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June 7, 2011

It's Mega Online Sellers vs. Hometown Retailers

Rules Chairman Takes One-Man Stand Against Alabama Merchants; Call Scott Beason Now!

HB 365 by [Rep. Jamie Ison, R-Mobile](#), the consumer use tax notification bill, is poised for final passage Thursday, the final day of the 2011 regular session of the Alabama Legislature. But [Senate Rules Chairman Scott Beason, R-Gardendale](#), refuses to place it on the Senate calendar.

Even if you have already done so, **call Senator Beason again at 205-325-5308 or 334-242-7794** and tell him to **put HB 365 on Thursday's calendar!** If he won't come to the phone, leave a message.



Keep the pressure on other members of the Senate Rules Committee as well to spur Beason to action on the final legislative day.

[>> Senate Rules Committee contact information](#)

HB 365 takes three simple steps to educate Alabama consumers about taxes due when they buy goods over the Internet, by phone or by catalogue.

It requires remote retailers to notify Alabama consumers at the time of purchase that sales tax isn't being collected.

It makes remote retailers provide the consumer with a year-end summary statement totaling tax-free purchases during the preceding year.

It changes Alabama's personal income tax return to allow state taxpayers to voluntarily remit city, county and state use taxes.

Under this bill, Internet sellers lose their "*no-tax advantage*" once consumers realize a tax is due. Small, hometown retailers can't compete with perceived tax-free Internet sales, especially when combined city, county and state sales taxes in our state reach as high as 10 percent.

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ARA AGENDA IN ACTION

\$8 Increase in Minimum Late Fee for Consumer Credit Transactions on Governor's Desk

Once the governor signs on, retailers and other businesses can charge a late fee of \$18 or 5 percent of the scheduled payment up to \$100 on all consumer credit transactions that have been delinquent for 10 days or more. **The Alabama Retail Association and the Alabama Consumer Finance**

Association have sought this

modest \$8 increase in the minimum late fee since 2007, when the minimum fee allowed under the Alabama Small Loan Act was raised to \$18. Until last week's passage of [HB 3](#) by [Rep. Craig Ford, D-Gadsden](#), the minimum late fee allowed under the Alabama Mini-Code, was \$10.



Rep. Craig Ford, right, and Sen. Gerald Dial, left, sponsored the late fee bill in their respective chambers.

The Alabama Senate amended and approved the bill on Thursday, June 2, and the House unanimously concurred with the change. The bill now awaits signing by the governor. [Sen. Gerald Dial, R-Lineville](#), sponsored the Senate companion and handled the bill on the Senate floor last week.

Product Liability Protection for Retailers and other Tort Bills on Governor's Desk

The Alabama Legislature last week gave its final stamp of approval to product liability protection for retailers as part of its 2011 tort reform package, marking only the third time in 22 years that lawmakers have attempted to improve the state's legal climate.

On Tuesday, May 31, the Alabama House of Representatives voted 65-25 for [SB 184](#) by [Sen. Ben Brooks, R-Mobile](#), which restricts product liability lawsuits to the makers of a hazardous product. The bill prohibits such suits against retailers, wholesalers and distributors who merely sell a product that is later determined to be defective. **ARA thanks Rep. Wes Long, R-Guntersville**, who sponsored the House companion bill and successfully fended off opponents to shepherd the bill through the House.

The bill known as the Alabama Small Business Protection Act was part of a four-bill tort reform package, which the Alabama Civil Justice Reform Committee (ACJRC) and the Alabama Retail Association as a member of that coalition has sought since 1999, the last time the Legislature addressed tort reform. The first time the Legislature passed a tort-reform package was 1989.

"This package will promote a justice system that is more fair and balanced," Brooks told reporters. "As a result of this legislation, Alabama's economic climate will be more attractive to new business."

- [HB 3](#)
- [HB 56](#)
- [HB 195](#)
- [HB 230](#)
- [HB 355](#)
- [HB 365](#)
- [HB 365 Amend](#)
- [HB 434](#)
- [HB 427](#)
- [HB 473](#)
- [HB 548](#)

SENATE

- [SB 184](#)
- [SB 187](#)
- [SB 192](#)
- [SB 207](#)
- [SB 212](#)

IN THE NEWS

[Internet sales tax: Treat retailers equally](#)

[Online retailers fight sales tax legislation](#)

[California Assembly approves bill extending sales tax to Amazon, other online retailers](#)

[Congress may make Internet sales tax issue a federal case](#)

[For Web purchases, the taxman looks at where the item goes](#)

[Meaningful tort reform](#)

[No longer a stacked deck](#)

[Internet sales tax dollars elude West Virginia, other states](#)

[Senate to vote on Taxpayers Bill of Rights](#)

[Alabama Legislature passes Arizona-style immigration bill](#)

[Immigration proposal's opponents may take battle](#)

Last week, the Legislature also approved [SB 187](#), also by Brooks, which requires Alabama to apply a stricter standard for determining whether to admit scientific expert testimony. The House approved the bill on a vote of 69-26 Tuesday and the Alabama Senate concurred with an amendment to exempt certain criminal and domestic abuse cases the following day. [Rep. Steve McMillan, R-Bay Minette](#), sponsored the House version.

Gov. Robert Bentley is expected to sign all four of the tort reform bills approved this session into law.

The other two bills in the package are:

[SB 212](#) by [Sen. Clay Scofield, R-Guntersville](#), 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. [Rep. Ron Johnson, R-Sylacauga](#), sponsored the House companion.

[SB 207](#) by [Sen. Cam Ward, R-Alabaster](#), changes the rate of interest on judgments in Alabama from 12 percent to 7.5 percent. The Southeast average is 8 percent. [Rep. Greg Canfield, R-Vestavia Hills](#), sponsored the House companion.

Along with the sponsors, [ARA thanks Senate President Pro Tem Del Marsh, R-Anniston; House Speaker Mike Hubbard, R-Auburn; and Rep. Paul DeMarco, R-Homewood, for their efforts on behalf of this package of bills.](#)

Streamlined Sales/Use Tax Agreement Commission with ARA Member on Bentley's Desk

Legislation related to the online sales tax issue is already on the governor's desk. On Thursday, June 2, the Alabama Senate amended and approved a substitute version of [HB 355](#) by [Rep. Mike Hill, R-Columbiana](#), which creates the Alabama Streamlined Sales and Use Tax Commission. An Alabama Retail Association representative will be one of the eight members of the commission, which will research Alabama's current sales and use tax laws to identify necessary changes to bring the state into compliance with the federal Streamlined Sales and Use Tax Agreement.

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.

The House unanimously agreed to the Senate amendment that gives the Legislative Council approving authority for the commission's recommendations. The bill has been forwarded to governor for his signature. The Association of County Commissions of Alabama pushed and ARA supported Hill's bill, which is intended to get Alabama ready to comply with the federal agreement in the event our state becomes a participating member.

>> [Read more about the Streamlined Sales Tax Initiative](#)

LAST DAY

Taxpayers' Bill of Rights and Gross Income

[to court](#)

[Alabama passes Arizona-like immigration bill, intensifies hiring regulations for businesses](#)

[Alabama moves beyond Georgia's immigration law](#)

[Governor praises Legislature for passing Full Employment Act of 2011](#)

[Alabama Legislature expands brew pub, breweries](#)

[Beer bill changes Alabama brewing laws](#)

[New legislation could help re-open Montgomery Brew Pub](#)

[Don't let credit card companies, banks kill swipe-free reform](#)

[Divided Democrats struggle over swipe fees](#)

[Senators said to weigh 6-month delay of debit 'swipe' rules](#)

[NRF letter to Senate calls Tester's swipe fee reform 'compromise' a 'sham'](#)

[Swipe fees battle may move to states](#)

[Retailers launch swipe-fee campaign](#)

[Site can help businesses retrieve government documents lost in tornadoes](#)

For more stories concerning legislative action and news of interest to retailers, go to [In the News](#)

ARA CONTACTS

[Rick Brown](#)
President

[Alison Wingate](#)

Inequity Left to Legislative Session's Final Day

Besides a General Fund budget amended by the governor, state board of education redistricting and the consumer use tax notification bill, which remain unsettled, two other bills of interest to the Alabama Retail Association and the Business Associations' Tax Coalition could see action on the Alabama Legislature's final legislative day.

HB 427 by [Rep. Paul DeMarco, R-Homewood](#), also known as the Alabama Taxpayers' Bill of Rights II, awaits Senate action. It creates an independent and qualified tax appeals court in Alabama and includes needed changes in the tax appeals process. [Sen. Ben Brooks, R-Mobile](#), sponsored the Senate companion. The legislation has the support of the Business Associations' Tax Coalition, a 29-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.

HB 548 by [Rep. Jay Love, R-Montgomery](#), a legislative fix for an inequity in the tax code regarding gross income taxes for pass-through entities, such as partnerships, limited partnerships, limited liability companies and S corporations. It also awaits final consideration in the Senate. **BATC and ARA support Love's bill**, which is a fairer solution than a regulation change proposed by the Alabama Revenue Department. [Senate President Pro Tem Del Marsh, R-Anniston](#), sponsored the Senate companion.

IMMIGRATION

Alabama Immigration Bill Exceeds Arizona's; Several Legal Challenges Loom

Despite efforts by the Alabama Employers for Immigration Reform, including the Alabama Retail Association, to bring reason and fairness to the process, the Alabama Legislature has approved a hard-line immigration bill that imposes additional burdens on and penalizes Alabama employers.

Thursday evening, June 2nd, on votes of 67-29 in the House and 25-7 in the Senate, the Alabama Legislature approved a 71-page bill that includes non-criminal penalties for businesses that hire illegal immigrants and requires businesses to enroll in the federal E-Verify system to check the citizenship status of their employees.

The bill, which awaits the governor's signature to become law, also prohibits businesses that have contracts, grants or receive money or incentives from the government from knowingly employing, hiring or continuing to employ an unauthorized alien. This section of the bill would become effective Jan. 1. Many Alabama retailers have received incentives to locate in various communities throughout the state, pharmacies and other medical-related retailers have Medicaid contracts and grocers accept Women, Infant and Children (WIC) funds, which would make them subject to this provision. The bill requires any business with government contracts, grants or

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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 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](#).

incentives, to obtain notarized affidavits from subcontractors stating the subcontractors do not employ any unauthorized aliens. If construed to include suppliers, this requirement will burden some retailers with a great deal of additional paperwork.

The bill requires every business or employer in Alabama, starting April 1, to use the federal E-Verify program to "verify the employment eligibility" of a new hire. Those with 25 or fewer employees can call the Alabama Department of Homeland Security, which on behalf of the business or employer will use the E-Verify program to check a new hire's employment eligibility.

The bill also bans any business or employer from knowingly employing an unauthorized immigrant. For a first violation, the business license or permit of the employer would be suspended for as long as 10 days for the location where the unauthorized person worked; and the business would be placed on probation for three years and required to file quarterly hiring reports to the district attorney. For a second violation, the business license or permit for the location would be revoked. But a business or employer that used E-Verify to check the work authorization of an employee would NOT be held accountable if an employee later was found to have been an illegal immigrant.

The legislation makes it a Class A misdemeanor to conceal or transport an unauthorized alien in Alabama and makes it a crime for an unauthorized alien to "knowingly apply for work, solicit work in a public or private place or perform work as an employee or independent contractor" in Alabama. That crime would be punishable by a fine of not more than \$500.

Outside of the provisions dealing with companies that have governmental relationships and E-Verify, the bill would become effective Oct. 1 of this year.

In the absence of any federal action, nearly every state in the union has tried to tackle immigration in the past several years. The substitute version of [HB 56](#) by [Rep. Mickey Hammon, R-Decatur](#), adopted by the Alabama Legislature is even more stringent than immigration legislation the state of Arizona adopted last year. The final Alabama bill incorporated elements of Hammon's original bill along with a large chunk of competing legislation proposed by [Sen. Scott Beason, R-Gardendale](#). The bill was retitled the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Several groups have already indicated they will mount legal challenges to the legislation.

FOOD LABELING

Bill Banning Local Menu Labeling Gets Final OK

Thursday of last week, the Alabama Senate on a vote of 28-0 gave final passage to [HB 195](#) by [Rep. Ken Johnson, R-Moulton](#), which will prevent Alabama from having a patchwork of local food nutrition labeling laws and save small restaurants from unnecessary and costly regulation. Under the bill, which awaits the governor's



For committee assignments and clerk contacts for the Alabama Legislature, see [ARA's 2011 Legislative Roster](#).

BENEFIT FROM THE VALUE

Nominate a Retailer of Year

Each year, ARA, in conjunction with the [University of Alabama at Birmingham School of Business](#), sponsors the Retailer of the Year program. These awards, which recognize the top retailers in Alabama and their accomplishments in the retail industry, are made during Retail Day in the fall in Birmingham.

Because the retail industry is made up of such a varied group of businesses, awards are given in four categories based on sales volume:

- less than \$1 million
- \$1 million to \$5 million
- \$5 million to \$20 million and
- more than \$20 million

An independent selection committee chooses Bronze, Silver and Gold Award winners in each sales volume category. The selection committee is

signature to become law, restaurants would not be subjected to menu labeling requirements without a statewide law passed by the Alabama Legislature. [Sen. Gerald Allen, R-Tuscaloosa](#), sponsored the Senate version of the bill. **ARA supported the efforts of the Alabama Restaurant Association to pass this legislation.**

TAXES AND TAX INCENTIVES

Governor Applauds Legislature for Passing Small Business Tax Credits for Hiring

On a vote of 32-0 Thursday, June 2, the Alabama Senate adopted an amended version of the governor's tax incentive legislation for small business known as the Full Employment Act. The House unanimously concurred in the amendment, which added financial institutions to the bill, sending it to Gov. Robert Bentley for his signature. The Full Employment Act of 2011 is an enhanced version of the Reemployment Act of 2010, which Bentley sponsored as a legislator.

HB 230 by [Rep. Blaine Galliher, R-Gadsden](#), provides a one-time, \$1,000 income tax credit for each new \$10 or more per hour job created by businesses with 50 or fewer employees. The credit can be applied after the employee has worked for a business for 12 consecutive months. [Sen. Arthur Orr, R-Decatur](#), sponsored the Senate companion.

Senate Gives Final OK to Double-Weighted Sales Factor Legislation; Fate Rests with Governor

HB 434 by [Rep. Jay Love, R-Montgomery](#), which doubles the weight given to the sales portion of income when multi-state corporations compute net income tax, cleared the Alabama Senate on Thursday, June 2, on a vote of 29-1. The fate of the bill now rests with the governor. The bill also amends 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 about \$25 million for the state's Education Trust Fund. **ARA monitored this legislation.**

UNEMPLOYMENT COMPENSATION

State to Keep 20 Extra Weeks of Federal Unemployment Benefits, if Governor OKs

Legislation that will keep Alabama from losing federal funding for 20 extra weeks of unemployment benefits moved quickly through the Alabama Legislature. On a vote of 29-1, the Alabama Senate on Thursday, June 2, approved **HB 473** by [Rep. Jack Williams, R-Birmingham](#).

The legislation makes a technical change in the formula for

made up of representatives from the media, Chambers of Commerce, fellow retailers and representatives from the academic community.

The finalists and their nominators are invited to attend the awards luncheon on Retail Day.

DEADLINE FOR NOMINATIONS

Nominations for Retailer of the Year must be received by Wednesday, June 8.

Nominees then will be asked to complete entry forms, which must be received by Wednesday, June 29. The selection of winners will take place by July 29 and winners will be notified by Aug. 8.

HOW TO NOMINATE?

Just complete the [online nomination form](#)

QUALIFICATIONS?

Nominated retailers must have a physical presence in the operation and/or management of a retail business in Alabama and have been **in business for a minimum of five years**. To be considered a retailer, the business **must collect state and local sales taxes**. *(Banks, insurance agencies and dry cleaners do not qualify.)*

The application form will take an in-depth look at the retailer's accomplishments over the past year and any contributions to the community where the retail business is located.

Gold winners from any previous year are not eligible for nomination. ([Review previous winners before making a nomination.](#))

determining if Alabama qualifies for the 20 weeks of unemployment benefits, which are totally funded by the federal government and have no bearing on the unemployment compensation tax rate for employers, according to the Alabama Department of Industrial Relations. Should the governor sign this bill into law, unemployed Alabamians will be able to continue to qualify for up to 99 weeks of unemployment benefits through the employer-funded Alabama Unemployment Compensation Trust Fund and extended benefits funded federally. Without it, the benefits would be available for only 79 weeks. The bill applies the formula change only through Dec. 31, 2011, which is when the extended federal benefits run out.

However, Silver and Bronze winners can be nominated in subsequent years. Previous nominees who did not receive an award also may be nominated again.



ALCOHOL

Fate of Brewery Modernization Act with Governor

On Tuesday, May 31, the Alabama House amended and approved the "*Brewery Modernization Act*" on a vote of 58-25. The next day, the Senate concurred 19-6 and forwarded the bill to the governor for his signature.

SB 192 by [Sen. Bill Holtzclaw, R-Madison](#), allows brew pubs to sell their beers on premise or to a distributor. Currently, brew pubs can't sell their beers at any other location. This legislation allows them to sell their beers through wholesalers, who could in turn package and supply it to restaurants and grocery stores. The bill also allows breweries to operate tap or tasting rooms.

The original bill would have allowed brew pubs to produce an unlimited amount of draft beer, while the final bill retains the current restriction of up to 10,000 barrels of draft beer annually. The revised legislation requires brewpubs be located in an historic building or an historic district, as currently required, but it also allows brewpubs in areas locally designated as "*economically distressed*." The bill sets a brewpub annual license fee at \$1,000. [Rep. Joe Hubbard, D-Montgomery](#), sponsored the House companion bill.

NEXT LEGISLATIVE DAY

The Alabama House and Senate meet at 10 a.m. Thursday, June 9, 2011, for the 30th and final meeting day of the 2011 regular session.

FEDERAL

Bill Seeking Debit Swipe Fee Reform Delay Could Come to Vote This Week; Call Senators!

The U.S. Senate could vote as early as Wednesday on a bill that would delay new rules passed last year that cap debit swipe fees banks can charge merchants.



S. 575 by Sen. Jon Tester, D-Mont., would delay swipe fee reforms for two years and calls for yet another study by government agencies. A so-called compromise would shorten the delay to six months. **Call Alabama's senators NOW and urge them to vote "NO" on S. 575** and allow the Federal Reserve to go forward with its efforts to develop regulations for debit fee swipe reform.

Sen. Jeff Sessions (202) 224-4124
Sen. Richard Shelby (202) 224-5744

The Durbin amendment to the Dodd-Frank Wall Street Reform Act of 2010, which became law last July, requires reform of the swipe or interchange fees, which the nation's largest banks charge when someone uses a debit card. 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.

The vote on Tester's amendment is expected to be much closer than the one held last summer on the Durbin amendment. However, Tester doesn't appear to have the 60 votes needed to beat back a filibuster from his own party, according to published reports.

Swipe fees, officially known as interchange fees, average 1 percent to 2 percent for debit cards and 2 percent to 3 percent for credit cards and are taken by banks each time a card is used to pay for a purchase. The fees have tripled over the past decade to about \$50 billion a year, and drive up prices paid by consumers by an estimated \$427 for the average household. Debit cards account for about \$20 billion of the total.

Congress has yet to deal with credit card swipe fees. But the Federal Reserve recommended change in debit fees will reduce debit card swipe fees by an estimated 70 percent, saving about \$14 billion a year that retailers plan to pass along to their customers through discounts or other benefits.

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