SESSION SUMMARY
2015 Kentucky General Assembly
Prepared for Members of the Kentucky Restaurant Association

April 8, 2015

Kentucky's restaurant industry scored a major victory when the 2015 session ended without any change in the state minimum wage laws. Legislation introduced by Speaker Greg Stumbo (D-Prestonsburg) to raise the state minimum wage to $10.10 per hour over a three-year period cleared the House but died in the Republican-controlled Senate. Changes to the current laws regarding the tip credit were not included in the bill and no other measure was filed this year to raise the "cash wage" requirements for tipped employees. However, a separate proposal was introduced to specifically authorize local governments to adopt local minimum wage rates higher than the state rate but it did not pass.

Local taxes were another hotly debated topic this year and the discussion focused on a proposed constitutional change to permit cities and counties to levy a local sales tax. Intense lobbying by local officials and the groups that represent them on the proposed local option sales tax meant that the effort to expand the restaurant tax took a back seat this year. No legislation was introduced this session either to authorize more cities to impose a restaurant tax or to broaden the permitted use of meals tax revenues for non-tourism related expenditures.

But this year's introductions did include three bills proposing tax incentives for the restaurant industry. Although none of the measures were enacted, it may open the door for discussion during future sessions.

The following narrative summary is arranged alphabetically by issue area and provides information about key legislation affecting Kentucky businesses that lawmakers considered this session. The electronic version of KRA's 2015 Session Summary includes links to the legislature's 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

Agency Proposed Changes: Despite the broad consensus on **SB 81**, the legislative package initiated by the state Department of Alcoholic Beverage Control (ABC) that easily cleared the Senate, it died in the House Licensing and Occupations Committee without ever being discussed. The legislation was sponsored by Senate Licensing and Occupations Committee Chair John Schickel (R-Union) and was designed to clarify and update the laws regarding the sale of alcoholic beverages.

The revisions proposed in **SB 81** were supported by both industry representatives and regulatory officials on both the state and local level. In fact, the bill was crafted by ABC officials following a series of meetings of a work group the agency formed to identify needed changes in the current law. A KRA representative was selected to serve on the work group. Many of the provisions in the bill were "housekeeping" items and all other changes proposed had the unanimous support of the work group.

After the bill was clearly stalled in the House, a coalition of industry groups and local government representatives sent a joint communication to all 100 House members expressing support for **SB 81** and urging action on the bill. In addition, the Kentucky League on Alcohol and Gambling Problems sent a letter to every state representative endorsing the bill because it included a ban on the sale of powdered alcohol. But no action was taken, so the Senate chose to add the bill's provisions to legislation pending in that chamber (**HB 71**) in an effort to advance the proposed statutory changes. The House did not take action on the Senate changes to **HB 71** when it was returned to that chamber so the inconsistencies in the current law that cause problems for both license holders and regulatory officials remain unresolved.

Restaurant operators would have benefitted by one of the key changes called for in the bill to resolve the confusion regarding local bans on Election Day sales. Prior to 2013, state law banned the sale of alcoholic beverages while the polls are open and several local ABC ordinances simply mimicked the state restriction. Since the statutory ban on Election Day sales was lifted, the status of pre-2013 local prohibitions is in doubt. The agency-backed bill proposed to make it clear that local governments can ban Election Day sales, but only if they enact an ordinance after June 25, 2013, the date the statutory prohibition expired.

A common renewal schedule for state and local licenses in cities and counties outside Louisville/Jefferson County as well as expanded eligibility for some license types such as permitting bed-and-breakfast facilities to apply for a NQ2 license and allowing a precinct election to decide the fate of marina sales were other updates included in the bill.

Beer Battle: The General Assembly did act to resolve an ongoing fight that pitted a coalition of independently owned beer wholesalers and craft brewers against Anheuser-Busch (AB) with the passage of **HB 168**. The legislation, sponsored by House Speaker Greg Stumbo (D-Prestonsburg), became not only one of the most controversial issues considered by lawmakers this year but also was the topic of public advertising campaigns put forward by both sides. The bill passed and prohibits an ABC-licensed brewer from also holding a distributor's license.

The controversy arose after the state Department of Alcoholic Beverage Control (ABC) refused to license AB's recently-acquired Owensboro location. A lawsuit was filed and the agency was ordered to issue the license since current law prohibits interlocking interest between the three tiers—producer, wholesaler and retailer—only for wine and distilled spirits.

Supporters of **HB 168** said it was needed to protect the integrity of the three-tier system which prevents a licensee in one tier from having a financial interest in a business licensed in another tier. AB contended that its provisions constitute a "taking" of property since it will force the company to sell not only its Owensboro facility but also its licensed distributorship in Louisville. Although the bill has been signed by the governor, the issue is likely to be the topic of further litigation.

Local Option Elections: The timing and cost of local option elections were the subject matter of bills introduced again this session but no changes in the current law were approved. Kentucky law requires that a local option vote regarding the sale of alcoholic beverages in a community be held at a time other than when a primary or general election is scheduled. Legislation was introduced in the Senate to permit but not require the local option election to be held at the same time as a regular election. **Senate Bill 145** required that the petitioners pay the cost of the election if it is held on a different date. The bill cleared the Senate but died in the House. Meanwhile, **HB 373** was filed in the House to mandate that local option votes be set for the same time as primary or general elections. The bill was amended in the House Licensing and Occupations Committee to remove the original provisions and instead require petitioners to pay the cost of the special election. No vote on the measure was taken on the House floor.

DUI: Tougher penalties for repeat offenders of the current prohibitions against driving under the influence (DUI) are set to take effect because of the passage of **SB 133**. The final version of the bill requires a driver convicted of a second or subsequent DUI offense to get an ignition interlock license that prohibits operation of a vehicle if any amount of alcohol is detected. The original bill, like **HB 60** filed in the House, proposed to replace the current hardship license with the ignition interlock license for all drivers convicted of DUI. The enacted version of **SB 133** requires use of the ignition interlock for all repeat offenders but only for first offenders whose conviction includes aggravating circumstances such as an elevated blood alcohol concentration (0.15 or more), causing an accident resulting in death or serious injury or operating the vehicle more than 30 miles per hour above the speed limit.

The Senate also approved **SB 34** to expand the "look back" period for determining what constitutes a repeat offense from five to 10 years but that bill died in the House. The House also did not act on **HB 135** that proposed changes in the DUI penalties including revising the "look back" time to 10 years.

Other ABC Issues: **House Bill 198** that was introduced by House Licensing and Occupations Chair Dennis Keene (D-Wilder) would have allowed distillers to sell the products they produce by-the-drink on the distillery premises. Although the bill won approval in the committee Keene chairs, it died without receiving a vote on the House floor. Another ABC-related bill to establish a new license allowing the consumption of alcoholic beverages as part of commercially-operated bicycle tours cleared the House but died in the Senate. **House Bill 224** proposed to create an "authorized public consumption" license that would be available only if the local government had approved operation of these commercial quadricylces in its community.

Energy Issues

Tax Exemption for Energy Used by Restaurants: Legislation was introduced this year proposing to exempt some of the energy used by a restaurant from the state sales and use tax. Under the terms of **HB 454**, sponsored by Representative Brad Montell (R-Shelbyville), 35 percent of the energy and water used by a restaurant would qualify for the sales tax exemption. No action was taken on the bill beyond its referral to the House Appropriations and Revenue Committee.

Renewable Energy Portfolio: This year's bill introductions saw Representative Mary Lou Marzian (D-Louisville) continue her quest to establish a Renewable Portfolio Standard (RPS) for energy generated or purchased by Kentucky utilities but her proposal failed to win approval again this year. **House Bill 229,** like proposals she has filed in previous sessions, would require that a rising percentage of electricity used in the state be from renewable sources.

Impact of Federal Regulations: The affordability and reliability of electricity within the commonwealth because of recent EPA regulations is the subject addressed by **HCR 168** that won approval this year. The resolution calls for a task force to study the consequences of federal environmental policies on Kentucky residents and businesses. It also urges Congress to enact legislation requiring the federal agency to present any proposed rule or regulation to a congressional panel for review and approval before it takes effect.

Environment & Growth Issues

Development Incentives: Two bills that could have impacted commercial development in Kentucky were introduced but neither passed because of the potential cost of the tax incentives to government revenues. **House Bill 118** was filed by Representative Dennis Keene (D-Wilder) to change the existing tax credit for redevelopment of historic properties from a non-refundable to a refundable one and also remove the cap on the maximum credit available. According to the analysis of its fiscal impact, it would have meant an annual loss of $25 million to the state coffers.

Tax incentives were also proposed to encourage rehabilitation of abandoned buildings by freshman Representative Dean Schamore (D-Hardinsburg). **House Bill 273** proposed the option of a state income tax credit or a credit against the local occupational license fee liability generated by activities within the building for a portion of the expenses incurred. The bill required approval by the local taxing authority if the new building owner chose the local tax incentive.

Planning and Zoning: Representative Kevin Sinnette (D-Ashland) filed **HB 240** that originally, would have required any person appealing a planning and zoning decision of the Circuit Court to the Kentucky Court of Appeals to post a supersedeas bond. Concerns were expressed by consumer groups that this was too big of a hurdle for small neighborhood associations or individuals to climb. The bill was amended prior to passing the House to make the bond discretionary, leaving the decision of a bond requirement to the judge. The Senate Licensing and Occupations Committee considered the legislation, but it failed to get enough votes in committee to go before the full Senate.

Call-Before-You-Dig: **House Bill 172** passed the General Assembly, changing the number of days a utility has to mark underground utility lines for large construction projects from two to five days. Representative Steve Riggs (D- Louisville) sponsored the legislation that was signed by the governor.

Food Sales & Service Issues

Tax Incentives for Restaurants: Representative Brad Montell (R-Shelbyville) introduced a three-bill package of proposed tax incentives to benefit restaurants operating in Kentucky and, in the case of **HB 453**, to also encourage hotel renovations. Its provisions would have permitted a restaurant or hotel to qualify for a tax credit of up to 25 percent of the increased state sales tax generated as a result of remodeling its facility. It limited the amount of recovery to no more than 20 percent of the costs of the repair, renovation, improvement or upgrades. In order to be eligible for the incentive, a restaurant would have to make a minimum investment of $100,000 while the investment threshold for a hotel to qualify was set at $2 million.

House Bill 454 meanwhile proposed a sales tax exemption equal to 35 percent of the cost of energy used by a restaurant. Utility bills for commercial accounts, unlike residential consumers' bills, are subject to the 6 percent state sales and use tax. Since utility costs are a major part of a restaurant's operating costs, Montell proposed to add a partial exemption similar to the one available to manufacturers that exempts the cost of energy used that exceeds 3 percent of the total cost of production.

The final proposal in the package was **HB 452** that would have created a new tax credit for restaurants that donate apparently wholesome food to a shelter or other entity. The refundable credit would be capped at 20 percent of the fair market value of the donated food.

All three bills were referred to the House Appropriations and Revenue Committee where they still languished at the end of the session. However, the provisions of **HB 452** were added to another tax-related bill (**HB 299**) in the Senate but the House did not concur with the Senate change. The final version of **HB 299** that was signed by the governor did not contain the restaurant industry incentive.

Tourism Taxes: The top priority of the Kentucky League of Cities (KLC) during the 2015 session was clearly the proposed constitutional change to allow a local option sales tax so there appeared to be no concentrated effort to pass legislation expanding the current law that permits cities previously classified as fourth or fifth class to levy a meals tax to finance tourism promotion and development. However, KLC's published legislative agenda continues to advocate for a statutory change to allow all cities to impose a restaurant tax of up to 3 percent and to allow the cities to keep 75 percent of the money rather than turning it over to the local tourist commission.

But in the just-concluded session, the only bill involving tourism taxes that was introduced was **HB 202** to allow Owensboro to use excess funds collected from the bed tax for operating expenses at its new convention center or the community's fine arts center. The bill cleared both chambers and has been signed by the governor.

Independent Health Department Regulatory Authority: Some restrictions on the regulatory authority of independent district boards of health will soon be in place because of the passage of **SB 107**. The original bill revised the paperwork requirements for Medicaid providers but it was amended to also prohibit district boards from adopting rules and regulations that conflict with state laws and regulations. These boards are in urban areas where the population exceeds 250,000 people.

One area in which local health departments have proposed to institute rules that differ from state standards involves food safety. The state food code established by administrative regulation and contained in 802 KAR 45:005, regulates restaurants and retail food stores but some local boards have tried to adopt standards that go beyond the state requirements.

BPA Ban: **House Bill 430** was filed to prohibit the manufacture, sale and distribution of food and beverage containers containing bisphenol-A (BPA) in products designed for use by children under the age of three. This session's BPA ban contained a requirement for manufacturers to recall BPA-containing products and to provide reimbursement to retailers returning the containers. The bill died in the House panel to which it was referred.

Statewide Smoking Ban: Legislative efforts to impose a statewide smoking ban at all worksites and places open to the public again fell short this year although, for the first time, the proposal survived a floor vote. **House Bill 145**, introduced by Lexington Representative Susan Westrom (D), cleared the House by a narrow margin, but died in the Senate. The bill was amended in the House to exempt cigar bars, tobacco shops and private clubs. The bill had the support of Governor Steve Beshear and House Speaker Greg Stumbo (D-Prestonsburg).

On the Senate side, the bill had the support of two key Republican Senators. Senator Julie Raque Adams (R-Louisville), chair of the Senate Health and Welfare Committee, was a strong advocate for a statewide smoking ban as well as State Senator Ralph Alvarado (R-Winchester), a physician, who has also publicly voiced his support for the measure. In fact, Senator Raque Adams filed her own smoking ban proposal. **Senate Bill 189** was similar to **HB 145** and it too died in the Senate Veterans, Military Affairs, and Public Protection Committee.

Other Food Service Issues: Restaurants and other places where patrons may have a severe allergic reaction will soon be able to stockpile epi-pens, single-use devices used to administer a premeasured dose of epinephrine. Under the provisions of **HB 248,** the auto-injectors may be prescribed and dispensed to a business provided it has designated a certified individual to be responsible for the storage and maintenance of the epi-pens.

Only more serious injuries at playgrounds, including those operated by some restaurants, will require reporting to the state Department of Agriculture under the provisions of **HB 525** that was enacted this year. Currently, the owner of any amusement ride or attraction is required to notify the agency of any injury requiring medical treatment other than first aid. The new reporting standard will require notice if the injured person requires an ambulance or other emergency transportation to the hospital.

General Business Issues

Government Competition: When the City of Somerset decided to get into the retail gasoline business last summer, several business groups cried foul arguing that competition from government is unfair because there is not a level playing field. Cities and counties can unfairly compete with private businesses because they are not subject to the same rules and don't face the same taxes and fees.

In response, Senator Chris Girdler (R-Somerset) worked with these business groups to craft legislation that he introduced. **Senate Bill 130** would not have prohibited cities and counties from getting into commercial enterprises, but it would have required local officials to first study whether or not the venture was necessary or feasible. The measure would have required local governments that choose to compete with the private sector to set aside money equal to taxes and fees that private businesses pay to run their business as a means to prevent cities and counties from undercutting tax-paying private companies. **Senate Bill 130** would also require local governments to use separate accounting for these ventures in order to improve transparency in the information available to the public.

Senate Bill 130 passed the Senate State and Local Government Committee, but not without stiff opposition from the Kentucky League of Cities (KLC), the Kentucky Association of Counties and the Kentucky Association of Municipal Utilities, who all testified before the committee. These organizations' arguments were simple; the requirements of **SB 130** would put in jeopardy some of the current services being provided by local agencies and tie their hands in the future. KLC contended that **SB 130** was the greatest affront to "home rule" statutes and principles of local control they had ever seen.

Although Girdler filed floor amendments to clarify the scope of the bill, continued opposition from the groups representing local governments led to its demise and **SB 130** failed to get a vote on the Senate floor.

Procurement: Representative Steve Riggs (D-Louisville) filed **HB 77** that would have prohibited state and local governments from purchasing goods or services from vendors with delinquent tax bills. The legislation was never acted upon.

Anti-Discrimination: This year, there were two bills filed prohibiting discrimination based on sexual orientation or gender identity—**HB 379** and **SB 156**. Representative Mary Lou Marzian (D-Louisville) sponsored **HB 379,** similar to measures she filed in previous sessions, but it once again failed to receive a vote in the House Judiciary Committee. **Senate Bill 156,** sponsored by Senator Morgan McGarvey (D-Louisville), was referred to the Senate Judiciary Committee where it also died.

The legislature did act to protect employers from discrimination charges under certain circumstances. **House Bill 164** specifically authorizes private sector employers to have employment policies that give preference to veterans without running afoul of discrimination laws.

Expanded Gaming: After a political spat with some associated with the horse racing industry, House Speaker Greg Stumbo (D-Prestonsburg) said he would not push legislation proposing a constitutional amendment to allow for casino-style gaming but he did file legislation to do just that—**HB 300**. Even though it was the Speaker's bill, **HB 300** was never voted on by the full House or even given a hearing in the House Elections and Constitutional Amendments Committee. Senator Morgan McGarvey (D-Louisville) sponsored **SB 199** that also proposed changing the Constitution to allow for casino gaming, but **SB 199** also died in the committee to which it was referred.

Health Insurance Issues

Mandated Benefits/Coverage: Mandatory healthcare benefits were proposed in several bills and each one focused on prescription drug coverage. Two bills limiting the co-payment an insurer could impose were introduced but neither was enacted. Both **SB 31** and **HB 146** would have barred health plans from establishing a co-payment for a prescription drug in excess of $100. The bills, introduced by Senator Tom Buford (R-Nicholasville) and Representative James Kay (D-Versailles), respectively, also proposed to limit the total amount of co-payments on drugs to $200 per month per patient.

Representative Jeff Greer (D-Brandenburg) also introduced another proposal dealing with health insurance coverage for drugs. **House Bill 538** would have required that insurers cover tamper-resistant painkillers as preferred drugs in their formularies. The measure saw no action in the House.

Health Exchanges (Affordable Care Act a/k/a *Obamacare*): Republican Representative Tim Moore from Elizabethtown introduced two bills taking on provisions of the Affordable Care Act (ACA). **House Bill 546** would have allowed insurers to offer mandate-free health insurance plans and would have allowed the purchase of health insurance across state lines. Moore's other bill (**HB 547**) would have prohibited the Kentucky General Assembly from requiring individuals to purchase health insurance. Both proposals would have directly conflicted with the ACA which establishes minimum standards for health plans and requires individuals to have health insurance. Neither proposal received a hearing in the House Banking and Insurance Committee.

Another proposal relating to the Kentucky Health Benefit Exchange, a key component of Obamacare implementation in the state also died in committee. Representative Tom Burch (D-Louisville) introduced **HB 482** ratifying Governor Beshear's Executive Order establishing the Exchange. This year marks the third session that the legislature has failed to confirm the governor's action so Beshear is expected to issue a new Executive Order now that the legislature has adjourned.

Medical Malpractice Reform: Some aspect of tort reform invariably surfaces when the General Assembly is in session and 2015 was no exception. **Senate Bill 6** would have established "medical review panels" to prescreen medical malpractice claims. Although the panel's decision would be non-binding, it would be admissible in court. The legislation was backed by a large coalition of health care providers and business groups. As in past sessions, the bill cleared the Senate but stalled in the House. A similar measure (**HB 398**) was introduced in the House but never received a hearing in committee.

Labor & Workforce Issues

Minimum Wage: Democratic House Speaker Greg Stumbo of Prestonsburg once again filed legislation to increase the minimum wage over a three-year period to $10.10 per hour. **House Bill 2** would have required all businesses with gross sales in excess of $500,000 to pay a minimum hourly wage of $8.20 starting July 1, 2015; $9.15 on July 1, 2016 and finally, $10.10 on July 1, 2017. The bill also would have established a comparable worth standard for determining wage discrimination which would be decided by the Kentucky Labor Cabinet but it did not include any changes to the tip credit law.

Representatives from the Kentucky Retail Federation and the National Federation of Independent Business testified against **HB 2** during the House Labor and Industry Committee hearing. The organizations jointly argued that increasing the minimum wage would greatly impact Kentucky's competiveness since the first increase would put Kentucky out of step with six of its seven border states. The committee approved the legislation and the next step for **HB 2** was the House Floor where it passed by a 56-43 margin after much debate. Representative Jim Gooch (D-Providence) was the sole Democrat voting against the legislation and only three Republicans—Representatives Jimmy Stewart of Flat Lick, Jill York of Grayson and David Hale of Wellington—voted for the bill.

House Bill 2 then moved to the Senate where proponents continued to push for its passage. After it was assigned to the Senate Appropriations and Revenue Committee, newly appointed Chair Chris McDaniel (R-Taylor Mill) who is also the lieutenant governor candidate on Agriculture Commissioner James Comer's ticket, made it clear that the legislation would not get out of his committee because of its detrimental impact on many businesses across the commonwealth.

Local Minimum Wage Proposals: Proponents for increasing the minimum wage are not only working at the state level, they are also pushing the issue at the local level. Last year, Louisville passed a local minimum wage ordinance that will increase the rate in that community to $9.00 per hour over a three-year period, starting July 1, 2015. From the moment Louisville started talking about the minimum wage issue, KRA argued the Metro Council did not have the authority to establish a minimum wage and worked with other business organizations to oppose the local ordinance. Despite a legal opinion supporting the KRA position, Louisville passed an ordinance establishing a local minimum wage with a rate higher than the minimum wage set by state law. KRA, the Kentucky Retail Federation and a Louisville company, Packaging Unlimited, filed a lawsuit in Jefferson Circuit Court in mid-February. The legal argument is simple; state law says that a city cannot enact laws or regulations that are in conflict with a state statutory scheme.

Meanwhile, Representative Reginald Meeks (D-Louisville) must have had some concerns that cities and counties did not have authority to increase the minimum wage since he filed **HB 96**. It would have clearly given cities and counties the power to increase the minimum wage in their jurisdictions above the state minimum wage. House Local Government Committee Chair Steve Riggs (D-Louisville) has publicly stated that he does not believe the Louisville Metro Council has the authority to increase the minimum wage in Jefferson County. **House Bill 96** was assigned to his committee, but it never received a hearing. The question of local government's power to adopt their own minimum wage laws must be resolved since Lexington has already begun hearings on a minimum wage ordinance and other cities are likely to do the same.

Workers Compensation: This year legislation moved forward in the House that would have made significant changes to the workers' compensation laws. **House Bill 294** would increase attorneys' fees, create a new class of disability, extend income benefits until five years after injury or age 70 (whichever is later) and raise factors used to calculate benefits. **House Bill 294**, sponsored by Representative Kevin Sinnette (D-Ashland), passed the House Labor and Industry Committee but was later withdrawn by its sponsor after pro-business floor amendments were filed.

Sinnette then filed his proposed changes as a floor amendment to another workers' compensation bill—**HB 206**. **House Bill 206** was a "simple little bill" to exempt ministers and church caretakers from the requirements of carrying workers' compensation coverage. No further action was taken on the bill after Sinnette filed his amendments.

Meanwhile, House Minority Whip Jim DeCesare (R-Bowling Green) filed legislation directing the state to pursue early settlements of Workers' Compensation Special Fund claims. **HB 277** also proposed to limit the amount of funds generated by Special Fund assessments on Kentucky employers that can be used to fund the Labor Cabinet. It is estimated that 40 percent of assessment dollars collected are redirected to fund the cabinet. **House Bill 277** died in the House Labor and Industry Committee.

Another measure that only directly impacts firefighters but could set a precedent in determining work-related disease was **HB 156**. It would have established a presumption that cancer is an occupational disease for firefighters. It passed the House Labor and Industry Committee very easily after the Kentucky League of Cities and the firefighters reached an agreement that these claims would be paid out of the state fire commission fund. **House Bill 156** easily passed the House on a 96-2 vote but it died in the Senate.

Senator Tom Buford (R-Nicholasville) again filed legislation including provisions similar to those in **HB 294** that would raise the cost of the workers' compensation system by increasing attorney fees and expanding benefits. **Senate Bill 95** was assigned to the Senate Economic Development and Tourism Committee, but it was never called for a committee vote.

Veterans Hiring: The General Assembly passed **HB 164**, sponsored by Representative Tanya Pullin (D-South Shore), which gives companies protections from discrimination lawsuits if they give veterans a hiring preference. **House Bill 164** was amended in the House Veteran and Military Affairs Committee to rename it the "Voluntary Veterans' Preference Policy Employment Act." It easily passed the Senate in the waning days of session and it means that employers, including retailers, can offer hiring preferences to veterans without fear of violating anti-discrimination laws.

Expungement: Representative Darryl Owens (D-Louisville) once again filed legislation that would allow for expungement of certain felonies including those that involve theft-related crimes. **House Bill 40** was assigned to the House Judiciary Committee where it was amended to prohibit expunged crimes from being used in negligent hiring or licensing litigation. **House Bill 40** passed the House 84-14, with a majority of both Republicans and Democrats supporting the legislation. The measure died in the Senate Judiciary Committee. Similar legislation (**SB 179**) was filed in the Senate by Senator Gerald Neal (D-Louisville), but it never received a hearing in the Senate panel.

Two other expungement bills were filed in the House but neither passed. House Judiciary Chair John Tilley (D-Hopkinsville) sponsored **HB 126** that would have allowed expungement of drug court cases—after successful completion of drug court—at the discretion of the judge.

Last year, legislation that would permit the expungement of multiple misdemeanors looked like it was going to pass, but it failed in the final hours of the 2014 session. A similar bill was introduced this year by Representative Tom Riner (D-Louisville). **House Bill 162** never received a hearing in the House Judiciary Committee so the current law allowing only a single misdemeanor conviction to be eligible for expungement remains in place.

Restricted Contact: Kentucky is one of the only states to not allow those in dating relationships to have access to an emergency protective order. Legislation filed by Representative John Tilley (D-Hopkinsville) passed the General Assembly to bring Kentucky more in line with other states. **House Bill 8** creates a new emergency protective order called an "interpersonal relationship protective order" that will be available to those who do not qualify for domestic violence orders. As of January 1, 2016, employers will need to consider ways in which to deal with situations where two employees are engaged in a relationship, work in the same place and a judge grants an order barring contact between the individuals.

Worker Protections: Two bills were once again filed to extend anti-discrimination protections to individuals based on sexual orientation or gender identity. **House Bill 379** was introduced by Representative Mary Lou Marzian (D-Louisville) and **SB 156** was sponsored by Senator Morgan McGarvey (D-Louisville). Neither was approved in the committee to which it was assigned.

There were also bills filed in both the Senate and House to provide additional legal protections for pregnant women and nursing mothers. Representative Joni Jenkins (D-Louisville) introduced **HB 218**, which requires employers to extend protections to pregnant women and includes other conditions related to pregnancy. Employers would have been required to post notice of these new worker protections. The bill was amended in the House to limit the definition of "other related conditions" to mirror the federal definition. **House Bill 218** died in the Senate Veterans and Military Affairs Committee.

Senator Reggie Thomas (D-Lexington) sponsored a bill that would set penalties for anyone interfering with a woman nursing and another bill to create worker protections for nursing mothers. **Senate Bill 35** would have created penalties for anyone inferring with breastfeeding in the work place or in public while **SB 36** would have required employers to create work place standards for nursing mothers and established fines for employer violations. Both bills died in the Senate Judiciary Committee.

Unemployment Insurance: This year, with the unemployment insurance federal debt being paid more quickly than was initially projected, changes to unemployment insurance received very little attention. There were three bills filed relating to unemployment insurance but none of them passed. Two of the bills, **HB 259** and **HB 406**, would have allowed relocated military spouses to be eligible for unemployment benefits. **House Bill 259** also would have prohibited victims of domestic violence from being disqualified for unemployment benefits. **House Bill 293** was also introduced to exempt seasonal workers from the mandatory one-week waiting period before being eligible for unemployment benefits.

Statewide Smoking Ban: The House for the first time passed legislation that would have prohibited smoking in public areas including workplaces. **House Bill 145**, sponsored by Representative Susan Westrom (D-Lexington), included provisions requiring employers to post signs at every entrance and to provide notice of the "no smoking" rule to both current and prospective employees.

The bill cleared the House in a 51-46 floor vote but died in the Senate Veterans and Military Affairs Committee. However, there is support from some Senate Republicans for a statewide prohibition. Senator Julie Raque Adams (R-Louisville), who is serving her first term as chair of the Senate Health and Welfare Committee, introduced **SB 189** to institute a statewide ban.

Employer Tax Credits: Another repeat measure was **HB 10**, legislation commonly referred to as the "Goodwill" bill because it would create an income tax credit for companies that contract with Kentucky nonprofit organizations for services provided by individuals who are blind or severely disabled. Beyond that, Representative Ron Crimm (R-Louisville) again filed legislation giving employers a tax credit if they give employees time off to make an organ or tissue donation (**HB 35**). Neither **HB 10** nor **HB 35** passed.

Small Business Retirement Program: Representative Martha Jane King (D-Lewisburg) filed legislation that would require a small business without a retirement plan to participate in a state-sponsored Roth IRA program through which its employees would make pre-tax contributions. **House Bill 261** was a major initiative of Kentucky State Treasurer Todd Hollenbach (D-Louisville) but many business organizations opposed the bill because participation was mandatory, unless the employer decided to opt-out of the program. **House Bill 261** did receive a committee hearing but it was not considered for a vote. A couple of other states have passed similar legislation and these policies are strongly supported by the American Association of Retired Persons (AARP) so it is likely that the proposal will resurface next year.

Independent Contractors: Unlike last year, employer groups did not initiate misclassification legislation, but labor organizations supported **HB 256** filed by Representative Sannie Overly (D-Paris). It called for the Kentucky Labor Cabinet to set standards to determine the difference between an employee and an independent contractor. It only applies to the construction industry since labor groups contend that construction companies regularly misclassify workers to avoid the cost of employee benefits. **House Bill 256** did clear the House Labor and Industry Committee, but it was not called for a floor vote in the House.

Other Labor & Workforce Issues: Senator Chris Girdler (R-Somerset) filed **SB 129** that would have prohibited school from starting before late August. It is strongly supported by the Kentucky tourism industry that argues with school starting earlier every year, it limits summer vacation season and also impacts the industry's ability to hire seasonal employees. **Senate Bill 129** did receive a committee hearing in the Senate Education Committee, but not a vote.

The Senate once again made right-to-work legislation its highest priority by filing it as **SB 1**. Sponsored by Republican Senate President Robert Stivers of Manchester, **SB 1** would have prohibited mandatory union membership as a condition of employment. Supporters of **SB 1** argue it is needed to encourage more business development throughout the state, but opponents argue that its only purpose is the demise of unions. **Senate Bill 1** passed the Senate in the first week of the session and it was later assigned to the House Labor and Industry Committee. It did receive a hearing, but it was designed to give its opponents a chance to grandstand against the measure and hold a vote to kill the bill. Right-to-work advocates tired of waiting for the state to enact legislation have been successfully pushing local governments to enact right-to-work ordinances, but labor organizations have filed a federal lawsuit arguing that the National Labor Relations Act prohibits local governments from enacting such legislation.

Regulatory & Licensure Issues

Administrative Regulations: Senate Republicans once again proposed legislation to change the Kentucky Constitution to require legislative approval of administrative regulations put forward by state executive branch agencies. **Senate Bill 2** was introduced by Senator Joe Bowen (R-Owensboro) who chairs the Senate State and Local Government Committee. Currently, there is legislative review of administrative regulations but lawmakers can do nothing to stop their implementation. Members of the General Assembly have continued to express frustration that regulations are put into effect that go beyond legislative intent. **Senate Bill 2** passed the Senate, along party lines, the first week of the 2015 legislative session. The House never took action on the bill and it died in the House Elections and Constitution Committee.

Representative Addia Wuchner (R-Florence) filed **HB 119**, which would delay the effective date of any administrative regulations that have a major economic impact until they are ratified by the legislature. The legislation died in the House State Government Committee. Representative David Meade (R-Stanford) filed **HB 319** which would delay the effective date of administrative regulations with an impact of over $100,000 on regulated entities and require the regulation to have a fiscal note. It too was referred to the House State Government Committee where it died.

Statewide Smoking Ban: Legislation enacting a statewide smoking ban passed the House but died in the Senate. **House Bill 145**, sponsored by Representative Susan Westrom (D-Lexington), made it further in the process than it ever has since it was originally filed several years ago. **House Bill 145** cleared the House by a 51-46 vote after it was amended on the floor to exempt cigar bars and private clubs and to clarify that local smoking bans are still in effect. Once it was received in the Senate, it was referred to the Senate Veterans, Military Affairs and Public Protection Committee where it was never acted on. Senate Health and Welfare Chair Julie Raque Adams (R-Louisville) also filed smoking ban legislation, **SB 189**, but it did not receive a committee vote in the Senate panel either.

Kid's Play Areas: Representative Denny Butler (D-Louisville) filed **HB 525** which changes the current notification requirements on amusement ride accidents, requiring notification to state regulatory officials only when someone is transported to the hospital. The current law requires ride operators and many businesses operating play areas for kids to report accidents to the Department of Agriculture for any injury that requires treatment beyond first aid. The legislation passed easily and will become law.

Breastfeeding: Senator Reggie Thomas (D-Lexington) filed **SB 35**, which would allow a woman to breastfeed in almost any location, public or private, and would establish penalties for anyone who interferes with a woman nursing. **Senate Bill 35** died in the Senate Judiciary Committee.

Local Government Regulations: Last year, legislation failed that would have prohibited boards of health from enacting any policy that is stricter than state law or regulation but a new version that only applies to independent boards of health who serve interstate metropolitan areas was enacted this session. In its original form, **SB 107** dealt with filings by Medicaid providers, but language was added in a House panel to limit these health departments' authority. The amended legislation passed the House without discussion, the Senate concurred with the House changes and the governor signed **SB 107**.

The new statutory provisions may help to address problems that occur when local health boards adopt food safety rules that differ from the state standards. The state food code is set by administrative regulation and applies to all restaurants and retail food stores. It was updated a few years ago with the stated intent of having a single, uniform set of standards that apply statewide but some local agencies have implemented requirements that go beyond those contained in the state code.

Revenue & Taxation Issues

Tax Issues Affecting Restaurants: Although it remains a legislative initiative for the Kentucky League of Cities (KLC), legislation was not introduced this year to give all cities the authority to levy a restaurant tax or to permit the use of funds generated by a local meals tax for non-tourism related purposes. KLC's focus on the local option sales tax (LOST) bill made the restaurant tax less of a priority issue this session.

Instead, a trio of bills with positive implications for the restaurant industry surfaced in the 2015 session. Representative Brad Montell (R-Shelbyville) filed the three incentive measures, each of which would apply to a restaurant that receives at least 70 percent of its gross receipts from the sale of food and beverages.

Under the provisions of **HB 452**, a restaurant would have an incentive to donate food to a shelter or other organization by way of a new income tax credit. The bill proposed to create a refundable tax credit equal to 20 percent of the fair market value of apparently wholesome food donated by the restaurant. The tax credit would be available for a four-year period, starting with the tax year that began on or after January 1, 2015. Although no action was taken on the bill by the House Appropriations and Revenue Committee to which it was assigned, its provisions were added to another tax-related bill (**HB 299**) in the Senate. However, the proposed tax credit did not survive in the final version of the bill that was enacted this year.

A second bill (**HB 454**) proposed to exempt 35 percent of the cost of energy used by a restaurant from the state sales and use tax. Unlike residential utilities that are tax exempt, the sales tax is added to the utility bill for commercial and industrial accounts. Current law provides an exemption for manufacturers to the extent that the cost of energy exceeds 3 percent of the total cost of production. **House Bill 454** would have added a partial exemption from the sales and use tax for electricity, natural or artificial gas, propane and water purchased and used by the restaurant.

The final bill introduced by Montell was **HB 453** to establish tax incentives not only for restaurants but also for hotels that are investing in renovations of their establishments. Under terms of the bill, a restaurant or hotel could receive up to 25 percent of the increased state sales tax generated as a result of the investment as a tax credit over a fixed time period, not to exceed 10 years. However, in no event could the business recover more than 20 percent of the costs of the repair, renovation, improvement or upgrade of its facilities. In order to be eligible for the incentive, a restaurant would have to make a minimum investment of $100,000 while the investment threshold for a hotel to qualify was $2 million.

Local Option Sales Tax (LOST): Local government officials continue their push for broader taxing authority and the focus this year was on legislation proposing an amendment to Kentucky's Constitution to allow cities and counties to impose a local sales tax. **House Bill 1**, introduced by Speaker Greg Stumbo (D-Prestonsburg) and co-sponsored by House Minority Leader Jeff Hoover (R-Jamestown), drew unexpected support this year not only from the Kentucky Chamber of Commerce and numerous local chambers but also from a significant number of House Republicans. It passed the House in mid-February by a 62-35 margin with 45 Democrats and 17 Republicans voting to advance the new tax proposal. Despite intense pressure from its supporters, including the 16 contract lobbyists hired by the LIFT (Local Investments For Transformation) advocacy group, **HB 1** died in the Senate.

Under provisions of the bill, voters in the 2016 general election would have determined the fate of the constitutional change authorizing a local option sales tax (LOST) to finance capital projects. If the amendment passed, a second vote by citizens in the community where local officials are proposing to levy the tax would be required and the maximum tax rate within a county would be capped at one percent.

The House also passed **HB 344** which would have taken effect on January 1, 2017 if the constitutional change was approved by voters in 2016. The so-called enabling legislation contained more specific requirements on how a local sales tax is levied and how it is administered. The bill authorizes a one percent collection allowance for retailers to help defray the costs they incur in collecting and remitting the new tax. No action was taken on the bill in the Senate other than its referral to the Appropriations and Revenue Committee.

After the bill passed the House, additional opposition beyond the retail community began to surface as other business groups analyzed its potential impact on their members. The Kentucky Industrial Utility Customers, a coalition of businesses that use large amounts of energy in their operations, sent a letter to lawmakers stating its opposition to **HB 1** because of its potential to increase the utility taxes paid by its member companies by $24 million each year. Additional groups weighed in and began communicating the negative impact the additional local tax and its potential to take $500 million from taxpayers would have on a wide range of Kentucky businesses and their customers.

But the LOST proponents, most notably Louisville Mayor Greg Fischer and a number of high-profile business leaders he organized to support the bill, did not give up the fight. They continued to regularly walk the halls of the Capitol urging senators to support "local control" and to "let the voters decide" by passing **HB 1** despite the fact that not all those who would pay the tax would have the right to vote.

When the session ended, **HB 1** failed to win final legislative approval but the issue is far from dead. Its supporters are already gearing up for another try next year.

Motor Fuels Tax: When lawmakers enacted budgets in the 2014 session, the estimates used to project Road Fund receipts indicated a slight decline in revenues but because of the significant drop in gas prices, even less money is expected to be generated to construct and maintain the state's highways. The motor fuel tax rate is currently set each quarter using the average wholesale price (AWP) of motor fuel to calculate the rate. Because the price of fuel has dropped, the tax decreased by 4.3 cents per gallon in January and was set to drop by another 5.1 cents on April 1. However, because of action taken on the final day of the 2015 session, the new tax rate is 26 cents per gallon instead of the anticipated 22.5-cent rate.

Three separate bills (**SB 29, HB 167** and **HB 513**) were filed this session to stabilize Road Fund receipts. In addition, **HB 132** that proposed a major overhaul in the state's tax system also contained a provision to increase the AWP floor. Although no vote was taken on any of these proposals, new provisions were added to the conference committee report on **HB 299** to address the gas tax issue. The statutory revisions raise the minimum AWP used to set the rate from $1.786 to $2.177 per gallon, effective April 1, to ensure that the tax rate will not fall below 26 cents. In addition, beginning in July, the tax rate will be set on an annual, rather than quarterly, basis. The effect of this change is to set the rate at 26 cents per gallon starting on April 1 and continuing through June 30, 2016. The final bill also contains provisions to limit fluctuations in the tax rate going forward. The current 10 percent limit on rate increases remains in place but a new 10 percent cap on the amount the rate can decline was added. Because it contained an emergency clause, the provisions of **HB 299** took effect on March 25, the day it was signed by Governor Beshear.

Major Tax Reform: Lawmakers made it clear prior to the session that there was little chance that the 2015 Kentucky General Assembly would tackle major tax reform. Nevertheless, Representative Jim Wayne (D-Louisville) once again put forward his ideas for a major overhaul of Kentucky's tax system in the form of **HB 132**. The bill proposed to expand the sales tax to selected services including commercial linen services, make major changes to income tax laws for both individual and business taxpayers and raise additional revenue by increasing the tax on cigarettes and other tobacco products. Wayne's bill also addressed the motor fuels tax by raising the floor used to establish the tax. **House Bill 132** met the same fate as earlier proposals Wayne has introduced; it never moved beyond the House Appropriations and Revenue Committee to which it was referred.

Unitary Reporting: Representative Wayne also introduced a stand-alone bill that would have required corporate taxpayers to use combined reporting for affiliated business income. **House Bill 374** would have raised $65 million in new revenue that Wayne proposed to use to create a Kentucky Earned Income Tax

Credit (EITC). Both the unitary filing requirement and the EITC were also included in **HB 132**. The House Appropriations and Revenue Committee held an informational hearing on **HB 374** but took no action.

Sales Tax Vendor Compensation: Late in the 2013 Session, lawmakers reduced the cap on the sales tax collection allowance from $1500 to $50 per return. The provision was part of a revenue bill designed to help reduce the state pension fund liability. Since that time there have been several attempts to increase the cap. This year, Representative Ron Crimm (R-Louisville) introduced **HB 36** to increase the cap from $50 to $250 per return. The bill did not receive a hearing in the House Appropriations and Revenue Committee.

LLET Tax: For the second year in a row, Representative Brent Yonts (D-Greenville) filed a bill to correct a problem caused by a difference in the "costs of goods sold" used in the federal Internal Revenue Code and the definition used by the state Revenue Department to determine tax liability under 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 federal definition results in more deductions against income and therefore less LLET liability. As a result, Kentucky businesses have been assessed by the Kentucky Revenue Department for underpayment of the LLET tax if they use the federal definition. **House Bill 331** did not receive a hearing in the House Appropriations and Revenue Committee.

Tax Credits: In addition to the tax incentives proposed for restaurants, several bills dealing with income tax credits were proposed this year, but only one was approved. The legislature passed **HB 340** lowering the threshold of expenditures required to qualify for the film tax credit. Other tax credits dealing with rehabilitating historic or abandoned buildings (**HB 118** and **HB 273**) failed to pass. Employer-based tax credits were also proposed for granting paid leave to employees who donate organs (**HB 35**) and for contracting with a Kentucky non-profit group for services provided by individuals that are blind or severely disabled (**HB 10**). Neither bill received a hearing in the House Appropriations and Revenue Committee.

Senator Morgan McGarvey (D-Louisville) filed a bill establishing a Kentucky Earned Income Tax Credit (EITC). **Senate Bill 183** would have created an EITC at a rate of 10 percent of the federal credit. McGarvey's bill was never considered by the Senate Appropriations and Revenue Committee. As noted earlier, two bills introduced by Representative Jim Wayne (D-Louisville) also contained an EITC provision.

Taxpayer Rights/Transparency: Representative Tommy Thompson (D-Owensboro) filed two bills designed to bring much needed transparency and efficiency to Kentucky's tax code. "The Taxpayer Rights Enhancement Act of 2015" (**HB 361**) would have required the state Department of Revenue to enhance its tax education and information program to help taxpayers better understand the state's tax laws. It called for formalizing the process that allows taxpayers to request rulings on tax issues and establishing reasonable timetables for tax protests and refund claims. **HB 361** also would have prohibited the use of third-party outside auditors that are compensated on a contingency basis.

Thompson's other measure, **House Bill 399**, called for changing Kentucky's rules on interest and penalties to mimic federal rules that provide a safe haven for taxpayers that make estimated payments. The House Appropriations and Revenue Committee held an informational hearing on the proposals but took no action.