

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

DECEMBER 2012

Kentucky Chamber

NEWS



The Kentucky Chamber Public Affairs Team, from left to right: Ashli Watts, manager; Carrie Rogers, communications manager; John Cubine, senior policy analyst; Dave Adkisson, president and CEO; Bryan Sunderland, vice president; Chad Harpole, director; Betsy Dexter, manager; Beverly Standifer, political affairs manager.

THE KENTUCKY CHAMBER'S PUBLIC AFFAIRS TEAM

## Navigating the political landscape at the Capitol

**THE 2013** General Assembly may be a "short" session (odd-year sessions are 30 days, while even-year budget sessions are 60 days), but it still offers an opportunity to address many important issues. Key among them is fixing Kentucky's public pension system, which is awash in red ink and in need of significant reform.

Kentucky's business community, small and large companies of all industries from Paducah to Pikeville, is represented at the Capitol by the Kentucky Chamber of Commerce, the state's largest and most comprehensive business association. President and CEO Dave Adkisson said the organization's top priorities are improving public education and creating an environment that promotes the creation of sustainable jobs. Those are tough feats to accomplish given the state's poor economy (recently ranked 47th in overall financial health by Barron's magazine).

The Chamber's 2009 *Leaky Bucket* report (and its 2011 update, *Building a Stronger Bucket*) attributes the strain on Kentucky's economy to areas of unsustainable government spending: corrections, Medicaid and public employee benefits.

Recent years have seen steps to address Medicaid and corrections, but the unfunded liability of the public employee pension system demands attention.

"If the pension issue is not fixed in this legislative session, the problem will get worse," Adkisson said. "There will be less funding for schools. I don't think state employees will be able to expect pay raises in the foreseeable future. There will be service cutbacks, and our ability to recruit jobs in Kentucky will be scaled back."

Dan Bork, VP of Corporate Tax for Lexmark International, Inc. in Lexington, agrees that the public pension liability must be addressed: "Government spending control as the Chamber has advocated in its *Leaky Bucket* reports is very important. Getting the government pension issue under control without raising taxes significantly will be the next biggest challenge facing the Commonwealth."

To effectively avert the fiscal train wreck heading for our state, policymakers must enact serious, lasting reform to the public pension system. This involves bringing it more in line with the private sector, adequately funding reforms and addressing the rising costs of health-care benefits.

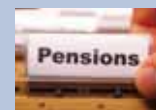
"If the pension system is not corrected in Kentucky, that would lead to higher taxes, and most people are not in favor of that right now," Adkisson said. "Government has got to learn to live within its means."



Download the agenda at [kychamber.com/agenda](http://kychamber.com/agenda), or to view it on your smartphone, scan this QR code.

## Key legislative priorities for 2013

### Reform Kentucky's Pension System



Kentucky's unsustainable and drastically underfunded public pension system is the number one fiscal threat facing the Commonwealth.

### Improve Education

To prepare a workforce for future job growth, it is critical to promote and protect rigorous academic standards, ensure degree completion at all levels and keep students from falling behind by increasing our commitment to early childhood education.

### Help Navigate Healthcare Environment



As public officials move forward with implementation of health care reform, it must be done in the least onerous manner for employers required to participate.

In addition to easing compliance burdens, Kentucky leaders need to focus on wellness initiatives to improve overall health.

### Support a Competitive Tax Environment



Pro-business tax reform can improve Kentucky's competitive position and help grow jobs and economic investment.

Tax changes designed only to raise revenue and not improve Kentucky's competitiveness will hurt job growth and investment. True pro-business tax reform can help employers grow jobs and raise revenue through long-term economic growth to support important investments.

### Improve Kentucky's Legal Climate



Frivolous medical liability claims are driving up the cost of doing business and increasing costs to taxpayers. In addition to commonsense medical liability reforms, it is critical to ensure Kentucky's statutes of limitations are not out of line with those in other states.

### Support Commonsense Regulations

Kentucky's regulations should be fair, no more stringent than federal regulations and consistently applied.

### Encourage Efficient Government Spending



Lawmakers must continue to focus on efficient and effective spending decisions on Medicaid, corrections and public employee health benefits to preserve investments in high-return areas like education and economic development.

### Defend Small Business

Kentucky's small businesses are the backbone of Kentucky's economy. Lawmakers must continue to make it easier for small businesses to succeed in Kentucky by using modern technologies to streamline the compliance requirements between small businesses and government. This will allow small business owners to focus on running their businesses and expanding their workforce rather than dealing with government red tape.

Jan. 10, 2013

5 - 9 PM

Lexington Convention Center

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Kentucky Chamber Day



presented by



### Kentucky Chamber members speak out

"Building a business from the ground up is something I understand. The Kentucky Chamber is a great resource to help grow your business no matter how big or small you are, because of their advocacy efforts and the programs they provide their members."



**Jim Booth**  
President, Booth Energy  
Chair, Kentucky Chamber  
Board of Directors

"Government spending control as the Chamber has advocated in its *Leaky Bucket* reports is very important. Getting the government pension issue under control without raising taxes significantly will be the next biggest challenge facing the Commonwealth."



**Dan Bork**  
VP of Corporate Tax  
Lexmark International  
Board of Directors

"Tax reform and necessarily associated resolution of state government fiscal issues will help [create a better climate for small businesses]. If the state is managing the personnel and pension issues and reforms the way we tax people and businesses to be simpler and fairer, small business will be able to get better traction."



**Sara Smith**  
President  
Smith Management Group

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View the Kentucky Chamber's full listing of Key Investors at [kychamber.com](http://kychamber.com) or scan this QR code with your smartphone.

## Pro-business candidates prevail in recent election

THE KENTUCKY Chamber's independent Political Action Committee (PAC) endorsed 26 legislative candidates in the 2012 General Election. Eight candidates for Senate and 18 candidates for the House were endorsed based on their overall voting record and demonstrated positions on key business issues. Of the 26 endorsed candidates, unofficial results indicate 24 were victorious.



### PAC-ENDORSED WINNING CANDIDATES

- Stan Humphries (R-Cadiz), Senatorial District 1
- David Givens (R-Greensburg), Senatorial District 9
- John Schickel (R-Union), Senatorial District 11
- Chris Girdler (R-Somerset), Senatorial District 15
- Damon Thayer (R-Georgetown), Senatorial District 17
- Morgan McGarvey (D-Louisville), Senatorial District 19
- Chris McDaniel (R-Taylor Mill), Senatorial District 23
- Robert Stivers (R-Manchester), Senatorial District 25
- Richard Heath (R-Mayfield), Legislative District 2
- Kenny Imes (R-Murray), Legislative District 5
- Jim Gooch (D-Providence), Legislative District 12
- Tommy Thompson (D-Owensboro), Legislative District 14
- Jeff Greer (D-Brandenburg), Legislative District 27
- Ron Crimm (R-Louisville), Legislative District 33
- Jonathan Shell (R-Lancaster), Legislative District 36
- Rick Rand (D-Bedford), Legislative District 47
- Bob DeWeese (R-Louisville), Legislative District 48
- David Floyd (R-Bardstown), Legislative District 50
- Kim King (R-Harrodsburg), Legislative District 55
- Brian Linder (R-DryRidge), Legislative District 61
- Ryan Quarles (R-Georgetown), Legislative District 62
- Donna Mayfield (R-Winchester), Legislative District 73
- Robert Benvenuti (R-Lexington), Legislative District 88
- Tanya Pullin (D-SouthShore), Legislative District 98



Gov. Steve Beshear, shown here at Kentucky Chamber Day in Jan. 2012, will be one of the featured speakers at the 18th Annual Kentucky Chamber Day on Jan. 10, 2013.

## Kentucky Chamber Day set for Jan. 10; KET to air the event

WHAT BETTER WAY to start off the new year than hearing what Kentucky's legislative leaders have to say about the coming business year. With the 18th Annual Kentucky Chamber Day, presented by Fidelity Investments, only a few short weeks away, you shouldn't delay if you want to reserve a seat or table at this important kick-off to the 2013 legislative session. You'll be seated alongside hundreds of business leaders from across Kentucky. The governor and the state's top four legislative leaders (all invited) will once again share their visions for the year ahead at the opening of the 2013 General Assembly. Kentucky Chamber Day will be held Jan. 10, 2013, in the Bluegrass Ballroom at the Lexington Center. Learn more or register online at [kychamber.com](http://kychamber.com) or call 502-848-8727. Sponsorship opportunities are available — for details, call Andrea Flanders at 502-848-8723 or email her at [aflanders@kychamber.com](mailto:aflanders@kychamber.com).



If you can't attend Chamber Day, you will still have a chance to hear from legislators. KET will be airing the event in its entirety on the following days and times:

- KET Monday, Jan. 14 at 9 p.m.\*
- KETKY Tuesday, Jan. 15 at 2 p.m.
- KETKY Wednesday, Jan. 16 at 9 a.m.
- KETKY Thursday, Jan. 17 at 9 p.m.
- KET Friday, Jan. 18 at 4 a.m.
- KETKY Friday, Jan. 18 at 11 a.m.

\*All times listed are EST.

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“Leadership KY enables participants to broaden their perspectives, expand their thinking, learn about the challenges and opportunities in our great Commonwealth and grow individually and relationally. When I look at the tapestry of my life, Leadership Kentucky will be a brightly colored sunrise, shining radiantly to light the path of my future.”

— Rachel Smith Childress, CEO Habitat For Humanity Lexington, Class of 2012

“Being new to Kentucky, LKY served as a catalyst for me learn more about KY's industries, resources and government. Equally important has been the networking opportunities with fellow classmates, speakers and alumni. I have visited places and participated in events that many of my colleagues — lifelong Kentuckians — have never seen or done.”

— Jonathan Steiner, Executive Director/CEO Kentucky League of Cities, Class of 2012



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## Chamber testifies on proposed change in Title V permitting fees

IN LATE NOVEMBER, the Kentucky Chamber testified before the Kentucky Energy and Environment Cabinet's Division of Air Quality (DAQ) on a proposed change in Title V permitting fees. The Cabinet is proposing a \$49 per ton fee for 2013, which represents a reduction from 2012 but is still above the presumptive minimum.

The Chamber's Energy and Environment Council, formerly chaired by Carolyn Brown of Bingham Greenebaum Doll and currently chaired by Rusty Ashcraft with Alliance Resource Partners, thoroughly studied the issue throughout the year. Kentucky Chamber Director of Public Affairs, Chad Harpole, commented on the issue.

"The Chamber's primary position on Title V fees is to ensure that the needs of the Title V permit holders can continue to be met in a prompt and efficient manner. It is important that the Division 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 which is why we supported the proposal," said Harpole.

"We appreciate the Cabinet and DAQ's continued efforts to look for cost savings measures and efficiencies within their programs. We also appreciate the Cabinet and DAQ's willingness to meet with stakeholders throughout the year, including our organization, to keep us up-to-date on any necessary changes to the Title V program," said Harpole. "We hope these efforts continue in the upcoming year."

## Chamber fills four positions

THE KENTUCKY CHAMBER welcomes two in its membership division. Rebecca Trout and David Wehrle have been named membership development managers.



Dexter



Watts



Trout



Wehrle



Scan with your QR code reader to hear the interview.

## Despite test scores, Chamber supports academic standards

DURING AN INTERVIEW with WKMS Radio in Murray, Kentucky Chamber President and CEO Dave Adkisson said the Chamber will continue to support the Commonwealth's new education standards despite a drop in test scores.

Adkisson went on to say that education officials expected lower scores because of the rigorous standards that were established after the legislature passed sweeping education reform in 2009.

The Kentucky Chamber, in partnership with the state Department of Education, has been working for the past year to raise employer awareness of and support for these new standards and the positive impact they will have on preparing students for success in both college and the workplace.

The Kentucky Chamber Foundation also produced an informational brochure titled "New Standards, New Tests and New Scores." Both the kit and the brochure are available for download at [kychamber.com/standards](http://kychamber.com/standards).

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To learn more about the member savings programs offered through the Kentucky Chamber, contact Denise Scott at 502-848-8724 or [dscott@kychamber.com](mailto:dscott@kychamber.com).



Kentucky Chamber

### KENTUCKY CHAMBER NEWS

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10

**KEY ELECTED** and appointed officials were on hand at the Kentucky Chamber's 2013 Legislative Preview on Dec. 10 to discuss their plans, priorities and predictions for next year's legislative session. The event, presented by Brown-Forman, was held in Lexington at the Marriott Griffin Gate. Panelists throughout the day discussed Kentucky's pension system, health-care and tax reform, environmental regulations, Medicaid changes and education standards.

1. Terry Tolan, executive director of the Early Childhood Advisory Council, and Rep. Carl Rollins spoke during the morning session on education issues.
2. Carolyn Brown, Bingham Greenebaum Doll, participated in a discussion on agriculture, energy and environmental regulations.
3. John Williams, chairman of CSI and member of Governor's Blue Ribbon Tax Commission, presented the results of the tax commission's work.
4. Congressman-elect Andy Barr and the Chamber's Vice President of Public Affairs Bryan Sunderland speak after Barr's presentation on federal issues facing the state.
5. Sen. Mike Wilson, chair of the Senate Education

Committee, discussed education topics that will come into play in 2013.

6. Bruce Scott, commissioner, Kentucky Department for Environmental Protection, and Lloyd Cress of the Kentucky Coal Association spoke during a panel discussion on agriculture, energy and environmental regulations.
7. Al Cross, Director, Institute for Rural Journalism and Community Issues, University of Kentucky, moderated a panel of media representatives that included Ryan Alessi, CN|2, Jack Brammer, Lexington Herald-Leader and Ronnie Ellis, CNHI News.
8. The Chamber's senior policy analyst Bob Gray conferred with Sen. Tom Buford.
9. Rusty Chevront, vice president, and director of global community relations for Brown-Forman, provided the opening remarks of the conference.
10. Speaker of the House Greg Stumbo, Sen. Damon Thayer and Chamber President and CEO Dave Adkisson discussed the goals of the 2013 legislative session.

Photos by Paul Atkison, Rockledge Photography

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1/15/13 KHMMS 11/13



# Health care reform is here to stay. Now what?

**THE RECENT** presidential election coupled with the Supreme Court's decision this summer upholding the Patient Protection and Affordable Care Act, means that President Obama's health-care reform is here to stay. So what's next for implementation of the Affordable Care Act?

The Affordable Care Act launched a new era in the American health care system. Consisting of more than 2,500 pages, it has the lofty, and often conflicting, goals of lowering health-care costs, increasing the quality of care provided, and increasing access to health care. Its far-reaching changes to our health insurance system are what affect businesses and Americans the most.

The Affordable Care Act leveraged our existing insurance structure, but seeks to achieve universal health insurance for all citizens through a variety of mechanisms that collectively are intended to accomplish this objective, including individual mandates, insurance exchanges, taxes on employers that do not offer insurance and subsidies for others that do, expansion of dependent coverage and expansion of the Medicaid program. The end goal is to make insurance available to all.

So what should employers do now? Employers first need to determine whether they will continue to offer health insurance to their employees or let their employees seek insurance through the state-sponsored health insurance exchange when it becomes available in 2014. To make this decision, employers need to gather a lot of information, such as whether their current plan is grandfathered, how the "pay-or-play" mandate affects them, etc. Last but not least, employee satisfaction should not be forgotten when deciding whether to continue providing health insurance.

## GRANDFATHERED STATUS

The Affordable Care Act exempts most plans that existed on March 23, 2010 — the day the law was enacted — from many of the law's consumer protections. Grandfathered plans lose their grandfathered status if they make certain changes that significantly reduce benefits or increase costs to consumers, for example:

- Eliminating all or most benefits to diagnose or treat a particular condition;
- Increasing an individual's coinsurance requirement, as



**MARGARET LEVI** is a member of Wyatt, Tarrant & Comb, LLP's Health Care Service Team. She has practiced law in the health care arena for more than 15 years and advises health care providers on a variety of health-care issues. She is the author of *The Impact of Health Care Reform on Kentucky Employers*, which is available at [kychamber.com](http://kychamber.com).

compared to March 23, 2010;

- Increasing a deductible or out-of-pocket limit, measured from March 23, 2010, by more than the "maximum percentage increase" as defined by law.
- Increasing a fixed-amount copayment greater than certain set limit;

Other significant changes to the employer's contribution rate (the percent of premium paid by the employer versus the employee), co-payments and other provisions of a plan may trigger loss of grandfathered status. Note: Although grandfathered plans can make only limited changes to the percent of the premium the employer contributes, grandfathered plans may still increase their total premium amount without losing grandfathered status.

## PAY-OR-PLAY MANDATE

Large employers — those with 50 or more full-time equivalent employees — must provide "minimum essential" health plan coverage to their eligible employees or pay a penalty if an eligible employee obtains coverage through a state-sponsored health insurance exchange and qualifies for government-subsidized benefits. An employer that offers no health coverage will be subject to a penalty equal to \$2,000 per year per employee after the first 30 employees. A separate penalty applies to an employer who offers

health plan coverage but the coverage is considered either "insufficient" (i.e., the employer pays less than 60% of the cost) or "unaffordable," resulting in employees choosing their own coverage and receiving government assistance. Coverage is considered "unaffordable" based on a scale that considers an employee's income and the percentage of costs covered by the employer. The penalty for inadequate coverage is \$3,000 per year for every employee who opts out of the employer's plan and gets government subsidized coverage under the exchange plan, but the total for the employer cannot exceed the overall penalty that would apply if the employer offered no coverage at all.

Of course, these "pay or play" rules raise the all-important question: Will employers continue to provide group health plans or will they decide to give up offering group health coverage and pay the penalty? According to recent surveys, most employers plan to continue health plan coverage in some form for their employees, but many companies may find that paying the penalty costs less than providing insurance coverage.

Perhaps the most significant of the new rules for employers, the "pay-or-play" mandate does not become effective until 2014.

Although the election is over, the challenges facing the Affordable Care Act are not. Several cases are currently wending through the courts where employers object on religious and other grounds to providing coverage for contraception and sterilization procedures.

Additionally, Republican legislators suggest reducing funding for key elements of the Affordable Care Act as part of efforts to avert the "fiscal cliff" and hike taxes for everyone. Finally, many of the law's provisions cannot be implemented and enforced until governmental agencies promulgate regulations expounding on the details lacking in the Affordable Care Act. For every provision of the Affordable Care Act that is relatively clear, there are several more that will have to be fleshed out in regulations issued by governmental agencies over the next few years. Employers and health care providers will need to be vigilant to keep up with the latest pronouncements and amend their health plans and related practices accordingly.

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# Chamber files brief in Toyota case for Kentucky employers

## RECENTLY STEPTOE & JOHNSON

PLLC submitted a friend-of-the-court brief on behalf of the Chamber in a significant class action suit brought against Toyota Motor Manufacturing, Kentucky, Inc. (TMMK), in which six plaintiffs seek millions of dollars in damages on behalf of current and former employees of the Georgetown plant. The Chamber asked the Court of Appeals to repair a critical error in this case that would set an alarming precedent for Kentucky's small businesses. The trial court reopened the case, first filed in 1999, more than six years after it was dismissed by the court, more than five years after that decision was unanimously affirmed by the Court of Appeals, and more than four years after the Kentucky Supreme Court denied discretionary review, which made the decision final.

Kentucky competes with numerous other states for jobs, and any perceived willingness to re-litigate final judgments based on post-judgment changes in the law would put it at a competitive disadvantage to every other state, particularly given the practically uniform precedent holding a case should not be reopened on such grounds. The Chamber submitted this brief to protect both the finality of

judgments for employers and Kentucky's competitiveness as a business-friendly location.

TMMK employs about 6,200 employees in its Georgetown plant, which has been consistently rated as one of the state's best places to work. The highly compensated team members in the Paint Department must don ("put on") and doff ("take off") a lightweight, lint-free paint coverall over their clothing prior to beginning their shifts. In their complaint, the plaintiffs are seeking compensation for this donning and doffing time, as well as for walking time to and from their work stations.

In 2000, the trial court held that the Kentucky Labor Cabinet had exclusive jurisdiction over plaintiffs' lawsuit seeking compensation for that time, and dismissed plaintiffs' suit. After that decision was unanimously affirmed by the Court of Appeals, and the Kentucky Supreme Court denied discre-



By Eric Lycan and Chris Slaughter  
Steptoe & Johnson, PLLC



tionary review, the case proceeded administratively before the Kentucky Labor Cabinet. In 2005, however, while the Labor Cabinet action was pending, the Kentucky Supreme Court decided for the first time in an unrelated case that courts do have original, though not exclusive, jurisdiction over wage and hour claims. Plaintiffs moved to reopen the judicial case based on this change in law, and in 2007 the Court reopened the long-dismissed and fully appealed case — erroneously concluding that the law never changed, it had simply

been "misinterpreted." Compounding this error, the trial court later certified the case as a class action, despite the fact that the law does not authorize class relief, and that the requirements of class certification are not met. Given the practical difficulties in compensating individual employees for walking time and donning and doffing

time, it is understandable why the General Assembly did not make class actions available under the Wages and Hours Act. Relatedly, many federal courts apply a bright-line ten minute standard for which certain pre-shift and post-shift time is noncompensable, and we have urged the Court of Appeals to adopt that standard in Kentucky.

Courts must uphold the finality of judgments. Subsequent change in law cannot be grounds for reopening a fully appealed final decision. If a final judgment is not in fact final, then certainty and predictability are undermined; businesses are less willing to risk hiring new employees or investing in new equipment. Requiring employers to litigate twice — and to defend all the way through trial before an opportunity to appeal simple issues of law — would be a crushing burden on Kentucky businesses, and a powerful disincentive to businesses considering bringing jobs to Kentucky. The Chamber believes the Court must consider in the preliminary appeal all of the issues placed before it in the briefs filed by the Chamber and TMMK in order to protect Kentucky's competitiveness and its employers.

## Snapshots from the Kentucky Small Business Caucus reception



Senator-elect Stan Humphries speaks with Kentucky Chamber President and CEO Dave Adkisson and Vice President of Public Affairs Bryan Sunderland during the Kentucky Small Business Caucus Reception.



The Kentucky Chamber co-sponsored the Kentucky Small Business Caucus reception on Dec. 5. (CENTER) Les Fugate, Fugate Strategic Affairs, and Kentucky Chamber Manager of Public Affairs, Ashli Watts. (RIGHT) Kentucky Chamber Manager of Public Affairs Betsy Dexter and Penny Gold of the Kentucky Society of CPAs.

### Upcoming Seminars

**Forklift Safety Training**  
January 16; Lexington  
\$299/\$399\*

**Accident Investigation Training**  
January 17; Lexington  
\$299/\$399\*

**Remaining Union Free**  
January 29; Louisville  
February 6; Bowling Green  
February 13; Lexington  
\$299/\$399\*

**5th Annual Worksite Wellness Conference**  
February 27-28; Lexington  
\$595/\$695\*

**11th Annual Kentucky Environmental Conference**  
March 5-6; Lexington  
\$595/\$695\*

Price\* = Member/Non-Member



Kentucky Chamber

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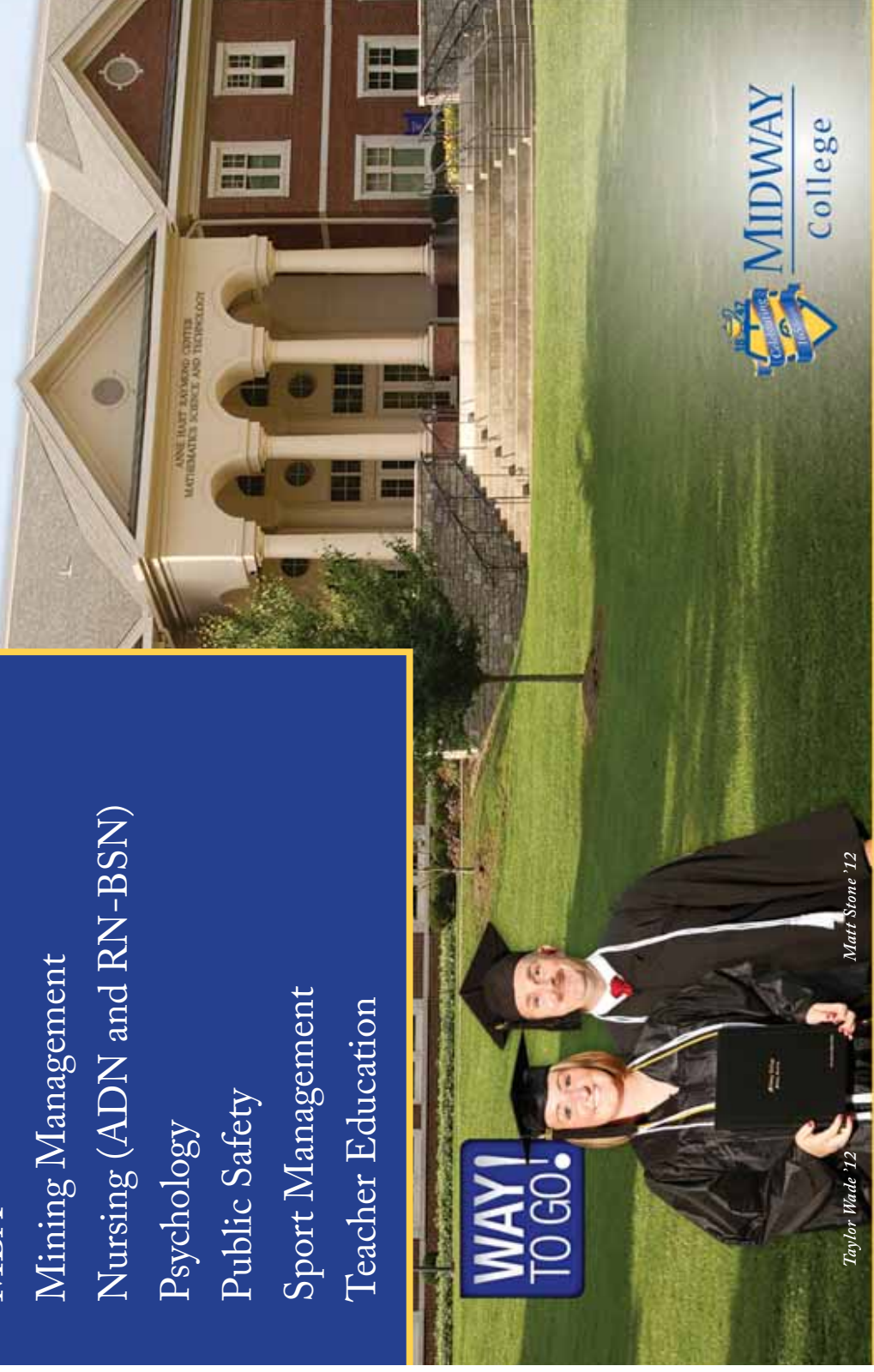


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# NEWS



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