



**Kentucky Chamber**  
*Uniting Business. Advancing Kentucky.*

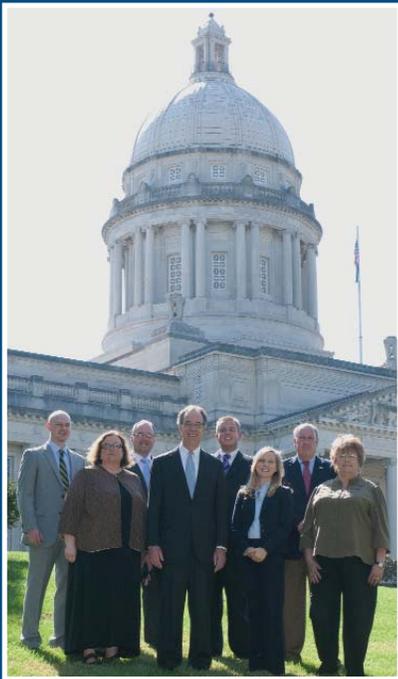
# 2012 Legislative Agenda

*Policies to get Kentucky back to work*



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**The Kentucky Chamber  
Public Affairs Team**

Dear Kentucky Chamber Members and Friends:

These days it seems that everyone has a “jobs plan.” As Kentucky’s largest business organization, the Chamber knows first-hand the importance of job creation to a recovering economy. Creating an economic environment that produces sustainable jobs should be our top goal. That’s why the Chamber has been an advocate of policies that promote both economic growth and personal well-being for citizens of the Commonwealth for more than 60 years. Each year we produce a Legislative Agenda – a policy document developed by our members that is used to guide our lobbyists as they represent the business community in Frankfort. We believe implementing the policies highlighted in this document is essential to creating both an immediate and long-term plan for job growth and retention. Ultimately, growth cannot be sustained without the proper policies to support it. We hope you’ll take the time to look through this year’s Legislative Agenda and let us know how these and other legislative issues affect you and your business.

Sincerely,

A handwritten signature in black ink that reads "Dave Adkisson". The signature is written in a cursive, flowing style.

Dave Adkisson  
President & CEO  
Kentucky Chamber of Commerce

# Policy Councils

As part of its advocacy mission, the Kentucky Chamber has developed five public policy councils and a small business committee composed of business leaders from around the state, each of which is responsible for developing legislative positions and priorities for their respective policy areas.



**Mike Owsley**  
English, Lucas,  
Priest & Owsley

## Education and Workforce Council

Kentucky's economic viability is directly linked to the education and skills of its citizens. We believe education at all levels must be responsive to the needs of employers and all students – children and adults. With a focus on lifelong learning, the education and workforce council works to ensure that Kentucky's economy benefits from a prepared, productive and diverse workforce. The council develops policies to support and improve education at all levels.

## Government Modernization Council

With the difficulties of budgeting for state government, it is more important than ever for the legislature to make very strategic decisions with limited resources. The government efficiency council focuses on all facets of government spending including proposed government efficiencies in the structure of government, public pension and personnel costs, public employee collective bargaining and other issues.



**Brad Cowgill**  
SmartClaim, LLP



**Rodney Bohannon**  
Briggs and Stratton

## Health and Wellness Council

Rising health care costs have become a significant fiscal threat to Kentucky's businesses. As such, the health and wellness council is focused on developing comprehensive, long-term solutions to help slow the ever-increasing costs of health care in Kentucky and to promote public policies that will help improve the overall health and well-being of Kentucky's citizens.

## Kentucky Competitiveness Council

By promoting business recruitment, retention and expansion, the competitiveness council seeks to increase Kentucky's competitiveness, not only with our border states, but with competitors around the world. To achieve that goal, the council is actively engaged in policy initiatives aimed at modernizing the economy, creating jobs, supporting state income and expenditure practices that promote long-term economic growth in Kentucky and improving the quality of life for all citizens.



**Dan Bork**  
Lexmark



**Carolyn Brown**  
Greenebaum Doll  
and McDonald

## Energy and Environmental Council

The energy and environmental council seeks to promote Kentucky as an energy leader and supports policies to achieve environmental protection without unnecessarily hindering economic development and business growth. Its members support legislative and administrative actions that are scientifically valid, technically feasible and economically rational.

## Small Business Committee

Because small businesses are often disproportionately affected by challenges facing the economy, the small business committee focuses on ensuring the broad range of issues of particular importance to small business owners are adequately represented in the Chamber's policy development process.



**Tierra K. Turner**  
TKT Associates

# Kentucky Chamber Public Affairs Team



**President & CEO**  
**Dave Adkisson**  
502-848-8744  
[davida@kychamber.com](mailto:davida@kychamber.com)



**VP of Public Affairs**  
**Bryan Sunderland**  
502-848-8735  
[bsunderland@kychamber.com](mailto:bsunderland@kychamber.com)



**Director of Public Affairs**  
**Chad Harpole**  
502-848-8788  
[charpole@kychamber.com](mailto:charpole@kychamber.com)



**Manager of Public Affairs**  
**Allyson Hamilton-McIntire**  
502-848-8734  
[amcintire@kychamber.com](mailto:amcintire@kychamber.com)



**Manager of Public Affairs**  
**Charles George**  
502-848-8766  
[cgeorge@kychamber.com](mailto:cgeorge@kychamber.com)



**Public Affairs**  
**Communications Manager**  
**Carrie Rogers**  
502-848-8784  
[crogers@kychamber.com](mailto:crogers@kychamber.com)



**Political Affairs Manager**  
**Beverly Standifer**  
502-848-8733  
[bstandifer@kychamber.com](mailto:bstandifer@kychamber.com)



**Senior Policy Advisor on**  
**Education & Communications**  
**Diana Taylor**  
502-695-4700



**Senior Policy Advisor on Small**  
**Business & State Government**  
**Bob Gray**  
502-695-4700



**Senior Policy Advisor on State**  
**Budget and Fiscal Policy**  
**John Cubine**  
502-695-4700

# 2012 Kentucky Chamber Legislative Agenda

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Each year, the Kentucky Chamber's five policy councils meet to research and analyze issues important to the business community. Our Legislative Agenda comes from this work. This detailed policy document guides our lobbying efforts in Frankfort and Washington, D.C. This year, the Kentucky Chamber government affairs team's primary focus will be:



## Improve the **education attainment** level of Kentuckians.

- Raise Kentucky's compulsory school attendance age to 18.
- Support the implementation of the new K-12 academic standards.
- Professionalize the teacher compensation system and strengthen evaluations.
- Focus on career and technical education programs to close the labor skills gap.
- Enact charter school legislation.
- Invest in early childhood education.
- Increase operational flexibility at universities while maintaining accountability.



## Modernize **government** at all levels.

- Prioritize state spending to invest in the future.
- Adhere to strict state spending principles.
- Adjust state personnel policies to reflect budgetary realities.
- Continue to modernize Medicaid through wellness programs and program administration changes.



## Promote **wellness** and healthy Kentuckians.

- Create a Kentucky-based health insurance exchange with market-based principles.
- Enact a tax credit for businesses that offer a wellness program to their employees.
- Intensify efforts to curb drug abuse, including limiting prescription drug distribution and expanding "Meth Check."
- Enact a comprehensive statewide smoking law that prohibits smoking in indoor public places.
- Repeal unnecessary state health coverage mandates.
- Allow Kentucky voters to amend the constitution to permit the legislature to consider comprehensive tort reform.



## Prepare Kentucky to successfully compete in the **global marketplace**.

- Repeal the inventory tax.
- Adopt a single sales factor apportionment formula for the corporate income tax.
- Develop a pro-growth tax code while continuing to focus on state spending.
- Strengthen the economic incentive program by expanding angel investor and technology reinvestment tax credits.
- Enact expanded gaming legislation.
- Enact right-to-work legislation.
- Repeal or revise the prevailing wage law.
- Develop a permanent mechanism to make unemployment interest payments.
- Enact a uniform statute of limitations law for employment-related lawsuits.



## Expand Kentucky's role as an **energy leader**.

- Promote sensible regulatory enforcement at all levels.
- Support achieving cleaner air through efficiencies, not a mandated regulatory approach.
- Support biomass and alternative energy initiatives, including manufacturing incentives for alternative energy resources.
- Ensure the stability and future of Kentucky coal as a key source of energy.

# Small Business Priorities

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Small businesses are responsible for the majority of job growth in the Commonwealth. The Chamber's Legislative Agenda recognizes the importance of small businesses in growing the Kentucky economy. Our issues are small business issues. To help foster a positive business environment that encourages job growth, the Kentucky Chamber supports the following small business priorities:

- Promote a rigorous and relevant K-12 education system.
- Close the workforce skills gap with targeted training and education.
- Support equitable unemployment insurance policies.
- Advocate workers' compensation laws that protect the rights of employers.
- Encourage an impartial civil justice system.
- Protect against unfair labor laws.
- Monitor the implementation of the new federal health care law.
- Maintain a watchdog role in the regulatory process.
- Oppose arbitrary wage and hour mandates.
- Advocate fair tax treatment for small businesses.
- Support entrepreneurial development and access to capital.
- Oppose state and federal encroachment into free enterprise.
- Maintain Kentucky's low-cost utility rates.

# Federal Priorities

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As policies established by the federal government are debated in the nation's capital, it is more important than ever that the Kentucky Chamber and its members stay well informed and prepared to deal with the changes. In just the last few years, the passage or proposal of sweeping policy changes – from the health care reform law to financial regulations to tax and labor policies – have generated a high level of uncertainty among Kentucky businesses, stifling economic growth and halting new job creation. The Chamber has weighed in on a number of issues with the Kentucky Congressional Delegation, communicated with congressional staff and traveled to Washington, D.C., for face-to-face meetings. We also maintain our involvement in federal issues with coalition partners and our relationship with national business advocacy groups. To help foster a positive business environment to support job growth, the Kentucky Chamber supports the following federal priorities:

**Support the formation of rules, regulations and changes to the Patient Protection and Affordable Care Act that:**

- Provide favorable tax treatment for employer-sponsored coverage.
- Allow states flexibility in the implementation of a health insurance exchange.
- Create a level playing field for health plans offered in and out of the exchange.
- Do not arbitrarily impose additional costs on business.
- Promote personal responsibility and consumerism.

**Support sensible environmental policies that:**

- Encourage the use of renewable and alternative energy.
- Will protect our nation's economic competitiveness.
- Promote innovation and technology as a solution.
- Recognize coal as an important part of our energy mix.
- Promote sensible regulatory enforcement from U.S. EPA.
- Will not place Kentucky at a distinct economic disadvantage.

**Support labor laws that:**

- Do not upend years of carefully balanced labor laws, whether through Congress or regulation promulgated by the National Labor Relations Board.
- Protect secret ballot elections to form unions.
- Maintain a company's ability to educate employees on the consequences of unionization.
- Do not include binding arbitration provisions.
- Do not impose one-sided penalties.

**Support tax and budget policies that:**

- Recognize a balanced approach to investments and expenditures.
- Do not place U.S. companies at a competitive disadvantage.
- Promote job growth and investment.
- Promote equity and ease of compliance.
- Are equitable to all businesses regardless of size.



# Improving the Education Attainment Level of All Kentuckians



Kentucky’s economic well-being is inextricably linked to the education and skills of its citizens. The relationship between educational excellence and economic growth is more critical today than it has ever been. In our modern economy, competition comes from nations on the other side of the world, not just from our neighboring states.

Kentucky must be focused and relentless in its work to create a system of education that is truly world class. All Kentuckians have a role to play, none more important than the state’s business community. It is the state’s employers who face competition every day and who understand the limitations created by an under-educated workforce.

The Commonwealth must reinforce the relationship between funding, expectations for high student achievement and accountability at all levels of education — from early childhood through postsecondary and adult. Accountability is the foundation of Kentucky’s system of education. The state must continually measure its progress toward specific goals to ensure a successful future for Kentucky and its citizens as well as accountability for taxpayers.

## 2012 GOALS

- Raise Kentucky’s compulsory school attendance age to 18.
- Support the implementation of the new K-12 academic standards.
- Professionalize the teacher compensation system and strengthen evaluations.
- Focus on career and technical education programs to close the labor skills gap.
- Enact charter school legislation.
- Invest in early childhood education.
- Increase operational flexibility at universities while maintaining accountability.
- Reform the education tribunal system

## Continue Moving Forward

The state has made substantial progress since the implementation of the Kentucky Education Reform Act in 1990 and postsecondary education reforms in 1997. In fact, Kentucky’s education system is ranked 33rd nationally, up from 48th in 1990, based on the Index of Educational Progress study from the University of Kentucky. These gains are worthy of acknowledgment, but it is important for the health of the state’s economy that progress continues.

The state’s adoption of new, more rigorous standards, along with 47 other states, will ensure that students are college and career ready when they graduate. The incorporation of the new standards into classrooms has begun, and testing based on those standards will begin in the spring of 2012.

The Kentucky Chamber supports the Kentucky Department of Education, the Council on Postsecondary Education and educators across the state as they transition to the new standards and ask that legislators and communities do so as well. The temptation to revert to less challenging standards may arise, but the future of our students and, in turn, our economy depend on the successful implementation of the new, more relevant standards.

## Elementary & Secondary

### Reduce the Dropout Rate

Higher education attainment is the foundation of accelerating economic growth. In 2010, nearly one in four high school students in the state dropped out, and nearly 25% of adults in Kentucky have less than a high school education. The Chamber supports raising Kentucky’s compulsory school attendance age to 18 and the development of alternative learning tracks and safe learning environments to help struggling students complete a high school degree and matriculate toward certificate and postsecondary degree programs.

### Promote Quality Teaching

Quality teaching is the single most important factor in students’ academic success. To ensure every Kentucky student has a high-quality teacher every year, the Chamber supports the formal statewide review of the effectiveness of teacher preparation programs, requiring providers to redesign professional development programs to better meet the needs of classroom teachers. Policymakers must professionalize the teacher compensation system to reward excellence and provide incentives to attract educators to underserved areas (both geographic and subject matter).



## Require Education Accountability

Individuals and institutions should be held accountable for student achievement through a series of performance measures that will help gauge teacher, student and administrator performance. Specifically, differentiated compensation for teachers and administrators, based on responsibilities and performance and dictated by a strengthened evaluation system, should be utilized to recruit and retain the best and brightest professionals. Those educators who do not meet the high standards required to serve all students should be removed from the education system. The Chamber further believes that efforts to build stronger schools, and thereby enhance the state's economic prosperity, require accurate and comprehensive data collection.

In support of this effort, the Chamber encourages the continued development of the P-20 data collaborative, a joint effort by the Kentucky Department of Education, Council on Postsecondary Education, Education Professional Standards Board and the Education and Workforce Development Cabinet. The collaborative seeks to collect student and teacher performance data from pre-school through adulthood and connect it to improvement plans for Kentucky's education system.

## Remove Poor Teachers

In addition to strong accountability for student achievement, education professionals must also be held accountable for poor performance and inappropriate behavior in a timely manner. The current tribunal system in place to review appealed cases of misconduct and inadequate job performance of school employees is both complicated and inconsistent. Superintendents are reluctant to fire or suspend an insubordinate employee due to the cost, complexity of the process and likelihood that their decision will be overturned by a tribunal. The Kentucky Chamber advocates for a clearer, more consistent process to ensure all students have a safe and productive classroom environment.

## Offer a 21st Century Education

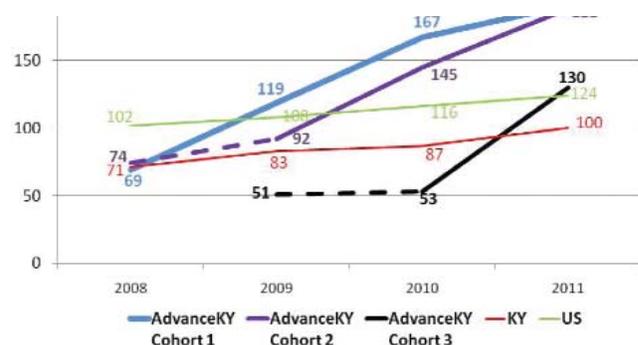
Students at all levels should be challenged and provided the environment and instruction they need to succeed in the technology-driven and increasingly global 21st century. Improving the academic achievement of all students can be done by encouraging rigorous and relevant courses and experiences. To make sure all students are provided a quality education experience, the Chamber supports the formation of locally managed charter schools in areas where certain schools consistently underperform as one of the tools by which Kentucky schools can improve.

Critical to Kentucky's ability to compete in the global economy is a commitment to increasing the focus on science, technology, engineering and mathematics in our schools. AdvanceKentucky, the ground-breaking initiative focused on improving participation in math, science



## AP Qualifying Scores

Per 1,000 Juniors and Seniors



Source: AdvanceKentucky

and English courses as measured by Advanced Placement (AP) exams, is a proven method to achieve this goal.

Secondary career and technical education programs, comprised of project-based learning, should also be fully utilized to further this goal. The Chamber supports legislative and local district efforts to increase graduates in these disciplines to meet the ever-growing needs of employers.

International awareness is essential to a first class, globally competitive workforce. The Chamber believes students should gain this awareness through an international educational experience during their junior or senior year in high school.

## Limit KEES Scholarships to Students Who Are Ready

At the high school level, financial rewards – in particular the Kentucky Educational Excellence Scholarship – should be weighted to provide students with greater incentives to take more rigorous courses. Under current law, a student can score a 15 on the ACT and still receive KEES Scholarship funds. The Chamber supports raising this score to more accurately reflect the minimum score needed for admission to Kentucky's postsecondary institutions.



## Invest in Early Childhood Education

Kentucky must invest in early childhood education and make greater investments in enhanced child-care programs for Kentucky's developing youth. Ensuring a successful beginning for Kentucky's students will require an innovative and collaborative approach to provide quality preschool to all 3- and 4-year-olds. Additionally, the Chamber supports efforts to fully fund all-day kindergarten equitably statewide.

### Postsecondary

## Make Higher Education Affordable

Making sure postsecondary education is affordable for Kentucky students should be a priority for the Commonwealth. The Chamber advocates simplification of the state's financial assistance process and a shared responsibility approach to distribute costs among students, families, postsecondary institutions and the government. Further, timely degree completion is a key strategy in managing limited state and student resources.

## Close the Skills Gap

A student's progress through the education system depends on how well he or she prepares at each level to succeed in the next. Too often, a lack of communication, collaboration and coordination among the levels of education creates obstacles for students. The Chamber commends the Kentucky Department of Education, Council on Postsecondary Education and Education Professionals Standards Board for their recent efforts to improve the communication and coordination along the education pipeline. Despite these developments, a skills gap still exists between employer needs and labor availability. Higher education at all levels must be more strategic at providing the training and education – from individuals with industry-specific certificates to Ph.D. graduates – that business needs.

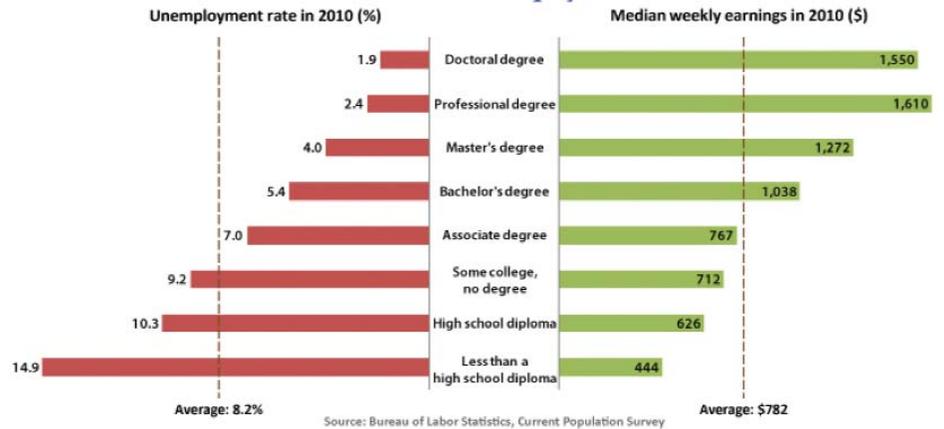
## Reinvest in "Bucks for Brains"

The Commonwealth's landmark Research Challenge Trust Fund, also known as "Bucks for Brains," has been used to attract world-class researchers and professors to Kentucky universities. The Chamber encourages lawmakers to continue the trust fund or devise a similar program that would provide matching dollars to give universities flexibility, with accountability, to ensure they can attract research faculty and provide up-to-date facilities, technology or other tools to meet the goals of the 1997 postsecondary education reforms.

## Set Universities Free to Excel

Public universities in the Commonwealth need greater operational flexibility to compete in an increasingly global marketplace. Flexibility

## Education pays:



that allows for entrepreneurial endeavors while requiring overall accountability would improve quality and better serve the institution, Commonwealth, employers and students. As an example, 43 states currently allow public universities to issue their own revenue bonds to finance building projects that generate income sufficient to cover the debt service. To the extent that such an approach would not negatively impact the Commonwealth's state bond rating, the Chamber believes a similar approach should be implemented in Kentucky with structural safeguards and oversight that ensure projects are consistent with the state's vision for postsecondary education.

### Workforce Development

## Aggressively Train the Workforce

The Chamber supports the widespread use of industry-based credentials, like the National Career Readiness Certificate, to establish uniform standards in workforce preparation. Students who pursue technical training instead of a college education should be eligible for financial awards of all types. The Chamber supports redesigning postsecondary financial aid programs to help working adults who need assistance for additional technical training and postsecondary education. The Chamber supports streamlining workforce development programs to aid employers and employees in these endeavors.

## Improve the Adult Education System

Eighty percent of Kentucky adults who receive a GED instead of a high school diploma are not prepared for postsecondary education or training. The GED Testing Service (GEDTS) is crafting its GED 21st Century Initiative, aligned to the newly adopted Common Core Standards, which will reflect the expanded rigor and relevance expected in a high school diploma to prepare learners for postsecondary education or employment. It is critical that Kentucky's adult education programs collaborate with employers, local community colleges, technical schools and other educational institutions to help ensure quality learning experiences for those working toward a GED.

# Modernize Government At All Levels



The news has been dominated in the past year by Kentucky's revenue shortfall, which, like those in most states, resulted from the downturn in the international economy that led to lower tax receipts and increased demand for public services. From fiscal year (FY) 2010 to FY 2012, Kentucky will use approximately \$3 billion in federal stimulus funds to fill the hole left by reduced state revenue. These federal funds are due to expire in 2012, leaving Kentucky to face a day of reckoning in balancing its budget.



In 2011, the Kentucky Chamber issued its *Building a Stronger Bucket* report, a follow-up to its 2009 *Leaky Bucket* report.



Both reports highlight the fact that Kentucky's budget priorities continue to shift away from investments in education and toward providing more money for corrections, public employee health benefits and Medicaid.

*Building a Stronger Bucket* reached several key conclusions:

1. The size of state government relative to the state's economy has remained consistent over the years (between 5% and 6% of the Gross State Product).
2. Corrections spending grew about 50% faster than the overall budget (60.4% vs. 41.1%) from 2000 to 2012.
3. From 2000 to 2012, Medicaid spending grew about three times faster than the overall budget (117% vs. 41.4%).
4. Public employee health insurance costs grew 4½ times faster than the overall budget (190% vs. 41.1%) for the same period.
5. Spending growth in these three areas is unsustainable and is draining resources away from education, the Chamber's No. 1 policy priority.

The Chamber's efforts to raise awareness of these facts among Kentucky's lawmakers resulted in some significant changes during the past two legislative sessions. Changes included cutting the annual growth in state employee health insurance in half, moving to Medicaid managed care statewide, and a comprehensive study of the state's corrections system, which resulted in major legislative reforms. The Chamber applauds the bipartisan support for the passage of the Penal

## 2012 GOALS

- Prioritize state spending to invest in the future.
- Adhere to strict state spending principles.
- Adjust state personnel policies to reflect budgetary realities.
- Continue to modernize Medicaid through wellness programs and program administration changes.

Code and Controlled Substances Act (HB 463) during the 2011 session, which will bring nearly \$30 million in savings annually to the state's General Fund. Despite these important gains, the state must continue to act deliberately to institute management strategies that work.

The Chamber offers the following suggestions to help Kentucky deal with these tough economic times and to ensure our policymakers do what most Kentucky families and business leaders have done over the past few years: establish spending priorities, make tough decisions and fix the leaks that take funds away from the priority of improving education. Actions to address this unsustainable spending

must occur before the discussion of additional revenue opportunities begin.

## Adhere to State Spending Principles

If Kentucky is to keep its financial house in order, it must establish a set of disciplined guidelines that will set our state on a road to prosperity. We encourage Kentucky's lawmakers to adopt the following principles for state spending:

1. Limit spending to 6% of the state's economy.
2. Limit borrowing costs to 6% of the state's budget.
3. Eliminate the structural deficit by adopting a five-year plan to spend only recurring revenues for recurring obligations.
4. Prioritize spending on areas that invest in the future like education and economic development.
5. Eliminate the practice of appropriating all anticipated revenue and ensure the state's "rainy day fund" has adequate resources to cover the state's emergency needs.





Consideration of new or increased taxes or fees should occur only after exhausting all reasonable opportunities to reduce spending and increase efficiency. Streamlining services, consolidating departments, eliminating ineffective programs, initiating responsible personnel compensation and benefit policies and other efforts to maximize the performance of public funds are examples of such fiscally responsible public operations.

The Chamber believes achieving a fiscally responsible state budget that promotes economic development will require a significant review of current spending trends and a shift in funding to our priorities of education and economic development. If not, we will continue to bear the high costs through unsustainable increases to treat poverty, crime and poor health. Programs that contribute to unsustainable growth in General Fund obligations should not be permitted to unduly consume tax dollars that could otherwise be invested in public priorities for building a stronger future.

## Prioritize Government Spending

In the past 20 years, Kentucky's General Fund appropriations have increased almost threefold—from \$6.5 billion in FY 1986-88 to \$18.5 billion in FY 2008-10. More important, Kentucky's spending priorities have shifted. Over the past 20 years, the share of the General Fund dedicated to K-12 and postsecondary education has been declining while significant spending growth has occurred in Medicaid, corrections and public employee benefit costs. Medicaid's share of the General Fund has doubled in the past 20 years, from 6.5% in FY 1986-88 to more than 13% in FY 2010. Corrections spending has skyrocketed. In FY 1988, the total Corrections budget was \$115.7 million. By FY 2010, it had almost quadrupled to \$464.8 million. Public employee benefit costs are up 190% since 2000.

The Chamber believes that to achieve sustainable and healthy growth in our economy and the well-being of our citizens, the state should prioritize spending on education and workforce development first, with economic development and infrastructure a close second.

## Sustainable Public Employee Benefits

As public retirement and health care costs escalate, they are draining money away from vital programs such as education, and the continued increases put essential services at both the state and local level at risk. In FY 2010, state government paid an estimated \$1.2 billion a year for health insurance for public employees, and these costs have been growing at a higher rate than inflation and a higher rate than average national health care increases. K-12 funding, especially any new money, is being consumed by the increased costs of health insurance and retirement.

As the General Assembly works to meet the obligations made to public employees, it will become clear that additional changes to health and retirement benefits will be needed. The Chamber



recommends the General Assembly continue to focus on reducing health care costs, suspend the annual 1.5% cost-of-living increase for retirees until the system is more stable, adopt a defined contribution 401(k)-style plan for new state employee hires and emphasize total compensation to employees so they better understand their full benefit package.

## Sustainable Debt Levels

The future of Kentucky's finances depends in large measure on its ability to manage debt in a way that is disciplined and effective. Borrowing for long-term capital projects of broadly recognized economic and social value is an appropriate use of public debt; however, debt must be limited to a level that is sustainable and does not adversely impact the overall credit rating of the Commonwealth.

In recent years, Kentucky has turned increasingly to issuing bonds to sustain the growth in government spending. Total state and local debt in Kentucky totals more than \$7,770 for each of the state's 4.2 million people. This is more than \$400 above the national average and places Kentucky 14th in government debt per capita. The Chamber believes the level of state debt should be closely monitored. Projects that have a related revenue stream or can create budgetary savings should receive priority consideration, and every project considered for financing should have a defined, sustainable plan for repaying the debt service.

## Modernizing Medicaid

Kentucky's Medicaid budget has been growing at a rate more than double that of total state government spending since 2000. Currently, one in five, or more than 800,000, low-income and disabled Kentuckians are on Medicaid. This rapid growth in Medicaid is pulling funds away from education, further compounding the problem, because, as research shows, better education is linked to better health.



The key challenge is finding a way to slow unsustainable Medicaid spending increases without inflicting harm on Medicaid recipients and health care providers. The Chamber was pleased with the establishment of an expanded statewide Medicaid managed care program. Studies suggest Medicaid managed care contracts can save anywhere from 1% to 20% over the traditional fee-for-service model. In addition to monitoring the implementation of the managed care approach, we recommend the following to make the Medicaid program more closely resemble a private insurance model:

**Incorporate Wellness Into Medicaid.** A best practice identified by the National Governor’s Association Center for Best Practices is for states to incorporate more wellness activities into Medicaid programs. The Chamber supports offering financial incentives to Medicaid recipients who maintain healthy behaviors.

**Program Review.** The Chamber encourages a top-to-bottom, data-driven review of the Medicaid program conducted by a nationally recognized consulting firm with expertise on Medicaid. The review should focus on an evaluation of the scope of services covered by Medicaid compared with other states as well as outcomes for Medicaid patients.

**Program Administration.** The Chamber believes additional areas that should be explored for possible savings include:



1. Improving the “error rate” – reducing overpayments to providers and ensuring the correct determination of recipient eligibility.
2. Ensuring that child support orders require non-custodial parents with access to health insurance to provide coverage for their children (as permitted by Kentucky law).
3. Increasing the use of generic drugs by Medicaid recipients.
4. Revisiting the use of significant co-pays for recipients at higher income levels.



# Improving the Health & Wellness of Kentuckians



There is a growing sense of crisis in the business community about the unsustainable upward trend of health care costs, particularly for small businesses. Over the past decade, employers have been increasingly forced to consider such undesirable cost-containment strategies as reducing employee benefits, shifting more and more costs to employees, dropping coverage altogether or increasing consumer prices to recoup their higher costs. The Kentucky Chamber encourages state lawmakers to focus on policies that improve the health of our citizens through cost-effective, evidence-based care along with wellness programs and other prevention measures.



## Monitor Implementation of the ACA

The Patient Protection and Affordable Care Act (ACA), enacted last year, represents a wholesale change to our nation's health care system. The Chamber is concerned that employers who have been providing voluntary health insurance will now be faced with mandated coverage, new structures on benefit design and increased taxes or penalties.

The effect of the law on employers will not be fully realized until the numerous federal regulations are finalized and the health care market responds to the changes. Kentucky officials and policymakers will have to act quickly to develop and implement changes in our state's health care programs and systems to comply with the law. The Chamber is monitoring these regulations and has provided input to federal and state agencies as well as the National Association of Insurance Commissioners. The Chamber will continue to look for opportunities to reshape the law in ways intended to ensure that employers in Kentucky can provide affordable, accessible health care to their employees and not be burdened by overreaching regulations and penalties.

dividuals and "Small Business Health Options Programs" (or SHOP) Exchanges for small employer groups, both aimed at creating a robust health insurance marketplace. Similar to shopping for a flight or hotel on a travel website, individuals and small businesses will be able to shop for qualified health plans online, allowing them to compare coverage, provider networks and cost. Each state must show the federal government it has the legal authority to operate an exchange, which may be established by passing legislation or issuing an executive order. If a state fails to act, it must participate in an exchange operated by the federal government.

States are on a tight timeline to get an exchange up and running. Exchanges are scheduled to become operational on January 1, 2014, but states must demonstrate to the U.S. Department of Health and Human Services they are capable of operating an exchange by January 1, 2013. The approaching deadlines necessitate action by state policymakers to develop an exchange in 2012. Though state agencies are currently working together behind the scenes to determine how an exchange will work in Kentucky, the legal authority to establish a state-operated exchange does not yet exist. Despite the Chamber's serious concerns about the ACA's impact on business, we do not believe the Commonwealth should cede power to Washington, but chart its own course in health care reform through exchange-enabling legislation or an executive order in 2012.

State policymakers must understand that passing a state-based exchange is not an endorsement of the law itself. Further, Kentucky should not wait for Congress to repeal the law or the U.S. Supreme Court to issue an opinion on the constitutionality of the individual mandate.

## Create Kentucky-based Health Insurance Exchange

Beginning in 2014, the ACA establishes "American Health Benefit Exchanges" for in-

## 2012 GOALS

- Create a Kentucky-based health insurance exchange with market-based principles.
- Enact a tax credit for businesses that offer a wellness program to their employees.
- Intensify efforts to curb drug abuse, including limiting prescription drug distribution and expanding "Meth Check."
- Enact a comprehensive statewide smoking law that prohibits smoking in indoor public places.
- Repeal unnecessary state health coverage mandates.
- Allow Kentucky voters to amend the constitution to permit the legislature to consider comprehensive tort reform.



## Kentucky Chamber Exchange Principles

*As the largest consumer of health insurance, employers must be afforded a central role in the development and operation of an exchange.*

**Market-based principles** The exchange should operate as an open marketplace that supplements, rather than supplants, the existing insurance market. To maximize coverage options for employers and drive down costs, all qualified health plans should be eligible to compete both inside and outside the exchange.

**Level playing field** The same market rules, mandated benefits and tax incentives should exist for health plans sold inside and outside the exchange.

Otherwise, the risk for adverse selection is great, as Kentucky experienced with health care reform in the mid-1990s. Further, the state should not impose any additional requirements on health plans beyond what is mandated by the U.S. Department for Health and Human Services.

**Easy to understand** The exchange must be intuitive, transparent and easy to navigate for small employers and consumers. Independent licensed insurance agents

should continue to have an important role in helping employers understand their coverage options.

**Separate risk pools** Pending a thorough analysis of Kentucky's insurance market, the state should exercise extreme caution before merging individual and small group markets. Such a merger could prove disruptive to the small group market, which typically enjoys less volatility than the individual market.

**Defined contribution/plan portability** The exchange should permit employers to contribute a set amount to each employee's policy, giving employees full control over decisions relating to their coverage and allowing plan portability for employees changing jobs.

**Independent governance** Rather than creating a new government agency or regulatory entity, the exchange should be operated by an independent, non-

profit organization governed by qualified board members with broad representation and expertise. The governing board should not maintain a separate regulatory function. Rather, regulation of the exchange should remain with the Kentucky Department of Insurance, which is already responsible for regulating Kentucky's insurance market.

**Effective administration** In light of the problems Kentucky experienced in the mid-1990s, it is critical that the exchange be administered by individuals who have the proper expertise in managing and analyzing health care data, records and financial information.

**Equitable funding** If funding sources are needed, it is important that all stakeholders who benefit from the exchange contribute. The burden should not be placed solely or disproportionately through a tax on small employers.

### Promote Wellness for All Kentucky Citizens

Collectively, Kentucky has one of the nation's most unhealthy populations. The Commonwealth consistently ranks at or near the top of the list in smoking rates, obesity levels and a host of other poor health indicators. In addition to being a quality-of-life issue, the state's health status has a significant impact on the business community, increasing employers' health care costs and hindering their ability to hire a healthy and productive workforce. Poor health is also a drain on the state's resources through increased utilization of health services by Medicaid recipients as well as state employees.

To reverse the culture of poor health in Kentucky and promote an underutilized health care cost control measure, the Chamber supports legislation that provides tax and other incentives for the creation of wellness programs, whereby businesses educate and encourage their employees to engage in healthy lifestyles and other preventive care measures. The Chamber is encouraged that the ACA broadens wellness initiatives by providing grants to certain small employers and increasing incentive limits.

The Chamber supports government programs and policies that help provide education and assistance for companies, organizations and individuals to promote health and wellness throughout Kentucky. These efforts should focus on encouraging a level of personal responsibility for one's health, as well as organizational health pro-

motion policies and environments. A balanced approach that educates children in schools and parents in workplaces about practicing healthy lifestyles to avoid the long-term consequences of childhood obesity is necessary. Being overweight as a child can often lead to health problems that were once confined to adults, such as high blood pressure and high cholesterol. With Kentucky having the third highest childhood obesity rate in the country, the Chamber lauds the state legislature for creating a task force in 2011 focused on curbing this condition.

### Intensify Efforts to Control Drug Abuse

The Chamber is concerned about the state's rising prescription drug abuse problem and its negative effect on Kentucky's workforce and health care costs. The Chamber supports increased efforts to track and limit prescription drug distribution, both statewide and through interstate compacts, and encourages the adoption of nationally recognized pain management guidelines.

While recognizing the severity of methamphetamine abuse in Kentucky, the Chamber opposes the scheduling of pseudoephedrine, an ingredient often found in common cold medications and a main ingredient in the illegal production of meth. This proposal would likely lead to higher health care costs for employers and state health plans while doing little to combat this growing



problem. Instead, the Chamber encourages legislators to consider the following alternatives:

- Expand Kentucky’s “Meth Check” system to prohibit those who have been convicted of meth-related crimes from purchasing any products that contain ephedrine and/or pseudoephedrine.
- Limit the amount of products containing ephedrine and/or pseudoephedrine that can be transported across state lines.
- Ban all online retail sales, distribution and shipment of products containing ephedrine and/or pseudoephedrine from non-Kentucky licensed pharmacies to individuals in Kentucky.
- Establish guidelines to increase information-sharing among Kentucky law enforcement officials and prosecutors.

### Enact Statewide Smoke-Free Law

According to the U.S. Centers for Disease Control and Prevention, Kentucky is second in the nation in the number of adult smokers, with 24.8% of the population. The situation is not improving with our youth – Kentucky is first in the nation in smoking prevalence among both middle and high school students. Smoking-attributable health expenditures are estimated at more than \$1.7 billion annually in Kentucky, and the smoking-attributable economic productivity loss in Kentucky is estimated at more than \$2.6 billion each year.

Kentuckians’ health scored two major victories during the 2010 regular session with the funding of the Medicaid smoking cessation program and the passing of House Bill 165, which clarified Kentucky’s employment discrimination laws to allow employers and insurers to treat smokers differently than non-smokers. Despite these advances, the business community believes our leaders need to continue to improve Kentucky’s public policies with regard to smoking.

The Chamber supports enacting a comprehensive statewide smoking law that prohibits smoking in indoor workplaces and public places, including restaurants, bars and hotels. While the Chamber is not typically supportive of policies that focus on a particular business or industry disproportionately, the body of evidence on smoking and its negative impact on public health and the economy is too significant to ignore. Already, 19 Kentucky communities and 23 states have passed comprehensive smoking laws, which have proven to curb smoking rates and lower health care costs without negatively impacting business.

### Increase the Number of Health Care Professionals

Many areas of Kentucky are underserved by health care professionals, contributing to poor access and higher medical costs for Kentucky’s citizens. More than two-thirds of Kentucky’s 120 counties have been officially designated as health professional shortage



areas for primary care by the Health Resources and Services Administration. In addition, Kentucky lacks sufficient numbers of physician specialists, nurses, pharmacists, dentists, mental health professionals and allied health personnel. This lack of skilled professionals contributes to fewer regular check-ups, poorer health and higher costs to the medical system over the long term. Kentucky’s aging population makes this a particularly critical issue.

To help reverse this disturbing trend, the Chamber supports a comprehensive state strategy to increase the number of health care professionals trained in Kentucky as well as innovative approaches to encourage them to practice here. This strategy should ensure that postsecondary education institutions which provide medical training are adequately funded and held accountable for increasing enrollment. These institutions should be encouraged to explore the development of economic incentives as well as expanded tuition assistance and loan repayment programs that include a requirement to practice in Kentucky for a set period of time. Additional incentives should be available for underserved counties and regions based on the particular need of each area. As is the case for higher education, lack of affordable training should not be a deterrent for talented students from entering the health care field.

With the ACA expanding the number of insured Kentuckians and those covered by Medicaid, the need for health care professionals will be even greater. The Chamber encourages state officials to utilize provisions contained in the law aimed at increasing workforce supply and training programs.

### Improve Kentucky’s Medical Liability Climate

The rising costs associated with medical malpractice liability are taking a significant financial toll on the health care industry, resulting in increased costs for consumers and a continued inability to at-



tract and retain sufficient numbers of physicians in all regions of the Commonwealth. The high price of liability insurance and the lack of reasonable tort limitations in Kentucky have contributed to the shortage of medical professionals.

To curb this disturbing trend, the Chamber supports allowing voters to consider a constitutional amendment that would permit the legislature to consider comprehensive tort reform. State and federal lawmakers should pass reasonable limits on damages and require alternative dispute resolution to help reduce escalating malpractice insurance premiums and the resulting burden passed on to consumers in the form of higher prices, fewer health care providers and fewer choices. Since 2000, numerous states have passed ballot initiatives to amend their constitutions, and 16 states have passed a cap on non-economic damages.

### Promote Informed Health Care Consumerism

Consumers need access to information about the cost of health care and the quality of services provided to make informed and cost-conscious choices when selecting a health care provider. The General Assembly made great strides in 2008 by passing the Chamber-led transparency initiative, which requires the Cabinet for Health and Family Services to make permanent the reporting to consumers of health care costs, quality indicators and results.

Without this effort, such information is almost entirely absent from today's health care marketplace, preventing Kentuckians from making informed choices when they purchase health care services. The Chamber encourages the Cabinet to make this comprehensive information easily available to consumers, which may serve to contain increases in health care spending by government, businesses and individuals. Only when consumers know the price and value of health care services will they be empowered to make the best possible choices for themselves and their families.

### Expand Mandate-Free Health Insurance

Because health care mandates and unnecessary regulations can add to the already high cost that consumers and employers pay for health insurance, the Chamber supports legislation that repeals coverage requirements – beyond those the federal government has implemented – for employers of all sizes. With the cost of health insurance already creating a competitive disadvantage for many businesses, extending these mandate-free policies will allow more employers to provide health benefits to their employees.

### Promote Competition in the Health Insurance Market

Attracting more insurers to Kentucky is a practical and realistic means of controlling escalating costs and providing greater access to health insurance. The Chamber calls on state government to enhance competition in the health insurance market through further deregulation of the insurance industry or any other reasonable means.



### Oppose Any Willing Provider

The Kentucky Chamber opposes Any Willing Provider provisions and supports the right of health insurance companies to negotiate exclusive contracts with health care service and product providers that offer discounted costs to consumers.

### Promote eHealth Policies in the Commonwealth

A number of preventable medical errors and duplication of services could be reduced significantly with the implementation of policies that encourage the use of secure electronic medical records that can be accessed by all of an individual's health care providers. This, along with electronic prescribing, can reduce duplication, improve delivery of services and save lives.

### Improve Long-Term Care

With the significant aging of the population, it is increasingly important for policymakers to adopt strategies that will be able to meet the medical needs of these individuals. The Chamber supports initiatives that provide greater incentives for individuals and/or employers to purchase Long-Term Care insurance policies. Additionally, the Chamber encourages policymakers to concentrate elder care resources on case management to ensure people's needs are matched with the most appropriate care. The Chamber also believes artificial barriers to home and community-based services should be eliminated in an effort to prevent premature institutional care.



# Preparing Kentucky to successfully compete in the global marketplace

The Kentucky Chamber believes promoting long-term economic development and job growth should be a top consideration when state revenue policies are adopted. It is critical that Kentucky be successful in our efforts to promote business recruitment, business creation and existing business expansion. To that end, the Chamber will advocate for public policy innovations that serve to remove the Commonwealth's most glaring competitive disadvantages. We call on state leaders to eliminate unnecessary government-imposed costs of doing business and to enact legislation that fosters business growth and innovation.

## Economic Policy

### Ensure a Competitive Tax Climate

Tax policies must be guided by a well-researched, balanced approach that provides for necessary public investments and expenditures while avoiding policies that could serve as disincentives to private-sector employment and investment. During these tough economic times, Kentucky's lawmakers are to be commended for holding the line on new or increased taxes, which heightened the state's national profile and better positioned Kentucky and its employers for recovery. In response to these actions, the Tax Foundation ranked Kentucky 19th best in its 2011 State Business Tax Climate Index, up 15 spots from 2009.

Despite this progress, legislators have a number of opportunities to change our tax code in ways that will have an immediate impact on Kentucky's ability to attract and retain jobs:

**Repeal or phase out the inventory tax.** Property taxes on business inventory, abandoned by most states, serve as a disincentive to business growth because they tax the investment itself rather than the outcome or profit from that investment. Furthermore, some types of inventory are exempt by law or enjoy exemption because of location, while other, similar inventory does not receive the same treatment.

**Adopt a single sales factor apportionment formula.** Though changes in 2005 and 2006 improved the competitiveness of Kentucky's business taxes, our combined state and local corporate income tax is still among the highest in the country. To become more competitive, Kentucky should join five of its neighboring states in adopting a single sales apportionment formula. Under Kentucky's current doubleweighted sales factor apportionment formula, companies are penalized for creating jobs and additional investment in the Commonwealth. This penalizes the company for bringing jobs and investment to the Commonwealth. By moving to a single sales factor formula, Kentucky will be viewed as a more attractive option for companies making significant capital investments and creating new jobs.

**Revise the limited liability entity tax.** To increase fairness, employers should have the ability to offset pass-through credits against taxes on income from other businesses and other years.

## 2012 GOALS

- Repeal the inventory tax.
- Adopt a single sales factor apportionment formula for the corporate income tax.
- Develop a pro-growth tax code while continuing to focus on state spending.
- Make strategic investments in the state's economic development program.
- Strengthen economic incentive programs by expanding angel investor and technology reinvestment tax credits.
- Enact expanded gaming legislation.
- Enact right-to-work legislation.
- Repeal or revise the prevailing wage law.
- Develop a permanent mechanism to make unemployment interest payment.
- Enact a uniform statute of limitations law for employment-related lawsuits.



In addition to these immediate changes, the Chamber urges the General Assembly to address the long-term need for comprehensive tax reform. Our members tell us the tax system is too complex and compliance is too costly, while numerous economic development experts say our code continues to be a competitive disadvantage because it punishes economic productivity. Since taxes significantly impact business decisions that lead to job creation and retention, the Chamber supports comprehensive tax reform in accordance with the following principles:

**Support growth and competitiveness.** Kentucky's state and local tax system should support growth-oriented tax policies that improve the competitiveness of Kentucky businesses in the national and global marketplace.

**Reduce the cost of capital.** The tax code should encourage investment as it is the key to increased growth and productivity as well as higher wages for Kentuckians.

**Simplify tax code.** The tax code should be simplified with the goal of reducing compliance costs for the private sector. Complex taxes impose costs on businesses that either reduce the return on investment or are passed on to consumers and workers.

**Promote fairness.** Kentucky's tax system should promote fairness by creating a level playing field on which Kentucky businesses can compete. Double taxation, or pyramiding, should be prohibited, and tax expenditures should be carefully studied to determine effectiveness.

**Revenue neutral changes.** Changes in the state tax code should be revenue neutral and undertaken only to increase fairness and competitiveness and not to simply generate additional state revenue. While tax changes cannot guarantee tax neutrality for every Kentucky business, the goal should be not to raise net taxes on the business community.

**Continue to focus on spending.** To keep taxes competitive, it is critical to examine expenditures and align them with economic realities. Reforming the tax code must be coupled with a continued commitment by the legislature to reform and prioritize government spending.

## Entice Business Development

While not a substitute for comprehensive tax reform, the Chamber supports strategic investment in incentive programs designed to encourage the growth of high-wage jobs, long-term investment in strategically defined industry sectors and promotion of small businesses. Further, the Chamber supports the enhancement of entrepreneurial development incentives to encourage innovation and competition in a global marketplace. To strengthen Kentucky's incentive program, lawmakers should act on initiatives to expand the Kentucky Investment Fund Act angel investor tax credit to individ-

## Kentucky Business Tax Climate Rankings

Tax	Rank
Overall Rank	19
Corporate Tax	42
Individual Income Tax	32
Sales Tax	7
Unemployment Insurance Tax	34
Property Tax	20

Source: Tax Foundation

uals and the Kentucky Reinvestment Act to include technology and headquarters reinvestment projects.

To ensure maximum effectiveness, accountability and continuity, the Chamber supports maintaining the public/private partnership board governance structure under which the Cabinet for Economic Development operates.

## Grow Kentucky's Exports

With 95% of today's market opportunities outside the United States, Kentucky must recognize and capitalize on its export advantage in international trade. Its geographic location in the United States, its status as the operational headquarters for an international logistics provider (UPS), and its trained and growing transportation workforce positions Kentucky to be a leader in the export of Made-in-America products. In fact, Kentucky exported more than \$19.3 billion of goods in 2010, ranking 19th among the 50 states in total exports. The Chamber encourages and supports all efforts by our state leadership to provide export training and promote the benefits of global trade to our business community. Exporting products from Kentucky will retain and create jobs, grow our businesses and strengthen our state's bottom line.

## Stop Overseas IT Piracy

When manufacturers use stolen information technology (IT) to cut their business costs, they gain an unfair competitive advantage that results in reduced revenues and job growth for responsible Kentucky manufacturers that pay for their software and hardware. IT theft is a particularly serious problem in emerging export markets with a weak rule of law that encourages illegal and unethical business practices. The Chamber encourages the General Assembly to pass legislation that will improve business competitiveness by requiring manufacturers in the global marketplace to invest in IT rather than steal it.



## Kentucky's Signature Industries

### Develop Pro-Business Energy Strategies

Kentucky is well-known for its abundant coal resources, and the state's low energy costs are among our most compelling competitive advantages. Low utility rates attract jobs and investment to the Commonwealth and help offset our less competitive business elements. In 2007, Kentucky took a bold step by providing incentives to build new energy sources that utilize our resources in a clean and efficient manner. In order to sustain, stabilize and improve upon our favorable energy climate, the Chamber encourages policymakers to continue to maximize our state's opportunities for long-term growth and development while preserving Kentucky's low energy costs.

### Expand Gaming to Support Kentucky's Equine Industry

Kentucky's equine industry is world-renowned, with more than a \$4 billion impact to Kentucky's economy and responsibility for more than 80,000-100,000 full-time equivalent jobs in our state. Kentucky is struggling, however, to hold on to its status as the "Horse Capital of the World" due to its inability to compete with other racing states that use alternative gaming revenues to increase purses and breeding incentives. Because of their pro-gaming, equine-friendly policies, states like Pennsylvania, Louisiana, Indiana and West Virginia have been successful in attracting Kentucky horsemen and the industry-related jobs.

The Chamber strongly encourages the General Assembly to authorize alternative gaming options to provide a much-needed boost to the state's equine industry, as well as to recoup the hundreds of millions of tax dollars being lost annually to casino gaming in neighboring states.

### Protect Kentucky's Distilling Industry

Kentucky's distilling industry also has a significant impact on the state's economy, producing 95% of the world's bourbon and \$1.5 billion in sales while generating \$125 million a year in taxes. Despite the economic recession and drop in manufacturing jobs, distilling employment rose 6% over the past decade, and the industry has helped create 10,000 jobs with an annual payroll of \$442 million. The Chamber strongly supports initiatives to protect and grow this iconic industry and is concerned that Kentucky now has the second-highest distilled spirit taxes of any open-market state in the country, behind only Alaska. For Kentucky to maintain its dominance in the distilling industry, the General Assembly must revise burdensome tax policies that threaten to force distilling operations to move out of state.



## Competitive Workforce

### Enhance Workforce Flexibility For Employers

State policymakers must support employers as they invest in the Commonwealth's workforce. To enhance workforce flexibility, the Kentucky Chamber opposes state and local wage mandates, safety regulations and additional standards that exceed federal requirements. When state or local governments enact regulations and mandates beyond what are necessary to provide proven, uniform protections, the added cost of doing business decreases Kentucky's overall competitiveness, particularly with our border and peer states. State government should closely scrutinize regulations already on the books to ensure effectiveness and provide consistent enforcement so businesses can operate in a predictable climate.

### Monitor Unemployment Insurance Legislation

A positive development for the Kentucky business community was the General Assembly's passage of landmark unemployment insurance reform during the 2010 special session. The legislation updates the current unemployment insurance system in Kentucky, revives the depleted unemployment insurance trust fund, prevents further borrowing from the federal government and keeps Kentucky competitive with other states. The Chamber supports continued efforts to monitor the implementation of the legislation and stands ready to work with the General Assembly to find a permanent solution to paying back the remaining interest owed to the federal government.



## Enact Right-to-Work Legislation

The Chamber strongly supports legislation to prohibit requiring any worker to join a union as a condition of employment. We believe that union membership should be a matter of personal choice and the freedom not to affiliate with a labor union is no less deserving of protection than the freedom to affiliate. States with right-to-work laws report faster per capita income growth, faster growth in manufacturing and nonagricultural jobs, greater capital expenditures, lower unemployment and fewer work stoppages. As Kentucky struggles to recruit new business and to retain existing and expanding businesses, Kentucky's failure to enact right-to-work (RTW) legislation has allowed the Commonwealth to cede competitive ground to other states. In fact, Kentucky is the only southern state not to have enacted right-to-work legislation, and with Indiana's current plans to enact right-to-work, stands to be a conspicuous outlier in this much needed area of reform.

## Oppose the Employee Free Choice Act (Card Check)

Over the past two years, the Chamber has successfully opposed the Employee Free Choice Act (EFCA) in Congress. EFCA would radically restructure 60 years of carefully crafted labor law balances that have served both unions and employers well for many decades.

EFCA consists of three main provisions, each of which is unacceptable to business: elimination of the secret ballot and a move toward the card check process, government-imposed arbitration, and unreasonable, one-sided penalty expansion directed at employers.

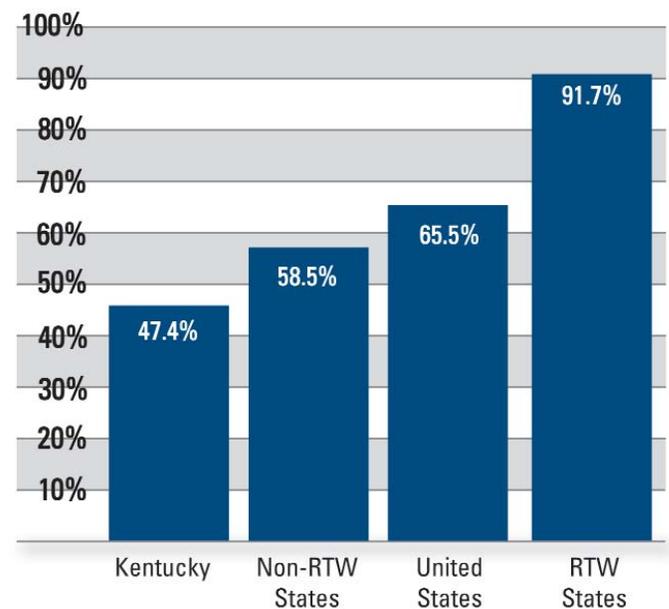
As public and congressional support for EFCA has diminished, the National Labor Relations Board and U.S. Department of Labor have been attempting to impose EFCA through regulation. Over the past year, these agencies have issued proposed rules that will make it easier for unions to organize, including mandated labor postings, reducing the length of union election campaigns and expanding reporting and disclosure requirements for employers. The Chamber will continue to voice its strong opposition to EFCA, any efforts to impose EFCA through administrative actions and other proposals that upend decades of settled labor law at the expense of both employees and employers.

## Support Paycheck Protection

Although requiring employers to deduct taxes from an employee's pay is a common and accepted practice, forcing businesses to administer payroll deductions to support the political activities of unions without compensation is a significant and unjustified intrusion into the administrative affairs of a company.

The Chamber supports legislation that repeals the employer mandate to withhold union dues from an employee's salary.

## Total Employment Growth: RTW vs. Non-RTW States 1977-2009



Source: Bureau of Economic Analysis; Non-RTW states include District of Columbia

## Revise Kentucky's Prevailing Wage Laws

While total repeal of the state prevailing wage law has long been and remains a goal advocated by the Chamber, we support a series of steps that would make Kentucky's economic and infrastructure development more competitive in the near term:

- Kentucky's prevailing wage laws must be made more representative of local wages by utilizing more effective methods of data collection than through the current hearings process.
- The definition of localities should be replaced with those that would reduce the number of unrelated counties grouped together.
- If no changes are made to make the wage determination process more representative of local wages, then federal prevailing wages should be adopted wherever they exist.
- Kentucky should reinstate a prevailing wage exemption on education projects. By once again allowing an exemption for educational projects, higher investments can be made in technology, improved facilities and in the classroom.

## Improve Workers' Compensation

The Chamber believes an equitable workers' compensation program must clearly define injury and disability, require independent medical examinations and objective medical findings, protect the integrity of exclusive remedy and minimize litigation. The Chamber supports legislation that overturns case law that runs counter to these core principles, as well as legislative and regulatory efforts to

control rising medical and prescription drug costs. Enacting legislation that controls runaway medical costs generates substantial cost savings for employers and can be done while ensuring high levels of service to injured workers.

### Enact a Uniform Statute of Limitations Law

Kentucky's five-year time period on employee wrongful termination or discrimination lawsuits places an inordinate requirement on employers. The Chamber supports changes to state statute that would make all employment discharge and discrimination-type actions more uniform. The statute of limitations on wrongful termination or discrimination cases arising out of the employment relationship should be no more than two years after cessation of employment.

### Stop Expansion of Public Employee Collective Bargaining

The Chamber is firmly opposed to any local or statewide expansion of public employee collective bargaining. The expansion of public employee collective bargaining can lead to inefficient administration of public duties, increased costs to taxpayers and an increased likelihood of interruptions of essential government services to the detriment of all Kentuckians.

## Infrastructure

### Develop and Maintain Infrastructure

Kentucky must realize that our global competitors are building infrastructure at an impressive rate. To take full advantage of Kentucky's favorable geographic location and improve the ability of Kentucky companies to compete, we must place a great emphasis on building and maintaining our state's infrastructure. Our focus must include energy, water, sewer, broadband and transportation systems.

### Expand Telecommunications and Broadband Infrastructure

The Internet is now one of the most important components of the modern economy. Unfortunately, the costs associated with deploying broadband in less populated areas have served to discourage deployment throughout the entire state, creating both a disincentive for companies to locate in underserved areas and an uneven playing field for existing businesses. The Chamber supports the continued efforts of the General Assembly to encourage broadband expansion and deployment.

### Construct and Maintain Transportation Investments

A dependable transportation network is necessary for the safe and efficient movement of individuals and freight statewide. It is a key factor in business location because good transportation infrastructure provides companies a means to move goods and provide services in a cost-effective manner. The Chamber supports the efforts of the Kentucky General Assembly to work toward developing and



maintaining a statewide transportation system adequate for the current and future needs of the Commonwealth. To achieve this goal, we believe that policymakers must protect the integrity of the dedicated Road Fund by refusing to divert road funds to pay for what should be General Fund obligations.

## Civil Justice

### Promote an Equitable Civil Justice System

The increasing cost of civil litigation, whether through legal fees, higher liability insurance premiums, defensive business practices or simply reduced investment opportunities, is a significant burden for Kentucky's employers. These costs are not only hurting businesses and their employees, but also consumers as they are passed on in the form of higher prices and fewer choices.

Kentucky must turn back the clock on expansion of employer civil liability. The number of suits filed in Kentucky's circuit courts jumped 60% from 2002 to 2009, and according to the Institute for Legal Reform, the state's legal climate ranking fell from 29th in 2008 to 40th in 2010. To stem the costly tide of an increasingly and unnecessarily litigious environment, the Chamber supports reasonable limitations on civil liability and a constitutional change that would allow the General Assembly to enact caps on awards for non-economic damages. Additionally, Kentucky businesses should be permitted to challenge state statutes or appeal the actions of a state agency by filing suit in the circuit court in the county where the business is located. These needed reforms will have a stabilizing influence on our tort system, making the state far more attractive to employers and potential employers alike.



# Expand Kentucky's role as an energy leader

The Kentucky Chamber believes economic growth, energy independence and environmental protection are compatible and complementary goals. We recognize that legitimate uses of the environment should be protected and that business activities may affect environmental quality. To achieve rational regulatory objectives, the Chamber encourages legislative and administrative actions that satisfy the following criteria: scientific validity, technical feasibility and economic rationality.



The need for government action should be established on the basis of objective information on which meaningful consensus can be achieved. Such information should demonstrate that any proposed action would cost effectively result in the avoidance of environmental harms or the creation of environmental benefits. The government must also consider technical feasibility in setting standards. In addition, government should be a conduit for information on available control technologies for businesses but not control the supply/demand of the marketplace. Government action and requirements for compliance should also reflect a proper balance of the benefits provided by a standard and the cost to society of achieving it. In setting standards, an

## 2012 GOALS

- Maintain Kentucky's role as an energy leader.
- Promote sensible regulatory enforcement at all levels.
- Support achieving cleaner air through efficiencies, not a mandated regulatory approach.
- Support biomass and alternative energy initiatives including manufacturing incentives for alternative energy resources.
- Ensure the stability and future of Kentucky coal as a key source of energy.

agency should consider the impact of standards on jobs, low income groups and the ability of business to operate profitably within the confines of any legal framework. Also, state government, utilities and businesses should work hand-in-hand to maintain a process to balance the ratepayers' desires for competitive rates and to incentivize energy production innovations, clean coal technologies and energy efficiency.

## Strive for Energy Independence and a Pro-Energy Economic Policy

The Chamber is encouraged by the General Assembly's recent efforts to foster Kentucky's energy independence. The Chamber recognizes energy conservation and efficiency as high-priority energy strategies. The Chamber also strongly supports incentives for businesses that go above and beyond existing environmental standards and for those that are proactive in promoting conservation and efficiency. Government should join with business to find creative solutions to

help reduce the up-front costs associated with implementing conservation and efficiency measures.

While the Chamber supports the utilization of Kentucky's abundant coal resources to provide much needed electric power, we also support the development of alternative energy sources and capital investment in Kentucky's energy infrastructure. The Chamber supports economic incentives to encourage private sector investments in the research and development of alternative energy resources and in support of redeveloping and strengthening Kentucky's energy infrastructure. The Chamber supports the development of an incentive package to encourage the manufacturing of renewable energy products in the state.

renewable energy products in the state.

In addition, the Commonwealth of Kentucky currently has a moratorium on the development of nuclear power plants. Lifting this moratorium would help bring cost-effective and environmentally friendly energy solutions to Kentucky, while having a positive economic impact. With new pollution control technologies and other innovations, more energy development is possible while protecting Kentucky's environment.

## Sensible Regulatory Approach

The Chamber supports efforts by the Kentucky Energy and Environment Cabinet to ensure existing environmental laws and regulations are applied and enforced in a consistent, non-discriminatory manner at both public and private facilities. In addition, the Chamber urges the cabinet to aggressively assert its authority as primary administrator of delegated environmental programs in cases where the United States Environmental Protection Agency (U.S. EPA)





attempts to overstep its oversight role or demand action that is inconsistent with past state regulatory actions or determinations.

Currently, U.S. EPA is issuing an unprecedented number of federal mandates that will have a significant impact on the businesses and residents of Kentucky. This is due, among other things, to the effect of those mandates on utility rates as a result of the cost of compliance. Those attempts at regulation by U.S. EPA with questionable legal authority include but are not limited to:

- Greenhouse gas regulations under the Clean Air Act, triggering first-time monitoring and permitting requirements that will trigger Best Available Control Technology for greenhouse gases.
- Revisions to National Ambient Air Quality Standards for all six criteria pollutants, regardless of whether the updates are currently required by the Clean Air Act.
- Regulation of Coal Combustion Residuals under a federal program, potentially as a hazardous waste.
- Further regulation of emissions from electric generating units for sulfur dioxide and nitrogen oxides under the Cross State Air Pollution Rule, which replaces the Clean Air Interstate Rule.
- First-time regulation of Hazardous Air Pollutants from coal-fired power plants through imposition of Maximum Achievable Control Technology requirements.
- Changes by U.S. EPA in water regulations and interpretations of existing rules without close examination of all costs and benefits. U.S. EPA should insure any new water regulations, or changed interpretations of water quality requirements, are flexible, efficient and recognize the role of the states in addressing their own water quality issues.
- Continued abuse of agency authority by U.S. EPA as the agency moves to implement new requirements by regulating through guidance without following the rulemaking process.

U.S. EPA's actions are resulting in overly stringent requirements that will significantly impact businesses, the economy and the regulatory agencies in the Commonwealth. It is imperative that the General Assembly and administrative offices of Kentucky weigh in on the federal rulemaking processes and use their influence to impact the outcome of these regulatory programs.

## Greenhouse Gases

The Chamber supports the development of cost-effective renewable and alternative energy sources and the promotion of energy efficiency to foster energy independence and economic growth. The Chamber does not oppose the concept of federal climate change legislation in principle, but points out the importance of properly addressing regional differences in current energy supplies. The Chamber will continue to evaluate the merits of any carbon-management legislation on a case-by-case basis, however, we continue to recognize the vital importance of Kentucky's coal resources and the impact those



resources have on the economy of the Commonwealth and the U.S. as a whole.

The Chamber believes a comprehensive national energy policy should focus on investing in energy production innovations including biomass, natural gas and coal technologies and avoid arbitrary mandates and punitive policies that would serve to drive up costs, stifle innovation and place citizens and businesses of Kentucky at an economic disadvantage with neighboring states. Cleaner air should be accomplished through the use of efficiencies at power plants and grid systems as opposed to regulatory mandated equipment that actually make our power plants less efficient. Climate change policies that allow technology to spur energy innovation would continue to protect the economy of the Commonwealth while securing the nation's economic and energy futures.

## Promote Sensible State, Local Environmental Regulation

In considering standards for the protection of human health and the environment, federal agencies undertake an exhaustive process of reviewing available data to set standards at an appropriate level. The Chamber opposes the adoption of more stringent state and local programs that would adversely affect Kentucky's ability to remain competitive in the global economy. When state and local governments engage in significant revisions of their environmental regulations, we strongly encourage the use of a stakeholder process for development of these programs. Any resulting regulatory framework must be based on sound science and be both economically rational and technically feasible to achieve the laudable objective of a cleaner environment. Uniformity between federal, state and local programs helps save businesses valuable resources in compliance procedures. The Chamber opposes local government authority to enforce federal and state environmental requirements. To the extent that regulatory programs already exist at the local level, it is incumbent upon the local agency to



administer a meaningful appeals process to provide adequate consideration of disputed issues prior to civil court action.

The Chamber also supports stability regarding the make-up of Kentucky's Public Service Commission. This non-partisan group, appointed by the governor and confirmed by the Senate, has helped establish and oversee Kentucky's low-cost utility rates for many years. The Chamber opposes any effort to politicize the make-up of this commission, which would create instability and potentially increase rates.

### Reform Notice of Violation (NOV) Procedures

Current administrative enforcement procedures allow little flexibility or discretion on the part of inspectors. Generally, any and all violations of existing regulations and requirements result in the immediate issuance of a "notice of violation." With the exception of immediate threats to health, safety or the environment, inspectors should have an alternative to issuing an NOV for non-compliance, as well as for a waiver of fines for first-time offenders. There is currently no end date for punitive administrative action stemming from an NOV. The Kentucky Chamber urges the General Assembly to place reasonable time limits on punitive action following the issuance of NOVs by state agencies.

### Air Permitting Efficiencies

The Kentucky Chamber applauds the Division for Air Quality for essentially eliminating the problems of permitting backlogs. The Chamber recently supported the Cabinet's position on the need for an increase in the Title V Permit Emission Fee so the needs of the Title V permit holders can continue to be met in a prompt and efficient manner by the Division.



As the program moves forward, it is important the Division of Air Quality maintain the level of service to the business community as air permit approvals are often a key component in implementing expansions of existing business and in obtaining new industrial development. However, just as our members have to do, the division and the cabinet should continue to look at cost control measures and efficiencies that can be used to reduce the anticipated shortfall and create efficiencies throughout the program. Considering emission trends, the Chamber believes the cabinet should explore with stakeholders additional funding mechanisms for the Title V program in the future, such as permit and permit renewal application fees similar to the Division of Water.



**Kentucky Chamber**

*Uniting Business. Advancing Kentucky.*

464 Chenault Road  
Frankfort, KY 40601  
502-695-4700  
[kcc@kychamber.com](mailto:kcc@kychamber.com)

[kychamber.com](http://kychamber.com)  
[twitter.com/kychamber](https://twitter.com/kychamber)