

SESSION SUMMARY
2019 KENTUCKY GENERAL ASSEMBLY
For Members of the Kentucky Restaurant Association

(Prepared April 11, 2019)

While it may have been a “short” session, lasting 30 “legislative days” rather than the 60-day session held in even-numbered years, there was certainly no shortage of issues discussed in the 2019 General Assembly, including many impacting KRA and its members. Among the nearly 800 bills introduced were two proposals to allow more local governments to impose a restaurant tax and keep up to 75 percent of the proceeds for broader public projects and programs. Neither bill advanced so the current limitations on which cities can levy a restaurant tax and requirements that the revenues to be used exclusively for tourism promotion and development remain in place.

KRA scored another major win by way of a provision in the tax “clean-up” bill that was enacted in the closing days of the session. At the urging of your government affairs team and those representing other trade associations, provisions were included exempting admission charges to events hosted by non-profit groups from the sales and use tax. These provisions of the bill took effect on March 26, the day the bill was signed by Governor Bevin because they included an emergency clause.

Another success was the addition of some limitations on the cottage food sector. KRA representatives were able to get language added to a bill requiring the state Department of Public Health to implement a registration system for home-based food processors and to restrict the amount of annual sales that both home-based processors and micro-processors can have before becoming subject to the more stringent regulations to which commercial enterprises such as restaurants are subject.

As is often the case, Kentucky restaurateurs reaped some of their biggest victories when many of the bills introduced in the General Assembly failed to win approval. This session’s list of filed-but-not-adopted legislation included bills proposing to raise the minimum wage, including the minimum cash wage for tipped employees, and empowering local governments to set a local minimum wage higher than the state rate. Other proposals were introduced but not passed to mandate paid sick leave for all employees; to rollback some of the workers’ compensation reforms enacted in 2018; to require those with 50 or more employees to provide six weeks of paid maternity leave and to institute “predictive scheduling” by which employers would be required to provide a written estimate of an employee’s work schedule at the time of hire and post weekly schedules at least seven days in advance.

The following narrative summary is arranged alphabetically by issue area and highlights some of the key issues affecting KRA and its members that were debated during the 2019 Session. The electronic version of our 2019 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; Development & Growth Issues;
Energy & Environment Issues; Food Sales & Service Issues; General Business Issues;
Health Insurance Issues; Labor & Workforce Issues; Regulatory & Licensure Issues; Taxation &
Revenue Issues; and Transportation Issues

ALCOHOLIC BEVERAGE SALES ISSUES

Local Regulatory Fees: Bills were filed in both the Senate and House this year— [SB 29](#) and [HB 293](#), respectively—to authorize more local governments to charge a regulatory fee to cover additional costs incurred as the result of alcoholic beverage sales. KRA’s team worked with Senator Danny Carroll (R-Paducah), the sponsor of the Senate measure who had filed similar bills in previous sessions, to add provisions capping the amount of both any new fees and any existing ones.

The current law allows only cities previously classified as cities of the 3rd and 4th class, as well as counties containing these cities, to impose a local regulatory fee to recover additional expenses related to policing, regulatory and administrative costs that are incurred because of the sale of alcoholic beverages. The fee, which functions much like a sales tax, is percentage based and added to the customer’s purchase price. There is currently no limit on the fee amount that can be set by a local government.

[Senate Bill 29](#), as enacted, will allow any city with a population of less than 20,000, as well as any county containing only these smaller cities, to levy a regulatory fee of no more than 5 percent. In areas where the fee is already in place, the bill prohibits the fee amount from being any higher than the rate imposed on January 1, 2019.

Other provisions of the current law remain in place including the statutory requirement that the rate be set each year to raise no more revenue than needed to recover the reasonable expenses directly attributable to alcoholic beverage sales. There is pending litigation alleging violation of the statute since some cities have set fees as high as 8 percent and used the proceeds for expenses beyond those related to alcoholic beverage sales.

Service in Dry Areas: Restaurants and other venues in “dry” territories are now able to host private events where alcoholic beverages are served since [HB 256](#) contained an emergency clause making it effective on April 9 when it was signed by Governor Bevin. The bill, sponsored by Representative Michael Meredith (R-Brownsville) also contains a provision allowing ABC-licensed caterers to provide and serve these beverages at private events in otherwise “dry” areas but makes it clear that cash bars are not allowed. Despite strong opposition to the bill by the Kentucky Distillers’ Association but with the support of KRA and other interested parties, [HB 256](#) made it over the legislature’s finish line on the final day of the session when it cleared the Senate by a 26-12 margin.

Wine Corkage: Legislation was introduced in mid-February to permit ABC-licensed restaurants to allow their customers to bring up to two unopened bottles of wine onto the premises for consumption with a meal. [SB 225](#) would have allowed the restaurant to charge a corkage fee for opening and serving the wine. After objections were raised by KRA, the bill died in the Senate Licensing, Occupations & Administrative Regulations Committee.

Product Availability: A legislative initiative put forward by the Kentucky Distillers’ Association (KDA) threatened to limit the availability of the distilled spirits their members produce to restaurants and other ABC-licensed retailers. Dubbed by proponents as the “souvenir” bill, it would have removed the statutory requirement that “special packages” of distilled spirits be available to retail licensees. After objections were raised by this segment of the industry, [HB 200](#) was never acted on by the full House.

Although [SB 99](#) proposing to authorize both in-state and out-of-state wineries to directly ship their products to customers passed the Senate, it died in the House after KDA pushed to broaden its provisions to include distilled spirits. Concerns were raised from both KRA representatives and other retail licensees about the impact this change might have on the availability of distilled spirits to meet their business needs.

DUI: Changes to Kentucky's driving-under-the-influence (DUI) law were adopted this year with the passage of [SB 85](#) but there was no effort to lower the BAC level that presumes impairment from the current 0.08 threshold. Instead, the bill focused on the use of ignition interlock devices and increased penalties for repeat offenders. The final bill allows for an employer exemption for driving business-owned vehicles not equipped with an ignition interlock device by employees otherwise limited to driving vehicles on which the device has been installed.

DEVELOPMENT & GROWTH ISSUES

Historic Property Tax Credit: [House Bill 456](#) was introduced to increase the cap on the historic property rehabilitation tax credit from \$5 million to \$30 million for applications submitted after April 30, 2019. The bill was referred to the House Appropriations & Revenue Committee, but it never received a committee hearing.

Planning and Zoning: Senator Morgan McGarvey (D-Louisville) introduced [SB 209](#) to clarify the authority of smaller cities within Jefferson County regarding planning and zoning. This legislation has been filed for the last few sessions but it never passes the General Assembly. This session was no exception since the bill did not receive a committee vote.

In the waning days of the session, a floor amendment was filed to [HB 246](#) by Senator Jared Carpenter (R-Berea) that would have required a local government's comprehensive plan to include at least 20-years' worth of residential, commercial or industrial property that could be developed over that span of time. The floor amendment was opposed by cities and counties who argued that the planning process should be left to the local government. Carpenter later withdrew the amendment, but made it clear that this issue will be discussed in future legislative sessions.

Blighted Properties: Senator Robby Mills (R-Henderson) filed [SB 229](#) that would have allowed for the appointment of a conservator of abandoned and blighted properties by local governments in order to oversee the cleanup and repair of these properties. In addition, the bill would have established fees against property owners for rehabilitation of these properties. The bill was assigned to the Senate State & Local Government Committee but was not heard in committee.

ENERGY & ENVIRONMENT ISSUES

Plastics Ban: Representative Mary Lou Marzian (D-Louisville) introduced [HB 183](#) in early February proposing to ban retail food and beverage establishments from providing single-use plastic straws to their customers starting in July 2022. The bill also would have banned single-use plastic bags beginning two years later. The bill was assigned to the House Natural Resources and Energy Committee where it languished until the end of the session.

Utility Rates: Legislation was introduced again this year to require the Public Service Commission (PSC) to consider affordability in their rate-making decisions ([HB 16](#)) and to also limit the use of surcharges by utility companies but the bill failed to advance. What was approved was [SB 100](#), a bill affecting net metering rates for customers that generate more electricity than they use, usually by way of solar panels, and feed the excess power to the utility grid. The bill that cleared both chambers limits expansion of net metering opportunities to new generators if this type generation reaches one percent of the utility's single-hour peak load during the year. It also revises the process used by the PSC to set the rate at which the customer-generator will be credited for the electricity they add to the grid and prohibits any cash refund of accumulated credits.

FOOD SALES & SERVICE ISSUES

Restaurant Tax Expansion: Two bills were introduced in the House this year to allow more locally-imposed restaurant taxes but neither measure gained the support needed to pass. [House Bill 345](#), sponsored by Representative Rob Rothenburger (R-Shelbyville), would have authorized all cities and counties to enact a restaurant tax. Introduced by Representative Attica Scott (D-Louisville), [HB 511](#) proposed to allow all Kentucky cities, as well as the urban county government in Lexington and the consolidated local government in Louisville, to levy the local tax. Both bills would have permitted the local governments to keep up to 75 percent of the revenues derived from the up-to-3-percent tax for construction and operation of infrastructure supporting economic development, tourism and recreation. Beyond that, the bills specifically required that at least one-third of the government-retained proceeds be used for recreation programs and infrastructure.

As in years past, KRA's team led the fight at the Capitol against the bill but the battle is becoming more of an uphill one each year as city officials and their lobbying arm, the Kentucky League of Cities (KLC), continue to push for an expansion of the restaurant tax in terms of both the taxing authority and use of the revenues it produces. "Local control" continues to be their mantra, telling lawmakers they will not be raising taxes but instead simply giving cities more "tools in their toolbox" to meet the citizens' needs.

Minimum Wage & Tip Credit: Although bills were introduced by Democrat lawmakers in both chambers calling for multi-step increases in the state minimum wage until it reached \$15 per hour, no action was taken on either [HB 182](#) or [SB 51](#). The Senate bill also contained provisions for a three-step increase in the minimum hourly cash wage for tipped employees to rise from the current \$2.13 to \$4.90 by July 1, 2022.

Cottage Foods: [House Bill 468](#) was introduced on February 20, the last day for new bills to be filed in the House, and in its original form, would have allowed the Department of Public Health to expand the list of products home-based operations are allowed to produce through the promulgation of administrative regulations rather than statutory changes. KRA's team worked with Representative Richard Heath (R-Mayfield), the bill sponsor, to add provisions requiring the state regulatory agency to develop and implement a registration system for home-based processors no later than January 1, 2020. The bill calls not only for identification of the person producing the cottage foods but also requires that the location where production is taking place be included in the registration and the specific foods being prepared be listed. Another KRA-backed provision was also included that caps the annual gross sales of both home-based processors and micro-processors at \$60,000. Current law limits the net yearly income for micro-processors to \$35,000 and includes no limit on "cake ladies" and other home-based processors. The amended bill easily cleared both chambers and became law without the governor's signature.

No action beyond its introduction was taken on [HB 39](#) that proposed to exempt "homestead food operators" from state permitting requirements. Under terms of the bill, these producers would have included a person producing less than 20 gallons of raw or pasteurized milk per day and those processing less than 20 gallons of milk into cheese, yogurt or cream.

Hep A Response: The Senate passed [SCR 154](#) directing the Cabinet for Health and Family Services to examine the state's response to the hepatitis A outbreaks in order to make future responses to disease outbreaks more effective. The resolution introduced by Senate Minority Leader Morgan McGarvey (D-Louisville) cited the fact that Kentucky's outbreak grew to be the largest in the nation with more than 4,100 known cases by February 2019. The measure cleared the Senate on March 14, the last day before the veto break, meaning there was no time left for consideration by the House.

Wine Corkage: The issue of “wine carry-in” by customers resurfaced this year in legislation introduced by Senator Robin Webb (D-Grayson). [Senate Bill 225](#) proposed to authorize ABC-licensed restaurants to permit patrons to bring their own wine for consumption with the meal. The bill included a provision banning the “carry in” of any wine sold by the restaurant. The bill died in the Senate committee to which it was referred.

Plastic Ban: Under terms of [HB 183](#), restaurants and other food and beverage operations would have been prohibited from providing single-use straws to their customers, starting in the summer of 2022. The plastics ban would have been expanded to cover plastic bags, including those often used for carry-out orders, two years later. However, there was no action taken on the bill in the House committee to which it was referred so it died.

CVBs: Three separate bills were introduced in the Senate this year impacting local convention and visitor bureaus but only [SB 202](#) passed. Senator Chris McDaniel (R-Taylor Mill) sponsored that bill to change the makeup of the Northern Kentucky commission to require two of the members to have an accounting, finance or business background. One of the seven members will still represent local restaurants.

[Senate Bill 94](#) would have required that a CVB board member be a resident of the jurisdiction while [SB 119](#) would have mandated that cities that impose restaurant or lodging taxes also provide training regarding proper collection including the interplay with the state sales tax.

GENERAL BUSINESS ISSUES

Regulatory Review & Comment: Businesses affected by administrative regulations promulgated by state agencies will soon have a longer time to review and comment on regulatory changes proposed by executive branch personnel as a result of the passage of [HB 4](#). The bill adds a second month to the public comment period and also extends the deadline for a legislative panel to review amendments to existing regulations as well as proposed new administrative regulations. Although Governor Bevin vetoed the measure, the General Assembly voted to override him and the bill will take effect in late June.

Expanded Gaming: After the United States Supreme Court ruled that states could regulate sports wagering, Kentucky was one of many states that became intrigued about the new revenue opportunities that sports wagering could bring. House Licensing & Occupations Committee Chair Adam Koenig (R-Erlanger) started the conversation about legalizing sports wagering in the summer of 2018. Those conversations led to the introduction of [HB 175](#) by Koenig that would have legalized sports wagering, fantasy sports contests and online poker in Kentucky. The bill was amended in the House Licensing and Occupations Committee to allow sports wagering only at horse race tracks or professional sports venues and to prohibit betting on college sports teams. The bill never came for a vote before the full House after it became clear that there were not the votes to pass it. Expanding gaming in Kentucky continues to be a goal, but a difficult one to realize.

The continued quest for casino gaming did not cease this session, but bipartisan proposals proposing a constitutional change to authorize the General Assembly to regulate casino gaming never took a single step towards passage ([HB 348](#) and [SB 105](#)).

Executive Branch Lobbying: Any person who is paid to engage with an executive branch agency for an expenditure, state contract, administrative regulation, or potential statutory change will soon be required to register with the Executive Ethics Commission as an executive legislative agent. Employers of these agents will also have to register, pay a \$500 fee and report compensation to the agents as a result of the passage of [SB 6](#).

Candidate Filing Deadline: Two measures passed the General Assembly this session that will impact candidate filing deadlines. Senator Chris McDaniel (R-Taylor Mill) sponsored [SB 60](#) which moves the candidate filing deadline for those seeking their party's nomination from the last Tuesday in January to the first Friday after the first Monday in January. For a number of years, legislators and legislative observers have bemoaned the slow start to any legislative session because the candidate filing doesn't occur until late in January. McDaniel remedied this issue with the successful passage of [SB 60](#).

[House Bill 114](#) as introduced by Representative Myron Dossett (R-Pembroke) would simply have moved the deadline for independents or third-party candidates to declare their candidacies from April to January. It passed the House easily but when it went before the Senate, it came back with a controversial provision removing the Secretary of State as a presiding officer over the Kentucky State Board of Elections. The amended bill passed the House after much debate and, because it contained an emergency clause, it took effect immediately upon the governor's signature on March 19.

Notary Reform: Two bills were filed in the Senate this session to update Kentucky's law regarding notaries and notarial acts, including recognition of electronic signatures. But it was [Senate Bill 114](#), sponsored by Senate Minority Leader Morgan McGarvey (D-Louisville), that cleared both chambers and will take effect on January 1, 2020.

Marijuana: Medical marijuana advocates made multiple presentations to various legislative committees in the interim period before the start of the 2019 session touting the benefits of medical marijuana and the need for it to be legalized. [House Bill 136](#) was introduced by Representatives Jason Nemes (R-Louisville) and Diane St. Onge (R-Ft. Wright) to allow a patient to get a recommendation from a physician for a medical marijuana prescription and either fulfill that recommendation at a dispensary or grow their own medical marijuana for personal use. While the bill did not get enacted, it did take a step towards passage when the House Judiciary Committee approved the legislation with only one "no" vote after it was amended to remove the grow-your-own provision and to limit medical marijuana use to non-combustible products.

Many have argued that once medical marijuana is legal in Kentucky, recreational marijuana use is not far behind. Senator Dan Seum (R-Louisville) filed [SB 80](#) that would legalize the sale, cultivation and private use of marijuana without a medical reason. The bill was referred to the Senate Health and Welfare Committee where it languished without committee consideration of the bill.

HEALTH INSURANCE ISSUES

Mandated Benefits: Several health insurance coverage mandates were proposed this year but only one of them passed. [Senate Bill 30](#), sponsored by Senate Health and Welfare Committee Chair Ralph Alvarado (R-Winchester), will require health insurance plans to provide coverage for genetic testing for cancer risk. The bill has been signed by the governor, but it won't take effect until January 1, 2020.

Other health insurance mandates that were proposed but not acted upon include [HB 87](#) that would have required insurance coverage for infertility treatments. Another proposed measure—[SB 108](#)—would have required health insurance plans to cover fertility preservation for patients undergoing medical treatments that could compromise their fertility. Several other bills were filed to mandate health insurance coverage of medical care including [HB 361](#) to require coverage for prosthetics; [HB 424](#) to mandate coverage of alternative pain treatments and [SB 86](#) to require coverage of air ambulance services.

Association Health Plans: Representative Adam Bowling (R-Middlesboro) introduced [HB 396](#) to lessen the rules on employers who join an association to pool together their health insurance risk and to

provide more opportunities for employer groups to organize into associations that aren't necessarily employers with common interests. [House Bill 396](#) was amended in the Senate to require that an association be in existence for at least two years before they can start a health insurance fund. These changes were precipitated by changes in U.S. Department of Labor (DOL) rules to allow more health insurance options for employers and small businesses. The governor signed the bill and it will take effect in late June. However, on March 28, a federal judge struck down the DOL rule that relaxed restrictions on multi-employer plans so its implementation is in doubt.

LABOR & WORKFORCE ISSUES

Minimum Wage/Tip Credit: Bills were filed in both chambers this year calling for Kentucky's minimum wage to rise to \$15.00 per hour in a series of annual incremental increases. [Senate Bill 51](#) also called for a three-step hike in the minimum cash wage that must be paid to tipped employees until it reached \$4.90 per hour. Although both [SB 51](#) and [HB 182](#) were introduced in the early days of the session, neither was taken up for discussion in the committees to which they were referred. The same fate met [HB 302](#) that would have authorized cities and counties to enact their own local minimum wages at rates higher than the state rate.

Paid Leave Mandate: Resurfacing this session were bills to require Kentucky employers to provide paid sick leave to all their employees and to mandate that some employers offer paid maternity leave. Under terms of [HB 47](#), employees would begin earning sick leave on their hire date at the rate of one hour of leave for every 30 hours worked. The bill would have allowed employers to limit the carry forward of sick time from one year to the next to 40 hours if the employer has less than 10 employees and 72 hours for other employers. [House Bill 48](#) proposed to require employers with 50 or more employees to provide six weeks of paid maternity leave. An employee who gives birth would have been eligible for the paid leave if she had been employed for at least one year. Both bills died in the House committee to which they were assigned.

Predictive Scheduling: Another repeat introduction came in the form of [HB 41](#) to require employers to post weekly schedules at least seven days in advance. The bill would have required employers to provide a "good faith estimate" of the work schedule for new hires. In addition, it would have required an employer to maintain a voluntary standby list of employees that may be asked to work additional hours and allowed an employee to identify time limitations to be considered when work schedules are created. It too died in the House Economic Development and Workforce Investment Committee.

Comparable Worth/Discrimination: Representative Mary Lou Marzian's (D-Louisville) bill to increase the minimum wage also contained equal pay provisions to prohibit wage differentials for employees performing jobs of comparable worth to a business. [House Bill 182](#) would have authorized the state Labor Cabinet to establish rules to be used to determine the equivalent skill, effort, responsibility, and working conditions of a job by administrative regulation if it had passed.

Bills were also filed in both chambers to expand anti-discrimination laws to include discrimination based on sexual orientation or gender identity but neither [SB 166](#) nor [HB 164](#) passed. Another Louisville lawmaker, Democrat State Representative McKenzie Cantrell, introduced [HB 300](#) to subject more employers to discrimination claims by lowering the number of employees a business must have in order to be subject to the law from eight to one. It too died in committee without further discussion.

Other Proposed Changes in Workplace Rules: A number of other bills affecting Kentucky employers were introduced this year but only one of those listed below won final legislative approval before the 2019 session ended.

Pregnancy Accommodations: Senator Alice Forgy Kerr (R-Lexington) again introduced legislation requiring employers to make specific accommodations for pregnant employees and nursing mothers including a mandate that a private space other than a restroom be available for expressing milk. Several changes were made to [SB 18](#) by way of floor amendments adopted in the Senate that limited the bill's application to businesses employing 15 or more people and making its requirements less prescriptive. Instead of mandating specific accommodations, the Senate-passed version simply included the list of changes that an employer could make. The House passed the bill on the session's closing day and it was signed by the governor on April 9.

Wrongful Discharge: [House Bill 301](#) proposed to change Kentucky from an "at will" employment state by making termination without cause after an employee had completed the probationary period unlawful. The bill also included provisions for an employee who was wrongfully discharged to recover lost wages and fringe benefits for up to four years. The bill died in the House committee to which it was referred.

Ban The Box: Another repeater this year was "Ban the Box" legislation to prohibit criminal history questions on the initial job application but no action was taken on [HB 90](#).

Salary Information: Two bills were filed in the House this year dealing with employee salaries but neither passed. [House Bill 193](#) would have barred employers from asking job applicants about their salary history while [HB 373](#) proposed to prohibit any employer policies that restrict an employee from discussing wages with co-workers.

Workers' Compensation: Several bills were filed in the House this session to rollback some of the workers' compensation reforms enacted in 2018 or add new benefits but none were approved. The two measures causing the most concern for Kentucky employers were [HB 350](#) and [HB 469](#) that proposed to reinstate lifetime medical benefits for injured workers.

Unemployment Insurance: Proposed changes in the state Unemployment Insurance system met stiff opposition from organized labor and other employee groups that led to the failure of the employer-friendly revisions. Companion bills introduced in the House and Senate ([HB 317](#) and [SB 171](#)) proposed to shorten the time an unemployed worker could receive benefits from 26 to 20 weeks. In order to encourage a return to work, the bills front loaded benefits—allowing 125 percent of the calculated benefit to be paid for the first five weeks; 100 percent for the second five weeks; 75 percent for the third five weeks and 50 percent for the final five-week period. [House Bill 317](#) cleared the House panel chaired by its sponsor, Representative Russell Webber (R-Shepherdsville), but was never voted on by the full House.

Arbitration Agreements: A state Supreme Court ruling last fall led to the introduction of [SB 7](#) by Senate President Robert Stivers (R-Manchester). The court ruled that the practice of requiring prospective employees to sign agreements for binding arbitration in place of litigation to resolve disputes is illegal. The court's action made Kentucky the only state with a ban on pre-employment arbitration agreements.

[Senate Bill 7](#), which cleared the Senate by a 26-10 margin and the House by a 51-45 floor vote, allows employers to require arbitration agreements as a condition of employment. A change made in the House and agreed to by the Senate prohibits such agreements from reducing the statute of limitations for filing a claim by more than 50 percent. The bill will take effect this summer.

Criminal Record Expungement: A host of bills were introduced this year on the issue of expungement of a person’s criminal record but it was only [SB 57](#) that won final passage. The bill makes some additional Class D felonies eligible to have the conviction vacated and the record expunged five years after the completion of the individual’s sentence. It also reduces the fee for applying for expungement from \$500 to \$250.

Earned Income Tax Credit: Senate Minority Leader Morgan McGarvey (D-Louisville) introduced the 2019 version of legislation calling for a state-level Earned Income Tax Credit (EITC). [Senate Bill 241](#) proposed to create a new refundable EITC at 10 percent of the allowed federal credit. The bill died in the Senate Appropriations and Revenue Committee.

REGULATORY & LICENSURE ISSUES

Regulatory Review and Comment: Representative Ken Upchurch (R-Monticello) introduced [HB 4](#) calling for significant changes in the administrative regulatory review process. The bill extends the duration of emergency administrative regulations to 275 days but also extends the public comment period for regulations from one month to two months. It also increases the time period that legislators have to scrutinize regulatory changes filed by state agencies. The additional review timelines lead to Governor Bevin vetoing the bill but his action was overridden by the General Assembly so the new provisions will take effect this summer.

Cottage Foods: Legislation sponsored by Representative Richard Heath (R-Mayfield) has passed that will require the state Department of Public Health to have in place, by January 1, 2020, a registration system for home-based food processors. This change to the original bill was made at the request of KRA representatives. Another industry-backed change to [HB 468](#) limits the definition of home-based food processors and micro-processors to those cottage industries that have gross annual sales of no more than \$60,000. In its original form, [HB 468](#) would have simply allowed the Cabinet for Health and Family Services to define what types of foods can be home-processed or micro-processed. The bill contained an emergency clause so it went into effect on March 27 when time expired for the governor to either sign or veto the legislation before it became law without his signature.

Plastics: House Bill 183, sponsored by Democrat House Member Marylou Marzian of Louisville would have banned businesses from providing customers with a plastic straw, unless the customer specifically asked for one, beginning on July 1, 2022. It also would have barred the provision of single-use plastic bags starting July 1, 2024. The bill was assigned to the House Natural Resources Committee where it did not receive a hearing.

Guns: While legislation did pass to allow concealed carry of guns without a license, [SB 150](#) didn’t preempt private businesses from restricting guns on their property. But there was a variety of legislation—on both sides of the debate—that was filed but not passed by the General Assembly. [House Bill 30](#) sponsored by Representative Robert Goforth (R-East Bernstadt) would have allowed anyone over the age of 21 years of age to carry a weapon and prohibit business locations from prohibiting customers from bringing guns on the premises. This bill was assigned to the House Judiciary Committee where it remained at the end of session.

REVENUE & TAXATION ISSUES

Tax Changes: Legislation was introduced in the House by Appropriations & Revenue Chair Steven Rudy (R-Paducah) to correct some of the provisions of the tax reform package passed during the 2018 session. Final details of [HB 354](#) were hammered out by a conference committee made up of House and Senate leaders and the bill was signed by Governor Bevin on March 26 after clearing both chambers. But further changes to Kentucky's tax code were also addressed on the final day of the session through the passage of [HB 458](#).

One of the most talked-about provisions of [HB 354](#) impacts non-profit groups such as KRA and its chapters. After the 2018 tax package expanded the sales tax base to include admissions, the Revenue Department interpreted this to mean that it included admissions to events hosted by non-profit groups such as charities as well as those organized by trade associations. The final language in [HB 354](#) clearly exempts admissions to events hosted by all non-profit groups from the sales tax as well as fundraising event sales, such as those made at charity auctions, from the sales tax. The bill makes it clear that on-going sales by non-profits, including any operations that compete with for-profit retailers such as thrift store sales, are subject to the sales tax. These provisions include an emergency clause which means they became law on March 26, the day the bill was signed by Governor Bevin.

A new provision in the final version of [HB 354](#) was added by the conference committee regarding depreciation of equipment. It allows up to \$100,000 in equipment to be expensed in a tax year by updating Kentucky's depreciation rules to reference Section 179 of the Internal Revenue Code (IRC) that was in effect on December 31, 2003. The current language in KRS 141.0101(16) references the 2001 version of the IRC code and because of that reference and changes in federal law, only \$25,000 would have been permitted to be deducted. KRA's government affairs team was actively involved in the effort to include this change in the final version of the bill. It will take effect for property placed in service on or after January 1, 2020.

Unitary Filing Mandate: In the closing hours of the 2018 session, mandatory unitary combined reporting (MUCR) provisions were added to last year's tax reforms that require corporations doing business in multiple states to file a unitary return. The change was made at the request of officials in the Bevin administration and without vetting by impacted industries. A coalition of businesses was formed last summer calling for repeal of the MUCR requirement but legislative action in the 2019 session fell well short of that request.

Some modest changes were included in [HB 354](#) including "waters-edge" language that requires both domestic and foreign corporations that earn less than 80 percent of their income outside the U.S. and its territories to be included in the unitary group. Another provision excludes jurisdictions that have a tax treaty with the U.S. from falling under the definition of "tax haven." Some additional changes to the MUCR section of the tax code were contained in [HB 458](#); the most significant being the addition of a deferred tax deduction provision to lessen the negative impact on publicly-traded companies. The bill passed on the last day of the session and was signed by Governor Bevin on April 9.

Other Tax Changes Proposed but Not Adopted: The House passed [HB 58](#) to restore the pension income exclusion to \$41,100 but the bill died in the Senate. The \$10,000 reduction in the pension exclusion was part of the 2018 tax package that also created a flat 5 percent income tax rate. House Minority Caucus Chair Derrick Graham (D-Frankfort) introduced [HB 487](#) calling for a return to a graduated income tax rate starting at 2 percent and increasing to 6 percent for individual income over \$75,000. The bill also proposed a graduated rate for the corporate income tax, starting at 4 percent and rising to 6 percent for income over \$100,000. The bill died without discussion in the House Appropriations and Revenue Committee.

Local Taxes: For the second consecutive session, no legislation was introduced proposing to amend Kentucky's constitution to allow a local option sales tax (LOST). But the lack of a bill being put

forward does not indicate that the issue is off the table. In fact, the Kentucky League of Cities (KLC) still lists LOST as a priority but has chosen to focus on other bills proposing broader taxing authority for local governments in both the 2018 and 2019 sessions.

Restaurant Tax: Two separate measures were introduced in the House this year to broaden the authority for a local restaurant tax of up to 3 percent and to expand the permitted uses of the tax proceeds. Neither passed but there appears to be growing support for equalizing the taxing authority among local governments, particularly among cities.

Republican State Representative Rob Rothenburger of Shelbyville introduced [HB 345](#) to empower all cities and counties to levy a local restaurant tax and to retain as much as 75 percent of the proceeds for the construction, maintenance and operation of infrastructure supporting economic development, recreation and tourism.

A Democrat lawmaker, State Representative Attica Scott of Louisville, also filed a restaurant tax bill. [HB 511](#) would have expanded the taxing authority to all Kentucky cities, including the merged governments in Lexington and Louisville. Like her colleague's proposal, her bill would have allowed the local government to keep up to 75 percent of the money generated by the tax.

Local ABC Fee: Governor Bevin has signed [SB 29](#) which will allow smaller communities in which voters have approved alcoholic beverage sales to levy a local regulatory fee on the sale of these products to recover additional expenses incurred by the local government. When it takes effect this summer, any city with a population of less than 20,000, as well as a county containing only these less-populated cities will be able to impose the fee.

However, because of amendments initiated by KRA's government affairs team, any new fee can be no greater than 5 percent and existing local regulatory fees are capped at the amount in place on January 1, 2019.

Occupational Taxes: A so-called update of the statutes governing the operations of city governments included a provision which will allow a city with a population of less than 1,000 to impose an occupational tax. Other cities already have this taxing authority and [HB 339](#) extends it to the smallest cities.

Two other measures dealing with local occupational taxes were introduced but neither passed. [House Bill 414](#) proposed a change in the law that would have allowed more county governments to refuse to credit any city taxes paid against the county tax. A Senate resolution ([SJR 23](#)) called for the state Department of Local Government to study the feasibility of an online portal allowing for centralized payment of local occupational taxes.

Special District Taxes: The Senate passed [SB 25](#) to provide more oversight of the taxes and fees levied by special districts but the bill was not acted on by the House. These special taxing districts are governed by unelected boards and include entities such as library districts, local health departments and rural water districts. [Senate Bill 25](#) would have required the local government in which the special taxing district is located to review any tax or fee increase as well as any new tax or fee levied by the special district. It also would have empowered the city or county elected officials to reject the revenue increases.

Pension Reform: After the 2018 pension reform bill was declared unconstitutional by the state Supreme Court, the issue of the unfunded liability in the retirement systems for teachers and public employees remains a major issue facing the Commonwealth. Governor Bevin called a special session in December to address the issue but with no agreement in place, lawmakers adjourned after only one day. They instead formed a special panel to study the issue and develop a plan to address it.

No action was taken during the 2019 session to resolve the broad issue but legislation was passed on the final day to address the specific problems related to public universities and quasi-governmental organization such as local health departments that face major increases in their actuarially-required contributions (ARC) to the retirement system. The provisions enacted in [HB 358](#) require these entities to either “opt in” to continue participation in the system or “opt out” and transition their employees to a new retirement system. Those that opt in will be responsible for the full ARC payment in 2020 while those opting out will have to pay the actuarial cost of their debt in either a lump sum or in installment payments set out by the bill. [House Bill 358](#) was vetoed by Governor Bevin on April 9 and since the General Assembly had already adjourned, there was no opportunity for lawmakers to override his veto.

Property Tax Recalls: Legislation proposing changes to the process for petitioning to hold a referendum on property tax increases changed dramatically as it moved through the legislative process. As introduced, [HB 49](#) would have extended the deadline to file a petition from 45 to 75 days and reduced the number of voter signatures needed to hold a recall vote. The bill was amended to apply its provisions only to taxing entities in Louisville (a consolidated local government) and Lexington (an urban county government), to reduce the petition filing deadline to 50 days and to eliminate the lower threshold of voter signatures required. However, the final version of [HB 49](#) that cleared both chambers does allow the use of electronic signatures on petitions in both communities.

Insurance Premium Tax Surcharge: [House Bill 176](#) passed this year specifying that only the General Assembly can change the insurance premium surcharge rate used to support police and firefighter programs. The original bill was amended in the House to increase the current rate from \$1.50 to \$1.80 per \$100 of premium. The amended bill was signed by Governor Bevin on March 26.

Eliminate Some Exemptions/Expenditures: The House Appropriations and Revenue Committee took no action to advance [HB 402](#) after objections were raised by several groups including the Kentucky Retail Federation. The bill had been portrayed as one to repeal obsolete and unused tax expenditures but its provisions were much more impactful. Among the changes proposed in the bill was the elimination of the exemption from the Limited Liability Entity Tax (LLET) for a number of businesses including agricultural cooperatives.

Review/Oversight of Tax Expenditures: Creation of a 17-member panel to review all existing tax expenditures including exemptions, deductions, exclusions, tax credits or preferential rates was proposed in [HB 292](#) but the bill was not considered by the House Appropriations and Revenue Committee. Under terms of the bill, the Tax Expenditures Oversight Board would include legislators, executive branch personnel, a tax attorney and a CPA. It also required that any new tax expenditure have a lifespan of no more than five years.

Gas Tax plus Increased Fees: [House Bill 517](#) was introduced by Representative Sal Santoro (R-Union) who chairs the House Transportation Budget Subcommittee to significantly increase revenues for transportation construction and maintenance but no action was taken to advance the bill. The bill proposed an increase in the gas tax by raising the wholesale floor price on which the tax is calculated from \$2.177 per gallon to \$2.90 and also increasing the supplemental fuel tax on both gasoline and special fuels. The effect of these changes would have increased Road Fund revenues by more the \$300 million each year.

The bill also proposed significant increases in vehicle registration fees including an add-on to the registration fees for non-hybrid electric vehicles. A new provision in this year’s bill was the creation of a “highway preservation fee” based on the fuel efficiency rating of the vehicle. This new fee would be levied at the time the vehicle is initially registered and at renewal each year. [House Bill 517](#) also called for increases in a host of other vehicle or driver-related fees including raising the fee for traffic school

from \$15 to \$50 and hiking fees for over-dimensional or overweight permits. In total, the bill's provisions would have added nearly \$500,000 to the Road Fund for FY 20-21.

Earned Income Tax Credit: Legislation was introduced again this year to create a state-level earned income tax credit (EITC). [Senate Bill 241](#) would have set the new refundable credit at 10 percent of the federal EITC but it did not receive a hearing and died in committee.

TRANSPORTATION ISSUES

Transportation Funding: A 10-cent hike in the state's gas tax was a key provision in [HB 517](#) that was filed this year but it was not the only measure which Representative Sal Santoro (R-Union) proposed to help boost Road Fund revenues. The Northern Kentucky lawmaker introduced a similar bill in the 2018 session and while neither gained enough support to advance, current Road Fund receipts are inadequate to address needed maintenance and improvements in the state's transportation system so the issue of increased funding is virtually certain to return next year.

This year's bill also called for raising the tax on special fuels and nearly doubling the annual registration fee for most motor vehicles by raising it from \$11.50 to \$22. The bill also called for the creation of a new highway preservation fee that would be an add-on to the annual registration fee and based on the fuel efficiency of the vehicle. Another new annual fee of \$175 was proposed for non-hybrid electric vehicles. [House Bill 517](#) proposed other increases that, cumulatively, would have boosted Road Fund receipts by nearly \$425 million in FY 19-20 that begins on July 1 and almost \$500 million in the next fiscal year.

Mileage-Based Funding: Another repeat measure filed this year was [HCR 54](#) calling for the establishment of a task force to develop a mileage-based transportation funding formula. No action was taken on the resolution by members of the House Transportation Committee to which it was referred.

DUI: Much of the focus of [SB 85](#) was on the use of ignition interlock devices by persons convicted of driving under the influence (DUI) but the enacted bill which was signed by the governor also raised penalties for repeat offenders. It also lowered the standard at which a person is presumed not to be under the influence of alcohol from 0.05 to 0.04. The final version of the bill provides for an employer exemption to the ignition interlock requirement for a person who is required to operate an employer-owned vehicle as part of their job. In order to secure the exemption, a sworn statement from the employer is required.

Distracted Driving: Two bills were filed in the House aimed at curbing the problems caused by distracted drivers but neither passed. [House Bill 120](#) would have banned the use of a cell phone, unless it was being operated hands-free, as well as tablets and computers while a person is operating a motor vehicle. The other introduction, [HB 303](#), proposed to prohibit a driver from having personal listening devices covering or inserted into both ears while operating a vehicle.