

SESSION SUMMARY
2010 Kentucky General Assembly
Prepared for Members of the Kentucky Restaurant Association
(Distributed on April 28, 2010)

The 2010 General Assembly was expected to be dominated by consideration of a budget for the upcoming two-year period in the face of declining state revenues and that was certainly the case. From the time the 2010 Session was gavelled in on January 5 until it adjourned "sine die" on April 15, the budget debate eclipsed other issues. But when lawmakers ended the session, the issue was still undecided as they failed to reach agreement on an Executive Budget for the biennium that begins on July 1. This marks the third time in the last decade that the legislature has adjourned without a budget and Governor Beshear has indicated he plans to call lawmakers back into session, likely in May, to try to resolve the issue.

Although the budget battle between the House and Senate and, even earlier, between the Governor and the General Assembly was clearly the "key" issue of the 2010 Session, it was certainly not the only issue affecting restaurants and other businesses operating in Kentucky that was considered. Nearly 850 bills were introduced this year, as well as close to 550 resolutions, and several of the issues considered proposed to significantly impact the food service industry.

Members of the Kentucky Restaurant Association scored a major win when companion bills introduced in the House and Senate to establish a state-level menu labeling mandate failed to win approval. KRA's government affairs team also helped to ensure the enactment of bills removing unnecessary restrictions on businesses in both the state's gift card law and its "bad check" provisions and extending the deadline for retiring the workers' compensation Special Fund debt in order to avoid an increase in the assessment employers must pay as part of their premiums.

The following summary, arranged alphabetically by issue area, provides a narrative regarding the activity on some of the major issues. The electronic version of the 2010 Session Summary prepared for KRA members includes links to the legislature's official website so you can easily access the complete summaries prepared by legislative staff and all action on the measures, as well as review the full text of individual bills and resolutions.

Bills enacted during the 2010 Session will take effect on July 15 unless a specific effective date was included in the legislation or the legislation contained an emergency clause which makes it effective as soon as it is signed by the Governor.

ISSUE INDEX

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

Alcoholic Beverage Sales Issues:

Election Day Sales: In response to requests from KRA members in Northern Kentucky, Representative Arnold Simpson (D-Covington) once again introduced legislation to open the door to the sale of alcoholic beverages on Election Day during the hours the polls are open. This year's version ([HB 162](#)) proposed to authorize cities and counties to enact a local ordinance setting the hours for the sale of alcoholic beverages on Election Day. Its provisions were limited to larger metropolitan areas since the expanded authority only applied in counties with a population of at least 75,000. Although the bill was unanimously approved by members of the House Licensing and Occupations Committee, it was never considered by the full House and was instead recommitted to the House Appropriations and Revenue Committee in late March.

Product Samplings: Another alcohol-related issue resurfaced in the 2010 Session to revise Kentucky's laws relating to "tasting" events at which customers may sample alcoholic beverages. [HB 167](#) was introduced by Representative Susan Westrom (D-Lexington) to permit a wholesaler, manufacturer or small winery to acquire a sampling license that would allow its employees to serve customers at retail licensee locations. The legislation also proposed to increase the number of distilled spirits samples that may be provided to a customer from two to three per day. Although the bill was introduced on January 5, it was not acted on by the House Licensing and Occupations Committee. Instead its provisions were incorporated into a separate "housekeeping" bill put forward by the Alcoholic Beverage Control (ABC) regulatory agency when that measure was considered in the House panel in mid-March. The amended version of [SB 41](#) cleared the House by a vote of 52-40 but died in the Senate without consideration of the House changes. However, the Senate attached the "tasting" provisions to an unrelated bill ([HB 158](#)) on the 59th day of the 60-day session. The House did not act on the amended bill so no change in the current law won final passage.

Sales at State Parks: Two Louisville Democrats— House Speaker ProTem Larry Clark and Senator Denise Harper Angel— put forward bills to authorize the sale of alcoholic beverages by-the-drink at state parks. The identical proposals would have allowed sales at parks located in communities where alcoholic beverages are already sold and authorized a local option election in the precinct or precincts containing the park in otherwise "dry" areas. Neither [SB 24](#) nor [HB 85](#) was considered during the 2010 Session but the state park language was also added to ABC's housekeeping bill ([SB 41](#)) by the House Licensing and Occupations Committee. The Senate did not take up the bill for consideration of the House changes.

Alcoholic Beverage Taxes: Three separate bills were introduced to reduce the taxes levied on alcoholic beverages in Kentucky but none were approved. [HB 61](#) and [HB 102](#) proposed to repeal the sales tax on package sales that was enacted in 2009. The other legislation ([HB 62](#)) would have reduced the wholesale tax levied on alcoholic beverages from 11% to 5.5%, effective July 1, 2010 and repealed that tax effective July 1, 2011.

DUI: The 2010 General Assembly enacted legislation to establish a "per se" violation of Kentucky's driving laws if a person has a measurable amount of specific drugs in his system while operating a motor vehicle. Senator Ray Jones (D-Pikeville) has long advocated the expansion of Kentucky's DUI laws to include controlled substances detected in a driver's blood and he introduced [SB 144](#) in early February. Although his bill cleared the Senate, it failed to win

approval in the House. Instead, provisions were added to [HB 265](#) to prohibit a person from operating a motor vehicle if any amount of 16 specific controlled substances, as detected by a blood test, has been taken within two hours of driving. The list of drugs includes amphetamine, cocaine, hydrocodone, methamphetamine, oxycodone and any Schedule I controlled substance except marijuana. The bill makes the blood test results inadmissible in court if the defendant can show that the drug was taken pursuant to a prescription. The amended version of [HB 265](#) that the Governor signed also decreases the BAC (blood alcohol concentration) that triggers stiffer penalties from 0.18 to 0.15 as was proposed by Jones in [SB 144](#).

Two other bills were considered this session to impose tougher sanctions against drivers convicted of DUI offenses but neither won final passage. [HB 58](#), sponsored by Representative Dennis Keene (D-Wilder), would have required installation of ignition interlock devices for first offenders and also expanded the list of aggravating circumstances to include driving the wrong way on any four-lane highway, not just limited access highways. The bill passed the House but died in the Senate Judiciary Committee. Representative Mike Harmon (R-Junction City) introduced [HB 121](#) to expand the time period for consideration of prior DUI offenses from five years to 10 years and to increase penalties for second offenses. Harmon's bill would also have allowed forfeiture of vehicles owned by a person convicted of DUI if his operator's license had been previously suspended but it died in the House Judiciary Committee without being considered.

Consumer Protection Issues:

Gift Cards: Legislation was enacted to clarify Kentucky's law regarding gift cards distributed as part of an award, loyalty or promotional program. The provisions of [SB 83](#), introduced by Senator Tom Buford (R-Nicholasville) at the request of the Kentucky Retail Federation, make it clear that gift cards issued without separate consideration are not required to have a minimum expiration date. The bill passed both chambers without a dissenting vote and has been signed by Governor Beshear.

Credit and Collection Issues:

Bad Check Handling Fee: On the last day of the 2010 Session, lawmakers gave final approval to [SB 107](#), legislation that included a statutory change to Kentucky's bad check law requested by the Kentucky Retail Federation. House Judiciary Chairman John Tilley (D-Hopkinsville) filed a floor amendment to the bill to clarify the law regarding the fee merchants can charge for handling bad checks. In 2008, the legislature increased the maximum fee to \$50 and Tilley's amendment eliminates unnecessary language in the law that had caused some confusion among the business community. Senator Brandon Smith (R-Hazard), the sponsor of [SB 107](#), endorsed the change and recommended Senate acceptance of the House amendment to his bill. The cleanup language was originally incorporated by the House Judiciary Committee in [HB 219](#), legislation specifically including checks issued for deposits on property and auction escrow accounts in the "theft by deception" law at the request of the bill's sponsor, Representative David Osborne (R-Prospect), but that bill failed to gain final approval. [SB 107](#) was signed by Governor Beshear on April 26 and took effect that day since it includes an emergency clause.

Small Claims Court: Two proposals were put forward this year to raise the jurisdictional limit of small claims court but neither was approved. [HB 103](#) would have made broader changes

by increasing the limit for civil actions in District Court from \$4,000 to \$10,000 and also raising the jurisdictional limit of small claims court from \$1,500 to \$5,000. The other measure ([HB 365](#)) would simply have increased the jurisdictional limit of small claims court from \$1,500 to \$2,500. Although several members of the House Judiciary Committee noted that an increase is needed since the small claims court limit has not changed for more than 25 years, most district judges continue to oppose any revision and no action was taken on either bill.

Energy Issues:

Clean Energy Mandate: The price of electricity for some customers, including restaurants and other commercial businesses, would likely have increased if [HB 3](#) had been enacted. The legislation, sponsored by House Majority Leader Rocky Adkins (D-Sandy Hook), proposed to create a Clean Energy Portfolio Standard which would require Kentucky utilities to diversify their sources of generation. Beginning in 2012, Kentucky utilities would have been required to use a rising percentage of renewable energy resources and low-carbon resources to produce electricity or to purchase "clean energy" credits to meet their non-industrial customer demand. A revised version of the bill would have allowed utilities to recover the increased costs of these alternate resources through a surcharge on the bills of commercial and residential customers rather than requiring the utilities to go through the full rate-making process. The bill effectively capped the additional costs to customers at three percent by allowing the Public Service Commission to suspend the new mandate to the extent the cost of the "clean energy" exceeds the cost of traditional generation by more than three percent. Industrial customers would not be impacted by the "clean energy" mandate since it only applies to the electricity supplied to restaurants and other non-industrial customers. In addition, the revised proposal would have delayed application of the standard to electric cooperatives until at least mid-2015 which means that only those customers served by investor-owned and municipal utilities would have seen their electricity costs go up as a result of the new standard starting in 2012.

Although the bill was not voted on by the House Natural Resources and Environment Committee, the issue of establishing a Clean Energy Portfolio Standard is one that is likely to resurface since it is strongly supported by the state Energy and Environment Cabinet. Retiring State Representative Harry Moberly (D-Richmond) also introduced "renewable energy" legislation this year ([HB 408](#)) requiring that two percent of electric sales be renewable in 2012 and increasing the percentage requirement in later years. No action was taken on Moberly's proposal. Ironically, the House did approve a simple resolution ([HR 136](#)) introduced by State Representative Rick Nelson (D-Middlesboro) that urges the Kentucky Public Service Commission not to approve any increase in electric rates that exceeds the previous year's percentage increase in the CPI.

Environment and Growth Issues:

Development Restrictions: Representative Reginald Meeks (D-Louisville) reintroduced his proposal to prohibit issuance of a building permit prior to verification being made that the property contains no known human remains. [HB 92](#) was not acted on by the House Judiciary Committee to which it was referred. Neither did the House Local Government take action on an even broader bill introduced by another Jefferson County lawmaker that would have severely restricted development. [HB 348](#), sponsored by Representative Joni Jenkins (D-Shively), would have required a planning unit to complete a comprehensive environmental status review and

identify solutions to pollution and growth. The measure would have made any comprehensive plan enactment or update and any zoning regulation void unless the requirement was met.

Food Sales and Service Issues:

Menu Labeling: Bills were introduced in both the House and Senate ([HB 246](#) and [SB 86](#)) to establish a state-level requirement that the calorie content of prepared foods offered for sale at restaurants, grocery delis and other food service operations be posted at the point of sale. KRA's government affairs team led the effort against these measures, citing pending federal legislation to address the issue of nutrition labeling. Although a committee hearing was held on [HB 246](#) in early February, no vote was taken by members of the House Health and Welfare Committee. The Senate bill was not considered by the Senate Agriculture Committee to which it was assigned.

Although the identical bills were modeled after the federal language that has since been enacted, it contained important differences including a requirement that the calories be listed in typeface identical to that used to list the item price. In addition, it did not include any protection from frivolous lawsuits that would likely result from inevitable variations from listed caloric information based on slight differences in serving size, quantity of ingredients or special orders. Neither did the state proposals include provisions preempting more stringent local requirements.

Restaurant Tax Expansion: Occupied by its own internal issues, the Kentucky League of Cities (KLC) did not pursue legislation this year to expand the authority to impose a local restaurant tax to more Kentucky cities or to allow revenues from local "meals taxes" to be used for a broad range of local government programs and services. However, several bills reclassifying various Kentucky cities were introduced during the 2010 Session. There were bills to reclassify both Sadieville in Scott County and Wurtland in Greenup County as cities of the 5th class which would have allowed these cities to enact a local tax but neither [SB 149](#) nor [HB 325](#) was enacted.

Milk Pricing: Several bills introduced during the 2010 Session were aimed at helping Kentucky dairy farmers including one proposal that would have created a new point-of-sale tax on milk sold in gallon or half-gallon containers to fund an incentive program for dairy producers. That measure ([HB 594](#)) failed to win support among lawmakers and the legislature instead passed [HCR 207](#) urging the United States Department of Agriculture to evaluate the formula used to establish milk prices paid to farmers and determine if the formula puts Kentucky dairy farmers at a competitive disadvantage.

The General Assembly also enacted [HB 566](#) that allows the Kentucky Milk Commission to develop a minimum milk pricing program for the protection of dairy farmers if the federal milk marketing order system is abolished and to explore the establishment of economic incentives to help sustain Kentucky's dairy industry. The bill was amended in the Senate to require legislative action prior to the establishment of a state minimum milk pricing program. The House accepted the Senate change before [HB 566](#) was sent to the Governor for his signature. The bill was signed on April 13.

Food Service at B&Bs: Expanded food service at B&Bs (bed and breakfasts) and "farmstays" was the subject of two bills introduced this year but neither won final legislative approval. [SB 103](#) would have permitted these businesses to provide other services such as catering or special event hosting on its property. [HB 354](#), which passed the House but died in

the Senate, included similar provisions but also made a distinction between B&B “homes” (those with up to five lodging rooms) and B&B “inns” with between six and 15 rooms.

Animal Care Standards: Senate Agriculture Committee Chairman David Givens (R-Greensburg) introduced [SB 105](#) to create a Kentucky Livestock Care Standards Commission and to bar local governments from establishing livestock or poultry standards that exceed state requirements. The bill unanimously cleared the Senate in mid-February and an amended version passed the House in late March. In the final days of the session, agreed-upon provisions of the bill were added to another piece of legislation introduced by House Agriculture Committee Chairman Tom McKee (D-Cynthiana). [HB 398](#) requires the State Board of Agriculture to promulgate administrative regulations dealing with on-farm livestock and poultry standards recommended by the new Commission and preempts local standards that exceed the state regulations. The bill was signed by the Governor on April 12.

General Business Issues:

Expanded Gaming: Although Governor Steve Beshear based his Executive Budget proposal on an estimated \$780 million in new state revenues projected to result from authorizing video lottery terminals (VLTs) at racetracks, the issue of expanding gaming never got serious traction during the 2010 Session. Several bills were introduced in both the House and Senate, including [SB 2](#), introduced by Senate President David Williams (R-Burkesville), proposing to amend Kentucky’s Constitution to require voter approval before gambling in any form could be expanded. That bill failed to garner the 23 votes needed to place a constitutional amendment on the ballot when it was considered by the full Senate. The bill failed on a 21-16 vote with all the GOP senators, plus Senator Bob Leeper (I-Paducah) voting “aye” and all 16 Senate Democrats voting against the bill. No action was taken on other gaming bills, including [HB 299](#) introduced by House Speaker Greg Stumbo (D-Prestonsburg) to authorize VLTs at racetracks.

Public Procurement: The 2010 General Assembly did approve two bills making changes to the procurement process for state and local governments, as well as other public entities such as schools and universities. [SB 45](#) gives a reciprocal preference to an in-state bidder on public contracts if the Kentucky business is competing against an out-of-state company that receives a preference on contracts in its home state. The final version of the bill that was approved requires that for one year and through the date of the advertisement for bids, the company has filed Kentucky tax returns, paid state UI taxes and has in place a Kentucky workers’ compensation policy in order to qualify as a resident bidder. The enacted version of [SB 45](#) also gives preference to the Kentucky Industries for the Blind and other non-profits serving the disabled in a public agency’s purchase of goods and services. The legislation was signed by the Governor and will take effect on July 15.

The Governor has signed [SB 176](#) that authorizes the use of reverse auctions in state and local government procurement for goods and some services, including purchases made by school boards and public universities. Under terms of the bill, reverse auctions may be used for the purchase of goods and for property leases initiated by public entities.

Several other bills that would affect public contracting practices were also introduced but not enacted. These include [HB 314](#) and [HB 321](#) that proposed to require companies and their subcontractors that bid on public contracts to participate in a federal program to verify employment eligibility of their employees.

Economic Development Incentives: Following discussion during the interim about the impact of Kentucky's current economic development programs, three measures were introduced but none won final passage. House Speaker ProTem Larry Clark (D-Louisville) introduced [HJR 122](#) directing a legislative study of the effectiveness of the existing economic development incentive programs and requiring the results to be submitted by December 1, 2010. The resolution passed the House 98-0 and was approved by the Senate Economic Development, Tourism and Labor Committee but died without receiving a vote on the Senate floor.

[HB 336](#) was introduced by Representative Jim Wayne (D-Louisville) to sunset incentive programs that have been in place for eight years unless they are specifically reauthorized by the General Assembly. Another Louisville Democrat, Senator Tim Shaughnessy, sponsored a bill ([SB 188](#)) to place a moratorium until December 31, 2011 on Tax Increment Financing (TIF) agreements that involve state funding. Neither of these bills made it out of the committee to which they were referred.

Civil Lawsuits: Representative Joseph Fischer (R-Ft. Thomas) proposed a constitutional change aimed at allowing tort reform in Kentucky but [HB 550](#) was not acted upon. The bill would have allowed voters to approve a constitutional amendment to authorize the General Assembly to limit damages for injuries to persons or damage to property.

Legislation proposing to regulate businesses that purchase the rights to receive a portion of a settlement or award a person receives as a result of a civil lawsuit was also filed but not approved. [SB 148](#) was recommitted to the Senate Judiciary Committee after winning initial approval in mid-February and it never resurfaced.

Business Organization & Reporting: Three so-called model bills updating Kentucky's laws governing various forms of business structures, including the adoption of uniform filing procedures, were enacted this year. All three—[SB 150](#), [SB 151](#) and [SB 152](#)—have been signed by the Governor.

Other General Business Issues:

States' Rights: In response to the federal health care legislation, several pieces of legislation were introduced to reassert states' rights and specifically restrict any mandate on Kentucky employers to provide health insurance coverage but none were approved.

Other Issues: The legislature approved [HB 454](#) to authorize a utility to impose a lien on real property if there are outstanding charges for service to the property. Before it won approval in the House, the bill was amended to limit the new authority to municipal utilities that are owed at least \$10,000. The Senate further changed the bill to prevent a lien on property that has been rented or leased if the outstanding charges were incurred by the tenant. The House agreed to the Senate amendment and the bill has been signed by Governor Beshear.

Legislation was also introduced in the House to create a construction loan guarantee program for commercial building projects, including restaurants. [HB 553](#) was approved by the House Economic Development Committee but was later recommitted to the House Appropriations and Revenue panel where it died.

State lawmakers came close to approving [HB 331](#) to require an insurer to provide a five-year loss run statement within 14 days of receiving a request from another insurer. The final version of the bill passed both chambers but time ran out before procedural action needed to send it to the Governor was completed.

Health Insurance Issues:

Mandated Benefits: While Congress was busy deliberating on comprehensive health insurance reform, Kentucky lawmakers were busy considering a variety of new mandated benefits. Legislators introduced a dozen mandated benefit proposals either as stand-alone bills or as amendments to other bills. Two measures received the approval of the General Assembly and were signed by the Governor. [SB 18](#) prohibits a health benefit plan from excluding coverage for costs incurred in a cancer clinical trial if the plan provides coverage for treatment occurring outside a clinical trial. According to actuarial estimates, the impact of the mandate on health insurance premiums will be minimal. Another enacted bill, however, will have a more significant impact on insurance premiums. [HB 159](#) requires health insurance policies to cover autism-related disorders. While the original bill was amended to limit coverage based on the size of the group and the age of the insured, [HB 159](#) will raise health insurance costs. According to an analysis by the Kentucky Department of Insurance, the bill will cost large group health insurance plans \$24-\$30 per year per insured, while small groups are expected to pay \$9-\$11 more per year for each insured.

One significant mandated benefit proposal that failed to pass was [SB 157](#) dealing with chiropractors. The bill would have required insurers to pay chiropractors for each service performed instead of paying a single rate for an office visit. Additionally, the bill would have established the minimum reimbursement rates for chiropractors at the rates in effect on October 15, 2008. Other mandated benefit measures that also failed to pass included [SB 154](#) (specified coverage for acquired brain injuries); [SB 192](#) (specified treatments for diabetes); [HB 460](#) (coverage for oral anti-cancer treatments) and [HB 537](#) (coverage for certain eye disorders).

States' Rights Issue: In response to federal health care reform legislation, Kentucky lawmakers introduced three bills to prevent governments from requiring individuals or employers to purchase health insurance. [HB 254](#) introduced by Representative Joe Fischer (R-Ft. Thomas), provided that no individual or business entity in Kentucky be required to purchase health insurance for himself, his dependents or employees, notwithstanding any federal law to the contrary. The bill also allowed out-of-state health insurers to offer individual and small group health plans in Kentucky. A similar measure, [HB 307](#), was introduced by Representative Tim Moore, (R-Elizabethtown). Representative Bob DeWeese (R, Louisville) introduced a proposed constitutional amendment ([HB 585](#)) to prohibit any rule or law from requiring any person, employer or health care provider to participate in any health care system. None of the bills passed.

Premium Differentials for Smokers: The General Assembly did enact legislation that was signed by the Governor to allow employers to charge smokers more for health insurance premiums. [HB 165](#), sponsored by House Majority Caucus Chair Bob Damron (D-Nicholasville), also allows employers to provide incentives for smoking cessation. An attempt in the House to permit employers to charge obese individuals more for health insurance failed.

Labor and Workforce:

Unemployment Insurance Reform: The plan to revamp Kentucky's unemployment insurance program that was developed by a task force formed by Governor Beshear and agreed to unanimously by both its business and labor representatives fell victim to the animosity between the House and Senate in the 2010 session's closing days. Despite passing the House on February 8 without a dissenting vote, the Senate did not act on [HB 349](#) before the session

ended. Unless the bill is included and passed during the special session that Governor Beshear is expected to call, Kentucky employers will be forced to shoulder the full burden of the state's ailing Unemployment Insurance (UI) Trust Fund.

Annual benefits paid by the state UI program have exceeded the contributions made by Kentucky employers since 2000 and high unemployment resulting from the recession has made the situation worse. In January 2009, the state was forced to begin borrowing from the federal trust fund to meet claims expenses and the debt was well over \$600 million by the end of the year.

The reform bill, introduced by House Speaker ProTem Larry Clark (D-Louisville) who was one of six legislators named to the task force, encompassed the recommendations crafted by the panel to address the system's problems. Its provisions would significantly benefit Kentucky employers by sharing the cost of retiring the trust fund debt and restoring the system's solvency through permanent benefit changes to reduce the system's costs. Without changes to the state system, employers will be forced to repay the debt through an increase in the amount of the federal tax (FUTA) they pay. Federal law provides that employers in states with outstanding loans in two consecutive years repay the debt through a reduction in the FUTA credit. These FUTA credit "offsets" effectively increase the federal tax by 0.3 percent each year until the amount borrowed is repaid. The federal "solution" will result in a new FUTA tax of 1.1 percent for Kentucky employers in 2011, up from the current 0.8 percent and the federal tax rate is projected to go to 3.4 percent in 2018 before the loans are repaid. If the changes suggested by the task force had been enacted, the FUTA credit "offsets" would expire much sooner.

On the revenue side, [HB 349](#) proposed to increase Kentucky's taxable wage base from \$8,000 to \$9,000 in 2012 and then increase the base by \$300 each year until 2022 when it would be frozen at \$12,000. But the bill also proposed changes in benefits to reduce the program's total costs. The statutory wage replacement rate would have decreased from 0.68 to 0.62 in 2012 and a one-week waiting period for benefit eligibility would also have been established that year. Other savings were expected from several "process" changes referenced in the legislation that could be put in place through administrative regulations.

Senate President David Williams (R-Burkesville) has suggested that legislators can address the issue in the 2011 Session since the major changes included in the task force proposal would not have taken effect until 2012. However, it's likely that some supporters of the bill, most notably organized labor, will want to renegotiate provisions of any legislation introduced next year before endorsing it.

Other UI Legislation: Lawmakers did pass a measure to revise the trigger for the implementation of extended unemployment insurance benefits that are 100% federally funded. [HB 450](#) will not affect employer's contributions to the system. Two other bills relating to UI benefits were introduced by GOP members of the House but they failed to pass. [HB 226](#), sponsored by Representative Tim Moore (R-Elizabethtown) would have permitted a military spouse to receive unemployment benefits if their spouse is reassigned 100 or more miles from the worker's home. Moore's bill would have repealed the current reciprocity requirement that specifies that the state to which a person is assigned must have similar provisions. House Minority Whip David Floyd (R-Bardstown) introduced [HB 242](#) to require an employee to make full repayment of unemployment benefits to the employer's reserve or pooled account if employee is convicted of embezzling funds.

Workers' Comp: The legislature approved two House bills that will have significant effects on Kentucky employers in terms of their workers' compensation premiums. The first, [HB 395](#) sponsored by House Democratic Caucus Chairman Bob Damron of Nicholasville extends the payoff date for the now-closed Special Fund from 2018 until 2029. Without passage of the

bill, the six percent assessment an employer pays as part of its workers' comp premium was projected to increase to more than 10 percent.

The other measure that was enacted is less positive for employers. [HB 38](#) amends existing statutory language that requires use of the latest edition of the American Medical Association (AMA) guidelines to determine the extent of disability in workers' comp cases. The change enacted this year directs continued use of the 5th Edition except in the case of psychological impairments that will be based on the guidelines in an even earlier version—the 2nd edition. [HB 38](#) includes a provision to allow the Executive Director of the Office of Workers' Claims to recommend the adoption of later guidelines or a portion thereof but requires the approval of the General Assembly before they are used.

Two other notable worker's compensation proposals were introduced but failed to pass. [SB 220](#) proposed a major overhaul of the system including provisions to terminate income and medical benefits when the employee reaches age 70 or five years after the injury, whichever is later; extend the deadline for reopening certain claims; increase maximum allowable attorney fees; increase maximum income benefits allowed and direct a study of the cost and effectiveness of medical benefits paid through the workers' comp system. [HB 435](#) would have made employers who have contracted for services liable to employees for the payment of an increased award due to the safety violation of these contractors. Its provisions allowed recovery from the contractor for the increased cost to the employer.

Discrimination: A “comparable worth” bill was introduced again this year to prohibit wage discrimination against a person of the opposite sex who is performing a job of “comparable worth.” [HB 133](#) was amended to replace its original provisions with language lengthening the statute of limitations for wage discrimination claims from 6 months to 2 years before it cleared the House. The bill died in the Senate Judiciary Committee.

Bills were also introduced in both chambers to prohibit discrimination based on sexual orientation and gender identity but neither [SB 138](#) nor [HB 117](#) was enacted.

Domestic Violence Orders Involving Employees: Both the House and Senate saw the introduction of legislation to permit dating partners (past or present) to obtain domestic violence protective orders ([SB 109](#), [HB 25](#) and [HB 30](#)). None of these bills was passed but the “dating” provisions were added to a separate domestic violence bill that cleared the House ([HB 189](#)) but died in the Senate.

One domestic violence bill that won final approval was *Amanda's Law* that was introduced by House Speaker Greg Stumbo (D-Prestonsburg) after a friend of his was killed and her former fiancée (and former lawmaker) was charged with her death. [HB 1](#) authorizes the court to restrict a person from going near a petitioner's residence, school or workplace and allows the court to order the use of a global positioning monitoring system for persons who have violated an order. The final bill also specially authorizes the use of GPS monitoring in other instances including pretrial release and diversion programs and probation and conditional discharge but does not include provisions allowing dating partners to obtain domestic violence orders.

Immigration: Only three proposals were introduced this year relating to unauthorized aliens and none were approved. [SR 153](#) simply encouraged the Governor and his administration to develop regulations and procedures to require the use of E-verify for all employers doing business with the Commonwealth. [HB 314](#) would have prohibited the hiring of unauthorized aliens by those who contract with state or local government by requiring participation in a federal verification system and contained a provision banning violators from contracting with public agencies for five years. The other bill, [HB 321](#), would have required

companies that bid on public contracts, as well as the subcontractors they use, to participate in a federal program to verify employment eligibility of their employees.

Employer Tax Credits: Several bills proposing tax credits for employers were introduced but ultimately were not adopted. [HB 10](#) would have created a nonrefundable tax credit for the amount a business pays a nonprofit agency for work performed by legally blind and severely disabled individuals. [HB 74](#) proposed a non-refundable tax credit for employers that provide wellness programs and [HB 275](#) would have established a job stimulus tax credit for an employer for hiring previously unemployed persons between October 1, 2010 and October 1, 2012.

Wage Assignments: [HB 115](#), legislation authorizing the court to order payment of spousal maintenance by wage assignment or other direct payment method, passed the House but died in the Senate Judiciary Committee. An effort to revive the bill late in the Session as an amendment to [SB 146](#) failed.

Wrongful Discharge: The General Assembly did not consider a bill filed by Representative John Carney (R-Campbellsville) to reduce the statute of limitations for wrongful discharge lawsuits from five to two years. [HB 369](#) died in the House Judiciary Committee.

Other Labor & Workforce Issues: Legislation was introduced in the House to remove the requirement that the employer copy of child support orders be sent by certified mail. [HB 463](#) was not considered on the House floor and [HB 414](#) was withdrawn by its sponsor. This proposed change was added as an amendment to several other bills moving through the process but it was not included in any legislation that was enacted.

The House passed [HB 248](#) to require group life insurance plans that provide dependant coverage to insure dependent children up to age 25 who are full time students and dependent children, regardless of age, who have incurred a physical or mental handicap before the age of 25. The bill died in the Senate. Legislation ([HB 402](#)) was introduced but later withdrawn to give employees the right to carry pepper spray for self-protection while on the premises of the employer.

Privacy and Security Issues:

Theft and Payment of Restitution: Significant changes were made to [HB 35](#) as it made its way through the legislative process. The original bill would have repealed provisions enacted in 2009 that make a person convicted of theft and other offenses forfeit their driving privileges until court-ordered restitution is paid. The staff of the Kentucky Retail Federation worked closely with the bill's sponsor, Representative Darryl Owens (D-Louisville), as well as House Judiciary Chairman John Tilley (D-Hopkinsville) and Representative Brent Yonts (D-Greenville) who crafted last year's language, to revise the legislation to address concerns raised by court officials while also preserving an important incentive to encourage restitution payment. The bill that was enacted authorizes a judge to suspend the motor vehicle operator's license of a person convicted of theft until court-ordered restitution is paid rather than making the revocation mandatory. [HB 35](#) also permits a judge to waive the waiting period for issuance of a hardship license that would allow an offender whose license is suspended to drive to and from work. The bill was signed by Governor Beshear on March 30.

Consumer Privacy: Several bills were introduced to provide additional protection for personal consumer information but none of the proposals will become law. [SB 90](#) was designed to limit the use of Social Security numbers (SSNs) in documents presented for filing with the County Clerk by requiring that the person making the filing certify that the document does not contain a SSN. [HB 581](#) proposed to address the issue of security breaches by mandating consumer notification by a business that had its database breached if personal consumer information was compromised. The bill also would have placed restrictions on the use of SSNs. Another House measure ([HB 107](#)) would have placed standards on local governments by requiring these agencies to protect the privacy of information gathered about any individual or entity by complying with the protection and destruction requirements for documents held by financial institutions.

Penal Code Changes: The General Assembly passed legislation initiated by the Justice Cabinet to help curb the rising costs of the state's corrections system but other bills proposing changes in the penal code were not enacted. Instead, the legislature approved a resolution ([HCR 250](#)) to establish a legislative drafting group to craft suggested changes in the Penal Code to provide alternatives to incarceration and reduce repeat criminal behavior that will be considered in the 2011 Session. The bill that was enacted ([HB 564](#)) permits early release of inmates convicted of non-violent crimes under certain circumstances and establishes a series of alternate sanctions against offenders who have violated the conditions of their parole. No action was taken on proposals to require peace officers to issue citations rather than making an arrest for selected misdemeanors ([SB 119](#)) or to limit the use of the PFO (persistent felony offender) law by disallowing its use for offenses that already carry a more severe penalty for subsequent convictions ([HB 184](#)).

Other Security Issues: A bill was again introduced this year to allow the expungement of certain felony records but it continued to fail to win support in the legislative arena. [HB 29](#) would have permitted a person convicted of a Class D felony to petition for expungement of his record after five years. Another issue that resurfaced proposed to create the crime of trespassing on retail and commercial premises when a person enters a driveway or parking lot of a business without conducting business and in violation of posted signs. [HB 389](#) met the same fate as previous proposals when it died in the House Judiciary Committee.

Regulatory and Licensure Issues:

Elevators: Freight elevators will now be subject to annual state inspections as a result of the passage of [HB 220](#). The bill also requires that installation or work on elevators or fixed guideway systems be performed only by a licensed elevator mechanic working under the general supervision of a licensed elevator contractor. Two other identical measures, [SB 115](#) and [HB 442](#) failed to receive consideration.

Breast Feeding: [HB 218](#), legislation establishing a fine of \$500 for the first offense and \$1,000 for each offense thereafter for violating the right of a mother to breastfeed in any location she is authorized to be, cleared the House but died in the Senate. The bill was in response to several well-publicized instances in Central Kentucky where business owners allegedly interfered with breast feeding by customers of their establishments.

Radon Inspection: The legislature did not act on [SB 185](#) that proposed to require that buildings open to the public and located in certain areas of the state that are built on or after January 1, 2011 be tested for radon before they can receive a certificate of occupancy.

Revenue and Taxation Issues:

Budget/Business Taxes: As noted in the introduction, the General Assembly adjourned without passing a two-year spending plan. The budget situation was rocky from the very beginning. In early January, despite warnings from legislative leaders, Governor Beshear put forth a two-year spending plan that relied on \$780 million in new revenue from video lottery terminals (VLTs) at racetracks. The Governor's budget was dead on arrival in the House and House leaders set to work on their own spending plan. On March 10, the House passed its version of the budget, [HB 290](#), that created approximately \$300 million in new revenues to be used in the budget by accelerating the payment of sales tax collected by large restaurants and retail stores and by suspending use of the net operating loss (NOL) carry forward for three tax years beginning in 2010. In addition, the House-passed budget bill accelerated the payment of payroll tax withholdings for very large employers. These business tax provisions were also included in [HB 530](#) which passed the House on March 4. The House also included more than a billion dollars in spending for new schools and other infrastructure mostly financed by issuing bonds in its version of the budget bill.

The business community quickly rallied in opposition to the business tax changes contained in [HB 290](#) and [HB 530](#). Several business groups, including the Kentucky Retail Federation, testified before the Senate Appropriations and Revenue Committee and met with Senate leaders to express opposition to the House-passed business tax measures. The Senate agreed with the business community and on March 22 passed its own versions of [HB 290](#) and [HB 530](#) that did not contain the business tax language adopted by the House. The Senate budget bill eliminated the acceleration of the sales tax payments and the suspension of the use of the NOL. The Senate plan balanced the budget by making further cuts to state agencies and programs including an additional one-and-a-half percent cut to the base budget in 2011 and an additional one percent cut in 2012. The Senate also rejected the House proposal to fund projects by issuing bonds.

The House quickly rejected the Senate budget proposal and leaders from both chambers began meeting to attempt to reach a compromise. After weeks of on and off closed door negotiations, the House and Senate ultimately could not agree on a budget proposal and lawmakers went home on April 15 without a biennial budget. Governor Beshear is expected to call the legislature into Special Session in mid-May to address the budget.

Accelerated Sales Tax Provision: Multi-unit restaurants and other businesses that collect an average of \$30,000 per month in sales tax receipts would have been forced to use operating capital to make payments to state government under the provisions of [HB 290](#) and [HB 530](#) that cleared the House. Approximately 1,100 companies are already on an accelerated payment schedule and the House language would have required them to remit funds even more quickly. The House proposal would have moved the return "due date" for these companies from the 25th to the last day of the month and the return itself would only include receipts from the previous month. However, these larger operations would be required to make an estimated payment for the current month's total sales tax liability on the same day which, in many cases, would require them to pre-pay taxes not yet received since an increasing number of transactions are "non-cash" payment.

Comprehensive Tax Reform: Despite some rumblings early in the Session by House leaders and the “appointment” of an ad-hoc committee to look at comprehensive tax reform, no proposal was seriously considered by lawmakers this Session. Two comprehensive tax reform proposals were prefiled but did not receive a vote in the House Appropriations and Revenue Committee. [HB 13](#), filed by Representative Jim Wayne (D-Louisville) called for significant changes in Kentucky’s tax system that included applying the sales tax to greens fees, private club memberships and selected services such as janitorial, garment alteration/ repair, security, landscaping, exterminating/pest control and commercial linen services. The bill also increased the individual income tax rate on net income over \$75,000; created a state Earned Income Tax Credit (EITC) at 15 percent of the federal credit and subjected estates valued at more than \$1 million to the estate tax. Representative Bill Farmer’s (R-Lexington) attempt at tax reform ([HB 78](#)) overhauled the state tax system by eliminating the income tax on both individuals and businesses; extending the sales tax to a broad range of services; repealing numerous sales tax exemptions and lowering the sales tax rate from six percent to five-and-one-half percent. Of particular concern to the restaurant community, the bill broadened the sales tax base to include payments made for the the leasing or rental of commercial property. [HB 78](#) also added other services including advertising, accounting and bookkeeping, legal services, security and repair and maintenance services to the sales tax base.

Local Occupational Taxes: Three measures dealing with local occupational taxes were introduced but none received serious consideration by the General Assembly. [HB 112](#) proposed a number of changes in the administration of local occupational and net profit taxes including a provision to exempt the proceeds from the sale of a business from the net profits tax. The bill also proposed to allow businesses an automatic tax filing extension if they received a federal tax filing extension. [HB 112](#) died in the House Local Government Committee. Another local tax measure, [HB 353](#) required the Department of Revenue to establish a web-based system for the centralized collection of local occupational license taxes and fees. The use of the centralized collection system was to be optional for businesses. It died in the House Appropriations and Revenue Committee. Finally, a measure proposing to extend the authority to levy occupational taxes and business license fees to all counties, regardless of size, and to eliminate the one percent cap on the occupational tax rate in counties with a population of at least 30,000. ([SB 223](#)) died in the Senate Appropriations and Revenue Committee.

Alcoholic Beverage Taxes: The tax on alcoholic beverages was the subject of three bills introduced this Session. None passed. [HB 61](#) and [HB 102](#) called for the repeal of the sales tax on package sales of alcoholic beverages, effective August 1, 2010. The tax was imposed by the General Assembly in 2009. Another measure, [HB 62](#), reduced the wholesale tax levied on alcoholic beverages from 11percent to five-and-one-half percent, effective July 1, 2010 and repealed the tax effective July 1, 2011.

Sales Tax Increase: Representative Mary Lou Marzian (D-Louisville) filed a proposed constitutional amendment ([HB 310](#)) to increase the state sales and use tax rate from the current six percent to six-and-three-eighths percent. According to the provisions of the bill, the increase would sunset on June 30, 2034. The measure also dedicated much of the new revenue from the increase to specific newly-created programs within state government including an outdoor heritage fund, a parks-and-trails fund, a clean water fund and a sustainable drinking water fund, and an arts and cultural heritage fund. Marzian’s proposal died in the House Elections, Constitutional Amendments and Intergovernmental Affairs Committee without receiving a hearing.

Miscellaneous Revenue and Taxation Issues: The legislature gave the Kentucky Department of Revenue more authority to require electronic filing of tax returns with the passage of [HB 319](#). The bill allows the department to require electronic filing including electronic fund transfer of any tax return or report. The bill specifies that certain filings must be made electronically. Legislation to update Kentucky's tax code to reflect changes in the federal tax code failed to win approval. [HB 383](#) would have adopted changes in the Internal Revenue Code through December 31, 2009.

Tourism:

Billboards: A perennial proposal to allow the owner of a billboard to apply for a vegetation control permit to allow trimming or pruning vegetation that obscures the billboard was introduced but later withdrawn. [SB 133](#) and similar legislation introduced in previous sessions have been opposed by environmental groups. The Senate Transportation Committee attached an amendment creating a pilot project allowing vegetation removal to [HB 536](#), a bill dealing with noncommercial billboards, but the bill died without being voted on by the full Senate. Legislation allowing electronic multiple message signs in areas where billboards are permitted and setting restrictions and guidelines for use ([HB 330](#)) was also introduced but failed to pass.

Supplemental Highway Signs: Representative Jody Richards (D-Bowling Green) introduced a bill to allow the payment of the cost, including installation, of a limited supplemental sign to be spread over a ten-year period. [HB 24](#) passed the legislature unanimously and was signed by the Governor.

Transportation Issues:

Text Messaging Ban: The legislature passed a bill to ban the sending or receiving of text messages or emails while driving. The Senate added the texting provisions to [HB 415](#) along with language prohibiting the use of cell phones while driving by individuals under the age of 18. The bill was signed by Governor Beshear on April 12. Several other similar measures were introduced but not adopted. [SB 23](#), [HB 27](#) and [HB 43](#) contained similar provisions but did not pass. [HB 232](#), which also failed to pass, went further and banned not only texting while driving but also the use of hand-held cell phones by all drivers regardless of age.

Use of Headlights: Two bills requiring that headlights be illuminated when the vehicle windshield wipers are being used were filed but did not receive consideration. [HB 113](#) and [HB 541](#) died without receiving a hearing in their respective committees.