

From Montgomery
to Washington;
ARA is there
to benefit you!

April. 22 2011

Amazon. NOtown vs. Hometown: Ask Your Senator to Choose Sides

ARA Board Members Question Senators: Now, It's Your Turn to Question Yours

Will you, our state senators, choose to support New York and West Coast businesses, or Alabama businesses? That's the question ARA Vice Chairman Dianne Wammack asked the Senate Commerce, Transportation and Utilities Committee while testifying Thursday during a public hearing on <u>HB 365</u> by <u>Rep. Jamie Ison, R-Mobile.</u> Ison's consumer use tax notification bill takes a giant step toward ending the Internet sales tax advantage enjoyed by behemoth, out-ofstate online retailers.

>>Read more details of HB 365

CRR EXTRAS

stay connected with ARA 🔇







TOP ISSUES

Retail Theft

Immigration

Streamlined Sales Tax

Double Deduction for Health Insurance

Tort Reform

Taxpayers' Bill of Rights

Debit Swipe Fees

Consumer Use Tax

Menu Labeling

Gross Income Tax

Double-Weighted Sales

Rebates

National Hiring Day

Utility Rate Incentives

>> Read <u>Earlier Issues of</u> Capitol Retail Report

BILLS

HOUSE

- HB 56
- **HB 61**
- HB 195
- **HB 218**

Three Alabama Retail Association board members spent Thursday morning away from their Alabama stores, pouring out their hearts and asking the committee members to move HB 365 onto the full Senate for final passage. They each questioned the lawmakers. "Have you ever seen a little league baseball or soccer team with Amazon.com on the jersey? Have you seen Amazon at the kickoff of a United Way campaign?," asked George Wilder, who owns men's clothing stores in Montgomery and Auburn, a family business that employs 13.

Birmingham-based Books-A-Million Executive Vice President and Chief Administrative Officer Doug Markham asked, "Somehow, little old Books-A-Million has managed to figure out how to collect and remit these complex sales and use taxes, not only in Alabama and the other states where we have a physical presence, but in big complicated states like New York, where we don't have presence. So is it really unfair or so difficult to expect these mega-Internet retailers to do the same?" The bookseller, which employs 1,300 Alabamians, has stores in 23 states and has an Internet presence. Wammack and her husband own Cameras Brookwood, the lone photo imaging business remaining in the Birmingham area.

>>Join the conversation on Facebook to see more

"This is a 'them against us' kind of thing,"; Charles McDonald, former ARA president told the committee. "You either are going to side with the local retailers you've heard today – and we could have filled Cramton Bowl with folks who would have made the same kind of testimony – or people who really don't care a whit about Alabama, except to make some sales down here."



My husband and I have spent most of our adult life building (Cameras Brookwood) to watch it succumb to business models that don't include service for the customer, ... don't pay or collect state and local taxes, don't provide local jobs and do not contribute to the community

- ARA Vice Chairman

Dianne Wammack

Owner, Cameras Brookwood



If some catalog or Internet seller in another state is offering to sell you the same product and is not required to charge you the tax or even to make you aware that you stil owe the tax, thatis not a level playing field, it is not fair.

-George Wilder Owner, The Locker Room



HB 365 IS not a new tax for the citizens of Alabama; it is simply an effort to educate our citizens of how to comply with existing law.

-Doug Markham EVP-CAO, Books-A-Million

The committee is expected to vote on the bill next week. If it clears committee, HB 365 then will go to the full Senate for final approval.

CALL, EMAIL OR TALK TO YOUR SENATOR NOW AND ASK:
ARE YOU WITH HOMETOWN OR NO-TOWN?
TELL YOUR SENATOR TO VOTE 'YES' ON HB 365

ARA LEGISLATIVE AGENDA IN ACTION

House OKs Streamlined Sales Tax Initiative Panel,

- HB 228
- HB 236
- UR 23
- HB 251
- HD 25
- HB 365
- HD 30
- HB 434
- HB 548

SENATE

- SB 30
- SB 104
- SB 166
- SB 184
- SB 187
- SB 204
- CD 207
- SB 212
- SB 256
- SB 347
- SB 425

IN THE NEWS

Books-A-Million posts a 10% increase in web sales Web tax on tap

Alabama Senate passes new requirements for lawsuits

Alabama Voices:
Tort bills critical for state

Weaver's pro-small business bill signed into law

Alabama governor signs bill on insurance tax break

Alabama Senate OK's bill to allow officers to detain suspected illegal immigrants

McDonald's unveils massive hiring plan at National Hiring Day event in Montgomery

Want a job with that? McDonald's 'Hiring Day' draws thousands

McDonald's hiring day draws crowds, high hopes

Commission to Include ARA Member

On a 94-0 vote Thursday, the Alabama House approved HB 355 by Rep. Mike Hill, R-Columbiana, a bill that also concerns the Internet sales tax issue. The Association of County Commissions of Alabama is pushing and ARA supports Hill's bill, which creates the Alabama Streamlined Sales and Use Tax Commission to get Alabama ready to comply with the federal Streamlined Sales and Use Tax Agreement in the event that our state becomes a participating member of the agreement. One of the eight commission members will be an Alabama Retail Association representative.

>>Read more about the Streamlined Sales Tax Initiative

The federal agreement, already adopted by 24 states, establishes uniform definitions of taxable items, sets up a system to collect and distribute sales taxes across state lines and provides retailers with software and free databases to tell them how much tax to charge.

IS FEDERAL LEGISLATION FINALLY ON THE WAY?

Federal legislation would be necessary before the federal agreement would kick in, but Alabama's retailers want the state to be ready to move forward whenever Congress acts. The court threw the issue back to Congress to resolve almost two decades ago, yet Congress hasn't acted. Next week, U.S. Sen. Dick Durbin, D-III., is expected to introduce the Main Street Fairness Act after Congress returns from its Easter recess. His bill would require ALL retailers to collect and remit sales taxes, whether online or in store. Durbin, like Alabama's retailers, has repeatedly questioned his fellow senators: "Why should out-of-state companies that sell their products online have an unfair advantage over Main Street bricks-and-mortar businesses?"

>>Read more about the Main Street Fairness

Senate OKs Tort Reform; Bills Head to House

The Alabama Senate, without much debate but with overwhelming votes, Tuesday approved a four-bill tort reform package, which retailers and other business interests have advocated for almost two decades.

ARA thanks Sens. Cam Ward, R-Alabaster, and Ben Brooks, R-Mobile, the co-chairmen of the Senate Judiciary Committee, who worked countless hours to help mold these bills into versions that cleared the Alabama Legislature's upper chamber with few dissensions. The House Judiciary Committee will consider all four Senate bills at its 9 a.m. Wednesday meeting in Room 410 at the Alabama State House.

The bills the Senate approved were:

SB 184 by Brooks, which restricts product liability lawsuits to
the makers of a hazardous product. The bill prohibits such
suits against retailers, wholesalers and distributors who
merely sold a product that somehow caused the owner harm.
Unless the retailer is also the manufacturer/designer, altered
the product to make it harmful or the manufacturer cannot be
identified, the retailer cannot be sued under this legislation. If
enacted, this legislation will save Alabama retailers time,

CDC: 26 states have enacted smoking bans; South, parts of West, lag

Violent criminals expand into cigarettes

Alabama House OKs plan to create panel to suggest changes to constitution, piece-by-piece

Coastal insurance bills pass Senate committee after unusual procedure

GOP wave reshapes nation's agenda state by state

Forget D.C. — real change is in the nation's statehouses

BP to provide \$1B for Gulf restoration

Swipe-fee opponents shower Sen. Tester with campaign contributions

Retailers not backing down in swipe fee battle

<u>TechNet shifts to neutral</u> <u>on swipe-fee rules</u>

Wells Fargo halts debit rewards

Obama signs repeal of health-care law's '1099' tax-reporting rule

For more stories concerning legislative action and news 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.

money and the aggravation of being pulled into a lawsuit from which they ultimately would be dismissed. This bill passed on a unanimous 34-0 vote. The House companion, <u>HB 251</u> by <u>Rep. Wes Long, R-Guntersville</u>, has received committee approval and also awaits House consideration.

- SB 212 by Sen. Clay Scofield, R-Guntersville, which prohibits forum shopping of wrongful death actions by requiring that such lawsuits can only be brought in the county where the deceased could have filed suit. This bill passed on a vote of 32-1. The House companion, HB 228 by Rep. Ron Johnson, R-Sylacauga, also awaits House consideration.
- SB 187, also by Brooks, which requires Alabama to apply the federal court three-part test in determining whether to admit scientific expert testimony. The stricter federal standard for admitting expert testimony helps business as it ensures valid scientific testimony has a solid foundation and basis. This bill passed on a vote of 32-1. The House Judiciary Committee was to consider the companion bill, HB 239 by Rep. Steve McMillan, R-Bay Minette, this week, but decided to wait until it gets the Senate bill next week.
- SB 207 by Ward, which changes the rate of interest on judgments in Alabama from 12 percent to 7.5 percent. The Southeast average is 8 percent. The bill passed 31-3 with one abstention. The House companion, HB 236 by Rep. Greg Canfield, R-Vestavia Hills, has received committee approval and also awaits House consideration.

200 Percent Health Insurance Deduction Now Law

Starting with 2011 tax returns, businesses with 24 or fewer employees and their employees who earn \$50,000 or less can double the amount they pay out for health insurance and deduct it from their 2011 income tax returns. Gov. Robert Bentley signed HB 61 by Rep. April Weaver, R-Brierfield, into law Thursday. More than 90 percent of ARA members employ fewer than 25 employees and qualify for this increased deduction if they offer group health insurance.

House OKs Taxpayers' Bill of Rights II; Senate Next

On a vote of 88-0, the Alabama House approved the Alabama Taxpayers' Bill of Rights II on Thursday. HB 427 by Rep. Paul DeMarco, R-Homewood, has the support of the Business Associations' Tax Coalition, a 30-member business trade association group that ARA President Rick Brown chairs, the Alabama Society of Certified Public Accountants, the Alabama Bar Association and the Council on State Taxation among others. It creates an independent and qualified tax appeals court in our state, bringing "uniformity to tax appeals and making much-needed changes in procedure," DeMarco told representatives. The Senate companion, SB 347 by Sen. Ben Brooks, R-Mobile, awaits action in the Senate Judiciary Committee. The House bill will next be considered by a Senate Committee.

>>Learn more about the Taxpayer Bill of Rights II

RETAIL THEFT

Judiciary Sub Restores Shoplifting Threshold; Senate to Get Sentencing Reform Package

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@athouse.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. <u>Click here</u> 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 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.

Wednesday on a 6-3 vote, the Senate Judiciary Committee approved a substitute version of <u>SB 204</u> by <u>Sen.</u>

<u>President Pro Tem Del Marsh, R-Anniston</u>, which creates a new class of felony while maintaining the current felony shoplifting threshold of \$500. The original bill would have raised the shoplifting threshold to \$1,000, doubling the amount



Senate President Pro Tem Del Marsh presents SB 204 to Senate Judiciary

of stolen merchandise necessary for a felony theft charge over every state surrounding Alabama. As the bill is now written and as ARA advocated, a \$500 theft would continue to result in a felony charge. The charge would be a Class D felony, which would result in as much as a one year and a day to three-year prison sentence.

Also under the original bill, Class D felonies would not have fallen under the habitual offender law. Your ARA worked with Marsh to amend the bill so that if a serial shoplifter is convicted of shoplifting three times, on the fourth offense, that offender would be subject to the habitual offender statute, which means a life sentence or 15 to 99 years.



Senate Judiciary Chairman Cam Ward

Another ARA-negotiated change to the bill sets clearer parameters for where to prosecute when two or more thefts are alleged against a single defendant. Under the revised bill, prosecution can occur in any one of the counties where the offense occurred, where the property was disposed of, or the county that includes the location where the stolen property was stored or recovered.

ARA especially thanks Sen. Cam Ward, R-Alabaster, the co-chairman of the Senate Judiciary Committee, for his assistance during negotiations on this legislation.

SB 204 is part of a package of bills being pushed by the Alabama Public Safety and Sentencing Coalition to ease overcrowding in Alabama's prisons. The House companion, <u>HB 218</u> by <u>Rep. Rod Scott, D-Fairfield</u>, remains in the House Judiciary Committee.

FOOD SERVICE

House Supports Saving Small Restaurants from Unnecessary and Costly Regulation

By a vote of 80-5 with one abstention, the Alabama House on Thursday approved HB 195 by Rep. Ken Johnson, R-Moulton, which would prevent Alabama from having a patchwork of local food nutrition labeling laws. Under the bill, restaurants could not be subjected to menu labeling requirements without a statewide law passed by the Alabama Legislature. The bill now goes to the Senate, which is also in a position to hear the Senate companion, SB 166 by <a href="Senate Alabama Restaurant Association to support this legislation.

IMMIGRATION

Legislature Now Has Dueling Immigration Bills



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:

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

Discounted Inbound and Outbound

As of Thursday, both the Alabama House and Senate had passed immigration legislation, just not the same the same bills.

Thursday, the Alabama Senate, on a vote of 26-6, approved <u>SB 256</u> by <u>Sen. Scott Beason, R-Gardendale</u>. The bill, now renamed the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, incorporates many of the provisions of Arizona's 2010 immigration legislation. Under SB 256, Alabama employers would:

- be prohibited from knowingly employing an unauthorized alien.
- have the option when checking the employability of a potential worker to use the federal E-Verify program or any valid and lawful government-issued document that establishes the person is not an unauthorized alien.

Senators amended or attempted to amend Beason's legislation more than a dozen times Thursday before adjourning. The bill did not get transmitted to the House, but should make its way into the House consideration process first thing Tuesday.

>>Read a detailed legal analysis of SB 256

Meanwhile, the Senate Job Creation and Economic Development Committee at 2 p.m. Tuesday will consider the House's immigration bill, HB 56 by Rep. Mickey Hammon, R-Decatur. The House approved Hammon's bill two weeks ago. A critical difference between the House and Senate bills is that Hammon's requires all but the smallest businesses to use the E-Verify system beginning in 2012, while Beason's gives employers the option of using the federal program.

>>Details of Hammon's bill

The Alabama Employers for Immigration Reform, a business group that includes ARA, will continue to monitor both bills and keep you informed of issues as they develop.

TAXES

Love, Marsh Propose Fairer Tax 'Loophole' Correction than Revenue Regulation

At 9 a.m. Wednesday, the House Ways and Means Education Committee will consider <u>HB 548</u> by <u>Rep. Jay Love, R-Montgomery</u>, legislation he just introduced this week. Love's bill attempts to close what the governor perceives as a "loophole" in the state's tax structure and what the Alabama Revenue Department has tried to rectify with a proposed change in gross income tax regulations. The Revenue Department has set a public hearing for May 5 on its proposed rule change.

This legislation deals with pass-through entities, such as partnerships, limited partnerships, limited liability companies and S corporations. Love's bill corrects problems, which the business community has tried to offer solutions for in the past, with a legislative fix that is more equitable than the regulation change proposed by the Revenue Department.

Sen. Del Marsh, R-Anniston, introduced an identical bill this week,

>>HB 548 and SB 425 Summary

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% <u>SB 425</u>, which has been assigned to the Senate Finance and Taxation Education Committee. His bill so far isn't on the committee's agenda for next week.

House Next Stop for Double-Weighted Sales Factor

The House Ways and Means Education Committee this week approved HB 434 by Rep. Jay Love, R-Montgomery, a bill to double the weight given to the sales portion of income when multi-state corporations compute net income tax. This bill also proposes to amend the sales factor so that sales of services and other sales of intangible property as well as income made from trademark and copyright royalties are sourced to Alabama if the taxpayer's market for the sales or royalty is in Alabama. Multi-state corporations doing business inside and outside of Alabama source their income based on a three-factor formula: property, payroll and sales. Under this legislation, the more payroll and property a company has in Alabama relative to its sales, the less tax the company owes Alabama.

This legislation is expected to net around \$20 million for the state's Education Trust Fund. This bill now awaits action by the full House. ARA is monitoring this legislation. Please provide any input you have on this bill to **ARA President Rick Brown**.

REBATE REGULATIONS

One of Coleman's Attempts to Regulate Rebates Clears Senate Committee Committee

Inspired by a TV episode of 20/20, Sen. Linda Coleman, D-Birmingham, this session introduced two bills related to rebates. Thursday on a 4-1 vote, the Senate Commerce, Transportation, and Utilities Committee approved one of those bills, SB 104, which mandates the time period for customers to send in rebate materials and for retailers to provide the rebate. It would require rebate issuers to remit rebates within 30 days of receipt of any rebate materials from the purchaser and give the purchaser a minimum of 45 days to submit the required rebate materials. Committee Chairman Gerald Allen, R-Tuscaloosa, voted against the bill and Vice Chairman Greg Reed, R-Jasper. questioned the author extensively. **ARA opposes** this legislation. The bill now awaits action by the Senate as a whole. Coleman's other bill, **SB 30** would classify as deceptive trade practices advertising manufacturer's rebates without providing the rebate to the consumer at the time of purchase and refusing to accept a photocopy of an original sales receipt from a consumer attempting to redeem a rebate. The committee has yet to take up that bill.

JOB CREATION

Speaker Thanks McDonald's for Aggressive Hiring; Jobs Commission to Report Monday

Alabama House Speaker Mike Hubbard, R-Auburn, appeared with franchise owners and corporate officials Tuesday at Montgomery's Madison Avenue McDonald's restaurant to promote the chain's National Day of Hiring. The company expects to hire 50,000 nationwide as a result of the one-day recruitment effort.

McDonald's plans to hire 2,500 Alabamians at its 252 restaurants in

our state. The company already employs 12,600 here. More than 200 had already filled out applications for the 300 positions available in the Montgomery area by 9 a.m. April 19.

"(The Legislature doesn't) create jobs," Alabama Speaker of the House Mike Hubbard said. "It's people like the Hays who do." McDonald's franchise owners



House Speaker Mike Hubbard speaks during National Hiring Day news conference as McDonald's franchise owners Ron and Loretta Hays listen.

Ron and Loretta Hays who appeared with Hubbard own six Montgomery restaurants as well as one each in Greenville and Tallassee. The Speaker's Commission on Job Creation is expected to make its report to Alabama Legislature by Monday. It originally had been scheduled to present its job growth recommendations to the Legislature and Gov. Robert Bentley by April 15, but the speaker extended the deadline due to the volume of ideas received. Hubbard's goal is to use the commission's report to help state lawmakers draft legislation during the current regular session to help small businesses create jobs. ARA board member Denise Knox, owner of Fairhope-based Private Gallery Inc. is a member of the Speaker's Commission.

McDonald's has been an ARA member since 1980. Debbie Stroud, who began working at McDonald's right out of college, also attended Alabama's National Day of Hiring event. She's now vice president of quality, service and cleanliness for McDonald's Atlanta Region, which includes Alabama.

>>For more photos of Alabama event,

Join the conversation on Facebook

Take Advantage of Alabama Power Rate Incentives

Earlier this month, the Alabama Public Service Commission approved a package of discounts, tax credits and incentives that could give retailers and other business owners lower electricity bills. According to a recent opinion piece by PSC Commission Twinkle Cavanaugh outlines those possible rate reductions:

- Only small businesses that use 15,000 kilowatt hours of power or less currently qualify for the lowest cost business rate, but the PSC voted to raise the maximum usage to 20,000 kWh, which means more small businesses will qualify. If your business qualifies for the lower rate, Alabama Power will notify you before the low-cost option takes effect for June billings.
- In order to encourage businesses to utilize unused storefronts and office space, the Commission also approved a 15 percent monthly discount on charges for electricity when a new account is established in an existing building, storefront or structure that has been unoccupied for at least six months. This incentive will be available until 2012.
- Small businesses that add additional employees while increasing power usage will receive a rate reduction for 24 months. A 10 percent discount on monthly rates will be in



effect for the first year along with a 5 percent reduction for the second year on qualifying service agreements, and these reductions become available with May billings.

>>Read Cavanaugh's rate incentives remarks

NEXT LEGISLATIVE DAY:

The House will meet at 1 p.m. Tuesday, April 26, 2011, for the 18th meeting day of the 2011 regular session. The Senate meets at 3 p.m. The Legislature is expected to meet for three days next week.

FEDERAL

Senator Seeking Debit Swipe Fee Reform Delay Supported Heavily by Banks, Credit Card Companies

The Montana senator seeking to delay proposed reductions in debit swipe fees collected nearly \$60,000 in campaign contributions from credit card and others who oppose the debit fee changes after he introduced <u>S. 575</u>, which would delay swipe fee reforms for two years and calls for yet another study by government agencies.

The Hill, a Washington, D.C. newspaper strictly about congressional action, reported the contributions to Sen. Jon Tester, D-Mont., in its Wednesday edition. Tester's bill is in the U.S. Senate Committee on Banking, Housing and Urban Affairs. Congress returns from its Easter recess next week.

Meanwhile, ARA again sent a letter to the Alabama delegation this week urging them to vote against S. 575 and the other delay legislation, <u>H.R. 1081</u>, and to allow the Federal Reserve to go forward with its efforts to develop regulations for debit fee swipe reform. The Federal Reserve in response to the Durbin amendment has recommended moving to a flat debit card swipe fee of between 7 and 12 cents per transaction for the 100 biggest banks. As it now stands, that change would be effective July 21.

Continue to talk to your congressman about the need for the swipe fee reforms to go forward.

Expanded 1099 Requirement is No More

On April 14, President Obama signed H.R. 4, the Small Business Paperwork Mandate Elimination Act, which repealed the onerous 1099 requirement of last year's health care reform law. Without the repeal, businesses would have been required to issue a 1099 to all businesses with which they purchased more than \$600 worth of goods in the previous year. This signing marks the first time a provision of Obama's controversial healthcare reform legislation has been repealed.