SESSION SUMMARY
Divided Senate Buries Most Legislation
Session Not Without Some Positives

As we predicted even before the 2007 regular session began, few pieces of legislation cleared the closely divided Alabama Senate. Down to the last day, the 18-member majority and 17-member minority kept their running feud going, climaxing on the final day with a fist fight and more of the same filibustering.

Other than budgetary, local and sunset bills, only 12 pieces of legislation received final approval in the upper chamber during the entire 30-day session. Despite the legislative logjam, your Alabama Retail Association worked to establish two study committees on issues of importance to retailers:

- Online business license renewals and payments;
- Process for collecting wireless phone service fees for the state’s emergency phone service.

The wireless phone fee committee will include an ARA member. More details on these bills can be found later in this summary.

Stopping bad legislation always equates to a good thing, and ARA had a hand in keeping some extremely detrimental legislation from seeing the light of day. Seventeen of those bills are enumerated later in this report.

Sometimes bills need to be adjusted to make them workable for retailers. Your association also did a lot of tweaking to legislation this session. One highlight among those, detailed later, was the agreement ARA reached with the Alabama Department of Corrections to keep prison labor from getting into direct competition with retailers. After talking with ARA, the department agreed to eliminate the portion of its bill that called for expanding its markets.
We also worked to get bills introduced in the Legislature this year to increase the late fees for credit payments, make theft by emergency exit a first-degree theft charge, move toward electronic retention of prescriptions and institute an energy-efficient sales tax holiday. When the Alabama Legislature convenes Feb. 5, 2008, for the next regular session, these bills will be back and lawmakers will be more familiar with them.

One bill advocated by the Alabama Department of Industrial Relations but supported by ARA that died with hundreds of other bills on the final day would have corrected the 2005 State Unemployment Tax Act. ARA will work with the Alabama Department of Industrial Relations to get a federal waiver to avoid the substantial consequences of not passing that bill, or seek a special session to avoid the $378 increase per employee in federal unemployment taxes.

>> Other News

FINAL DAY SUCCESS

Online Business License Renewals/Payments May Be on Way
Study Committee Will Report Its Findings in 2008

The only ARA-supported legislation that survived the final legislative day was a resolution to create a task force to study the feasibility of and set a timeline for a statewide online filing and payment system for business licenses, one of the planks of your ARA 2007 State Legislative Agenda. Early in the day before it reverted to the stalling and tension that typified the session, the Alabama Senate approved HJR 9. It creates a seven-member Municipal Business License Filing Interim Task Force, which is to report its findings to the Legislature no later than the fifth legislative day of the 2008 regular session.

A GOOD DEFENSE

ARA Best at Keeping Bad Legislation from Slipping Through

Often more important than passing bills is killing those that could be detrimental to retailers. Here are summaries of legislation the Alabama Retail Association successfully opposed in the 2007 regular session of the Alabama Legislature.

- SB 250
- SB 254
- SB 255
- SB 275
- SB 321
- SB 357
- SB 474
- SB 494
- SB 505
- SB 511

IN THE NEWS

- Senate turns into slugfest State Senate smackdown
- Punch thrown in Senate scuffle
- The 2007 session in a Nutshell
- Filibuster spells end to Sunday liquor bill
- Legislature OKs higher insurance requirements
- PAC-to-PAC bill dies on last day
- Riley dusts off line-item veto on session's last day
- Riley OKs education budget, uses line-item veto on General Fund
- Alabama governor signs farm truck exemptions
- As session ends, many bills on table
- Beer bill goes flat, wins Alabama's Shroud Award
- Amendments approved amid low voter turnout
- Voters approve amendments by wide margins
- Voters approve bond amendment to help fund steel mill
- Minimum wage law impacts poster compliance
- Immigration bill suffers crushing blow
- Sessions wins amendment to
COOL Put on Ice

For the fifth year, legislation was introduced to require food service establishments to label seafood products as imported or domestic. As in the past, it would have affected restaurants, cafeterias, grocery delis and other facilities engaged in the business of selling food to the public.

The domestic shrimp and fishing industry pushed HB 328 by Rep. Spencer Collier, R-Irvington, and the Senate companion, SB 474 by Sen. Ben Brooks, R-Mobile, to increase sales of their product. They promoted this protectionist legislation as a food safety issue.

In order to remedy the perceived health threat, this legislation required that restaurants and delis label all fish as domestic or imported. This requirement could have been fulfilled by:

• Declaring the fish imported or domestic on the menu; OR –

• Prominently displaying a placard that lists any fish you sell as domestic or imported.

• In addition to the above, the following disclaimer must be on your menu or placard:

"Under Alabama law, the consumer has the right to know, upon request to the food service establishment, the country of origin of imported farm-raised or wild fish."

If violated, a food service establishment would have been subject to a fine up to $1,000.

ARA has led the fight to keep this country of origin labeling legislation from being considered each year and did again in 2007. ARA supports more positive programs such as the “Eat Alabama Wild Shrimp Campaign.”

Catfish Labeling Bill Doesn't Get a Bite

ARA also would rather seek a positive promotion of Alabama products in retail outlets than allow punitive measures to pass when it comes to catfish.

ARA representatives expressed concerns over SB 505 by Sen. Bobby Singleton, D-Greensboro, which would have required restaurants to inform consumers whether catfish is "farm-raised" or "river or lake” catfish or if the product was imported from a country other than the United States.

Under the bill, food service establishments would have had to comply by providing information to the consumer on a placard, menu or other written material. The bill also required the same identifying information for any advertisements.
All distributors, processors or wholesalers of catfish products would have had to provide this information to each person, firm or corporation to whom they distributed or sold catfish products for resale. Civil penalties of up to $5,000 could have been assessed for non-compliance by any party.

The Senate Agriculture, Conservation and Forestry Committee never reviewed the bill.

Retailers Won’t Have to Collect Pre-Paid Wireless Phone Fees
Study Committee with ARA Member Looking at Issue

A bill proposed in the Alabama House would have required retailers to collect the E-911 fees required to be paid on wireless phone service at the point of sale for pre-paid wireless phones. HB 3 by Rep. Locy Baker, D-Abbeville, would have allowed Commercial Mobile Radio Service (CMRS) providers to collect and remit the CMRS service charge by either:

- using a formula on the amount of revenue for phones sold; OR
- the CMRS’ provider or other vendors would collect at the point of sale a service charge from each customer of prepaid wireless telephone service in the amount of one percent of the purchase price of the service.

ARA representatives asked the sponsor to carry over his bill in favor of setting up a study committee on the feasibility of collection measures. This committee will have an ARA-appointed member.

Alabama’s Right-to-Work Law Survives Assault

ARA-opposed bills that essentially would have repealed Alabama’s Right-to-Work Law never received committee action in either body.

SB 160 by E.B. McClain, D-Midfield, and HB 563 by Rod Scott, D-Fairfield, would have required non-union employees to reimburse unions for their representation in a grievance arbitration process. Such representation is a responsibility labor unions initially accept when organizing a workforce.

Under current law, an employee in a unionized shop can choose not to join the union and therefore, not pay union dues. Under this scenario, the employee is still entitled (required) to use the grievance arbitration procedures through the general e-mail address: house3@alhouse.org
There is no general e-mail address for senators. Click here for a roster of the state senators with their complete contact information.

Links to contact info:
The link to each lawmaker mentioned in this publication goes to their individual websites, which have contact information. You can also find out whose legislative district you live or work in under Find Your Lawmaker in the Political Affairs section of alabamaretail.org.

For committee assignments and clerk contacts for the Alabama Legislature, see ARA’s 2011 Legislative Roster.

Now, Even More Benefits from ARA

Your Business Can Save
provided under the union contract; and the union is required to pay the associated expenses. Under the proposed legislation, the union would have been able to charge non-union employees for expenses incurred during arbitration procedures. The resulting effect would have been to force non-union employees to join the union.

**Burden of Proof Intact; Law Remains Same**

When Workers Allege Discharged for Worker’s Comp Claim

Rep. Marcel Black, D-Tuscumbia, and Sen. Rodger Smitherman, D-Birmingham, tried to weaken the burden of proof for claimants in cases alleging workers were discharged for filing a workers’ compensation claim. Currently, under the Code of Alabama, “no employee shall be terminated by an employer solely because the employee has instituted or maintained any action against the employer to recover workers’ compensation benefits …” **HB 330 and SB 250** attempted to change the law to read “solely or substantially because the employee has instituted or made a claim to recover workers’ compensation ….” Though it received a favorable report in the Senate Judiciary Committee, the entire Senate did not vote on the measure. The House Commerce Committee never considered this **ARA-opposed bill.**

**Pharmacists Can Continue to Substitute Anti-Epileptic Generics**

**HB 303** by Rep. Ron Johnson, R-Sylacauga, would have prohibited pharmacists from substituting any anti-epileptic therapeutic product without the consent of the prescribing physician and patient. Sen. Linda Coleman, D-Birmingham, introduced the Senate companion, **SB 248.** Pharmacist substitution of brand name drugs with FDA-approved, generically equivalent drugs saves money for patients, employers and insurance carriers.

Throughout the country, similar legislation has been introduced, creating obstacles to the existing generic substitution practices for prescription drugs used to treat epilepsy. A mandate to prevent pharmacists from substituting drugs prescribed to treat epilepsy with generically equivalent alternatives unless the pharmacist first obtains signed, informed consents from both the prescriber and the patient would adversely affect the delivery of patient care.

Neither chamber voted on this **ARA-opposed legislation.**

**Thousands**

ARA constantly strives to increase the Value its members received from membership. Many members have been using our low-cost workers' comp program for years, but were asking for more. In January, we announced more savings. ARA members now have access to:

**Cost-Saving Credit Card Processing:**

Through a partnership with Huntsville-based **CHECKredi**, ARA members get rates normally reserved for only the largest stores.

**Discounted Inbound and Outbound Shipping:**

Through our arrangement with **PartnerShip** ARA members can save up to 27% on FedEx services and up to 70% on other shipping needs.

**Budget Friendly Email Marketing:**

**Constant Contact** brings ARA members cutting edge e-mail marketing technology for as low as $15 a month; members save up to 25%

**Find Out More Today**

**IMPORTANT EVENT THIS WEEK**

**WHAT:** Birmingham Business Leadership Exchange

**WHEN:** 6 p.m. Wednesday, April 6

**WHERE:** Regions Center Upper Lobby Auditorium, 1900 5th Avenue North

**Complimentary parking available at Regions Center deck via 19th St. North**

The Speaker’s Commission on Job Creation is partnering with the Birmingham Business Alliance to invite business
Sanders Bills Sought to Extend Statute of Limitations
Could Have Revived Hundreds of Cases

ARA opposed two bills by Sen. Hank Sanders, D-Selma, which could have extended the statute of limitations on virtually any issue.

SB 205 extended the statute of limitations for toxic substances exposure for civil actions and provides for retroactive effect. It also allowed for multiple claims for the same action. This could have revived hundreds, if not thousands, of cases currently barred.

SB 206 proposed an amendment to the Constitution of Alabama to permit the revival of certain actions previously barred by a statute of limitations, for any claims for disease or property damage resulting from exposure to any toxic substance. The Alabama Civil Justice Reform Committee, of which ARA is a member, contended the bill could be construed by a court to pertain to any action, not just limited to toxic cases. In the bill, the term toxic substance referred to any physical substance or material, exposure to which is toxic or hazardous to human life or well being, or which causes any disease process, including, without limitation, all hazardous substances, hazardous wastes, hazardous materials, and toxic substances as defined by federal law.

The Senate Judiciary Committee did not act on either.

Security Freezes for Credit Reports Averted

A bill by Rep. Steve Clouse, R-Ozark, would have allowed a consumer to elect to place a security freeze on his or her credit report by making a request in writing by certified mail to a consumer credit reporting agency. A "security freeze" would prohibit credit reporting agencies from releasing the consumer's credit report or any information from it without the express authorization of the consumer. If a security freeze is in place, information from a consumer's credit report may not be released to a third party without prior express authorization from the consumer.

HB 80 would have given the consumer the right to bring civil action against anyone who improperly obtains access to a file, knowingly or willfully misuses file data, or fails to correct inaccurate file data, including a consumer credit reporting agency.

ARA, the Automobile Dealers Association and the Bankers Association met with the sponsor to point out many owners of companies across the industrial spectrum to attend a "Business Leadership Exchange," and share their ideas about how to improve the business climate in the state. If you have any questions, please contact the office of House Speaker Mike Hubbard at 334-242-7668. If you are unable to come to the Birmingham exchange but would like to submit ideas and recommendations, you may email them to Alabama Jobs Commission or join the conversation on Facebook at facebook.com/speakersjobscommission.

Dietary Supplements Ban for Minors Unnecessary

HB 356 by Rep. Tommy Sherer, D-Jasper, would have prohibited the sale of certain dietary supplements to those under the age of 18. It would have prohibited selling dietary supplements to those younger than 18 if those supplements contained: an ephedrine group alkaloid; Androstanediol; Androstanedione; Androstenedione; Norandrostenedione; OR Dehydroepiandrosterone.

After research by ARA, it was discovered that the FDA banned so-called “andro” containing supplements a few years ago. After learning of this, the sponsor asked for the bill to be carried over. ARA appreciated Rep. Sherer’s cooperation.

Under the bill, a seller would have had to ask for valid identification from any person who attempted to purchase a dietary supplement with one of those ingredients if that person reasonably appeared to be under 18 years of age. The crime of selling, transferring, or otherwise furnishing any of these to someone younger than 18 years of age would have been a Class Amisdemeanor.

Pharmacy Board Make Up Remains Intact

ARA opposed HB 170 by Rep. Ron Johnson, R-Sylacauga, which would change the make up of the Alabama Board of Pharmacy, on the basis it would be divisive to pharmacy in Alabama.

Under existing law, the Alabama Board of Pharmacy consists of five members, with three appointed by the governor from certain types of pharmacies and nominated by various groups. Johnson’s bill sought to have the independent pharmacist member of the board nominated by the Alabama Independent Drug Store Association. Current law requires members to be licensed pharmacists who have been licensed in this state for a minimum of five years, but this bill attempted to increase that to 10 years and further require them to be full-time Alabama residents actively engaged in the practice of pharmacy or pharmacy administration in Alabama, or both.

The legislation required any board member serving in one of the three designated positions for a hospital, independent or
chain pharmacy who left that designated practice during his or her term to be terminated from the board within 90 days of the date his or her change in practice.

Unnecessary Legislation to Protect Military Avoided

Even legislation with noble purposes sometimes isn’t necessary. Such was the case with SB 238 by Sen. Del Marsh, R-Anniston. His bill would have recognized those who served in the armed forces for their patriotism and sacrifice by providing them with certain protections. The bill would have provided business license waivers, driver’s license extensions, a death benefit for a beneficiary, certain contract and lease benefits, certain rights regarding civil actions, limitations on interest on certain debt, and residential and cell phone contract benefits. However, it had a number of problems, including requirements that overlapped with and/or expanded those already provided under federal law, vague and ambiguous provisions, inconsistent and poorly defined terms with internal inconsistencies between provisions. It would have especially created a burden for creditors.

ARA proudly supports our service men and women and their continued protection, but saw this legislation as unnecessary and redundant.

State Minimum Wage Didn’t Happen

ARA opposes mandated wages other than the minimum set by the federal government and while the federal minimum wage did increase, Alabama won’t have a separate minimum wage as a result of this legislative session.

The Alabama Minimum Wage Act, HB 331 by Rep. Patricia Todd, D-Birmingham, would have gradually phased in a $7.25-an-hour minimum wage for Alabama workers. Any employer who violated this act would have been subject to a penalty of between $500 and $1,000 for each infraction. The House Commerce Committee refused to act on this legislation.

Judicial Elections Faced Challenges from Multiple Fronts

The Alabama Retail Association, as a member of the Alabama Civil Justice Reform Committee, opposed a line of bills that could have revamped how Alabama selects its appellate judges.
ARA opposed these bills and will oppose any other measure that would strip Alabama voters of their right to elect judges or change the current judicial election system.

Fortunately, no committee in either chamber favorably reported any of these bills:

- **HB 710** by Rep. Charles Newton, D-Greenville, and pushed by the Alabama Bar Association, provided for the merit selection of candidates for state appellate judicial office and would have established a Judicial Nominating Commission for state judicial candidates. The bill provided that a person appointed to a state appellate judicial office would stand for re-election at the end of his or her term in the form of a retention election. The bill also established a Judicial Evaluation Commission to evaluate performance of a state appellate judicial officer standing for re-election in a retention election. It also would have allowed this group to submit three names to the governor in the event of a vacancy on any of the three appellate courts. Another provision of this bill would have removed the maximum age restriction concerning being elected or appointed to a judicial office.

- **HB 536** by Rep. Marcel Black, D-Tuscumbia, and **SB 357** by Sen. Rodger Smitherman, D-Birmingham, which called for a constitutional amendment to allow vacancies in any trial or appeals court to be filled by appointment. A nominating commission would interview candidates and recommend three finalists for the governor to choose. The appointee would face voters and any challengers in the next general election. These bills applied to the appeals court as well as circuit and district courts.

- **HB 605**, also by Newton, would have made elections nonpartisan for district and circuit court judges. It only required approval by the Legislature and governor.

- **HB 474** by Rep. Jeff McLauglin, D-Guntersville, would have allowed nonpartisan elections for all judges at the trial and appellate levels. It also only required approval by the Legislature and governor.

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**ARA Member on E-911 Wireless Phone Fee Study Committee**

ARA sought and received an amendment to ensure that one member of a study committee, which will review the process by which wireless phone service fees are collected to fund the state Enhanced 911 emergency telephone service, will be
appointed by your Alabama Retail Association. That seat will be a retail company that sells prepaid wireless telephone service to Alabama customers.

In the 2007 session, the Alabama Legislature approved HB 318 by Rep. Ron Johnson, R-Sylacauga, which calls for the state to rethink the procedures, collection, distribution and governing body for the fees wireless phone users pay. The study committee will make recommendations to the Legislature on those changes by the fifth day of the 2008 regular session. The companion bill was SB 193 by Sen. Ted Little, D-Auburn.

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Early Prostate Cancer Detection Bill on Way to Governor

Thursday evening, the Alabama House of Representatives gave final approval to SB 255 by Sen. Rodger Smitherman, D-Birmingham, which encourages insurance companies and self-insured plans to offer policies that include prostate cancer screenings for men older than 40. The final version of the bill only calls for the companies to "offer" the coverage rather than "mandating" they pay for it. Virtually all major private health care insurers in Alabama already provide for screening for prostate cancer in their coverage. ARA opposes health insurance mandates as they drive up health costs. No mandate legislation made it through the 2007 legislative session.

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Sponsor Heard ARA Concerns on Social Security # Removal Bill

HB 178, which would have required Social Security numbers and birthdates to be removed or covered on documents recorded in a probate office, was substituted after concerns were raised by ARA representatives about the effect of the provisions on credit reports.

As substituted, the exceptions to the bill included federal and state tax liens and whenever the birth date is required by law in the document. Access to original, complete versions of state and federal tax liens are necessary to protect the integrity of credit reports. ARA appreciates the cooperation of the sponsor, Rep. Victor Gaston, R-Mobile. Like so many bills, this one died on the final legislative day due to inaction.

The Senate companion was SB 226, by Sen. Kim Benefield, D-Woodland.
ARA Able to Substitute Computerized Data Breach Notification
Bill Dies Without Floor Action

ARA and other interested parties met with Sen. Phil Poole, D-Moundville, sponsor of SB 114, which would have required those with computerized data containing personal information about Alabama residents to inform them of any breach of security. The goal was to amend the bill to make it more uniform with other states and to prevent duplicative notices on a single security breach.

A substitute bill was adopted in committee, but never received floor action. ARA offers a special thanks to Sen. Poole for his assistance.

Under the bill, businesses would have had to notify Alabama residents of any breach of security as soon as reasonably possible. If notification involved more than 100,000 people or a cost of $250,000 or more, the owner of the compromised computerized data would have had to notify the injured parties by e-mail, post the notice conspicuously on their Web site and notify the major statewide media, instead of providing written notice.

ARA Fought Expansion of Prison Industries into Private Sector

HB 618 by Rep. Mike Ball, R-Huntsville, would have allowed private employers access to prison labor housed behind the fences of correctional facilities.

ARA reached an agreement with the Alabama Department of Corrections to strike the objectionable secondary purpose of the bill, which was to expand the market for prison industry goods and services to state, county and city employees as well as 501(c) organizations. That provision would have put prison labor in direct competition with retailers.

Alabama Prison Industries manufactures products such as office furniture, clothing, custom furniture, corrugated boxes, mattresses, janitorial products, office cubicles and paint. In addition, Prison Industries offers such services as furniture restoration, auto restoration, printing and data processing.

The agreement ARA reached with DOC would eliminate the expanded market provisions. Although a Senate committee adopted the ARA-agreed-on substitute, neither chamber acted on the bill.
Compromise Sought on Invasive Legislation; Bill Still Dies
Bill Tried to Out Businesses with Employees on Public Health Care

The House Government Operations Committee repeatedly carried over HB 420 by Rep. Sue Schmitz, D-Toney, which required applicants for publicly funded health-care benefits to disclose the names of their employers.

**ARA worked with the sponsor on a compromise** to clarify confusing language in the bill, make sure employees are full-time workers before they are disclosed and ensure that any disclosures of franchise employers are specific.

**ARA opposed this legislation** as punitive on small business owners who work hard to provide benefits for their employees.

The original extremely invasive legislation would have required any potential beneficiary of such programs as the Children’s Health Insurance Program, Medicaid and the Alabama All Kids program to identify his or her employer, if that employer had 50 or more employees on public assistance. No later than Feb. 1 of each year, Medicaid and the Alabama Department of Public Health would have had to report each employer’s name, business address and total number of employees and dependents enrolled in each publicly funded health-care program to the Legislature. The Legislature then could make that report available to the media.

However, the committee refused to take action on the bill.

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WE’LL BE BACK

**ARA Takes Your Concerns to Lawmakers**

*ARA works hard to keep in touch with members on concerns they would like to see addressed in the Legislature. ARA representatives worked to have these bills introduced as a direct result of contacts made with our membership.*

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**ARA-Backed Late Fee Increase Will Return in ’08**

The first item the ARA board approved as a part of our 2007 legislative agenda was a modest increase to $18 for the late fee for credit payments.

Rep. Leslie Vance, D-Phenix City, and Sen. Bobby Denton, D-Muscle Shoals, graciously introduced HB 323 and SB 168. Unfortunately, the House bill was carried over on the House
floor after being filibustered, and the Senate bill got caught in the Senate logjam.

Since 1997, a creditor has been able to charge $10 or five percent of the schedule payment, whichever is greater up to a cap of $100, when a credit payment is late. Previously, the late charge was $5. Obviously, the cost to a creditor for collecting delinquent payments has increased in the past 10 years. The $18 we asked for is still only half of what the typical bank credit card can assess and can assess sooner.

ARA will work again next year for passage of this needed legislation.

Theft by Emergency Exit Bill to Make Come Back

Sen. Roger Bedford, D-Russellville, and Rep. Tammy Irons, D-Florence, introduced ARA-backed bills that would make it first-degree theft of property for anyone attempting to steal property to use an emergency exits to make a quick get away and evade loss prevention efforts.

In a constant battle to stay one step ahead of law enforcement and retail loss prevention professionals, shoplifters constantly refine their techniques. To the frustration of retailers throughout Alabama and the United States, shoplifters’ latest method manifests itself in using emergency exits to make their escape.

Under current law, you’d have to steal $2,500 worth of property to reach the level of first-degree theft. Under SB 254 and HB 789, anyone who trips the emergency alarm to mask their getaway while stealing any amount of property would be guilty of first-degree theft. This legislation was part of ARA’s 2007 State Legislative Agenda.

>> Read ARA’s Issue Brief

Although the bill did not make it to the floor of either chamber this year for debate, ARA will work again next year for passage of this bill.

Electronic Records Retention Bill Begins Dialogue

At the request of ARA, Rep. Jim Barton, R-Mobile, introduced a bill that would have provided that if a computer system in a pharmacy was able to capture an electronic visual image of a prescription drug order, the electronic image would constitute the original prescription and a written original would not have been required.
HB 648 was introduced to begin the conversation about electronic records retention with other interested parties and regulatory bodies. We did not plan to move the bill this year, but will encourage open dialogue prior to the 2008 regular session for future passage.

Technology can capture and store a trove of data on patient outcomes, compliance, drug therapy and other important information. As the industry moves to integrate the information internally and among healthcare systems by way of increased use of e-prescribing and electronic medical health records, this proposed statute will allow pharmacies to use this vehicle to populate those records.

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Energy-Efficient Products Sales Tax Holiday to Return

Two bills that ran out of time in the 2007 regular session contained the ARA-supported concept of a sales tax holiday for energy-efficient products.

HB 743 by Rep. Sue Schmitz, D-Toney, would have sought to include certain energy efficient products in the August sales tax holiday. Schmitz' bill added energy efficient products with a sales price of $1,500 or less per product purchased for noncommercial home or personal use to the products exempted from sales and use tax during the holiday. Under this legislation, certain ENERGY STAR® appliances would have been exempt from sales taxes. ENERGY STAR® appliances have been designated by the U.S. Environmental Protection Agency and the U.S. Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements.

Adding energy-efficient products to the sales tax holiday also was part of HB 773, known as the Alternative and Renewal Energy Act of 2007, by Rep. William Thigpen, D-Fayette. Thigpen’s bill has two identical Senate companions: SB 494 by Sen. Parker Griffith, D-Huntsville, and SB 511, also by Griffith, assigned to two different committees.

An energy-efficient products sales tax holiday has been on the ARA’s legislative agenda for several years and will no doubt return again.

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'Common Sense Consumption Act'
Comes Up Against Weighty Opposition
Opposition from trial lawyers kept HB 731 by Rep. Neal Morrison, D-Cullman, from advancing in the 2007 regular session. This bill to prevent frivolous lawsuits against manufacturers, distributors, retailers, advertisers and others associated with lawful food products was part of ARA's 2007 Legislative Agenda.

This is the second year ARA has supported this bill, and it won't be the last.

The bill provided that no manufacturer, distributor, or seller of certain food or beverages is subject to civil liability for the personal injury to a consumer that is based on obesity or weight gain. The Common Sense Consumption Act would protect retailers from civil liability for any claim arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food.

With restaurant profit margins averaging around 4 percent, a single frivolous lawsuit is enough to put a small restaurant out of business. That is why ARA included this legislation to stop this type of lawsuit in its legislative agenda.

>> Read ARA's Issue Brief on this topic

A HELPING HAND

ARA Supports Other Business-Related Legislation

The Alabama Retail Association happily supports the good ideas and efforts of others to advance the business climate in Alabama. Here's just a few of bills we supported this legislative session.

ARA Supported Passage of 7-Day Beverage Sales

The Alabama Retail Association was part of the Partnership for Economic Progress, which supported legislation to allow the city councils of Tuscaloosa, Gadsden, Anniston, Decatur, Dothan, Florence, Selma, Alexander City, Athens, Enterprise, Ozark, Sheffield, Sylacauga and Talladega to hold referendums on seven-day beverage sales, allowing local voters to decide this question for their communities.

SB 321 by Sen. Bobby Singleton, D-Greensboro and HB 507 by Rep. Craig Ford, D-Gadsden, granted this power, already held
by Bessemer, Phenix City, Prichard, Auburn, Center Point, Fairfield, Homewood, Mountain Brook, Opelika and Prattville. This bill did not expand sales of alcoholic beverages by any municipality not selling beverages at the time of this bill’s passage. It would have allowed cities to decide the hours of sale and the types of licenses that can sell, such as grocery stores, restaurants or bars.

Seven-day beverage sales increase local jobs, expand payrolls, create economic development and bring tourism to towns and cities throughout Alabama. It benefits the bottom line for retailers and it means more revenue for schools, seniors and health care. Although scheduled for debate on the last day, this legislation also died. We expect the coalition to continue their efforts in 2008.

**ARA Will Seek Special Session/Waiver**

*To Avoid Higher Unemployment Taxes*

Alabama businesses could see a $378 increase per employee in federal unemployment taxes because the Alabama Senate didn’t approve a House bill that corrects state tax law. Despite the Senate’s failure to act, ARA members came through. **Thanks to all who called their senators to urge passage of this bill.** Your voice was heard and commented on by the lawmakers. Unfortunately, the Senate conflict was too great to overcome.

**HB 83** by Rep. Frank McDaniel, D-Albertville, would have made a required correction to the 2005 State Unemployment Tax Act, which put the state in alignment with federal law.

Phyllis Kennedy, director of the Alabama Department of Industrial Relations, said failure to pass the legislation will give the U.S. Department of Labor the authority to remove a 5.4 percent tax credit currently in place for Alabama employers, which will “increase the tax exponentially.” Kennedy said elimination of the tax credit would raise federal taxes from 0.8 percent of the first $7,000 of wages to 6.2 percent of the first $7,000 of wages. **That equates to an increase from $56 to $434 per employee!**

Kennedy said her department has contacted the Labor Department and is hopeful the federal agency will give the state a grace period. “We will await word from the Labor Department as to when they would initiate compliance proceedings,” Kennedy said.

If no grace period or temporary waiver until the 2008 regular session is granted, your ARA will ask the governor to call a special session to pass this vital legislation.
Electronic Payment Legislation Receives ARA Support

ARA supported State Treasurer Kay Ivey in her efforts to allow the state comptroller to electronically pay warrants of more than $2,500 to business entities, vendors and providers of professional services, rather than cut a paper warrant.

HB 443 by Rep. Neal Morrison, D-Cullman, and its Senate companion, SB 275, by Sen. Wendell Mitchell, D-Luverne, would have accomplished that increased efficiency and modernization of the way the state does business. However, this bill also was buried on the last day of the session.

Small Biz Regulatory Flex Act Doesn’t Reappear on Final Day

As it has in the past, ARA supported HB 84, by Rep. Frank McDaniel, D-Albertville, which mirrored federal provisions requiring that any state agency that proposes a new rule or rule change that affects small business to prepare a small business regulatory flexibility analysis, including a small business economic impact statement. The bill defined a small business as one that employs fewer than 100 full-time employees or has gross annual sales of less than $6 million. This legislation also would have required a five-year review of all state agency rules to determine their effect on small business.

When the bill was before the Senate for final passage earlier in the session, the Senate carried it over and never brought it up on the final day. We will again support the Small Business Regulatory Flexibility Act in future sessions.

ARA Gets Behind Parallel Stand on Minimum Wage and Benefits

ARA supported HB 322 by Rep. Jack Williams, R-Birmingham, which would have prohibited any local law from setting a minimum wage that is greater than the federal minimum wage or requiring an employer to provide benefits in excess of what is required by federal law. His legislation parallels the ARA 2007 legislative stand on minimum wage and benefits. The House Commerce Committee gave the bill a favorable report, but the House did not bring it up for debate.

Healthcare Incentives Were Another ARA Supported Cause
Bill Would Have Benefited Small Business

Unfortunately, the House Education Appropriations Committee never reported out a bill by Rep. Jay Love, R-Montgomery, which would have encouraged small businesses to provide health insurance coverage for employees. HB 278 would have allowed certain qualified small businesses to deduct enhanced amounts for expenses related to health insurance premiums under certain conditions. It also would have allowed qualified employees to deduct certain amounts of their health insurance premiums contributions under certain conditions. ARA strongly supports reducing healthcare costs, including reducing employers’ costs for providing healthcare for employees.

Fortified Wine Bills Saw Committee Action Only

Bills to allow stronger wines to be sold in grocery and convenience stores received favorable committee reports, but were not acted upon in either chamber. SB 124 by Sen. E. B. McClain, D-Midfield, and HB 147 by Rep. Johnny Mack Morrow, D-Red Bay, also would have allowed fortified wine to be sold by any Alabama Beverage Control Board licensee.

ARA and ACJRC Tried Once More to Complete Tort Reform

For the eighth time since the Alabama Legislature approved a three-bill tort-reform package in 1999, the Alabama Civil Justice Reform Committee, of which Alabama Retail Association is a member, tried to complete tort reform in our state.

Unfortunately, none of the three bills moved. This is what we tried to accomplish on your behalf:

- **Limit Mental Anguish Lawsuits**
  HB 614 by Rep. William Thigpen, D-Fayette, would have established a minimal evidentiary standard for recovery of damages for mental anguish by requiring the claimant to have sought treatment by a licensed mental health provider or physician prior to recovery for mental anguish or emotional distress. Under this legislation, mental anguish damages would have been limited to three times the economic damage.

- **Keep Product Liability From Extending to Retailer**
  HB 654 by Rep. Steve McMillan, R-Bay Minette, provided that product liability would not extend to the wholesaler, distributor, dealer, retailer or seller of the
product unless that entity is also involved in the
design, manufacture, labeling or assembly of the
product in such a way that is casually related to the
alleged defect. The bill provided that product liability
actions could not be brought after 15 years from the
date of manufacture of the product, and provided for
the recovery of compensatory damages in a product
liability wrongful death action. Under the legislation,
punitive damages could be awarded only upon proof
by clear and convincing evidence that the defendant
acted intentionally to cause injury or intentionally
engaged in conduct that he knew would cause injury.

- **Tie Post-Judgment Interest to Federal Standard**
  
  **HB 694** by Rep. Marcel Black, D-Tuscumbia, tied the
post-judgment interest rate to the one-year constant
maturity Treasury yield, for the calendar week
preceding the date of the judgment. This is the interest
rate used on judgments entered in federal court and
allows for the recovery of post-judgment interest at a
fair market rate. Under current law, interest on
judgments accrues at 12 percent annually.

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