

SESSION SUMMARY
2017 Kentucky General Assembly

Prepared for Members of the Kentucky Restaurant Association

April 21, 2017

The 2017 General Assembly was expected to be different after Republicans gained control of the State House for the first time in nearly 100 years but virtually no one could have predicted how “productive” the session would be. More bills were enacted this year than in any so-called “short” session since annual legislative sessions started in 2001. In fact, the number of bills set to become law as a result of action during this year’s 30-day session—a total of 188 bills—actually exceeds the number passed in most 60-day sessions that are held in even-numbered years.

With Republicans in control of both legislative chambers as well as the Governor’s office, many of the policy changes enacted this year were long-held GOP priorities. These included bills making Kentucky a “right-to-work” state; repealing the state’s prevailing wage law and allowing establishment of charter schools. But other business-friendly measures also won legislative approval this year including legislation to provide additional liability protections for restaurants that donate food to help feed the needy. Also enacted were bills to lower the interest rate on civil judgments including contested workers’ compensation awards; to update the laws regarding alcoholic beverage sales and to clarify the relationship between franchisors and franchisees with respect to their employees.

However, some of the most significant legislative victories for KRA members came by way of the defeat of proposed legislation that would have negatively affected the restaurant industry. Legislation proposing to allow all cities to levy a local restaurant tax failed to pass as did bills proposing to raise the state minimum wage, including the cash wage required to be paid tipped employees, and removing even more restrictions on local taxing authority .

The following narrative summary is arranged alphabetically by issue area and highlights some of the key issues affecting KRA and its members that were considered during the 2017 Session. The electronic version of our 2017 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
Taxation & Revenue Issues

ALCOHOLIC BEVERAGE SALES ISSUES

Agency-Initiated Reforms: KRA was successful in getting language included in **HB 183** to remove the disparity in the fee paid by restaurants and distilleries for by-the-drink licenses. The bill was crafted by officials in the state Department of Alcoholic Beverage Control (ABC) and introduced by House Licensing, Occupations and Administrative Regulations Committee Chair Adam Koenig (R-Erlanger).

Many of the proposed revisions contained in the nearly 150-page bill were referred to as “clean up” in that they removed inconsistencies in the current law, recognized updated business structures, removed unnecessary or duplicative provisions, and added clarification language. But **HB 183** also included some substantive changes in the law that will affect businesses that sell alcoholic beverages. The bill passed both chambers, has been signed by Governor Bevin and will take effect this summer.

Among its provisions, **HB 183** specifically bans “carry in” of product by prohibiting the ABC-licensed business from allowing customers to consume beverages on the premises that are not purchased from the licensee and eliminates the 50-seat requirement for restaurants to qualify for a NQ2 license. It permits the use of loyalty cards issued by restaurants and retailers as long as any discount does not result in “below cost” sales. The bill opens the door for transfer of product between restaurants under common ownership and allows a retail licensee to transport wine and distilled spirits from the wholesaler to its own licensed premises. It also includes language for expansion of delivery privileges of retail licensees to include wine and distilled spirits as well as beer which they currently authorized to deliver. **House Bill 183** removes the prohibition on local option elections being held at the same time as a regular election and moves the venue for appeals of ABC Board orders from Franklin Circuit Court to the local circuit court.

Local Option Elections: Although **HB 183** removed the statutory ban on holding a local option election on the same day as a primary or general election, there were several other bills introduced this year relating to these local “wet/dry” votes. Several bills were introduced to require that local option elections be held on the same day as a regular election but it was **HB 319** that won final legislative approval. The bill allows an election to determine if alcoholic beverage sales will be allowed in a community at other times but requires the petitioners to pay for the costs of the election if it is held on a non-election day. The bill contained an emergency clause making it effective on April 11, the day it was signed by Governor Bevin.

Local Regulatory Fees: Legislation was introduced again this year to allow more 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. **Senate Bill 40** proposed to allow smaller communities to levy the fee as well. KRA’s government affairs representative testified against the bill, telling lawmakers that some cities have set fees as high as 8 percent and used the proceeds for expenses beyond those related to alcoholic beverage sales. Since there is no statutory mechanism to address the misuse other than filing suit against the city or county, authorizing more local governments to levy a fee would simply broaden the problem. The bill died in the Senate without further action following the committee hearing.

“Vintage Spirits”: A statutory change was enacted that will allow an ABC-licensed business to purchase “vintage spirits” from unlicensed persons and then resell them after notifying

the state regulatory agency of the purchase. **House Bill 100** defines a “vintage spirit” as one that is in its original, unopened container, not owned by a distiller and not available for purchase from a licensed wholesaler. The bill also permits distillers holding a by-the-drink license to sell product at fairs and festivals.

Other Proposed Changes in ABC Laws: First-term State Representative C. Wesley Morgan (R-Richmond), owner of several package liquor stores, introduced numerous bills proposing changes in the current law but none were enacted. Several of the proposals he filed dealt specifically with wine and distilled spirits, including removal of the ban on credit sales if any wholesaler has not been paid in full within 30 days, a prohibition on exclusive distribution rights to a single wholesaler, and a requirement that product be delivered within one week of the order being placed. He also introduced legislation to permit a beer distributor to sell malt beverages on credit to a retail licensee.

CONSUMER PROTECTION ISSUES

Data Breach: Legislation was filed in the Senate that would have expanded consumer protections under Kentucky’s existing data breach law. **Senate Bill 59** was introduced by Senate Judiciary Committee Chair Whitney Westerfield (R-Hopkinsville) and the legislation, if passed, would have been problematic for many businesses that handle customer credit card information on a daily basis. It would have expanded the definition of “personal information” by including username and password combinations and also broadened the definition of “breach” to include non-computerized records and made access to information, rather than its acquisition, a data security breach. The most troubling part of **SB 59** is that it would have created a private right of action in instances of data security breaches, meaning private citizens would be able to sue when their data is stolen by hackers or criminals. The bill never received a hearing in the Senate Judiciary Committee, but it is likely to return next session.

CRIMINAL JUSTICE & LOSS PREVENTION ISSUES

Felony Theft Level: Despite the endorsement of the Criminal Justice Policy Assessment Council (CJPAC) appointed by Governor Bevin, no increase in the felony theft level was included in **SB 120**, the criminal justice reform bill sponsored by Senate Judiciary Chair Whitney Westerfield (R-Hopkinsville). The panel recommended increasing the dollar amount at which theft becomes a felony offense rather than a misdemeanor crime from \$500 to \$2,000, but Westerfield removed that provision from the bill before it was introduced after objections raised by the Kentucky Retail Federation that the proposed change amounted to a “cost of living” increase for criminals gained traction among lawmakers.

A separate bill (**HB 89**) proposing to increase the felony theft level from \$500 to \$1,500 was introduced but was not considered in the House Judiciary Committee to which it was referred.

Criminal Justice Reform: Other changes recommended by the CJPAC are set to become law because of the passage of **SB 120**. The bill focused on reducing recidivism by removing the absolute ban on licensure of ex-offenders in many professions and trades. Beyond that, it allows the establishment of a “behind-the-walls” training program for inmates in which private sector businesses could lease inmate labor for production of non-agricultural goods. **Senate Bill 120** also

permits local jails to operate work release programs and establish reentry centers, both of which would require participants to use some of the wages they earn to pay restitution.

Criminal Gangs: Increased penalties for crimes committed by members of a criminal gang and for those who recruit gang members were proposed in **HB 315** but the bill failed to make it over the finish line before the session ended.

Expungement: The 2016 General Assembly enacted legislation allowing the expungement of many non-violent felony crimes and several bills were filed this year to broaden the number of felonies that could effectively be erased from a person's criminal record. None of the measures passed.

Drug Abuse: Much of the legislative debate this year focused on Kentucky's drug abuse problems and several lawmakers filed bills to address what has reached a crisis in many areas. The enacted version of **HB 333** makes fentanyl derivatives illegal and increases penalties for trafficking in these substances as well as heroin, fentanyl and carfentanil. The bill also sets a three-day limit on most prescriptions for Schedule II drugs written for pain associated with acute medical conditions.

The legislature also approved **HB 158** requiring Kentucky's listing of controlled substances to be at least as restrictive as the federal schedule but allows state officials to add to the list of controlled substances or impose more restrictive scheduling by administrative regulation. Bills were also passed requiring more information to be included in KASPER, the state's electronic system for monitoring controlled substances dispensed in Kentucky.

DEVELOPMENT & GROWTH ISSUES

Planning & Zoning Appeals: A bill requiring a bond to be posted by those appealing a planning and zoning decision (**HB 72**) was approved by the General Assembly and has been signed by the governor. Lawmakers took final action just hours before the session ended on a revised version of the bill that requires a bond to be posted on most appeals of a final Circuit Court decision in planning and zoning cases. The final language, hammered out in a conference committee, calls for the circuit court to hold a hearing to set the bond amount. If the court finds that the appeal is "presumptively frivolous," the maximum bond amount is \$250,000. Otherwise, the bond amount is capped at \$100,000. It specifies that the appeal be dismissed if the bond is not posted within 15 days of being set and includes an exemption for any person or entity challenging the creation or expansion of a landfill.

Abandoned Building Tax Credit: With a special session on tax reform expected to occur in the fall, any issues effecting additional tax credits or exemptions were mostly dead on arrival. This was the case for **HB 518**, which proposed to establish a tax credit for individuals that rehabilitate abandoned buildings. Currently the state allows tax credits for rehabilitation of historic building structures, but not for abandoned buildings without historic significance. **House Bill 518** was assigned to the House Appropriation and Revenue Committee and never received a hearing.

ENERGY & ENVIRONMENT ISSUES

Energy Used by Restaurants: Legislation proposing that 35 percent of the costs of utilities used by restaurants operating in Kentucky from the state sales tax was introduced but failed to advance. **House Bill 302** was filed by first-term State Representative Jason Nemes (R-Louisville).

Renewable Portfolio Standards: In an effort to reduce dependence on burning coal to generate power, legislation was filed in the House (**HB 338**) to require utility companies to use renewable energy for a greater percentage of their power. The House bill would also allow utility companies to recover costs they incur for making the switch to renewable sources. **House Bill 338** was assigned to the Natural Resources and Energy Committee, but never received a hearing. The Senate filed similar language in the form of a concurrent resolution (**SCR 21**) to encourage the establishment of a statewide energy strategy that includes the use of renewable portfolio standards. Similar to the bill in the House, the legislation was assigned to committee, but never received a hearing.

FOOD SALES & SERVICE ISSUES

Immunity for Food Donations: Restaurants and retail food stores will have additional protections from liability for product they donate to non-profit organizations with the passage of **HB 237**. The bill, sponsored by Representative Phillip Pratt (R-Georgetown), was initiated by the Hunger Task Force created by Agriculture Commissioner Ryan Quarles.

The bill provides immunity for “apparently wholesome food” and other non-food grocery products that are donated and meet all government-imposed consumer safety standards even if the product is not readily marketable because of its appearance or sell-by date. It adds protections for donated product that may not meet all safety standards if notice of the deficiency is given and the agency agrees to recondition the product prior to its distribution. After passing both chambers unanimously and being signed by the governor, **HB 237** will become law this summer.

Restaurant Tax: At the urging of the Kentucky League of Cities, a restaurant tax bill was introduced again this year but the bill died in the Senate without any consideration. **Senate Bill 221** would have allowed all Kentucky cities, including Lexington and Louisville, to levy a local restaurant tax 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 be 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.

Tax Incentives for Restaurants: Freshman State Representative Jason Nemes (R-Louisville) introduced two bills that were designed to help reduce operating costs for Kentucky restaurants but both measures died in the House Appropriations and Revenue Committee. **House Bill 302** would have created a sales tax exemption for 35 percent of the costs of utilities used by a restaurant that derives at least 70 percent of its revenues from the sale of prepared food and

beverages. Under terms of the bill, the exemption would have been in place for a five-year period, starting July 1, 2017.

An income tax credit for “apparently wholesome food” donated by a restaurant was proposed in **HB 339**. The bill would have created a new refundable tax credit equal to 20 percent of the value of the food donated beginning in 2017 and continuing through the 2020 tax year.

Food Truck Regulation: No action was taken on **HB 527**, but the issue of less stringent regulations for mobile food units and restricted concessions that are limited to serving “low risk” menu items is expected to be a topic of discussion in the interim. The bill called for the Cabinet for Health and Family Services to set operating and permitting standards for these food service facilities through administrative regulations.

Tipped Employees: Bills were introduced in both the House and Senate to raise the minimum cash wage for tipped employees but neither advanced. **House Bill 420** proposed an increase to \$3.00 per hour in 2017 with procedures included for annual increases thereafter. **Senate Bill 33** proposed a three-step increase until the cash wage requirement reached \$4.90 per hour in 2020. The Senate measure also included a 95-cent increase in the state minimum wage each year until it became \$10.10 per hour in 2020.

A Senate proposal to fully align Kentucky’s wage and hour laws with the federal standards also failed to win approval. Among its provisions, **SB 237** would have allowed for a training wage to be paid to teenage employees and eliminated the statutory ban on mandatory tip pooling.

GENERAL BUSINESS ISSUES

Judgment Interest: A bill that had broad support among the business community was **HB 223** and it will become law this summer. The bill lowers the interest rate on civil judgments including most workers’ compensation cases from 12 percent to 6 percent. The 12 percent rate was set back in the 1980s when interest rates were historically high and has not been changed to reflect the current economic climate. House Judiciary Chair Joe Fischer (R-Ft. Thomas) sponsored the legislation.

Tort Reform: A narrowly-focused tort reform bill was enacted this session but despite both chambers now having Republican super majorities, it was a tougher battle than many expected and its advocates did not get everything they wanted. **Senate Bill 4** addresses medical malpractice claims by requiring that someone filing a medical malpractice lawsuit to first have their case reviewed by a panel of medical experts. The bill creates a medical review panel to consider the malpractice claim before it proceeds through the court system in the hopes that frivolous lawsuits will be discouraged.

The bill, sponsored by Senator Ralph Alvarado (R-Winchester), cleared the Senate by a 23-13 margin during the opening week of the session but stalled in the House. Changes were later made in that chamber to allow a plaintiff to proceed with the lawsuit if the panel has not issued its findings within nine months. The House also amended the bill to make it permissive, rather than mandatory, that the panel’s findings be admitted as evidence in the litigation.

The amended version of **SB 4** passed the House 51-45 which means that tort reform advocates have an uphill climb to get the necessary votes to pass a constitutional amendment for comprehensive tort reform. The Senate accepted the House changes and the bill was signed by the governor.

Legislative Term Limits: Members of both the Senate and the House sought to let voters decide to limit the number of terms a legislator can serve in the General Assembly under proposed constitutional amendments, but none of the bills received a hearing in committee.

Gaming: Legislators in both chambers also proposed constitutional amendments to authorize casino gaming in Kentucky. Representative Jerry Miller (R-Louisville) and Senator Morgan McGarvey (D-Louisville) filed **HB 373** and **SB 204**, respectively. The bills required the revenues to be earmarked to resolve Kentucky's pension liabilities. Neither bill received a committee hearing, but it shows that the issue is one that remains of interest to legislators and the constituents they represent.

Campaign Contributions: Senate Majority Floor Leader Damon Thayer (R-Georgetown) was successful in passing legislation to double campaign contribution limits in Kentucky and Governor Bevin has signed the bill. When it takes effect, individuals and political action committees will be allowed to contribute up to \$2,000 to a candidate. It also increases contribution limits to state political party funds and state caucus funds to \$5,000. **Senate Bill 75** includes a provision allowing contribution limits to rise every other year based on the Consumer Price Index. The bill also allows for corporate contributions to political party building funds.

HEALTH INSURANCE ISSUES

Mandated Benefits: Every session there are numerous bills introduced to add new health insurance mandates, and this session was no different. One of the two bills that passed (**SB 89**) requires health insurance plans to cover all federally-approved tobacco cessation treatments including prescription medications such as Chantix. The second bill that passed (**HB 78**) requires healthcare providers to inform women of their cancer risk if their mammogram shows they have dense breast tissue. The bill was amended in the Senate to require health insurance companies to provide three-dimensional mammograms for women with dense breast tissue. The House rejected this change and the bill went to a conference committee where they reached an agreement to encourage health insurance plans to cover this type of mammogram instead of requiring them to pay for it.

Several measures didn't pass that would have required health insurance plans to pay for certain services. One measure that would have required payment for genetic testing for patients with a family history of colon cancer was withdrawn by the sponsor and another requiring coverage of infertility services for women undergoing cancer treatment was introduced but not enacted. Representative McKenzie Cantrell (D-Louisville) filed **HB 483** that would have required health insurance plans to cover all components required under the Affordable Care Act, such as prohibiting exclusions of coverage for those with pre-existing conditions, dependent coverage until age 26 and coverage of essential health benefits.

Health Care Cost Transparency: Senate Banking and Insurance Chairman Tom Buford (R-Nicholasville) filed **SB 174** that would have required healthcare providers and health insurance companies to proactively disclose fees for health care services allowing patients to shop providers in order to get the lowest cost for health services. The bill didn't receive a committee hearing and died in the committee its sponsor chairs.

LABOR & WORKFORCE ISSUES

Right to Work/ Paycheck Protections: Kentucky joined the growing list of “right to work” states with the passage of **HB 1** in the opening week of the 2017 session. The bill prohibits mandatory union membership as a condition of employment. A companion measure (**SB 6**) requires an employee to “opt in” before union dues or fees can be withheld from their wages. Both bills contained emergency clauses so they became law when they were signed by Governor Bevin on January 9.

Prevailing Wage/ Ban on Local Wage Mandates: Another bill that saw action during the first week of the session was **HB 3** which repealed Kentucky’s prevailing wage law requiring higher wage rates for workers on public construction projects, including schools, with a price tag of more than \$250,000.

The bill also contained a provision making it clear that local governments do not have the authority to set wage rates or require employers to provide specific benefits. The new statutory provision codifies the Supreme Court ruling in a lawsuit filed by KRA, the Kentucky Retail Federation and a Louisville-based business that successfully challenged the minimum wage ordinance enacted by the Louisville Metro Council. **House Bill 3** also became law on January 9 when it was signed by the governor.

Minimum Wage/ Cash Wage for Tipped Employees: Although it is now clear that local minimum wage mandates are not allowed, the legislature has the authority to set a state minimum wage that applies throughout the Commonwealth. Kentucky’s minimum wage is currently tied to the federal rate but bills were introduced in both chambers to raise the state minimum wage. Further, Freshman State Representative McKenzie Cantrell (D-Louisville) sponsored **HB 201** to change the law to allow cities and counties to establish a local minimum wage. None of the bills advanced so no change in the law was made.

Senate Bill 33 proposed a three-step increase—95 cents each year—until the state minimum wage reached \$10.10 per hour in 2020. An even higher rate was proposed in **HB 178** that called for a \$1.55 annual hike until the state minimum wage reached \$15 per hour in 2021.

The Senate proposal also called for higher cash wages for tipped employees which are also currently tied to the federal standard. As proposed in **SB 33**, the current rate of \$2.13 per hour would increase to \$3.05 in 2017, to \$3.95 in 2019, then to \$4.90 in 2020 when it would be fixed. Legislation introduced in the House also called for a higher payment to tipped employees. **House Bill 420** proposed to increase the minimum cash wage rate for tipped employees to \$3.00 per hour in 2017 and to set standards for annual increases starting in 2018.

Comparable Worth: A bill was introduced again this year to prohibit wage discrimination based on sex, race or national origin and the 2017 version included a definition of “equivalent jobs.” **House Bill 179** called for the methodology used to determine the equivalent skill, effort, responsibility, and working conditions of a job to be set by administrative regulations. The bill died without a hearing in the House committee to which it was referred.

Other Wage & Hour Proposals: Senator Chris McDaniel (R-Taylor Mill) sponsored **SB 237** to conform the state’s wage and hour laws with the federal Fair Labor Standards Act but it died without further action beyond its introduction. Among its provisions, the bill would have permitted a training wage to be paid to teenage employees; repealed the law prohibiting mandatory tip pooling

and allowed employers to make deductions from employee wages for such things as intentional breakage or property damage and lost or stolen property. It also would have raised the threshold at which employers are subject to the wage and hour laws to those businesses with at least \$500,000 in gross revenues.

Legislation was also introduced but not enacted to expand the number of employees that are eligible for overtime payments. **House Bill 456** would have required that an employee be paid at least \$913 per week in order to be exempt from overtime rules.

Workers' Compensation: Proposed changes in the current workers' compensation system to reduce costs to Kentucky employers were introduced by Representative Adam Koenig (R-Erlanger) as **HB 296**. Medical expenses represent nearly 60 percent of the system's costs so many of the proposed reforms were focused on reducing medical costs.

The bill would have put a 15-year limit on what is currently lifetime medical benefits for most permanent partial disabilities (PPD) and required the adoption of treatment guidelines and a pharmaceutical formulary. It also allowed recovery of medical costs from a responsible third party; placed further limits on reopening claims and filing for cumulative trauma benefits and required that indemnity benefits for those suffering temporary disabilities be offset by net wages earned for "light duty" work.

Opponents of **HB 296**, most notably the Fraternal Order of Police and firefighter unions, seized on the fact that "loss costs" in the system have been significantly reduced over the last decade in arguing against its passage. The labor groups focused much of their attention on the proposed changes to limit PPD medical benefits and to employ treatment guidelines. Data shows that only about 5 percent of PPD injuries required 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. The adoption of treatment guidelines would simply put Kentucky in line with more than half the other states that have instituted these "defaults" to deal with the treatment of workplace injuries.

House Bill 296 passed the House in late February but stalled in the Senate after opponents launched a well-orchestrated campaign against the bill. Although negotiations were ongoing throughout March to address some of the opponents' claims while still providing savings for employers, Senate Republicans decided to pull the plug on the bill following a closed-door caucus on the session's final day.

Action was taken, however, on a workers' compensation measure designed to give some relief to the state's struggling coal industry. Both the House and Senate passed an amended version of **HB 377** that closes the "black lung" fund and shifts responsibility for existing claims to the Kentucky Employers' Mutual Insurance (KEMI), an entity created by the legislature years ago. The new provisions also lower the assessments levied on coal companies for "black lung" claims as the fund is phased out.

The other statutory change enacted this year that impacts workers' compensation was made as part of **HB 223** that reduced the interest rate on contested and unpaid claims from 12 to 6 percent. It also lowers the interest rate for denial or delay of income benefits that an administrative law judge determines to be "without reasonable foundation" from 18 to 12 percent.

Franchises: In response to a National Labor Relations Board decision indicating joint employer status between franchisors and franchisees, the 2017 General Assembly enacted **SB 151** to ensure that is not the case under Kentucky law. The bill makes it clear that employees of a franchisee are not the employees of a franchisor and specifies that neither are employees of a franchisor to be considered employees of a franchisee.

School Start Date: A newly-created local school calendar committee will soon have the option to set a late-August school start date by authorizing longer school days with the passage of **SB 50**. Rather than requiring 170 student attendance days, the bill allows local school districts to adopt a calendar containing 1,062 hours of instructional time which will permit districts to schedule longer school days rather than extending the school closing date until later in the summer to accommodate a later start date. The tourism industry and employers hiring students for summer help could benefit from a later school start date. The provisions of the bill will take effect with the beginning of the 2018-2019 school year.

Payroll Cards: A Labor Cabinet reorganization bill (**HB 378**) included provisions updating the law to allow wages to be paid by direct deposit or through a payroll card account. If a payroll card is used, the employee must be allowed to make at least one withdrawal per pay period without an activation fee being charged. The bill, which has been signed by the governor, also requires that employers that provide electronic wage statements provide access to a computer and printer for the employee to use.

Criminal History: Changes to the law enacted in 2016 made more than 60 felony crimes eligible for expungement to give ex-offenders a “second chance” to become productive members of society after they complete their sentence. This session saw the introduction of more bills to expand the list of crimes that could be shielded from criminal background checks. Although four separate bills were filed, none passed.

Nor was any action taken on two “ban the box” bills that were filed to prohibit employers from requiring disclosure of prior criminal convictions on a job applicant’s initial employment application.

Kentucky businesses avoided a new mandate when KRA’s government affairs team identified a problem with **HB 374**. The bill was intended to comply with a federal mandate for background checks for child care staff members but its original provisions were much broader by requiring a background check for any job applicant for a position involving “supervisory or disciplinary power” over a minor. The bill was amended to limit its scope and to specifically exempt the employer of a minor from the bill’s requirements before it was enacted.

Unemployment Insurance: Two changes were made in the law governing unemployment insurance (UI) this year. **House Bill 473** establishes a process through which an acquiring business can avoid being negatively impacted by the existing business’s UI experience and instead establish its own initial rate. Successor employers would have the option of paying off or paying down the predecessor’s negative reserve account to establish a lower UI rate rather than being automatically subjected to the rate applied to the business being purchased. **House Bill 375** was also enacted to allow a military spouse to qualify for UI benefits if their husband or wife is reassigned by the military to a post that is 100 or more miles from the worker’s home.

Employee Protections/ Benefits: Several bills were introduced this year to provide additional benefits for pregnant employees and new mothers but none passed. **House Bill 303** would have required employers with 50 or more employees to provide six weeks of paid maternity leave. Other proposals were filed that would have broadened the “reasonable accommodations” that employers would be required to provide pregnant employees to include longer break periods, new or modified work equipment and light duty assignment. These bills also would have required time

off for employees to recover from childbirth and a private location other than a restroom for new mothers to express breast milk.

REGULATORY & LICENSURE ISSUES

Administrative Regulations: Governor Bevin has made reducing unnecessary, over-burdensome regulations a priority and the General Assembly responded to Bevin’s initiative and passed **HB 50**. It proposes to sunset regulations seven years after they were first established. The legislation also establishes a process by which agency officials can request that a particular regulation remain in place. Another bill introduced in the House, **HB 332**, would require the General Assembly to enact legislation ratifying a regulation with a major economic impact before it would go into effect. Economic impact is defined as any regulation with compliance costs of more than \$500,000. **House Bill 50** passed both chambers and was signed into law by the governor, but **HB 332** cleared a House committee but never received floor vote by the full House.

Regulation of “Low Risk” Food Service Establishments: Legislation was introduced in the House to pave the way for less stringent regulations for some food service establishments. **House Bill 527** proposed a new statutory definition of “restricted concessions” and “statewide mobile food units” would be eligible for less restrictive operating standards established by regulation and could even be exempted from permitting under terms of the bill. Its sponsor, Representative Myron Dossett (R-Pembroke), agreed to defer action on the proposal until any concerns of the restaurant industry could be discussed and addressed.

TAXATION & REVENUE ISSUES

Tax Reform: In his State of the Commonwealth address before a joint session of the General Assembly in early February, Governor Matt Bevin confirmed rumors he plans to call a special session later this year to address comprehensive tax reform. But he surprised many when he said the tax changes he wants to see adopted will not be “revenue neutral” because more tax revenue is needed to resolve the unfunded liability in Kentucky’s public pension systems.

The governor suggested that Kentucky should move away from a production-based system to one that relies more heavily on consumption-based taxes. He said all existing “tax expenditures”, including both sales tax exemptions and income tax credits, will be reviewed and some are likely to be proposed for repeal.

But Bevin’s plans for a special session did not deter Representative Jim Wayne (D-Louisville) from again presenting his own ideas for tax reform. He introduced **HB 263** calling for an expansion of the sales tax base to include specific services including commercial linen, removal of the current limitations on property tax increases, an increase in tobacco taxes and the expiration of all existing tax credits available to Kentucky businesses. The bill also would have required unitary reporting by businesses with affiliated operations and reduced the vendor allowance for fuel tax collection. The bill died without action in the House Appropriations and Revenue Committee.

Sales Tax Exemptions: A limited number of bills were introduced this year to expand the list of items that are exempt from the state sales and use tax and none were enacted. **House Bill 302** would have exempted 35 percent of the costs of electricity, natural gas, propane and water used by a restaurant from the sales tax.

Local Option Sales Tax (LOST): Although no bill was filed this year proposing to amend Kentucky's Constitution to allow a local option sales tax (LOST), the issue arose in an unexpected way late in the session. **House Bill 330** was introduced to allow for refinancing of the debt on the Louisville YUM! Center and to allow tax incentives to be used for a longer period of time to pay off the bonds. When the bill was considered in the Senate Appropriations and Revenue Committee, provisions were added to require specific annual contributions by both Louisville Metro government and the University of Louisville. Language was also added to require that all LOST proceeds that Louisville might be authorized to levy would go toward paying off the YUM! Center bonds. The committee changes were later removed and replaced with a requirement for excess revenues generated by the facility to be used for early repayment of the bonds. The amended bill cleared both chambers and has been signed by the governor.

Other Local Taxes: Several bills were introduced this year to expand the taxing authority of local governments but none were enacted. **Senate Bill 221** would have allowed all cities to levy a restaurant tax of up to 3 percent and to retain as much as 75 percent of the proceeds for the construction, maintenance and operation of specific infrastructure. Another Senate proposal—**SB 40**—would have authorized more cities and counties to levy an uncapped regulatory fee on the sale of alcoholic beverages within their jurisdiction. Legislation introduced in the House would have removed restrictions on occupational taxes imposed by most counties. **House Bill 479** proposed to remove the one percent cap on the county fee and would have permitted even the smallest counties (those with populations below 30,000) to levy the occupational license 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.

Collection Allowance: At the request of the Kentucky Retail Federation, first-term State Representative D.J. Johnson (R-Owensboro) introduced **HB 362** to increase the cap on the vendor allowance permitted to restaurants and retailers for their role as sales tax collection agents for state government. The bill would have raised the maximum collection allowance from the current \$50 per return to \$1,500. While there was no action on the bill, KRA's government affairs team felt it was important to raise the issue in advance of legislative action on tax reform.

Two other bills were also introduced in the House proposing increases in the sales tax collection allowance but both would have only impacted businesses in Eastern Kentucky counties that were designated as federal "Promise Zones."

Tax Administration: Two bills were introduced this year affecting the administration of Kentucky's tax laws but only **HB 245** was enacted. It permits the state Department of Revenue to respond to questions and publish its responses to help taxpayers understand the application of tax laws. It specifically allows the agency to include examples as part of its response and in any publications it issues.

Senate Bill 185 contained even more taxpayer-friendly provisions but it was not taken up by the committee to which it was referred. The bill would have required the Department of Revenue to notify taxpayers if an overpayment was made and delayed payment of any taxes while an appeal is pending. It also would have permitted the agency to waive interest accrued due to an error or delay caused by department personnel.