private cause of action contained in the original version of the bill.

**Criminal Records:** Several bills were filed this year to limit information that appears as part of a person’s criminal record. Bills were introduced in both chambers to effectively erase a conviction for a Class D felony or series of Class D felonies arising from a single incident from a person’s criminal record five years after completion of the sentence. [HB 64](#), sponsored by Representative Darryl Owens (D-Louisville), passed the House but died in the Senate Judiciary Committee. Two Senate felony expungement bills—[SB 107](#) filed by Senator Jimmy Higdon (R-Lebanon) and [SB 145](#) introduced by Senator Ray Jones (D-Pikeville)—also failed to clear the Senate panel.

Legislation sponsored by Representative Wilson Stone (D-Scottsville) to broaden eligibility for expungement of misdemeanor records also failed to win final approval. [HB 355](#) would have permitted multiple misdemeanors to be removed from the public record after a five-year waiting period. Under current law, only the record of a single misdemeanor crime can be expunged.

**“Gross Misdemeanors”:** Legislation was introduced to create a new level of crime labeled a “gross misdemeanor,” but it failed to pass. [HB 537](#) would have set the penalty for the new category at 12 to 24 months imprisonment. The maximum term for misdemeanors is currently set at 12 months.

## **Regulatory & Licensure Issues**

**Statewide Smoking Ban:** Representative Susan Westrom (D-Lexington) and Senator Julie Denton (R-Louisville) both introduced bills this session that would have created a statewide ban on smoking in workplaces and businesses open to the public. The bills also authorized local governments to impose stricter standards than what were outlined for the statewide ban. Westrom’s [HB 173](#) won approval in the House Health and Welfare Committee as did the bills she introduced in 2012 and 2013. However, the bill was never voted on by the full House. Denton’s [SB 117](#) died in the Senate Judiciary Committee without receiving a hearing. In an effort to keep the issue alive, Senator Denton filed an amendment with the same provisions as the two bills to [HB 123](#). It was later withdrawn.

**Agency Administrative Regulations:** Two pieces of legislation were introduced this year that would have significantly increased legislative oversight of state agency regulatory activity. [SB 1](#) targeted the issue by proposing a Constitutional Amendment to allow the legislature to stop an administrative regulation proposed by an agency. The measure passed the Senate but died in the House Elections, Constitutional Amendments and Intergovernmental Affairs Committee. The broader measure was [SB 195](#) that also proposed to amend the Kentucky Constitution. The bill would shorten future legislative sessions to five days in odd-numbered years and to 45 days in even-numbered years. It would also allow the General

Assembly to call itself into special session for no more than 10 days in a biennium. This provision could be used to address administrative regulations found deficient by either the legislative review subcommittee or the interim committee of jurisdiction. Like [SB 1](#), [SB 195](#) died in the House.

[HB 299](#), a bill requiring state agencies to assess the amount of paperwork necessary to comply with proposed regulations, passed the House but died in the Senate State and Local Government Committee while [HB 230](#) died in the House State Government Committee. [HB 230](#) would have delayed the effective date of any regulatory change that has a major economic impact until legislation ratifying the change has been approved.

**Local Regulations:** A bill introduced by Senate Majority Caucus Chair Dan Seum (R-Louisville) proposed to remove the statutory provisions that allow a local board of health to issue regulations it deems needed to protect public health. In a number of instances, local health department regulations have imposed more stringent requirements than state standards in areas such as food safety and sanitation. [SB 88](#) was not taken up for consideration in the Senate. In other cases, local health boards have used their regulatory authority to institute smoking bans.

Two other bills regarding local regulatory authority were introduced as well. [HB 151](#) would have allowed local governments more authority in regulating the sale of guns and ammunition while [SB 25](#) would have prohibited local governments from regulating the manufacture, sale, or possession of knives. [HB 151](#) died in the House Judiciary Committee, and [SB 25](#) died in the Senate State and Local Government Committee.

**Other Firearms Issues:** Three other pieces of legislation dealing with firearms were introduced. [HB 293](#) was designed to exempt firearms marked “made in Kentucky” and used exclusively in Kentucky from federal law; the provisions of [HCR 85](#) directed the Legislative Research Commission to create a Gun Violence Prevention Task Force; and [SB 60](#) would have removed the statutory prohibition on firearms in establishments licensed to sell alcoholic beverages. Both [HB 293](#) and [HCR 85](#) died in the House Judiciary Committee without receiving a hearing. [SB 60](#) passed the Senate but died in the House Judiciary Committee as well.

**Billboards & On-Premise Signs:** The issue of trimming vegetation and other growth obstructing billboards arose again this year when Representative Johnny Bell (D-Glasgow) introduced [HB 203](#) to allow billboard owners to apply for vegetation control permits. Another bill was introduced to expand the type of signs that can be displaced along Kentucky highways. [HB 394](#) would have permitted electronic signs to be erected in areas where billboards are permitted but restricted the use of moving or flashing text or pictures on these signs. Both bills were assigned to the House Transportation Committee where they died without further action.

After the state Transportation Cabinet proposed new administrative regulations governing not only billboards but other outdoor advertising devices including on-premises signs, additional legislation was filed. Two House resolutions ([HCR 171](#) and [HR 126](#)) were introduced urging the Cabinet to withdraw the proposed regulations and seek more public input. Another measure ([HJR 177](#)) directed the agency to withdraw the regulations and to work with the Interim Joint Committee on Transportation to craft new regulations. None of the resolutions were approved and the agency regulations that were published in the February 2014 edition of *The Administrative Register* are working their way through the review process.

## Revenue & Taxation Issues

**Changes in Kentucky Tax Law:** A “revenue” bill containing changes in Kentucky’s current tax laws was negotiated as part of the budget deliberations and was also delivered to Governor Beshear prior to the veto break. Among the changes contained in [HB 445](#) was the establishment of a tax on wagers placed on historical horse races and an extension of the \$1 fee levied on each new tire sold to finance clean-up of waste tires. Other provisions of the bill made permanent the tax credit already in place for the film industry, broadened the certified rehabilitation tax credit to include work done on certified historic structures in Lexington and Louisville and created new tax credits for distillers and “angel investors.” [HB 445](#) also updated the Internal Revenue Code referenced in Kentucky’s tax laws to the IRC Code as of December 31, 2013. However, some exceptions to the federal code regarding deductions are included in the legislation. The final bill also phases in a reduction of the wholesale tax on beer and wine. The tax will decrease by one-quarter of one percent (1/4%) each year until it reaches 10 percent in June 2018.

The final version of [HB 445](#) did not contain provisions passed by the House that would have produced more revenue for the state’s Road Fund. The bill that cleared the House earlier in March contained language increasing the “floor” used to calculate the motor fuels tax. It would have set the minimum Average Wholesale Price (AWP) on which the gas tax is calculated at \$2.878 per gallon. Because of a drop in the AWP, the gas tax dropped 1.5 cents per gallon in January and was already set to be reduced another seven-tenths of one cent (\$0.07) on April 1. Increasing the minimum AWP to \$2.878 per gallon was estimated to produce approximately \$100 million over the biennium for the state’s road fund. The Senate stripped the gas tax increase from the version of [HB 445](#) that it approved on March 26, and it was not included in the conference committee report that won final passage in both chambers.

**Major Tax Reform:** Representative Jim Wayne (D-Louisville) once again put forward his ideas for a major overhaul of Kentucky’s tax system. He prefiled his proposal that was introduced as [HB 220](#) on the session’s opening day. Wayne has introduced tax reforms bills in prior sessions, and his 2014 bill met the same fate as earlier proposals; it never moved beyond the House Appropriations and Revenue Committee to which it was referred.

In early February, Governor Steve Beshear announced his own proposal for comprehensive tax reform. Dubbed "Kentucky Competes," the plan would generate \$210 million a year in new revenue for the Commonwealth when fully implemented. The plan relies heavily on recommendations made by the Governor's Blue Ribbon Commission on Tax Reform that was chaired by Lt. Governor Jerry Abramson and on which Wayne served.

The Governor’s plan proposed sweeping changes in Kentucky law dealing with income and sales tax. It also called for a 60-cent per pack increase in the cigarette tax, bringing the tax to one dollar per pack, and subjected electronic cigarettes to the same taxes as other tobacco products. It called for a slight reduction in the corporate income tax rate, but the plan recommended a phase-in of a single-factor apportionment formula based solely on sales that would replace the current three-factor formula that multi-state corporations are required to use to calculate the portion of corporate income subject to Kentucky tax. The move to a single-factor formula would reduce state revenues by \$155 million annually while the cut in the corporate income tax rate would cost the General Fund \$6 million dollars annually. The proposal also would eliminate the state's tax on business inventories, saving companies \$7 million annually.

A key element of his plan would extend the sales tax to selected services. Some business and consumer services including auto repair, commercial linen services, recreational

activities (golf courses, gym memberships, etc.), and landscaping services would become part of the sales tax base and was estimated to raise \$280 million in new revenues each year.

The Governor also reiterated his support for a Constitutional Amendment to allow local governments to impose a local sales tax in the press conference he held to announce his tax reform proposal. Governor Beshear's plan was met by a muted response from members of the General Assembly. Legislative leaders in both chambers acknowledged that passing sweeping tax reform in an election year was a difficult task, and legislation encompassing the Governor's proposal was never introduced.

**Other Proposed Tax Credits:** Several other income tax credits were proposed beyond those included in the final version of [HB 445](#), but no others were approved. Both [SB 155](#) and [HB 220](#) proposed to create a state level Earned Income Tax Credit (EITC) that would be based on the federal tax credit. [SB 151](#) would have allowed restaurants and other businesses and individuals that donate goods and services in the wake of a disaster to claim a tax credit for these donations. Employer-based tax credits were also proposed for hiring previously unemployed Kentuckians ([HB 321](#)) and for contracting with a Kentucky non-profit group for services provided by individuals that are blind or severely disabled ([HB 10](#)).

**Biennial Budgets Enacted:** The primary task facing lawmakers at the start of the 2014 Session was crafting a two-year spending plan for state government for the biennium that begins on July 1. Just hours before they adjourned on March 31 for the veto recess, both chambers approved negotiated versions of [HB 235](#), the Executive Branch budget bill, as well as budgets for the judicial and legislative branches. Most of the attention was focused on [HB 235](#) since it appropriates more than \$20 billion. The agreed upon bill was hammered out over several days (and nights) of negotiations between House and Senate leaders to resolve differences in the bills passed by the two chambers. The compromise was contained in a conference committee report.

One of the significant changes in the conference committee report was a reduction in the amount of bonded projects that was proposed by the Governor and the debt authorized by the House. The House-passed budget bill included nearly \$2 billion in bonded projects. The Senate slashed the project spending, approving \$533 million in new debt. The conference committee report includes \$743 million in new General Fund debt and \$721 million in agency bond debt primarily for postsecondary education projects. The final version of [HB 235](#) also makes smaller cuts in General Fund support for the state's colleges and universities, including the career and technical college system, than recommended in the Governor's budget proposal. Postsecondary education funding will be cut by 1.5 percent instead of the 2.5 percent reduction the Governor proposed. Most state agencies will have a five percent cut in the General Fund dollars they receive, although the budget bill authorizes pay raises for state employees. The bill also increases state funding for elementary and secondary education and requires salary increases for teachers.

By approving the budget bills prior to the veto recess, the legislature preserved its right to overturn any vetoes of line items in the budget that the Governor may issue. Unlike other legislation, the Governor is authorized to disapprove any part of an appropriation bill rather than having to accept or reject the entire measure. The Governor vetoed several provisions in the budget bill that restrict the Executive Branch's flexibility in managing the state's finances. The vetoes were not acted on when the legislature returned following the veto recess so the Governor's vetoes stand.

**Sales Tax Vendor Compensation:** Despite the efforts of KRA and its 12 partners in a coalition formed to push for adequate compensation for businesses providing sales tax collection services for the state Revenue Department, lawmakers failed to reverse the drastic cut in the collection allowance that took effect in August 2013. As part of a last-minute agreement on the 2013 pension reform legislation, the cap on vendor compensation for sales tax collection was reduced from \$1,500 to \$50 per reporting period.

During the closed-door negotiations, legislative leaders were told that the cut would only impact “big box” stores. The significant reduction actually impacted a wide range of businesses including many small restaurants with a single location. It effectively caused an \$11 million tax increase on the companies that are forced into their role as collection agents for the state.

Factual information about the broad impact of the cut and about the actual expense involved in collecting sales tax for the government was provided in testimony last fall before the Interim Joint Committee on Appropriations and Revenue and to all legislators during the session. We were hopeful the 2013 cuts would be revisited during the final negotiations on the budget. However, legislative leaders chose to take no action to increase the collection allowance to help defray the costs businesses incur in providing the collection services to state government.

Some individual members of the House did attempt to address the collection allowance cut but legislative action outside the budget deliberations was not taken or expected. Representative Ron Crimm (R-Louisville) introduced [HB 227](#) to increase the cap from \$50 to \$250 per return. Representative Brent Yonts (D-Greenville) worked with KRA’s lobbyist to revise [HB 137](#), legislation he introduced that earmarked additional revenues received by the state if Congress enacts Main Street Fairness legislation to address the pension liability. The amended bill that cleared the State Government Committee that Yonts chairs required that the collection allowance be restored to the pre-August 1 level if the federal legislation is adopted. However, the bill was recommitted to the House Appropriations and Revenue Committee and no further action was taken.

The collection allowance also became an issue during discussions regarding the local option sales tax. In fact, the House Local Government Committee added language requiring vendor compensation for restaurants and other retailers if a local sales tax is levied before approving the enabling legislation ([HB 551](#)) for the proposed Constitutional change. Under terms of the bill approved by the panel, businesses would be allowed a collection allowance equal to one percent of the local tax collected. No further action was taken on the bill after [HB 399](#), the bill proposing the Constitutional change to allow a local sales tax, was shelved.

## **Local Taxes:**

**Local Option Sales Tax (LOST):** As noted in the previous section, despite intense lobbying by its supporters, including Governor Steve Beshear, a proposed Constitutional Amendment to allow a local option sales tax (LOST) failed to win legislative approval to appear on the November ballot. [HB 399](#), introduced by House Majority Whip Tommy Thompson (D-Owensboro), proposed the Constitutional change that would remove the prohibition on a local sales tax. If the Constitutional Amendment had appeared on the ballot and had been passed by the voters, the provisions of the bill would have allowed local governments to institute the tax for specific capital projects if voters in the community, in a subsequent referendum, approve the local tax. Similar legislation ([SB 135](#)) was introduced by Senator Paul Hornback (R-Shelbyville) but it was only the House proposal that was seriously considered.

The Kentucky Retail Federation presented testimony against [HB 399](#) when it was on the agenda of the House committee to which it was assigned but it cleared the panel on March 11.



Later that day, House Speaker Greg Stumbo (D-Prestonsburg) called the measure “bad policy” and considering that Speaker ProTem Larry Clark (D-Louisville) voted against the bill in committee, its chances of getting a floor vote in the House were up in the air. That situation changed the following week when Stumbo announced that Governor Beshear had persuaded him to support [HB 399](#). However, on March 24, Louisville Mayor Greg Fischer, one of the most high-profile advocates for the bill, told reporters that its supporters had been unable to line up the 60 votes needed to pass the proposed Constitutional Amendment in the House. The demise of [HB 399](#) also meant the end of legislative action on [HB 551](#), the enabling legislation that would have taken effect only if the Constitutional Amendment had won voter approval.

Although the legislation failed this year, the issue of a local option sales tax is far from dead. Fischer said that he and other LOST supporters would continue to try to round up support in preparation for bringing back the issue during the 2015 Session.

**Local Fees on Alcoholic Beverages:** The General Assembly acted this year to provide needed accountability and transparency concerning fees levied by local government on alcoholic beverages sold within their jurisdiction. Current law authorizes cities of the third- and fourth-class, and the counties containing these cities, to impose a regulatory fee to recover additional costs incurred by the local government following a vote to approve the sale of alcoholic beverages. The fee is based on gross receipts and one of the provisions of the enacted version of [HB 415](#) makes it clear that it is only the gross receipts related to alcoholic beverage sales and not all sales made by the ABC license holder that are subject to the local fee.

Industry representatives at all levels of the three-tier system had expressed concern to lawmakers that the fees were excessive and that proceeds were likely being used for expenditures other than those authorized by the statute. [HB 415](#), sponsored by House Licensing and Occupations Chairman Dennis Keene (D-Wilder), requires that revenues raised by the fee be placed in a separate account that would be audited each year. The bill also directs the state Alcoholic Beverage Control (ABC) Department to issue regulations to be used to estimate additional expenses the local government will incur in the first year the fee is levied. In subsequent years, the fee is required to be based on actual expenditures in the previous year. [HB 415](#) specifies that a local fee may only be levied within two years of the time that alcoholic beverage sales are authorized. The bill also contains provisions under which the local government would forfeit its right to levy the fee if it violates any provision of the law, including use of the money for unauthorized purposes.

**Local Tourism Taxes:** No legislation was filed this year to permit more local communities to impose a restaurant tax or to allow restaurant tax revenues in cities of the fourth- and fifth-class that are currently authorized to levy the tax to be used for non-tourism related expenditures. In fact, several cities that were reclassified this year with the passage of [HB 398](#) will not be allowed to have a local restaurant tax after January 1, 2015 because of a provision contained in [HB 331](#), the legislation that reforms Kentucky’s city classification system. [HB 331](#) takes a “snapshot in time” approach to maintaining the current authority that individual cities have. The provision related to the restaurant tax specifies that only cities that had authority to levy the tax on January 1, 2014 are allowed to impose the tax under the new classification system that takes effect next year.

**LLET Tax:** A coalition of business groups led by the Kentucky Society of CPAs endorsed [HB 136](#). The bill would have corrected a problem caused by a difference in the definition of “costs of goods sold” used in the federal Internal Revenue Code and the definition used by the

Revenue Department to determine tax liability as part of the Limited Liability Entity Tax (LLET). Kentucky's definition is much narrower and excludes many of the items that can be factored into "costs" under the federal code. The bill, sponsored by Representative Brent Yonts (D-Greenville), did not receive a hearing in the House Appropriations and Revenue Committee. Neither did two proposals filed by Representative Rick Nelson (D-Middlesboro) to exempt some small businesses from the LLET ([HB 422](#) and [HB 559](#)).

**Tax Fraud Prevention:** Legislation initiated by the Revenue Cabinet was passed to criminalize the use of "tax zappers." [HB 69](#) makes it a felony to use "phantom-ware" or other falsification devices to reduce sales tax liability. Another bill put forward by the agency did not fare as well. [HB 438](#) proposed to create a whistleblower reward program under which individuals that provided tips regarding tax fraud would be eligible for a monetary award. The bill was amended before it cleared the House to call for a study of the advantages and disadvantages of a program rather than instituting it. No action was taken on the bill by the Senate.

### **Transportation Issues:**

**Restrictions on Cell Phone Use:** A bill to restrict the use of cell phones while driving in a school zone or highway work zone was introduced by Representative Terry Mills (D-Lebanon). [HB 33](#) passed the full House in late February but died in the Senate Transportation Committee.

**Speed Limits:** Both [HB 58](#) and [SB 92](#) proposed to increase the speed limit on four-lane state highways that are not interstates or parkways to 65 MPH. The bills both died in their respective Transportation Committees without hearings.

**DUI:** Legislation was introduced in the House to stiffen penalties for DUI offenses including [HB 14](#) that would lower the 0.08 BAC level to 0.05. However, the bill died in the House Judiciary Committee along with [HB 34](#). [HB 34](#) would have restructured the penalties for driving under the influence including an expansion of the "look back" for repeat offenses from five to 10 years.

Another bill ([HB 64](#)) regarding DUI offenses was withdrawn in mid-February. It included provisions that would have increased penalties for the first DUI offense and replaced the hardship license with an ignition interlock license.

**Billboards:** A perennial issue regarding maintenance of billboards located along Kentucky highways resurfaced this year with the introduction on [HB 203](#) in January. The bill, similar to legislation introduced in previous sessions, would have allowed billboard owners to secure a vegetation control permit to trim growth that obscures the billboard's message. Another measure ([HB 394](#)) proposed to allow electronic signs to be erected in areas where billboards are permitted but restricted the use of moving or flashing text or pictures on these signs. Neither bill was acted on in the House Transportation Committee. Nor did that panel consider any of the three resolutions filed ([HR 126](#), [HCR 171](#) and [HJR 177](#)) calling for the withdrawal of proposed administrative regulations regarding billboards and other outside signs that were filed by the state Transportation Cabinet in February.

**Other Issues:** Several other bills related to transportation were filed during the 2014 session but all of them died in the House Transportation Committee. [HB 74](#) would have

mandated the use of headlights on most vehicles when it is raining or snowing; [HB 120](#) proposed to waive the minimum spacing requirement for access points in counties where the largest city is a 6<sup>th</sup> class city; and [HB 530](#) would have created a driving certificate for non-citizens.

One measure that did pass was [SB 59](#), to make indemnification clauses in motor carrier contracts unenforceable thereby limiting truckers' liability. It received final legislative approval prior to the veto recess and has been signed by Governor Beshear.