

SESSION SUMMARY
2018 KENTUCKY GENERAL ASSEMBLY
For Members of the Kentucky Restaurant Association

(Prepared May 1, 2018)

Lawmakers faced major challenges when they returned to Frankfort on January 2 for the start of the 2018 session. Their primary responsibility in even-numbered years is adoption of a two-year budget for state government, a task made more difficult this year because the unfunded pension liability, originally estimated to be \$40 billion, continued to grow and the revenue estimates for the upcoming biennium that starts July 1 projected only modest growth.

In the final days of the session, scaled-back changes to the pension plans for teachers and state employees were adopted and a budget bill and accompanying tax reform package were passed by the General Assembly. Significant changes in Kentucky's tax code were enacted including expanding the sales tax base; adopting a 5 percent flat rate income tax for both individuals and corporations; revising the apportionment formula to a single factor based on sales and requiring combined income tax returns for unitary business groups; increasing cigarette taxes and effectively phasing out Kentucky's inventory tax. (The tax reform package is discussed in greater detail in the Taxation & Revenue section of the Session Summary.)

Statutory changes were enacted this year that will have a positive impact on the restaurant industry. A bill modernizing the state's workers' compensation system passed and should help to lower costs for Kentucky employers, particularly in the area of medical expenses that have constituted as much as two-thirds of the total system costs. Unused gift cards will now be specifically exempt from the abandoned property law provided they have no expiration date and are not subject to dormancy fees.

But the biggest victories for KRA and its members came, as they often do, when many of the bills that were introduced did not win approval. Two restaurant tax bills were filed to allow more cities to enact a local tax of up to 3 percent on prepared food and use the proceeds for non-tourism related purposes. Bills were introduced but not enacted to raise the state minimum wage and to authorize local governments to adopt their own minimum wage rates at a level higher than the state rate. There was also legislation introduced to raise the minimum cash wage required to be paid to tipped employees but it too failed.

The following narrative summary is arranged alphabetically by issue area and highlights some of the key issues affecting KRA members that were considered during the 2018 Session. The electronic version of our 2018 Session Summary includes links to the legislature's website so you can easily access additional information on specific bills, including the full text of the legislation as it was introduced along with changes made or proposed as it moved through the process.

ISSUE INDEX

Alcoholic Beverage Sales Issues; Consumer Protection Issues;
Criminal Justice & Loss Prevention Issues; Development & Growth Issues;
Energy & Environment Issues; Food Sales & Service Issues; General Business Issues;
Health Insurance Issues; Labor & Workforce Issues;
Regulatory & Licensure Issues; and Revenue & Taxation Issues;

ALCOHOLIC BEVERAGE SALES ISSUES

Proposed Increase in Wholesale Tax: Three separate bills were filed proposing to increase the wholesale tax on alcoholic beverages but none of them advanced. Two of the measures ([HB 82](#) and [HB 159](#)) also called for eliminating local regulatory fees on these products.

Local Regulatory Fees: In contrast to the proposals to eliminate the local regulatory fee, [HB 267](#) was introduced to allow all cities and counties to levy a fee on alcoholic beverages sold within their jurisdictions. Current law permits cities previously classified as cities of the 3rd and 4th class and counties containing these cities to impose a local regulatory fee to recover additional costs they incur because of alcoholic beverage sales. There is pending litigation alleging violation of the statute since some cities have set fees as high as 8 percent and used the proceeds for expenses beyond those related to alcoholic beverage sales.

A House floor amendment was filed to [SB 110](#) to permit cities with a population of less than 1,000 that have voted to allow alcoholic beverage sales to also levy the regulatory fee but neither the amendment nor [HB 267](#) were considered.

Microbreweries: [House Bill 136](#) was enacted to allow a microbrewery to sell an unlimited amount of the product it produces for on-premise consumption and by-the-drink at specific community events. It also permits the sale of up to 31 gallons or three cases at the facility for off-premise consumption and allows up to one case of package sales per customer at fairs, festivals and similar events. The bill requires that the microbrewery pay the wholesale tax on the products involved in these sales directly to the state Department of Revenue.

CONSUMER PROTECTION ISSUES

Data Breach Issues: Prior to the start of the 2018 session, Senate Judiciary Chairman Whitney Westerfield (R-Hopkinsville) was a guest on a local radio show where he discussed his concerns about customer's data and personal information security. While Westerfield did not introduce legislation in 2018 as he did last year, Senator Morgan McGarvey (D-Louisville) filed two bills that would have made sweeping changes to Kentucky data breach laws ([SB 33](#) and [SB 248](#)). Both bills would have updated Kentucky's existing data security laws but [SB 33](#) was the most robust. It would have required five years of free credit monitoring services to be provided to consumers whose data was breached and required three free credit reports each year. It also proposed to expand the definitions of both "personally identifiable information" and "security breach" and would have required businesses to encrypt more of the information they hold. Another provision in [SB 33](#) would have prohibited customers from being required to submit to binding arbitration or waiving their right to a private cause of action. [Senate Bill 248](#) contained modified versions of many of these same provisions but neither bill received a committee hearing.

Change in Price Gouging Law: Kentucky's law addressing consumer pricing during a declared emergency has been updated. The new statutory changes in [SB 160](#), which will take effect July 14, reduces the minimum number of days an emergency declaration can be in place to 15 days from 30 days. It reduces penalties to a maximum of \$25,000 per day for violations and includes an amended definition of 'cost' that includes protections to allow businesses to raise prices without being found to have engaged in price gouging. Governor Matt Bevin has signed the legislation into law and it will go into effect on July 14.

CRIMINAL JUSTICE & LOSS PREVENTION ISSUES

Felony Theft Level: Proposed increases in the felony theft threshold surfaced again this year in multiple bills filed by members of both political parties. The bill that provided the most potential for passage was a broader criminal justice measure, [SB 133](#), which made its way through the process but was amended on the Senate floor to remove the language proposing an increase from \$500 to \$1,000 after the Kentucky Retail Federation representatives testified against that provision of the bill.

An administration-backed proposal was also introduced calling for the dollar figure at which theft would become a felony offense to go up to \$2,000. [House Bill 396](#) also proposed to lower penalties for illegal possession of drugs as a way to reduce costs in the state's prison system. Despite testimony in support of the bill from Justice Cabinet Secretary John Tilley, [HB 396](#) was never called for a vote in the House Judiciary Committee.

Although no change in the felony theft level was enacted this year, supporters of an increase including two Louisville lawmakers—Democrat Attica Scott and Republican Jason Nemes—remain committed to a change in the threshold. Scott filed two separate bills ([HB 83](#) and [HB 126](#)) proposing an increase to \$5,000 and \$1,500, respectively. Nemes was a co-sponsor of [HB 396](#) and has invited those opposed to an increase to meet with him prior to the 2019 session to see if an agreement can be reached.

Gross Misdemeanors: [House Bill 83](#) also proposed to establish a new category of criminal classification called a “gross misdemeanor.” The maximum imprisonment for this new classification would have been two years as opposed to a felony that caps the term of imprisonment at five years. Theft of property valued between \$500 and \$5,000 would have been considered a gross misdemeanor had the bill not died in the House Judiciary Committee.

Criminal Gangs: Increased penalties for crimes committed by members of a criminal gang and for those who recruit gang members received final passage on the final day of the legislative session. [House Bill 169](#) drew opposition from both political parties and one majority party member in the House called for the governor to veto the bill. The governor signed the bill on April 26 and it became law immediately because it contained an emergency clause.

Victims' Rights: A bill calling for a constitutional change to establish the rights of crime victims passed this session and will be on the ballot in November. [Senate Bill 3](#) proposes to amend the Kentucky Constitution to give victims specific rights including timely notice of proceedings and reasonable protection from the accused. A separate measure ([SB 30](#)) also passed which will serve as the enabling legislation if voters ratify the amendment.

DEVELOPMENT & GROWTH ISSUES

Planning & Zoning: A bill to protect parties affected by planning and zoning decisions was filed but never received a hearing. [House Bill 322](#) would have allowed any party appealing a decision to recover the cost associated with the appeal if the ordinance or ruling was found to be unlawful.

Annexation: First-term Senator Rick Girdler (R-Somerset) championed [SB 97](#) that grants non-resident owners standing in court to contest the annexation of unpopulated territory. The legal representative of a business is also granted authority in the bill to sign referendum petitions. [Senate Bill 97](#) also establishes a two-year timeframe in which an annexation can be contested. The bill passed both chambers and was signed into law by the governor.

Brownfields: Legislation was filed in both chambers this session seeking to revise the current voluntary remediation law. [House Bill 370](#) was the only bill that made its way through the process and was signed by the governor. The bill revises the application process, including increasing the application fee to \$5,000, but also changes the current “covenant not to sue” to a “corrective action liability agreement” that will run with the property.

[Senate Bill 269](#) proposed to change the current tax incentives from a fixed but capped amount to a percentage-based tax credit and add new requirements to qualify for the credit but the bill failed to receive a hearing.

ENERGY & ENVIRONMENT ISSUES

Renewable Portfolio Standards vs. Reliable Energy: In an effort to reduce dependence on burning coal to generate power, legislation was filed in the House again this year ([HB 196](#)) to require utility companies to use renewable energy for a greater percentage of their power supply. The House bill would have allowed utility companies to recover costs they incur for making the switch to renewable sources.

Representative Jim Gooch (R-Providence) filed [HB 448](#) to require electric suppliers to generate a minimum of 70 percent of their power through reliable energy sources by 2020 and 75 percent by 2026. The bill defines “reliable energy” as readily available and stored on site. The legislation was likely in response to critics of coal and proponents of renewable sources such as solar, wind and biomass. Neither bill received a hearing in the House Natural Resources and Energy Committee to which they were assigned.

Utility Rates: Several pieces of legislation proposing changes in the law that would directly affect ratepayers were introduced but none of them received hearings in their assigned committees. [House Bill 27](#) would have authorized the Kentucky Public Service Commission (PSC) to reconsider orders involving an out-of-state utility commission if they made final decisions that would be detrimental to Kentucky ratepayers. Two House bills ([HB 357](#) and [HB 507](#)) were filed to establish a fair rate of return for utility companies and their customers. [House Bill 357](#) would have helped keep rates low by considering affordability and [HB 507](#) would have done so by establishing residential rates not to exceed service cost. Another House bill ([HB 34](#)) was filed to establish a cap on basic service charges a utility company can charge to ratepayers. [Senate Bill 147](#) was proposed to cap the rate of return on investment that a utility company could make in economically distressed areas, such as eastern Kentucky. The cap would be set at a 6 percent rate of return. Finally, [HJR 5](#) was filed to direct the PSC to reexamine electric rates to ensure they are fair, just and reasonable.

FOOD SALES & SERVICE ISSUES

Restaurant Tax: Two bills were filed to allow more cities to levy a local restaurant tax but neither saw action beyond their introduction. [House Bill 413](#) was introduced by House Local Government Committee Chair Rob Rothenburger (R-Shelbyville) to permit all Kentucky cities,

including the merged governments in Lexington and Louisville, to levy a local tax on prepared food of up to 3 percent. The bill would have allowed the local government to keep up to 75 percent of the proceeds to finance capital construction, maintenance, and operation of infrastructure that supports tourism, recreation, and economic development within the taxing jurisdiction. No less than 25 percent of the money would have been required to be turned over to the local tourist and convention commission. It also contained a provision prohibiting a city that levied a restaurant tax from also imposing a percentage-based occupational license tax on the business but made it clear that the restaurant's employees would not be exempt from the occupational tax.

The other bill, [HB 490](#), would have permitted all cities except Louisville to enact a local restaurant tax and earmarked all the proceeds to be used to help fund their employer contributions to the pension system for government workers.

Permitting & Inspection Fees: Legislation was introduced at the request of officials in the Cabinet for Health and Family Services to remove any statutory limits on fees charged for public health programs and to permit the agency to set fees at a level to cover undefined Cabinet costs. After objections were raised by KRA's government affairs team, the sponsor, Representative Russell Webber (R-Shepherdsville), filed a floor amendment to limit the cost recovery to the actual program costs and to add language limiting any fee increase for programs affecting KRA members such as the permitting and inspection program for food service establishments to no more than 5 percent per year. The amendment to [HB 327](#) was approved by the full House before the bill was narrowly passed by a 46-40 margin. It later cleared the Senate and has been signed by the governor but will not take effect until July 1, 2019 since it had a delayed effective date.

Minimum Wage & Tip Credit: Bills were introduced in both the House and Senate to raise Kentucky's minimum wage to \$15 per hour but neither were considered in the committees to which they were referred. [House Bill 303](#) proposed a five-step increase by which the minimum hourly wage would increase to \$8.80 on August 1 and increase each year until it reached \$15.00 in 2022. The Senate measure ([SB 17](#)) proposed raising the rate to \$8.20 on July 1 and increasing the minimum wage each year until it topped out at \$15.00 on July 1, 2025. [Senate Bill 17](#) also called for an increase in the cash wage paid to tipped employees starting in 2019 when it would rise from \$2.13 to \$3.05 per hour. It called for two more increases until the cash wage requirement reached \$4.90 per hour in 2021. Bills were also introduced in both chambers to allow local governments to enact their own minimum wage rates at amounts in excess of the state minimum wage but both failed to pass.

Gift Cards: A rewrite of the abandoned property law included a provision making it clear that the proceeds from unused gift cards are not subject to escheat. [House Bill 394](#) exempts unused gift cards from the definition of abandoned property that must be turned over to the state after three years provided they contain no expiration date and can only decrease in value by redemption of merchandise, goods or services. The bill was signed by the governor and will become law in mid-July.

Changes in Price Gouging Law: [Senate Bill 160](#) made revisions to Kentucky's law regarding consumer pricing during declared states of emergency. The bill adds a statutory definition for "cost" that includes the cost of replacement and provides a safe harbor for businesses that raise prices no more than 10 percent above the amount charged on the day before an emergency is declared. The bill contains other standards for price hikes that do not constitute price gouging. The bill also reduces the minimum time that an emergency is in effect from 30 to 15 days and puts a cap

on the fines that can be assessed for violations. It has been signed by Governor Bevin and will become law in mid-July.

Local Fees on Food Containers & Bags: A bill sponsored by Senator Mike Wilson (R-Bowling Green) proposed to preempt local governments from enacting ordinances restricting the use of certain types of food containers and shopping bags or from imposing fees on these items. [Senate Bill 82](#) was initiated by container manufacturers but was supported by the restaurant and retail industries. But the bill ran into stiff opposition from local officials, particularly the Kentucky League of Cities, who said it ran afoul of “home rule” and violated the principle of local control. As controversy over the issue heightened, the bill stalled in committee and was never considered on the Senate floor.

Cottage Food Production & Sales: For more than a decade, farmers who produce fruit, vegetables, jams, jellies, fruit pies, cakes and cookies have been allowed to sell their products without being subject to state public health regulations and [HB 263](#) amended the definition of “home-based processors” to include home bakers. Sales can be made directly to consumers from the individual’s home, at a roadside stand or community event and online.

When the bill was considered in the Senate Agriculture Committee, provisions were added requiring registration of these individuals, payment of a registration fee and an initial inspection of the home kitchen. However, at the request of state regulatory officials, these provisions were removed when the bill was considered on the Senate floor. It has been signed by the governor and its provisions will become law this summer.

GENERAL BUSINESS ISSUES

Abandoned Property/ Unused Gift Cards: State Treasurer Allison Ball initiated legislation that was introduced by Representative Jerry Miller (R-Louisville) to revise the state’s unclaimed property laws. The bill included language that specifically exempts most gift cards from being subject to the escheat law. [House Bill 394](#) clearly exempts unused gift cards from the definition of abandoned property that must be turned over to the state after three years. Gift cards that contain no expiration date and can only decrease in value by redemption of merchandise, goods or services will be exempt. KRA’s government affairs team worked with Ball to have the language exempting gift cards included in the omnibus update of unclaimed property law. The bill was signed the governor and will become law in mid-July.

Constitutional Amendments: Numerous bills proposing constitutional amendments were filed this session but only one made its way through the legislative process and will be voted on by Kentuckians in November. [Senate Bill 3](#) passed the General Assembly and was delivered to the Secretary of State to be put on the general election ballot in November. The amendment proposes specific rights for crime victims including notification of court appearances and participation in hearings and plea meetings.

Two constitutional amendments ([HB 23](#) and [SB 4](#)) were filed proposing to move statewide elections, such as the governor’s election, to even-numbered years. [House Bill 23](#) passed committee but never received a vote by the full House and [SB 4](#) passed the Senate but never received a final vote on the House floor.

Other bills proposing to change the election process in Kentucky were also filed but not enacted. [House Bills 73](#) and [163](#) proposed to establish legislative term limits for state legislators. [House Bill 250](#) would have lowered the minimum age for running for the General Assembly.

[Senate Bill 165](#) proposed to amend the Constitution by expanding the terms for state legislators by increasing Senate terms to six years and electing House members for a four-year term.

Bills proposing to change the Constitution to allow expanded gaming were introduced in both chambers again this session but as in years past, they failed to advance. Three separate bills were filed ([HB 42](#), [HB 229](#) and [SB 241](#)) to allow casino gaming and earmark most of the revenues for public pensions.

A tort reform constitutional amendment was once again proposed by Senator Ralph Alvarado (R-Winchester). [Senate Bill 2](#) proposed to allow the General Assembly to limit the monetary damages a person could receive. It also called for a uniform statute of limitations to file a claim. The bill passed the Senate State and Local Government Committee but never received a vote on the Senate floor.

A constitutional amendment proposing to change how Supreme Court Justices and judges for the Court of Appeals are selected was also filed but failed to pass. [House Bill 44](#) would have allowed the governor to appoint these officials to their original term rather than election at the ballot box.

Gaming: In addition to the bills proposing a constitutional revision to allow casino gaming, [HB 41](#) was introduced to authorize expanded gaming without amending the Constitution. The bill would have permitted horse racetracks to conduct electronic gaming and also allowed up to four free-standing casinos in precincts that authorize their establishment in a local option election. This bill too died in the House panel to which it was referred.

Venue for Lawsuits Involving State Government: A bill related to civil actions against government agencies was filed this session but failed to receive a vote in the House Judiciary Committee. [House Bill 515](#) would have allowed lawsuits to be filed in counties where the enforcement action occurred. Currently claims against government agencies are handled in Franklin Circuit Court.

Public Pension Reform: Making omnibus changes to the state's public pension system was a priority for the governor and the General Assembly members this session. Several bills were filed and ultimately one passed. [Senate Bill 151](#), which was originally filed as a wastewater/ sewer bill, received final approval by state legislators and was signed into law by the governor. The bill makes some changes to the retirement systems for teachers and state employees to stem the growth in the unfunded liability.

HEALTH INSURANCE ISSUES

Mandated Benefits: Two bills passed this year expanding the benefits health insurance plans are required to provide. First, the House and Senate easily passed [HB 218](#) that broadens the benefits for autism treatment by removing the age limits and dollar caps. Governor Bevin has signed the legislation and it will take effect mid-summer. The House and Senate both introduced legislation requiring coverage for telehealth services at the same rate as a face-to-face patient visit ([SB 112](#) and [HB 12](#)). [Senate Bill 112](#) passed the Senate despite opposition from health insurance companies that opposed the legislation because it would require payment parity. A floor amendment was filed in the House that would have allowed payments for telehealth services at a lower rate but it was never called by its sponsor. The legislation passed the House on the last day of the session and it was signed by the governor so it will take effect on July 14.

Several other bills were introduced to mandate health insurance coverage for specific medical conditions or services. Senator Alice Forgy Kerr (R-Lexington) filed legislation that would have required coverage for fertility preservation for those undergoing medical treatment, such as chemotherapy, that could jeopardize their fertility ([SB 95](#)). Although it cleared the Senate, it died in the House as did a companion bill ([HB 493](#)) that was filed in the House. Another bill to require a one-year's supply of birth control pills ([HB 249](#)) was also introduced but failed to pass.

Healthcare Cost Transparency: Hearings were held during the interim about healthcare costs and the need for transparency which resulted in the introduction of [SB 154](#). The legislation would have required health insurance companies to set up an incentive program for patients that utilize lower-cost providers. The incentives could have been used toward co-pays or received in cash. Patients would also have had the ability to get information on the costs of service so they could price shop. [Senate Bill 154](#) was amended in the Senate to include the cost of pharmaceuticals and durable medical equipment providers before it passed that chamber but it did not get a hearing in the House.

Surprise Billing: At some healthcare facilities, some providers are not on the same contractual arrangement with the health insurance company, meaning patients are being charged for out-of-network services from providers at their in-network hospital. This means the patient is forced to pay the higher out-of-network costs. [Senate Bills 235](#) and [236](#) would have required all providers at contracted facilities to accept the health insurance plan's provider rate and they both would have prohibited balance billing. Neither bill received a hearing in the Senate Banking and Insurance Committee.

LABOR & WORKFORCE ISSUES

Workers' Compensation: Kentucky employers can expect positive results from the changes to the workers' compensation system that passed during the 2018 session. [House Bill 2](#), sponsored by Representative Adam Koenig (R-Erlanger), is expected to significantly reduce costs within the system, particularly in the area of medical care which currently represents nearly 60 percent of the total system's costs.

[House Bill 2](#) limits lifetime medical benefits for most of those determined to have a permanent partial disability (PPD) by placing a 15-year cap on these benefits but giving those who still require treatment an avenue to apply for continuation of benefits. Data shows that only about 5 percent of PPD injuries require treatment for longer than 15 years but the potential for additional medical expenses requires reserves to be higher and, therefore, increases an employer's cost. Other provisions designed to reduce medical costs within the system require the adoption of a pharmaceutical formulary by the end of 2018 and evidence-based treatment guidelines by the end of 2019 that would serve as the default for treatment of injured workers. These provisions will put Kentucky more in line with most other states that already have these cost-saving measures in place.

The bill also addresses recent court decisions that could cause significant rate increases for employers including the *Parker v. Webster Coal* decision that declared unconstitutional the law ending income benefits at Social Security age since not all workers qualify for Social Security. The final version of the bill specified that income benefits end at age 70 or four years after the injury, whichever is later.

Another major provision of the bill would ensure that employers are not penalized when an accident occurs because of voluntary intoxication on the part of the injured worker. It specifies that

if a blood test shows the presence of illegal substances or prescribed drugs in excess of the prescribed amount, it is presumed to be the cause of the accident.

Other employer-friendly provisions of [HB 2](#) allow recovery of medical costs from a responsible third party, limit the time period for reopening claims, allow for lump sum settlements agreed to by both parties to be subject to a higher discount if the award is \$40 or less per week and require that income benefits for those suffering temporary disabilities be offset by wages earned for “light duty” work.

[House Bill 2](#) raises the cap on attorney fees and changes the way these fees are calculated. It also increases the cap on income benefits for injured workers. For those determined to be totally disabled, either permanently or temporarily, the maximum benefit will be increased from 100 percent of the state average weekly wage (AWW) to 110 percent. Those who have permanent partial disabilities will see the benefit cap increase from 75 to 82.5 percent of the AWW.

There was an effort this year to broaden eligibility for workers’ compensation benefits for workers who are not physically injured but suffer psychological trauma. These so-called “mental-mental” claims were proposed in amendments to [HB 2](#) and in a stand-alone bill but no changes to include these claims were approved.

The other statutory change enacted this year that impacts workers’ compensation was passage of [HB 388](#) to require electronic remittance of assessments to the workers’ compensation funding commission beginning in January 2020.

Minimum Wage/ Cash Wage for Tipped Employees: Three separate bills were introduced this year proposing changes to Kentucky’s minimum wage law but none passed. [House Bill 303](#) and [SB 17](#) both proposed annual increases in the state minimum wage until it reaches \$15 per hour in 2022 and 2025, respectively. Another House bill ([HB 393](#)) would have empowered cities and counties to enact local minimum wage mandates with rates exceeding the state minimum wage. [Senate Bill 17](#) also contained this provision. In addition, the Senate proposal called for a three-step increase in the minimum cash wage required to be paid to tipped employees. Under terms of the bill, on July 1, 2021, the cash wage requirement would be set at \$4.90 per hour.

Comparable Worth: The House bill calling for a \$15 state minimum wage ([HB 303](#)) also contained equal pay provisions to prohibit wage differentials for employees performing “equivalent jobs.” Under terms of the bill that died without committee consideration, the methodology used to determine the equivalent skill, effort, responsibility, and working conditions of a job would have been established in administrative regulations promulgated by the Labor Cabinet.

Other Employee Protections/ Benefits: About a dozen other bills were introduced this session to provide additional benefits or protections to employees. Although none of them passed, some of the proposals that were introduced include the following:

Predictive Scheduling: Although it’s been an issue in some other states and many localities, this was the first session that a bill was introduced in Kentucky’s legislature requiring employers to post weekly schedules at least seven days in advance. [House Bill 308](#) also would have required employers to provide a “good faith estimate” of the work schedule for new hires and to maintain a voluntary standby list of employees that may be asked to work additional hours.

Paid Sick Leave: [House Bill 182](#) proposed to require Kentucky employers to provide paid sick leave and established the “earn” rate at one hour for every 30 hours worked. The

bill would have allowed employers to limit the carry forward of sick time from one year to the next at 40 hours if the employer has less than 10 employees and 72 hours for other employers.

Paid Maternity Leave: Another House introduction ([HB 197](#)) proposed to require employers with 50 or more employees to provide six weeks of paid maternity leave. An employee who gives birth would have been eligible for the paid leave if she had been employed for at least one year.

Leave for Crime Victims: A bill filed in the House dealt with employees who are crime victims and want to take time off to attend court or other proceedings associated with the prosecution of the crime. Although [HB 268](#) did not require paid time off for this purpose, it proposed to permit an employee to elect to use paid leave time he or she has accumulated.

Accommodations for Pregnancy & Nursing Mothers: Additional benefits for pregnant employees and new mothers who are nursing surfaced again this year with the introduction of [HB 320](#) and [SB 38](#). As in previous proposals, the “reasonable accommodations” employers would have been required to provide included longer or more frequent break periods, new or modified work equipment and light duty assignment. These bills would have required the employer to furnish a private space other than a restroom for new mothers to express breast milk. The Senate version included a provision allowing an employer to demonstrate that the requirements pose an undue hardship but the standards set out in the bill would have made it a difficult point to prove.

“Ban the Box”: Democrat lawmakers in both chambers introduced “Ban the Box” bills but neither bill passed. [House Bill 28](#) would have prohibited employers from requiring disclosure of an applicant’s criminal history as part of the initial job application while [SB 172](#) banned requiring such disclosure until an offer of employment was made.

Other Proposed Changes in Workplace Rules: Several bills were introduced prohibiting discrimination based on gender identity or sexual orientation but as in previous sessions, they gained no traction. Neither did [HB 518](#) to make termination of employment without cause unlawful and require the employer to pay lost wages and fringe benefits for up to four years to an employee found to be wrongfully discharged. Another proposal that was filed but not acted on was [HB 374](#) that would have made it unlawful for an employer to ask about the salary history of a job applicant.

Representative Diane St. Onge (R-Ft. Wright) filed several bills regarding workplace discrimination claims that were supported by the employer community but they too failed to win final approval. [House Bill 353](#) which passed the House but died in the Senate would have prevented filing of a claim if the same grievance had already been addressed by a court or the Kentucky Commission on Human Rights. The same fate met her [HB 355](#) to establish a two-year statute of limitations for filing a claim for a civil rights violation.

Unemployment Insurance: Representative Jim DeCesare (R-Rockfield) introduced [HB 252](#) calling for changes in the state’s unemployment insurance (UI) program to bring Kentucky’s benefits more in line with other states. Under terms of the bill as it was introduced, the minimum base-period wages that must be earned to qualify for benefits would be raised from \$750 to \$2,000 and then adjusted every two years based on the Consumer Price Index. The original bill also called for a freeze in the maximum weekly benefit until the average maximum weekly benefit in the seven states surrounding Kentucky equals or exceeds Kentucky’s benefit cap. It also proposed to base the

duration of UI benefits on the state's unemployment rate. The current system permits benefits for up to 26 weeks and DeCesare's proposal would have allowed benefits to be paid for as long as 26 weeks only if the unemployment rate was 9.5 percent or higher. It established a stepped-up schedule for the length of benefit payments starting at 14 weeks if the unemployment rate was 5.4 percent or below.

The bill was amended in the House Economic Development and Workforce Investment Committee to set the base period wage requirement at \$1,500 rather than \$2,000 but it still ran into stiff opposition from lawmakers that represent economically-depressed areas of the state. It was amended again before clearing the House to remove the provisions regarding the maximum weekly benefit and the duration of UI payments. The Senate approved the bill as it passed the House and it was signed by Governor Bevin.

Another provision in the original bill that was retained in the enacted version permits a small portion (0.0075 percent) of the tax paid by contributing employers to be redirected to a service capacity upgrade fund to improve performance in the system's operations. The new technology is estimated to cost \$60 million.

Two other UI bills proposing to eliminate the waiting week required to receive UI benefits were introduced but neither [HB 67](#) nor [HB 467](#) passed. Establishment of the waiting week was a key employer-backed change that was incorporated in the 2010 UI reform package that allowed Kentucky to pay off its debt to the federal government and restore solvency to the state program.

Earned Income Tax Credit: Legislation was filed again this year to create a state-level Earned Income Tax Credit (EITC). The new refundable tax credit was proposed to be 15 percent of the federal credit in a broad tax reform bill ([HB 29](#)) that was prefiled last summer and at 10 percent of the federal amount in [SB 180](#). Neither bill was considered in the Appropriations and Revenue Committee of their respective chambers.

REGULATORY & LICENSURE ISSUES

Administrative Regulations: After passing key legislation last session to reduce "red tape" by sunsetting administrative regulations, the General Assembly acted once again by passing another bill to help with unnecessary regulations or those found deficient by a legislative panel. [House Bill 130](#) quickly passed the House before stalling in the Senate until the final day of the legislative session. The bill did receive final approval from both chambers but was vetoed by the governor. The bill would have required legislative staff to submit an annual report regarding all administrative regulations found deficient by a legislative panel. It also proposed to extend the time period in which emergency regulations are in effect from 180 to 210 days and provide a longer period for legislative committees to review regulations filed by executive branch agencies.

A bill calling for a constitutional amendment was also filed that would allow the legislature to reject or amend administrative regulations during the interim period between sessions. Currently, the General Assembly can only take action on administrative regulations when in session and [HB 10](#) was filed to allow lawmakers to void a regulation or change it before it takes effect. The measure passed the House but did not move through the Senate chamber.

[House Bill 154](#) also sought to make changes to the administrative regulation review process by creating a procedure for in-session review of all regulations that are promulgated during the interim. Most regulations are enacted during the interim because legislators are not in session to make changes and can merely review the regulations proposed by state agencies. [House Bill 154](#) was assigned to the House State Government Committee but never received action.

Bag and Container Fees: With other jurisdictions enacting fees or limiting the content of bags and food containers that are permitted to be used, [SB 82](#) was filed to ban local governments in Kentucky from regulating or taxing bags and auxiliary containers. [Senate Bill 82](#) was opposed by city officials across the state and by the Kentucky League of Cities and the bill failed to clear the Senate. Constitutionally, cities are prohibited from levying certain taxes and the case can be made that adding an excise tax on bags or containers is unconstitutional. However, it has become a priority for the American Progressive Bag Alliance to set the preemption in state statute.

HVAC Maintenance: Legislation has been signed by the governor ([HB 100](#)) that streamlines the process for individuals to gain HVAC licenses. The bill reduces certain educational requirements for individuals to become licensed master contractors or journeymen. Original provisions of the bill would have also limited the amount of maintenance work unlicensed employees could do on HVAC systems. KRA's legislative team raised concerns with that language and it was removed from the bill prior to passing the House.

Price Gouging: A bill updating Kentucky's price gouging law ([SB 160](#)) was filed in the Senate, made its way through the legislative process and has been signed by Governor Bevin. The bill provides a safe harbor for price increases during a declared state of emergency that are no more than 10 percent above the price on the day before the emergency declaration. It also includes other provisions concerning price hikes that occur because of cost increases and, therefore, do not constitute price gouging. These include additional costs from a supplier, market fluctuations and contracts established prior to the emergency. The bill also sets the initial time frame for a state of emergency at 15 days; current law is 30 days.

REVENUE & TAXATION ISSUES

Tax Reform: Major changes in Kentucky's tax code were enacted but it wasn't until the last day of the 2018 session that the final tax reform package was unveiled. In early March, the House passed a revenue bill ([HB 366](#)) to help finance its version of the budget bill ([HB 200](#)) that included a 50-cent increase on each pack of cigarettes, a hike in the waste tire fee from \$1 to \$2 and a new 25-cent per dose tax on opioids. The Senate rejected all the new revenue measures except the increased waste tire fee and the bill was sent to a conference committee to hammer out an agreement. A revised version of [HB 366](#) was narrowly passed in both chambers the day before the veto recess, garnering the minimum number of votes needed in both the House and Senate to pass a revenue-raising bill. It was projected to raise nearly \$500 million in the coming biennium largely by broadening the sales tax base and increasing the cigarette tax by 50 cents per pack.

Governor Bevin vetoed the bill contending it was inadequate in terms of "comprehensive" tax reform. When lawmakers returned to Frankfort, they overrode the governor's veto and passed what was called a tax reform "cleanup" in an amended version of [HB 487](#). But that bill went far beyond a cleanup. Although it incorporated most of the provisions of [HB 366](#), it also added new provisions that were reportedly requested by the Bevin administration including a requirement for combined reporting, also known as unitary filing, for corporations doing business in Kentucky. The governor allowed the final tax reform package to become law without his signature.

Outlined below are some of the key tax changes that were finally enacted:

Expansion of Sales Tax Base: Many more items, including a number of services, will become subject to the 6 percent state sales tax beginning on July 1. The definition of "admissions" was broadened to include fees for use of golf courses, fitness centers and other

facilities which will make them subject to the sales tax. Labor associated with the installation, repair or application of tangible personal property and digital property, including such things as car and appliance repair, were also added to the sales tax base as was the sale price of extended warranties. Other services that will soon become subject to the sales tax include landscaping and lawn care; snow removal; janitorial; industrial laundry and linen supply; pet care and small animal veterinary treatment; dry cleaning; indoor tanning; limousine services; and non-medical diet and weight-loss programs.

Flat Rate Income Tax: The tax reform package adopted a single 5 percent income tax rate for both corporations and individuals starting for tax years beginning on or after January 1, 2018. The only deductions that will still be allowed on individual income tax returns will be mortgage interest, Social Security income and charitable contributions. It also lowered the pension income exclusion from \$41,100 to \$31,100.

Apportionment Formula & Combined Reporting: For tax years beginning after January 1, 2018, the apportionment formula was changed from a three-factor formula to a single factor based solely on sales. The final version of the tax package, enacted on the session's closing day, also requires a corporation that is a member of a "unitary business" group to file a combined tax return unless it elects to file a consolidated return with all members of the affiliated group. The unitary filing requirement is set to take effect for tax years beginning on or after January 1, 2019.

Conformity with New Federal Tax Code: The tax reform bill updates Kentucky's tax code to conform to the Internal Revenue Code in effect on December 31, 2017 with certain exceptions including the federal depreciation schedule since Kentucky has its own depreciation rules as provided in KRS 141.0101. A last-minute change also disallowed the deduction for pass-thru income to individuals under Section 199A of federal code.

Inventory Tax: Kentucky is one of the last states to eliminate its inventory tax and this year's tax reform package effectively phases it out by creating a state income tax credit for inventory taxes levied at both the state and local level. The non-refundable credit will be phased in over four years with a 25 percent credit available in the current tax year and then increasing each year until it reaches 100 percent for tax years beginning on or after January 1, 2021.

Tax Administration: The final version of [HB 487](#) contains several changes in the law including a requirement for electronic filing of tax returns by businesses that issue more than 25 employee withholding statements or have gross receipts totaling \$1 million or more and for returns prepared by a "tax return preparer." Other changes include elimination of the requirement to post a bond or pay the tax when appealing an assessment and extending the time to protest a tax assessment from 45 to 60 days. It also contained a provision to prohibit the state Department of Revenue from engaging in any contingency fee contracts for tax collection or audits.

Other Revenue Measures That Did Not Pass: Two bills were introduced in the House to increase the current 6 percent sales tax rate. [House Bill 569](#) proposed to raise the rate to 7 percent and [HB 599](#) called for an 8 percent state sales tax. While there was reportedly serious consideration given to a 1 percent sales tax increase during the conference committee negotiations, no rate increase was contained in the final report despite Governor Bevin's support for the tax hike. Bills were filed in both chambers to raise additional money for the state coffers through expanded gaming including free-standing casinos but they did not advance. Legislation calling for an increase

in the tax on alcoholic beverages and raising the limits on increased property tax revenues were also introduced as were bills to eliminate some of the existing sales tax exemptions and tax incentives.

Budget: Governor Bevin proposed an austere budget that would have eliminated more than 70 programs and cut 6.25 percent from most state agency budgets. Bevin did exempt SEEK, the state's primary and secondary education funding formula, from the cuts. His version of the budget was introduced as [HB 200](#). The House retooled his proposal and passed an amended version of [HB 200](#) to increase funding for education and restore funding for many programs by raising new revenue including a 50-cent increase in the cigarette tax and a new 25-cent tax on opioids. The Senate version of the budget was more conservative since it did not include the tax increases and the House rejected it. A conference committee was established and they worked to get an agreement on a budget. The final version of [HB 200](#) that won approval in both chambers increased funding for education and fully funded the state's pension obligations by tax reform provisions passed in a revenue bill ([HB 366](#)). Bevin vetoed the budget bill and the accompanying revenue package but the General Assembly overrode the vetoes on the final days of the session. They did make some changes to the budget in [HB 265](#), which were "fixes" to [HB 200](#) on the final day of the session. Governor Bevin did not sign the legislation and instead let it become law without his signature.

Pension Reform: The unfunded liability in the state pension systems for teachers and government employees dominated the news last year and Governor Bevin said he would call a special session in 2017 to address the issue. Although a reform plan was unveiled in October, it drew immediate and harsh criticism from workers in the systems and the extraordinary session never happened. Instead, the 2018 General Assembly convened with the pension problems still unresolved and state budget officials estimating that an additional \$700 million would be needed in each year of the coming biennium to address the unfunded liability.

On February 20, [SB 1](#) was introduced proposing changes in the current pension systems although the reforms were not nearly as far reaching as those contained in the governor's proposal. However, its provisions still drew the ire of pension plan participants, particularly teachers who came to Frankfort regularly throughout the session to protest the proposed changes. Despite several changes to [SB 1](#) throughout the process, the bill died without a vote in the Senate. However, on the 57th day of the 60-day session, a scaled-back version of pension reform surfaced in the House as a committee substitute for [SB 151](#). The key changes it made included putting new teachers into a hybrid cash balance plan like the one for state employees hired since the 2013 pension changes were enacted and limiting the use of accumulated sick leave that can be used to boost retirement benefit calculations. The revised bill passed both chambers and was signed by the governor on April 10.

Transportation Funding: [House Bill 609](#) was introduced to raise the gas tax by 10 cents per gallon by increasing the floor for the average wholesale price on which the tax is based. The bill proposed raising the current minimum wholesale price from \$2.177 to \$2.90 per gallon and also increasing the supplemental fuel tax on gasoline and special fuels. In addition, the bill also proposed to increase the vehicle registration fee from \$11.50 to \$22 and impose an add-on registration fee for electric and hybrid vehicles. It also called for hikes in other vehicle-related fees including those for over-dimensional and overweight vehicle permits.

Although the bill languished in the House Appropriations and Revenue Committee without ever being acted upon, the issue of increasing Road Fund revenues remained under discussion until the closing day of the session. Nothing was passed this year to boost Road Fund receipts but the

issue is expected to return because current funding levels prevent Kentucky from addressing needed maintenance and making improvements in the state's transportation system.

Local Option Sales Tax (LOST): No bill was filed this year proposing a change to Kentucky's Constitution to allow cities and counties to impose a local sales tax. Instead, local government officials focused their lobbying efforts on a legislative fix to lessen the financial hit resulting from revised calculations in the actuarially required contribution (ARC) they will be required to make to fund the pension plans for their employees. Representatives of local governments pushed for a separation of their pension system from the one for state employees and when it became apparent that would not happen, they switched to asking for a "collar bill" to phase in the increased contributions. A cap in the contribution rates for local governments, limited to a 12 percent increase each year, was passed in an amended version of [HB 362](#). Governor Bevin vetoed the bill but the veto was overridden when lawmakers returned from the veto recess,

Other Local Taxes: Legislation was introduced to expand the taxing authority of local governments but no changes were enacted. Two bills were introduced broadening the authority for a local restaurant tax of up to 3 percent to be levied. [House Bill 413](#) would have empowered all cities to levy the tax and to retain as much as 75 percent of the proceeds for the construction, maintenance and operation of specific infrastructure. The other proposal ([HB 490](#)) would have authorized all cities other than Louisville to enact a local restaurant tax and use all the proceeds to underwrite their required contributions to the pension system.

Legislation was filed in the House this year to permit all cities and counties to levy an uncapped regulatory fee on the sale of alcoholic beverages within their jurisdiction. A separate amendment was introduced to permit cities with a population below 1,000 to impose the regulatory fee but neither proposal was passed.

A bill was also introduced in the House to remove restrictions on occupational taxes imposed by most counties. [House Bill 358](#) proposed to remove the one percent cap on the county fee and would have permitted most counties (those with populations below 300,000) to levy the occupational license tax. Current law only authorizes counties with populations of 30,000 or more to levy the tax. It also would have authorized an offset on the county fee by the amount paid the city only if an agreement for the credit was made between the local governments.

Public Health Fee Bill: The Cabinet for Health and Family Services (CHFS) initiated legislation to permit the agency to increase fees to cover undefined costs of the cabinet. KRA representatives raised concerns that the cabinet could increase fees, such as food inspection fees, beyond the cost of the actual program. CHFS argued that General Funds should not subsidize these programs but KRA pushed for some restrictions on the increase in fees. A floor amendment to [HB 327](#) was added limiting the fee increases to no more than 5 percent annually before it passed the House by a 46-40 margin. [House Bill 327](#) passed the Senate as well and was signed by the governor. It contains a delayed effective date so it doesn't take effect until July 1, 2019.

Special District Taxes: Special taxing districts have long been in the sights of the Kentucky General Assembly, particularly because they are governed by unelected bodies who can levy taxes and fees. [Senate Bill 25](#) would have required the local government in which the special taxing district is located to review any tax or fee increase or the levy of new taxes or fees. The bill authorized the city or county elected officials to reject the revenue increases. The bill passed the Senate 22-14. Once it reached the House, [SB 25](#) was assigned to the Appropriations and Revenue Committee where it died.

Preemption of Local Container & Bags Fees: Senator Mike Wilson (R-Bowling Green) filed [SB 82](#) to prohibit local governments from imposing restrictions or fees on food containers and shopping bags. The Kentucky League of Cities opposed the legislation arguing that it was an assault on local control. [Senate Bill 82](#) was originally assigned to the Senate State and Local Government Committee, but it quickly became clear that the bill didn't have the votes in this committee. The bill was reassigned to the Senate Economic Development, Tourism and Labor Committee where it did receive a hearing, but no vote was taken so the bill failed.

Earned Income Tax Credit: Retiring Representative Jim Wayne (D-Louisville) traditionally files legislation making comprehensive changes to Kentucky's tax structure and one of the provisions in his 2018 bill ([HB 29](#)) proposed a state-level earned income tax credit (EITC) at 15 percent of the federal EITC. Wayne's bill died in the House Appropriations and Revenue Committee. [Senate Bill 180](#) also proposed a state EITC at 10 percent of the federal level but it did not receive a hearing and died in committee.