



Daily Legislative Update

Tuesday, February 17, 2015

37th Day of 90th General Assembly

TODAY AT THE CAPITOL

House convenes 1:30 p.m.

Senate convenes 1:30 p.m.

JOINT

9:00 AM Room A, MAC [JOINT BUDGET COMMITTEE](#) [Agenda](#) 

HOUSE

10:00 AM Room 138 [EDUCATION COMMITTEE- HOUSE](#) [Agenda](#)

10:00 AM Room 130 [PUBLIC HEALTH, WELFARE AND LABOR COMMITTEE- HOUSE](#) [Agenda](#)

10:00 AM Room B, MAC [PUBLIC TRANSPORTATION- HOUSE](#) [Agenda](#)

10:00 AM Room 149 [JUDICIARY COMMITTEE- HOUSE](#) [Agenda](#)

SENATE

10:00 AM Room 171 [INSURANCE & COMMERCE - SENATE](#) [Agenda](#)

10:00 AM Room 309 [AGRICULTURE, FORESTRY & ECONOMIC DEVELOPMENT - SENATE](#) [Agenda](#)

10:00 AM OSC [STATE AGENCIES & GOVT'L AFFAIRS-SENATE](#) [Agenda](#)

WORKFORCE DEVELOPMENT PACKAGE FILED

Sen. Jane English filed a package of workforce development bills last Friday afternoon. All of these bills were developed by Senator English in cooperation with the State Chamber/AIA. Since the Senate did not meet Friday or Monday, none of the bills have been referred to committee.

SB 368 is sponsored by Rep. Charlotte Douglas in the House. The bill would create a new statewide workforce development system and rename the Board of Career Education as The Career Education and Workforce Development Board. The 10-person Board would include representatives from various industries including agriculture, construction, energy, healthcare, information technology, manufacturing, financial services, hospitality, transportation logistics and rehabilitation services. Non-voting members include: the State's education commissioner, higher education director, executive director of the Arkansas Community Colleges, Arkansas Economic Development Commission director and the director of the Department of Workforce Services.

According to the bill, the purpose of the Board is to "develop and monitor a state plan for vocational-technical education which shall include at least the establishment of at least one area vocational center in each education service cooperative service area and in Pulaski County." The Career Education and Workforce Development Board will develop each of the policy issues affecting public schools after consulting the state Board of Education and will be implemented in coordination with the Department of Education, the education service cooperatives or both.

Additionally, the Board would have general supervision of all programs involving vocational, technical and occupational education, and would have control over administering the state's adult education funds.

SB 369 and **SB 372** would eliminate specified service areas for two-year colleges and technical schools, and removes the duty of the Arkansas Higher Education Coordinating Board to determine service areas for two-year institutions of higher education. Rep. Bill Gossage is the House sponsor of SB 372.

SB 370 and **SB 371** would expand public schools partnering with higher educational institutions by allowing school districts to use national school lunch funds to provide concurrent courses or technical education options to students in grades eight through twelve.

PLEASE ASK YOUR STATE REPRESENTATIVE TO VOTE NO ON HB 1158.

HB 1158 by Rep. Richard Womack and Sen. Bart Hester received a Do Pass recommendation from the House Public Health, Welfare and Labor Committee last week. It is expected to be considered by the full House tomorrow afternoon.

The bill caption says it would require a new occupational regulation to explicitly state that it supersedes a person's right to a lawful occupation that is established by this Act. The title says, "An Act to amend Arkansas law concerning the right to engage in a lawful occupation, to stimulate job creation and economic development while preserving health and safety standards and for other purposes.

The State Chamber/AIA Executive Committee voted this morning to oppose the bill as written and if it passed the House to seek major revisions in the Senate. The bill moved quickly out of the House Committee after being amended from its original "shell" filing, so we did not get the opportunity to visit with the House sponsor before the bill passed out of committee. We have talked with Senator Hester and he has expressed a willingness to discuss and work on major amendments if the bill gets out of the House.

Those who support the bill are concerned about over-regulation that inhibits people from working, reduces competition and increases the cost of products and services. We have heard from three contractor associations, the lawyers association, accountants association, education association and others who have serious concerns about the bill. We are also in contact with other groups representing architects, engineers, insurance agents and adjusters, and real estate agents and appraisers who are looking at the bill. We will host a meeting for these people to fully discuss and identify the concerns about this bill.

Over the years, most licensing issues have drawn concern by contractors and industry. In this instance, before we knew the full extent of the bill, we needed to provide a heads-up to as broad an array of businesses as possible to allow a full examination of the bill's impact to various businesses and types. As indicated above, to date, we have heard from a broad array of trade and professional groups with concerns about the bill.

One professional association told their members that the bill is too broad - it would be better policy to identify those occupations that have rules that are indeed punitive or anti-competitive and address them individually. This bill will encourage unlicensed persons to engage in professions and occupations that require licensing. The various state agencies that are charged by statute to enforce professions or occupations will be required to attempt to stop any unlicensed practice. This will result in unnecessary legal expense to the state, in what is probably a lost cause. At a minimum, the bill makes it tempting for unlicensed and uneducated or untrained people to attempt to "hang up a shingle" purporting to be accountants, funeral directors, electricians, plumbers, etc. During the time it would take to establish whether licensing and education or training requirements can be upheld, Arkansas would be in an unlicensed environment where anyone could hold themselves out as providing services.

Another association provided this more detailed analysis on this bill:

- After providing that a non-licensed person shall not perform any occupation for compensation for which a license is required, it then provides that in any regulatory or judicial action to prevent an unlicensed person from engaging in an occupation, that person may assert as a defense the right to engage in a lawful occupation.
- The defense of the right to engage in a lawful occupation exists whether the licensing requirement pre-dates or post-dates the effective date of the bill.

- If an un-licensed person raises as a defense the right to engage in a lawful occupation, they must make a showing that the requirement of a license “is a substantial burden on the person’s right to engage in a lawful occupation.” To make that showing, the person must show that the regulatory obstacle to engaging in the lawful occupation “imposes significant difficulty or cost on a person seeking to enter into or continue in a lawful occupation.” Any requirement for training, education or qualifying examination would, by definition, be a “substantial burden.”
- Once the person who raises the right to engage in a lawful occupation meets this burden, the burden shifts to the State to prove two things: (1) that there is a “compelling interest in protecting against present and recognizable harm to the public health or safety, and (2) the occupational regulation is the least restrictive means of furthering the compelling governmental interest. “Compelling state interest” is a legal buzzword arising from strict-scrutiny analysis under constitutional law.
- Essentially, the right to engage in any lawful occupation is made a fundamental right under the bill requiring the showing required to survive the constitutional law strict-scrutiny analysis.
- The compelling state interest must be one of protecting against a recognizable harm to “public health and safety.” Licensing requirements for doctors, nurses and pharmacists should probably satisfy this first hurdle (if not necessarily the second). Licensing requirements for lawyers, accountants, engineers, architects, teachers, etc. would not meet this requirement and therefore immediately unsustainable.
- Assuming the State can satisfy the compelling state interest requirement, the second burden of proof is that the regulation is the least restrictive alternative.
- Just to make sure that it is understood that the right of anyone to engage in any lawful occupation trumps a licensing requirement, the bill provides that the right to engage in a lawful occupation is to be “construed liberally” and any court considering a potential violation of the right to engage in any lawful occupation shall “not grant any presumption to legislative determinations (A) of harm to the public health or safety; or (B) that the regulation is the least restrictive means of furthering the compelling governmental interest.”

STATE CHAMBER/AIA BILL TRACKING

To date, the House has filed 381 bills and the Senate has filed 384 bills.

The State Chamber/AIA is tracking 189 bills and resolutions.

No new bills were filed yesterday.

For the complete, searchable list of bills being tracked, please visit our [tracking site](#). The full text of each bill is available at the site.

TOMORROW AT THE CAPITOL

[Committee Meetings for Wednesday, February 18, 2015](#)

JOINT

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| 7:30 AM | Room B, MAC | JBC-PERSONNEL | Agenda  |
| 9:00 AM | Room A, MAC | JOINT BUDGET COMMITTEE | |

HOUSE

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| 10:00 AM | Room 149 | INSURANCE & COMMERCE- HOUSE | Agenda |
| 10:00 AM | Room 130 | AGING, CHILDREN AND YOUTH, LEGISLATIVE & MILITARY AFFAIRS- HOUSE | Agenda |
| 10:00 AM | Room 151 | STATE AGENCIES & GOVT'L AFFAIRS- HOUSE | Agenda |
| 10:00 AM | Room 138 | AGRICULTURE, FORESTRY & ECONOMIC DEVELOPMENT- HOUSE | Agenda |
| 10:00 AM | Room B, MAC | CITY, COUNTY & LOCAL AFFAIRS COMMITTEE- HOUSE | Agenda |
| 12:00 PM | Room B, MAC | HOUSE RULES | Agenda |

SENATE

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| 10:00 AM | OSC | REVENUE & TAX - SENATE | Agenda |
| 10:00 AM | Room 207 | EDUCATION COMMITTEE - SENATE | Agenda |
| 10:00 AM | Room 171 | JUDICIARY COMMITTEE - SENATE | Agenda |
| 10:00 AM | Room 272 | PUBLIC HEALTH, WELFARE AND LABOR COMMITTEE - SENATE | Agenda |
| 10 Minutes upon Adjournment | Room 309 | TRANSPORTATION, TECHNOLOGY & LEGISLATIVE AFFAIRS - SENATE | Agenda |

LEGISLATIVE SESSION CONTACT INFORMATION

State Senators: 501-682-2902

State Representatives: 501-682-6211

To view schedules, calendars, bill information and legislator information, visit:
www.arkleg.state.ar.us.

To view live stream video and audio from the Arkansas House of Representatives,
visit www.arkansashouse.org.

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