

*From Montgomery
to Washington,
ARA is there
to benefit you!*

CRR EXTRAS

Friday, May 22, 2009

'09 Session Rates as Successful

In Terms of Retail- Supported Items Approved

More Taxes Avoided; Regulatory Change Made

With one exception, the 2009 regular session of the Alabama Legislature proved productive for retailers. More ARA-supported legislation received final approval during this session than in any other session in the current quadrennium. The "tax" word got much less play in 2009 than it did during last year's regular session, when retailers and business successfully beat back \$1 billion in new taxes. Most significantly, your Alabama Retail Association and 29 other business groups successfully kept a multi-million dollar unemployment compensation tax increase from final passage. Plus, loads of other legislation that would have harmed retailers and others died when the final gavel struck on Friday, May 15.



Among the more than 1,622 bills introduced, only two that add to the regulatory burden for restaurateurs received final approval during the entire 30 legislative days

stretched over three and a half months, and, as much as possible, ARA mitigated the effects of that legislation, which places additional labeling requirements on food-service operators.

ARA-supported legislation that became law as a result of action in the 2009 session:

- provides incentives to grow movie, TV and video production in our state;
- corrects a flaw in the state law concerning the sale of ephedrine and pseudoephedrine products; and
- allows small towns to decide for themselves if they want to permit alcoholic beverage sales, while allowing businesses operating under both restaurant and club liquor licenses to continue to do so.

TOP ISSUES

- [Behind-the-counter cold and allergy remedies continue](#)
- [Movie productions to return to Alabama](#)
- [ARA member is Recession Angel](#)
- [Small towns lining up alcohol referendums](#)
- [Alabama can now sell richer wines and gourmet beer](#)
- [No new unemployment comp tax increase](#)
- [Deduction for income taxes paid intact](#)
- [Seafood/catfish labeling a reality](#)
- [Guns in parking lot issue will resurface](#)
- [Weigh in on data security breach compromise](#)
- [Alabama to continue electing judges](#)
- [ARA deflects assault on generics](#)
- [ARA will try again for energy-efficient sales tax holiday](#)
- [Law makers revise child labor law](#)
- [Rules for tobacco sales change Aug. 1](#)
- [Summer special election update](#)

BILLS

- [Act 144](#)
- [Act 283](#)

Besides shepherding bills to passage, ARA also had a hand in keeping some extremely detrimental legislation from seeing the light of day, including the proposed \$22 million annual unemployment compensation tax increase, mandatory unitary combined reporting for multistate corporations and changes in the way judges are elected.

All in all, the 2009 legislative session rates as successful. No punches were thrown, the budgets passed during the regular session without draconian cuts (thanks to the federal stimulus) and lawmakers maintained a brisk pace with more than 200 bills outside budgetary, local and sunset bills receiving final approval compared to the meager number approved in the first two years of this term. Fewer bills should be considered next year as 2010 is an election year; nonetheless, ARA will be back with key planks of its legislative agenda including an increased deduction for health insurance and an energy-efficient sales tax holiday. The next regular session begins Tuesday, Jan. 12, 2010.

An account of how select bills - among the almost 100 that ARA supported, opposed or monitored - fared during the 2009 regular session follows.

>> Other News

ALABAMA LEGISLATURE AGREES WITH ARA

ARA Prevents Ephedrine from Being Banned Even Behind Counter

On April 21, Gov. Bob Riley signed **a correction to the state law regulating the sale of ephedrine or**

pseudoephedrine. That change, [Act 2009-283](#), was **among items supported by the**

Alabama Retail Association to become law in the 2009 regular session. If [SB 47](#) by [Sen. Lowell Barron, D-Fyffe](#), had not received final legislative approval in the 2009 session, come Oct. 1, all **over-the-counter medications now being sold behind the counter** through a signature log **would have been banned completely from sale**. State law now no longer contains a prohibition against the sale of any product containing ephedrine or pseudoephedrine unless the product is manufactured so that those active ingredients cannot be extracted to be used in the production of methamphetamine. With this prohibition deleted, pharmacies can continue to sell ephedrine and pseudoephedrine products in the same way they have since state and federal changes were made to



- [Act 376](#)
- [Act 380](#)
- [Act 409](#)
- [Act 509](#)
- [Act 546](#)
- [Act 565](#)
- [Act 576](#)
- [Act 578](#)
- [Act 582](#)
- [Act 584](#)
- [Act 659](#)
- [Act 771](#)
- [HB 018](#)
- [HB 056](#)
- [HB 116](#)
- [HB 121](#)
- [HB 126](#)
- [HB 127](#)
- [HB 128](#)
- [HB 134](#)
- [HB 193](#)
- [HB 270](#)
- [HB 330](#)
- [HB 362](#)
- [HB 411](#)
- [HB 496](#)
- [HB 548](#)
- [HB 567](#)
- [HB 639](#)
- [HB 797](#)
- [HB 865](#)
- [HB 869](#)
- [HB 943](#)
- [HJR 315](#)
- [SB 027](#)
- [SB 100](#)
- [SB 115](#)
- [SB 132](#)
- [SB 203](#)
- [SB 288](#)
- [SB 326](#)
- [SB 381](#)
- [SB 388](#)
- [SB 407](#)
- [SB 460](#)
- [SB 545](#)
- [SB 624](#)
- [SJR 131](#)
- [SJR 140](#)

those type sales in 2004. When the ephedrine/pseudoephedrine law originally was written, it was thought the technology to prevent extraction of the ingredients used in methamphetamine production would exist by the Oct. 1 effective date of the prohibition. Such technology does not exist. **Thanks to Sen. Barron and Rep. Frank McDaniel, D-Albertville,** who carried the companion legislation, **HB 183**, which received House approval but never made it to the Senate, for their sponsorship of this plank of **ARA's 2009 State Legislative Agenda**.

It's Lights, Cameras and Action in Alabama

As early as late summer, **retailers could see increased sales because of the Entertainment Industry Incentive Act of 2009, an ARA 2009 Legislative Agenda item**, which the governor signed into law March 24. **Act 2009-144** should grow the state's movie industry as well as soundtrack productions by offering tax incentives to smaller movie, TV and video productions with budgets ranging from \$500,000 to \$10 million and soundtrack productions spending at least \$50,000. The new law places a limit of \$5 million on the rebates available this year, with the cap growing to \$7.5 million in 2010 and \$10 million in the years beyond. **Thanks to Rep. Richard Lindsey, D-Centre,** who sponsored **HB 69**, and **Sen. Roger Bedford, D-Russellville,** who sponsored the Senate companion, **SB 148**.

Lawmakers Honor ARA Member for Stimulating Economy

The full membership of the Alabama House and Senate honored Danny Cottrell, owner of **The Medical Center Pharmacy** in Brewton and Atmore and **an ARA member since 2001**, in a joint resolution sponsored by **Rep. Ken Guin, D-Carbon Hill, HJR 315** commends Cottrell for the "**Brewton Bump**," an upsurge in the Brewton economy brought on



Danny Cottrell, center, with his employees and their bonuses in \$2 bills in his Brewton pharmacy. (Photo by John David Mercer / Press-Register)

by Cottrell's personal economic stimulus plan in which he gave each full-time worker \$700 and each part-time worker \$300 in \$2 bills, asking his employees to donate 15 percent to charity and spend the rest at downtown Brewton businesses. Cottrell's plans brought national attention to the

- [Sunday alcohol sales may continue in Shelby and Houston counties](#)
- [Wine bill signed as liquor bill veto overridden](#)
- [Alabama governor approves stronger beer](#)
- [Alabama Legislature approves higher-alcohol beer](#)
- [Jemison stepping closer to vote on going wet](#)
- [Albertville OKs draft or keg beer sales; agrees to join sales tax holiday](#)
- [Colbert County draft beer bill approved](#)
- [Alabama enacts catfish, seafood origin disclosure](#)
- [Labeling fish bill passes](#)
- [Legislators: Concealed weapons bill will return next session](#)
- [Governor signs Child Labor Reform Act](#)
- [Rolling Reserve Budget Act deserves prize for Alabama's most innovative reform idea](#)
- [Identity theft protections pass Legislature](#)
- [District 22 voter registration deadline today](#)
- [Democrats cheer fresh faces in House District 6 race](#)
- [District 6 candidate runs to help the 'common man'](#)
- [If he wins, House District 6 candidate Sasan says he'll quit his police job](#)

For more stories concerning legislative action and news

state. ABC News named him a Recession Angel. He also was featured on Fox News, Good Morning America, and NBC News. In the greatest form of flattery, other pharmacists even copied his idea and launched similar stimulus plans. The resolution received final approval from the Senate on the final day of the 2009 regular session. **ARA joins the Legislature in congratulating Cottrell for drawing attention to the economic impact that retailers, especially retail pharmacies have on their communities.**

Several New Alcohol Statutes Enacted in 2009

Small Towns Can Hold Alcohol Votes; Both Restaurant and Club Licenses Possible

They had to override a gubernatorial veto to do it, but the Alabama Legislature gave final approval to **HB 175** by [Rep. Jimmy Martin, D-Clanton](#), which allows any city of more than 1,000 residents, except those in Clay, Randolph, and Blount counties, to ask voters if they want to approve the sale of alcoholic beverages, even if the municipality is in a dry county. As of this writing, at least one town, Jemison, had collected signatures equaling at least 30 percent of the number of voters who voted in that municipality's last election, as required to begin the referendum process under this new law. Others are sure to be closely behind. The House overrode the veto 54-19 on April 30, and the Senate voted 18-11 on Thursday, May 14, to do the same, thus enacting the bill into a state law.

Act 2009-546 also contains **an ARA-supported provision that allows businesses now operating under both a restaurant and club liquor license to continue to do so**. Without this change, about 25 restaurants in Shelby County and another 20 restaurants in Dothan would have had to decide between their two licenses and quit serving on Sundays. The Alabama Alcoholic Beverage Control Board will continue to enforce a prohibition against any new businesses operating under both licenses as it has since November of last year.

Higher Alcohol Content Beer and Wine Bills Get Final OK

On May 14, Gov. Bob Riley signed **SB 263** by [Sen. Steve French, R-Birmingham](#), into law, thus increasing the allowable alcohol content of table wine in Alabama from 14.9 percent to 16.5 percent. Convenience stores are specifically excluded from selling the more potent wines under **Act 2009-509**. This law defines convenience store as a small store engaged primarily in the quick retail sale of



of interest to retailers, go to [In the News](#)

ARA CONTACTS

[Rick Brown](#)

President

[Alison Wingate](#)

Vice President

[Nancy Dennis](#)

Dir. of Public Relations

[Brett Johnson](#)

Member Relations Mgr.

LEGISLATIVE CONTACTS

To contact members of the Alabama Legislature:

WRITE:

Alabama State House
11 South Union Street
Montgomery, AL 36130

CALL:

HOUSE: (334) 242-7600
SENATE: (334) 242-7800

E-MAIL:

Most representatives can be reached through the House e-mail system by using the following format:

[firstname.lastname@alhouse.org](#).

Those without e-mail addresses can be reached 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 GO TO CONTACT INFO:

The link to each lawmaker mentioned in this publication goes to their individual websites, which

motor fuel and a limited quantity and variety of consumable items in their original containers for off-premises consumption. **Beginning Aug. 1, grocery stores, restaurants and specialty stores, such as wine stores, can offer the richer, more potent wines for sale .**

On the next to last day of the 2009 regular session, the Alabama Legislature finally freed the hops. On a vote of 19-9 on May 14, the Senate approved **HB 373** by [Rep. Thomas Jackson, D-Thomasville](#), commonly known as the "*Free the Hops*" bill, and the House on a vote of 81-3 concurred with the bill as amended by the Senate, sending it to the governor, who signed **Act 2009-771** today. The state alcohol content limitation now is 13.9 percent, immediately allowing the sale of gourmet beers in our state. The previous limitation was 6 percent. **Only merchants with a retail beer license for on-premises and off-premises consumption can sell the higher alcohol content beer under this new law .** The Senate debated but never took a vote on the companion legislation, **SB 132** by [Sen. Bobby Singleton, D-Greensboro](#).

Some Areas to Get Draft Beer

Several local bills regarding alcohol sales cleared the legislative hurdles this session. Draft beer bills were approved for Henry County (**Act 2009-376 / HB 786**), Scottsboro (**Act 2009-380 / HB 845**), Albertville and Guntersville (**Act 2009-409 / SB 573**) and Colbert County (**Act 2009-659 / HB 294**). The governor pocket vetoed one alcohol-related bill that received final legislative approval in the last week of the session, **HB 121**, which would have authorized alcoholic beverage sales for off-premises consumption after noon on Sundays for the city of Camp Hill.

DOING BUSINESS LESS TAXING FOR RETAILERS

Unified Tax Coalition Deflects Unemployment Tax Increase

More important sometimes than what passes in a legislative session is what doesn't, especially when the legislation that doesn't make it through the process would raise your taxes. Such was the case with **SB 460** by [Sen. Rodger Smitherman, D-Birmingham](#), and its companion, **HB 688**, by [Rep. Jack Page, D-Gadsden](#), **a \$22 million annual increase in unemployment compensation taxes for employers**. Neither bill passed its originating chambers.

Thanks to all the ARA members and those in the combined membership of the Business Associations' Tax



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](#).

BENEFIT FROM THE VALUE

Now, Even More Benefits from ARA



Your Business Can Save 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:

Coalition (BATC) **who contacted their lawmakers and made it clear Alabama business couldn't afford to expand unemployment compensation benefits** as called for under this legislation. However, we can't put that message to rest now that the session has ended. Expect this legislation to be reintroduced in the 2010 and the 2011 regular legislative sessions. Under these bills, Alabama would have received almost \$100 million **in temporary federal funds** to pay unemployment benefits in exchange for changing state law **to expand benefits permanently** and make 20,000 more jobless workers eligible for benefits, immediately costing Alabama businesses \$22 million more EACH YEAR in unemployment compensation taxes. Under the federal stimulus plan, the state has until Sept. 30, 2011, to decide whether to expand its unemployment compensation benefits as mandated to receive these federal funds.

ARA will continue to join with BATC to fight this additional tax on employers who already can expect a \$20 million annual increase in unemployment compensation taxes to be automatically activated in January in order to keep the Unemployment Compensation Trust Fund solvent.

Unified Front Also Keeps Unitary Combined Reporting at Bay Again

ARA and BATC will continue to oppose the expected return in 2010 of a proposal to require multistate corporations to file Alabama income taxes in a unitary combined report.

Opposition to required unitary combined reporting for corporate taxpayers was part of ARA's 2009 Legislative Agenda and will remain so next year.

HB 865 by Rep. Jeff McLaughlin, D-Guntersville, which never received even a committee hearing, would have required a group of two or more corporations to file a "combined" income tax return that included the income and apportionment factors of all corporations that were members of a "unitary" business – whether or not all of the corporations did business in or otherwise had nexus with Alabama. In other words, the state would look at ALL income for a multistate corporation in order to determine Alabama's share of taxes to be paid. It would have been up to the Alabama Department of Revenue to determine which corporations would be subject to combined reporting. McLaughlin also attempted to change the way Alabama taxes multistate companies in 2008.

Federal Income Taxes Paid Deduction Still Available to You

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 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

[Rep. John Knight, D-Montgomery](#), tried an unprecedented four times to get the House to consider [HB 116](#), which would have removed the state portion of sales tax from groceries, excluding candy and soft drinks, and would have limited the exemption for federal income taxes paid. The Senate also never debated its companion, [SB 115](#) by [Sen. Hank Sanders, D-Selma](#).

may [email them to Alabama Jobs Commission](#)

or join the conversation on Facebook at

[facebook.com/speakersjobscommission](#)

It was the funding mechanism to offset the cost of dropping the grocery sales tax that doomed this legislation. The Tax Fairness Amendment of 2009, the name given to Knight's plan, began as a **\$426 million annual tax increase** for all single taxpayers with an annual adjusted gross income of more than \$50,000 and for married couples making more than \$100,000. Taxpayers with adjusted incomes below those numbers would have been able to continue to deduct all of the federal taxes they paid from their state income taxes. The percentage of the deduction allowed then would decrease gradually based on income until it was eliminated altogether for single taxpayers making more than \$200,000 and married taxpayers making less than \$400,000. Knight and others offered varying other methods to cover the \$364 million the Legislative Fiscal Office estimated would leave the state coffers annually if the four percent sales tax was removed from groceries, but none of the proposals gained passage.

Knight has not abandoned the effort to remove the sales tax for groceries. He will be back in 2010 with a proposal, although it probably won't be this one.

Tripled Cigarette Tax Fails to Get Consideration

Another tax that failed to gain passage in the 2009 session was

[HB 134](#) by [Rep. Patricia Todd, D-Birmingham](#), which would have tripled the tax on a pack of cigarettes from 26 cents per pack to 75 cents per pack. It never even received committee consideration. **ARA continues to support comprehensive tax reform over patchwork tax policy** such as advocated by this proposal.

FISH LABELING REQUIREMENTS CHANGE

Country-of-Origin Labeling for Fish Now Law
Governor Signs Bills for Seafood and Catfish

Despite your calls to lawmakers, numerous letters sent to legislators as well as the governor on behalf of retailers, grocers and restaurants and almost daily



efforts by your ARA lobbyists during the 2009 regular session, the governor signed two country-of-origin labeling bills into law on Tuesday, May 19. Retailers couldn't overcome the full-court press Alabama's catfish and seafood producers put on Alabama lawmakers, including commissioning polls and feeding Alabama-raised catfish to lawmakers multiple times during the session. In the prior six years, the Alabama Retail Association had kept mandated country-of-origin labeling from even being debated on the floor of the Alabama Legislature's two chambers.

As the bills moved through the process this year, **ARA working in association with the Alabama Restaurant Association did convince lawmakers to amend the legislation so the resulting laws are not as burdensome as originally proposed.** In fact, **Act 2009-582 / HB 435** by **Rep. Spencer Collier, R-Irvington**, and 55 other co-sponsors, is a compromise ARA and the Restaurant Association worked out with the main sponsor. This legislation received final approval on the last day of the 2009 session in a 26-0 vote by the Alabama Senate.

Beginning Jan. 1, 2010, food service establishments must inform customers of the country-of-origin for ALL the seafood they serve, **if customers ask**. Restaurants, cafeterias, grocery delicatessens and any other food service establishment, except hospitals, that serve seafood must place the following disclaimer either on its menu or on an 8.5-by-11 (letter-sized), or larger, placard near its food safety permit: *"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."*

Unfortunately, the day before the Senate OK'd Collier's bill, it also gave final approval on a 30-1 vote to **HB 473** by **Rep. A.J. McCampbell, D-Linden**, and 32 co-sponsors. **Act 2009-584** requires food service establishments to notify customers of the country of origin of catfish served. Grocery delicatessens now must operate under three different country-of-origin regulations if they choose to serve cooked seafood or catfish, as fish falls under federal regulations as well. Since March 16th of this year, the federal government has required grocers and fish markets to include a country-of-origin label for fish, shellfish, beef, lamb, pork, chicken, goat, perishable agricultural commodities, ginseng, pecans, macadamia nuts

and peanuts.

Restaurants, grocery delis, fish markets, dinner cruise ships, hospitals and even sidewalk vendors who sell ready-to-eat catfish are affected by the new state law for catfish only. Beginning Aug. 1, food service establishments must post the country of origin of any catfish served either on the menu, on table tops or on a sign in plain view. If the catfish served is imported from outside the United States, the country of origin also must be included in any kind of advertisement related to the catfish. That requirement, for example, includes internal as well as print, radio or television advertisements of any specials on imported catfish.

The law only requires one method of labeling for catfish. To comply, choose one of the following to state the country-of-origin for the catfish you serve:

- on a menu, including menu boards, in the same font or letter size;
- on tabletop displays of at least 30 square inches placed on each table;
- or in one-inch lettering on a sign of at least 93 square inches, which equates to 8.5 inches by 11 inches, the size of a regular letter-size sheet of paper.

Throughout debate on the legislation, the Alabama Catfish Producers, a division of the Alabama Farmers Federation, said it would provide free signs, menu stickers and table-top displays to any restaurant serving U.S. farm-raised catfish. Restaurants are responsible for their own signage for imported catfish and that signage needs to change whenever the country of origin changes.

The Alabama Department of Public Health will administer both new labeling requirements, thanks to an ARA-supported amendment. Under the original proposal, the catfish law would have been administered by the Alabama Department of Agriculture and Industries, which would have subjected food service operations to a new regulator. **ARA will keep you informed as the Health Department develops any rules in support of the new laws' provisions.**

With one exception, the new laws also carry the same penalties. A food service operator in violation of the general seafood or catfish-specific labeling requirements will receive a warning from the Alabama Department of Public Health on first offense, a \$100 fine on second offense, \$250 fine on the third offense, \$500 fine on the fourth offense, culminating with a \$1,000 fine on the fifth offense within a two-year period. The catfish law also carries the possibility of revocation of the business' food safety permit.

Under both laws, the food service establishment would NOT be subject to penalties if a wholesaler or distributor fails to disclose or mislabels the country of origin of the products.

ARA thanks [Sen. Tripp Pittman, R-Daphne](#), for being the lone senator to vote against the catfish-only legislation and advocate "*keeping government out of market decisions*" in debate before the full Senate and a gallery full of catfish farmers. Pittman also tried unsuccessfully to amend the legislation so signage would only be necessary when a restaurant served imported catfish.

Lawmakers made it clear during debate that they approved this legislation as a means to support the catfish industry, referring often to "*agriculture and aquaculture jobs threatened by foreign competition*."

"We all want free and fair trade," Pittman told the Senate.
"Restaurants are having problems staying solvent too."

Since December of 2006, ARA, in cooperation with the [Eat Alabama Wild Shrimp](#) campaign, has promoted domestic shrimp to its member retailers. ARA also negotiated for more than a year with the catfish producers for a voluntary campaign, but the catfish industry insisted on a legislative solution.

ARA WAS WATCHING OUT FOR YOU

On the Legal Front

No New Cause of Action Created for Company Bans on Guns in Parking Lots

Tax increases weren't the only detrimental pieces of legislation thwarted during the 2009 regular session. **ARA and other groups fought throughout the session to remove the open-ended liability from [HB 362](#) by [Rep. Craig Ford, D-Gadsden](#)**, which would have made it a Class A misdemeanor for businesses to ban lawfully possessed firearms locked in employee or customer vehicles in public or private company parking lots. The House unanimously approved Ford's bill, while the Senate debated but never voted on the Senate companion, **[SB 407](#) by [Sen. Roger Bedford, D-Russellville](#)**. Neither version progressed during the final two days of the session, but the National Rifle Association and other proponents have made it clear the legislation will be back next year.

The section of this bill to which ARA objected stated that if someone claims an injury, physical "or otherwise," because a business prohibited its employees from keeping firearms

locked in their cars parked in the company lot, the injured party would have been able to seek damages in civil court. The phrase "or otherwise" would have created a new cause of action and undue liability on businesses and corporations. Many small businesses use boilerplate employment manuals, which could prohibit firearms on company property, including the parking lot, without the business owner even knowing it and would have put the business in violation had this legislation passed. **ARA continues to be concerned about exposing employers to civil lawsuits that seek damages beyond physical injuries and will continue to seek to remove that possibility from any future legislation .**

Retailer-Punitive Data Breach Bills Die; Compromise Will Return

HB 797 by [Rep. Tammy Irons, D-Florence](#), and **SB 545** by [Sen. Roger Bedford, D-Russellville](#), as originally proposed, would have created new, private causes of actions a financial institution could



use against retailers responsible for a security breach. ARA opposed the original legislation because of the new cause of action and because it attempted to bring retailers into disputes that really are between the financial institutions and the credit-card companies. ARA opposed similar legislation for the same reasons in last year's regular and special sessions. Only one other state, Minnesota, has data breach legislation that creates a similar cause of action. Public hearings were held on both bills, but Irons' bill containing the punitive language never received a committee vote.

Bedford rewrote his bill in a compromise with ARA. It received committee approval, but the Senate never debated it. The compromise would have required businesses and other organizations to notify Alabama residents of any breach of security as soon as reasonably possible by mail or e-mail. If notification involved more than 100,000 people or a cost of \$50,000 or more, the owner of the compromised computerized data would have been required 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. For all breaches of 1,000 or more people's data, the data holder also would have been required to notify all consumer reporting agencies of what the notices said, when they were sent and to how many consumers. **ARA supports timely notification of consumers of data breaches and would like members to review [this compromise bill](#). Please send any suggested language changes to [ARA Vice President Alison Wingate](#) . Bedford has said he will reintroduce this compromise legislation in 2010.**

Courts Can Still Get the Facts from Unemployment Cases

The Senate never debated [SB 381](#) by [Sen. Quinton Ross, D-Montgomery](#), which would have excluded findings of fact made under unemployment compensation statutes from consideration as evidence in other proceedings. This bill would have been detrimental to employers as it would have precluded an employer from using an employee's previous statements and findings in court in certain cases. Employers would not have been able to use the evidence in any proceeding, even if it was the same occurrence or transaction and between the same parties. For instance, it would have prohibited the release of a finding that an employee was terminated for cause and not entitled to unemployment. This bill also would have prohibited the use of such prior findings in a retaliatory discharge case. The House Commerce Committee never considered the House companion, [HB 943](#), by [Speaker Pro Tem Demetrius Newton, D-Birmingham](#).

Partial Disability Cap Remains Intact

For the second year in a row, legislation to remove the \$220 weekly cap for partial disabilities and allow an employee to claim that an injury to one part of the body affects another, thus claiming disability on both, never made it out of the House Commerce Committee. **ARA opposed [HB 18](#)** by [Rep. Joseph Mitchell, D-Mobile](#).

ARA Helps Deflect Multiple Challenges to Judicial Elections

Alabama's method of electing judges will remain the same as no proposals changing the way Alabama elects its judges received legislative approval in this session, including:

- [HB 548](#) by [Rep. Jeff McLaughlin, D-Guntersville](#), which would have required the nonpartisan election of state judges. The House Constitution and Elections Committee defeated this bill.
- [HB 128](#) by [Rep. Marcel Black, D-Tuscumbia](#), a constitutional amendment that would have established nominating committees for filling all state judicial office vacancies, thus turning the decision of who will and who will not be a judge in Alabama over to the state bar. The Alabama House indefinitely postponed its consideration. The Senate Constitution, Campaign Finance, Ethics and Elections Committee approved the Senate companion, [SB 100](#) by [Sen. Rodger Smitherman, D-Birmingham](#), but it never made it to the Senate floor.
- [HB 126](#), also by Black, would have established retention elections for appellate judges who have served at least one full term and created the Judicial



Evaluation Commission to evaluate the performance of an appellate judge seeking re-election. The bill also would have established nonpartisan election procedures for Alabama's appellate courts. It never made it out of committee.

- [HB 127](#), also by Black, would have made all appellate judicial races nonpartisan, but did not include language about retention elections or a judicial evaluation commission. The House Constitution and Elections Committee never acted on this bill as well.

ARA will continue to oppose any legislation that alters the current election process for appellate judges. ARA's opposition to such bills was part of its 2009 Legislative Agenda.

On The Health Front

Pharmacists Can Continue to Substitute Anti-Epileptic Drugs with Generics

Several pieces of legislation and resolutions failed to get final consideration in this session that would have prevented pharmacists from substituting drugs prescribed to treat epilepsy with generically equivalent alternatives unless the pharmacist first notified both the prescriber and the patient.

ARA opposed all of these proposals as they would have adversely affected the delivery of patient care.

[SJR 131](#) by [Sen. Linda Coleman](#) asked the U.S. Food and Drug Administration to enact regulations or guidelines that would have required epilepsy patients and their physicians to be notified prior to any interchange or substitution of anti-epileptic drugs. [SJR 140](#) by [Sen. Larry Means, D-Attalla](#), urged health insurers not to make decisions on patient care and medications, brand or generic, without prior notification to the patient, or the patient's parent, legal guardian, or spouse. The Senate approved both resolutions, but since they were joint resolutions and never reached the House, both died.

The resolutions were an attempt to keep alive the issue, which previously died with [HB 869](#) by [Rep. Demetrius Newton, D-Birmingham](#), which would have prohibited pharmacists from substituting any anti-epileptic therapeutic product without first notifying the prescribing physician and patient. Pharmacist substitution of brand name drugs with FDA-approved, generically equivalent drugs saves money for patients, employers and insurance carriers. Should the resolution achieve its goal or the bill become law, insurance premiums and Medicare obligations most likely would increase. Similar legislation has been introduced in

previous legislative sessions, although none gained final approval.

The Conscience of Alabama Pharmacists Kept Clear of Government Mandates

A bill that attempted legislatively to resolve the dilemma of how to make certain a patient has access to appropriate drug therapy as determined by their prescribing practitioner while allowing pharmacists to follow their conscience never even received committee consideration. HB 639 by [Rep. Robert Bentley, R-Tuscaloosa](#), would have given healthcare providers, institutions and payers the right to refuse to perform or to participate in healthcare services that violated their conscience and would have protected them from discrimination based on exercising this right. It also would have prevented pharmacy and other healthcare employers from disciplining an employee who deviates from established company policies or procedures. This is a complex issue, which should remain independent of governmental mandates.

Avoiding Healthcare Mandates Remains Part of ARA Agenda ARA continued in the 2009 session to oppose any mandatory healthcare benefits that could further increase the cost of healthcare coverage.

Several such bills died this session. Under [HB 411](#) by [Rep. Lesley Vance, D-Phenix City](#), and [SB 326](#) by [Sen. Zeb Little, D-Cullman](#), individual or group insurance organizations that cover hospital, medical or surgical expenses would have been required to provide coverage for prosthetics. Although this bill received committee approval, it never made it to the House floor. [HB 56](#) by [Rep. Robert Bentley, R-Tuscaloosa](#), would have required that health benefit insurance plans include coverage for dependents until age 27. This bill never made it out of committee.

ARA WILL RETURN WITH AGENDA ITEMS

Effort to Increase Health Insurance Deduction to 200% Lives On

In the 2008 regular session, ARA and the Business Associations' Tax Coalition, the 30-member group of business and trade associations chaired by ARA President Rick Brown, achieved a 150 percent deduction for health insurance premiums paid for small businesses and their employees. [Rep. Jay Love, R-Montgomery](#), presented legislation in the 2009 session, which would have bumped Alabama businesses with fewer than 25 employees and their employees who earn less than \$50,000 up to a 200 percent

deduction for the health insurance premiums they pay. Unfortunately, [HB 330](#), which would have increased the deduction to 200 percent, never made it out of committee. More than 90 percent of ARA members employ fewer than 25 employees and thus would have qualified for this deduction if they offer group health insurance to their employees. This legislation would **NOT** have required companies to offer health insurance. It simply would have given them more of a reason to offer it, by making it even more affordable.

Energy-Efficient Products Sales Tax Holiday to Return

In 2010, ARA will again reprise legislation to create a sales tax holiday for certain energy-efficient products. [SB 388](#) by [Sen. Kim Benefield, D-Woodland](#), and [HB 193](#), by [Rep. Greg Wren, R-Montgomery](#), which would have added energy-efficient furnaces, refrigerators and other energy-efficient appliances to the list of items included in Alabama's annual sales tax holiday, did not receive committee approval in this session. The Alabama Education Association objected to an estimated \$147,000 loss to the Education Trust Fund, which



they said would have meant the loss of two veteran teachers or three new teachers. On the contrary, the Alabama Retail Association contends **a tax holiday actually would increase sales tax collections**, rather than cause a loss of revenue. Statewide

sales tax collections have increased each August since 2006, when Alabama first instituted a three-day sales tax holiday for the first full weekend of August for school-related items. State sales tax collections for the month of August in the past three years have increased a total of 24 percent over the same month sales in 2005, when there wasn't a sales tax holiday. ARA hopes that upsurge in sales continues for this year's sales tax holiday.

[>> Read ARA's Issue Brief on this topic](#)

[>> Read more about the August sales tax holiday](#)

A bill that died in the 2009 session that would have accomplished a similar goal to Benefield's and Wren's bill, was [SB 288](#) by [Sen. Trip Pittman, R-Daphne](#). It would have given income tax credits, rather than a sales tax holiday, to individual taxpayers who install certain energy efficiency equipment in home or commercial property up to a maximum of \$500 for residences and \$1,000 for commercial property. It would have included ENERGY STAR® appliances as well as any other additions that increase the energy efficiency of a home or business such as solar power generation or insulation upgrades. The purchase as well as the installation

costs would have been deductible at various rates based on the nature of the product being installed. Pittman's bill never made it out of the Senate Finance and Taxation Education Committee.

ARA Hopes to Resolve Others' Issues with Security Freezes

In its 2009 State Legislative Agenda, ARA advocated allowing a consumer to place a security freeze on his or her credit report by sending a written request to a consumer credit reporting agency. [HB 496](#) by [Rep. Allen Treadaway, R-Morris](#), and [SB 203](#) by [Sen. Lowell Barron, D-Fyffe](#), would have accomplished that goal, but ARA ended up in conflict with the American Association of Retired Persons and the trial lawyers, who wanted to add liability language. Rather than risk that language detrimental to retailers would be added in floor debate, ARA worked to stall these bills in committee. The House bill never made it out of committee. The Senate bill made it out of committee but never made it to the Senate floor. **ARA continues to support security freezes for consumer credit reports as long as retailers are not adversely affected.**

ARA GIVES ITS SUPPORT TO OTHERS' LEGISLATION

Pharmacy Board Changes Now Law

This week, the governor signed into law legislation that allows the Alabama Board of Pharmacy to:

- adopt rules imposing nondisciplinary administrative penalties for certain violations;
- provide for assistant pharmacist license renewals;
- provide for biennial licenses (every two years) beginning in 2010 for the manufacture or sale of precursor chemicals, rather than the current annual license;
- own real property; and
- to electronically provide each registered pharmacist with a copy of the board's rules and regulations.

ARA lent its support to [Act 2009-576](#) / [HB 346](#) by [Rep. Ken Guin, D-Carbon Hill](#). The Senate companion was [SB 316](#) by [Sen. Tom Butler, D-Madison](#), which received committee approval but not consideration by the full Senate.

Alabama's Child Labor Laws Reworked

New Rules Now Align More Closely with Federal Regulations

The Legislature and governor also agreed this session on revisions to Alabama's child labor laws so they align more closely with federal regulations. **ARA supported this legislation proposed by the Alabama Labor and Alabama Education departments.**

Under [Act 2009-565 / HB 144](#) by [Rep. Frank McDaniel, D-Albertville](#), businesses will no longer have to apply for a work permit to hire teens **after Dec. 31**. That system will be replaced with a child labor certificate system. **Starting in the fall**, rather than seeking a work permit through the schools, you can purchase an annual \$15 Child Labor Certificate from the Alabama Department of Labor for each location or entity where those age 14 through age 17 work. A Child Labor Certificate is not required for each minor but rather for the age groups employed. One certificate is required if 14- and 15-year olds are employed and another certificate is required if the teens employed are 16 and 17. ARA will let you know when the new certificates are available through the Labor Department and how to obtain one. To be eligible to work, 14- and 15-year-olds are required to get an *"Eligibility to Work Form"* from their school certifying that they have satisfactory grades and attendance. The teens, not the business, are required to get this form. No form is necessary for teen-agers 16 and older. Other significant changes to the law include:

- maintaining time records and a personnel file on those younger than 19 for three years, which is the federal regulation now ;
- verifying a working minor's age using documents recognized by the Federal Employees Identification Laws. Those are the documents under federal law that an employer may use to verify an employee's age (i.e.-documents listed on the I-9 form); and
- requiring employers to document the already required 30-minute break for 14- and 15-year-olds during a five-hour shift.

No Sales Tax Exemption for Over-the-Counter Medicine Tax Relief Will Have to Wait for Another Session

In an attempt to lower the tax burden on Alabama families, [Rep. Mac Gipson, R-Prattville](#), introduced [HB 270](#), which would have removed the city, county and state sales taxes on over-the-counter-medications. **ARA applauds Gibson for the effort**, even though his bill never made it out of the House Education Appropriations Committee. To have been eligible for this tax exemption, a product would have had to

have a label identifying it as a drug and contain a "*drug facts*" panel or a statement of active ingredients. The bill explicitly excluded grooming and hygiene products as well as dietary supplements.

ARA MADE SOME BILLS BETTER

ARA Amendment Added to Price-Gouging Proposal

[Sen. Roger Bedford, D-Russellville](#), added an ARA-supported amendment to [SB 27](#), which would have reformed Alabama's price-gouging law. The Senate Judiciary Committee approved the bill, but it never reached the Senate floor for debate. The amendment would have exempted items that had been on sale or discounted immediately prior to an emergency declaration. For those items, the price would not have been able to rise 15 percent above the average price of the item before it went on sale. **ARA thanks Senator Bedford for his assistance in adding the amendment**. Under Bedford's bill, during a declared state of emergency, an increase in the price on goods or rentals exceeding 15 percent of the previous 30 days' average price would constitute price gouging. Currently, the price gouging statute activates when price increases exceed 25 percent of the previous 30 days' average.

ACTION ON FINAL DAYS

Lawmakers Tweak Rules for Tobacco Sales

Beginning Aug. 1, some new parameters will exist for tobacco sales. Under [Act 2009-578 / HB 391](#) by [Rep. Laura Hall, D-Huntsville](#), which the governor signed into law this week, retailers who sell tobacco products must post a sign stating Alabama law prohibits those younger than 19 from purchasing tobacco and that proof of age will be required. Most retailers already do this as part of the responsible vendor program. The new law also clarifies the definition of self-service displays to include any open display accessible by the public. Locked cases are not self service. Tobacco specialty stores, defined as those deriving 75 percent or more of revenue from tobacco or tobacco products, are exempted from the self-service display restrictions in the current law. Under the changes adopted, law enforcement can confiscate fake IDs as well as contraband tobacco found in the possession of minors. The Senate companion was **SB 113** by [Sen. Larry Means, D-Attalla](#), but Means' version never made it to the Senate floor.

Time Runs Out for Business License Tax Exemption

Prescription Drugs Still Taxed

As its last act of the 2009 session, the Alabama Senate amended and adopted [**HB 567**](#) by [Rep. Ronald Johnson, R-Sylacauga](#), which would have exempted certain prescription drugs from business license taxes based on gross receipts. The Senate amended the bill to exempt Class 1 (Birmingham) and Class 3 (Montgomery) municipalities and apply only to prescription drugs for which pharmacists don't set the cost, such as those reimbursed by Medicaid and insurance companies. However, no time remained for the House to consider the Senate changes. Current law exempts prescription drugs from gross sales taxes. The Senate Finance and Taxation Education Committee never considered the Senate companion, [**SB 624**](#), by [Sen. Roger Bedford, D-Russellville](#).

2009 TURNS OUT TO BE AN ELECTION YEAR

Four Legislative Spots to be Filled This Summer

More Special Elections to Come in 2009

Alabamians head to the polls this summer to replace four members of the Alabama Legislature during what ordinarily would be a non-election year. Those elected this summer will serve until the winners in 2010, the normal legislative election year, take office in January 2011. Don't get too comfortable though; the outcome of the four summer



elections will prompt more special elections this year as four sitting lawmakers are candidates for the vacancies being filled in the upcoming weeks. Should any sitting lawmakers be elected to new offices, the governor will have to schedule special elections for their current seats. New lawmakers elected this summer also might find themselves immediately put to work. The governor has said he would call a special session to address problems in the state's prepaid college tuition program, if the parties involved can reach a consensus on what to do. Standby, should a special session be called, your Capitol Retail Report will be reactivated to keep you posted on any developments related to retailers.

SENATE DISTRICT 7

Retail PAC Endorses Sanford



Alabama RetailPAC this week endorsed small business owner and ARA member Paul Sanford , who faces incumbent Rep. Laura Hall, D-Madison, in the Senate District 7 Special General Election set for

June 9 . Sanford is the Republican nominee for the seat vacated when Parker Griffith was elected to Congress.

Sanford and his wife, Danielle, own and operate **Little Paul's Barbecue** in Huntsville, which has been **an ARA member since 2002** . He is the fourth generation in a restaurant family. His mother and uncle currently co-own and operate two Gibson's Bar-B-Q locations in Huntsville. Sanford *"possesses the small business experience and dedication to service that the Alabama Senate desperately needs,"* said ARA President Rick Brown.

"Small businesses struggle to provide jobs and make a profit while the government continues to demand more time and more regulatory measures of business owners," Sanford said. *"As a senator, I will fight attempts at the state level that create red tape and/or impose undue burdens on business owners"*

Friday, May 29th is the last day to register to vote in the Senate District 7 election. If you or your employees vote in Senate District 7, please register and vote for Paul Sanford on June 9.

SENATE DISTRICT 22

Today Last Day to Register to Vote

The **last day to register** to vote **in the Alabama Senate District 22 General Election is today** , Friday, May 22nd.

Current Rep. Marc Keahey, D-Grove Hill, faces former Rep. Greg Albritton, R-Evergreen, on **June 2nd** in the race to fill the seat vacated by the death of Sen. Pat Lindsey, D-Butler.

HOUSE DISTRICT 6

Primary Set for Next Week

Four Republicans and three Democrats seek their party's nomination in **Tuesday's** primaries for the Alabama House District 6 seat vacated after the felony convictions of Rep. Sue Schmitz, D-Toney. The primary winners will meet **July 14th** in a General Election, unless a primary runoff is needed in which case, the runoff will be July 14th with an Aug. 18 General Election.

SENATE DISTRICT 19

Two Current Representatives Vie for Senate Seat

Reps. Merika Coleman of Hueytown and Priscilla Dunn of Bessemer, face off in the **June 30th** Democratic primary runoff for the Alabama Senate District 19 seat vacated when

Sen. E.B. McClain, D-Midfield, was convicted of multiple felonies. Since no Republicans qualified, the June 30th winner will be the representative for that district. Dunn garnered 33.73 percent of the 5,947 ballots cast in the May 12th Democratic primary, while Coleman received 29.01 percent.

[>> Full Election Calendar](#)

NEXT LEGISLATIVE DAY

2010 SESSION BEGINS IN JANUARY

Law makers will return for the first legislative meeting day of the 2010 regular session at noon **Tuesday, Jan. 12, 2010**. ARA will keep you informed should the governor call law makers back for a special session between now and then.

The *Capitol Retail Report* is another **Benefit from the Value** of Alabama Retail Association membership. For more benefits, go to www.alabamaretail.org