



## Daily Legislative Update

Wednesday, March 11, 2015

59th Day of 90<sup>th</sup> General Assembly

### TODAY AT THE CAPITOL

House convenes at 1:30 p.m.

Senate convenes at 1:30 p.m.

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### STATE CHAMBER/AIA PRIORITY BILLS

#### CALL TO ACTION

#### UNEMPLOYMENT INSURANCE

**HB 1489** will be run in the Senate Public, Health Welfare and Labor Committee this morning by Sen. Bart Hester.

This bill changes the calculation of an individual's unemployment insurance benefit from the highest quarter of earnings to the average of an employee's last four quarters of earnings. It also reduces the weeks of unemployment insurance benefits in Arkansas from 25 to 20.

The purpose of this bill is to help the Arkansas UI Trust Fund improve its balance in an effort to meet the U.S. Department of Labor's (USDOL) solvency requirement, which is currently calculated at \$642 million. The USDOL's plan is for all states to meet their solvency calculated balance by 2019. The Fund has approximately \$230 million now. The Fund is solely funded by employers who paid up to an additional \$195 per employee to retire debt that arose in 2009 from the Great Recession. Our desire is to prevent this from ever repeating. Please ask your Senator to support HB 1489.

## PENDING STATE CHAMBER/AIA PRIORITY BILLS

### TAXPAYER FAIRNESS

**SB 490** by Rep. Ken Bragg seeks to eliminate requiring taxpayers to pay taxes before they can challenge a tax ruling, lessens the burden of proof for taxpayers, makes more fair the application of the statute of limitations, creates transparency in Department of Finance and Administration (DFA) rulings, moves the corporate income tax filing date back one month after IRS filings are due and other provisions.

DFA's concerns have been satisfied and the Cities and Counties agreed to an increase of the tax rebate period from six months to one year. They now have "no position" on the bill. The primary purpose of this bill is to get Arkansas out of the bottom five on the Council of State Taxation's business tax environment list.

The bill awaits consideration in the House Tax Committee. Please ask your Representative to support SB 490.

### WORKERS' COMPENSATION

**HB 1768** Rep, Matthew Shepherd, Sen. John Cooper, Sen. David Sanders, Senate President Jonathan Dismang and House Speaker Jeremy Gillam will be run very soon.

The bill seeks to solve the unfunded liability of the Workers' Compensation Commission's Death and Permanent Disability Trust Fund (D&PD) by stopping new claims from going into the Fund on or after July 1, 2015. It would also restore subrogation to workers' compensation cases.

The AFL-CIO will oppose this legislation despite our repeated explanations that the bill does not hurt workers. In fact, it provides workers being paid out of the Death and Permanent Disability Trust Fund a more reliable source of payment since the D&PD Fund is \$131 million actuarially unsound.

We were hopeful the Arkansas Trial Lawyers Association would not oppose this because subrogation (recovery from a third party that caused the injury), which is their concern, provided for attorneys to be paid first when subrogation is used. We met with them today and discussed a limited range of options that are not likely to produce any kind of satisfaction. The State Chamber/AIA Workers' Compensation Committee will meet this afternoon to discuss any possible avenue for agreement. We will also plan testimony and grassroots support for this important bill to the business community. Please ask your legislators to support HB 1768.

**HB 1761** by Rep. Micah Neal is a shell bill we asked Rep. Neal to file as a placeholder for potential additional legislation we might choose to pursue. Our Committee will also discuss this at its meeting this afternoon.

## TIPAC

**SB 204** by Senator Jane English and Rep. Karilyn Brown is set to be heard as a Special Order of Business in the House Judiciary Committee on March 19. Please ask your Representative to support SB 204.

The Transparency in Private Attorney Contracting Act (TIPAC) ensures contingency fee contracts in the office of the Attorney General are awarded openly and that citizens receive the maximum practicable amount of any settlement or award.

TIPAC promotes competitive bidding and transparent contracting by requiring the Attorney General to: a) Determine, in writing, that a contingency fee arrangement will be both cost-effective and in the best interests of the state; b) Request proposals on a state website before entering into a contingency fee contract; c) Publish executed contingency fee contracts on a state website; and d) Publish information on any fees paid pursuant to contingency fee contracts.

TIPAC ensures that government attorneys retain control of litigation and that consumers, victims, and taxpayers receive their fair share of any recovery by: a) Establishing reasonable, tiered limits on contingency fees as a percent of a state's recovery, b) Allowing private attorneys to receive, in addition to any contingent fee, only reasonable costs and expenses as determined from detailed records maintained throughout the litigation; and c) Requiring government attorneys to participate in all settlement negotiations and retain ultimate control of the litigation.

## TAXES

**MANUFACTURING REPAIR AND REPLACEMENT PARTS SALES TAX EXEMPTION SB 332** by Sen. Jake Files and Rep. Joe Jett awaits consideration in the Senate Revenue and Taxation Committee. This bill's revenue impact is keeping it and about a half billion dollars of tax cut proposals on hold.

This bill seeks a further then complete reduction in the sales taxes paid by manufacturers on their repair and replacement parts. It would eliminate all but the constitutional sales taxes from 4.875 percent to 2.5 percent on July 1, 2015 and to zero on July 1, 2016. As filed, it would have eliminated the Direct Pay Permit requirement to take advantage of the tax reductions. We are working with DFA to create a Limited Direct Pay Permit that will satisfy concerns of DFA and the State Chamber/AIA.

This bill is an effort to make Arkansas more competitive with our surrounding states where we are badly out of step. We are working to position this bill to gain priority for revenue that may become available to use for tax cuts. Your contacts can help gain the needed priority. Please ask your Legislators to support SB 332

## **PROHIBIT CONTINGENT FEE AUDITS**

**SB 470** by Sen. Ronald Caldwell would prohibit state agencies and political subdivisions from engaging auditors or appraisers on a contingency fee basis. It is being held in the Senate State Agencies and Governmental Affairs Committee while we work with the Auditor's office and a variety of interests to resolve concerns.

## **WORKFORCE DEVELOPMENT**

Progress has been made on the State Chamber/AIA's workforce development package. Our bills include:

**SB 368** by Sen. Jane English, Rep. Charlotte Douglass and others

**SB 369** by Sen. English

**SB 370** by Sen. English

**SB 371** by Sens. Jane English and Bobby Pierce

**SB 372** by Sen. English, Rep. Bill Gossage and others

## **BILLS WE OPPOSE**

### **ADEQ PERMITTING**

**HB 1701** by Rep. Warwick Sabin will add layers of regulation and slow the permitting process at the Arkansas Department of Environmental Quality (ADEQ). This will reduce Arkansas's competitiveness with other states in industrial recruitment. The additional notice created by HB 1701 is redundant – every permit type at the ADEQ has public notice requirements which are promulgated subject to public comment, review and legislative oversight. HB1701 is unnecessary government regulation. The State Chamber/AIA joins the Arkansas Environmental Federation in opposing this bill.

### **\*NEW\* - EXTENDING INTENTIONAL TORT STATUE OF LIMITATIONS**

**HB 1448** by Rep. Mary Broadaway removes actions for assault and battery, false imprisonment and intentional slander from the one-year statute of limitations and places them into the three-year statute of limitations.

Under Arkansas law, negligence no matter how gross, cannot serve as the basis for punitive damages. Intentional torts, such as assault, battery, slander and libel have a much stronger basis for submitting the issue of punitive damages to a jury. The statute of limitations for

negligence is three years. In certain cases, this would give plaintiffs a much easier path to having a jury consider punitive damages.

Under the Arkansas Civil Rights Act, claims of sexual harassment must be brought within a year of the conduct. Often these lawsuits include a claim of assault or battery. This bill would mean a common law claim will be viable for three years, not one year.

This would also likely extend the time for filing claims of intentional infliction of emotional distress, commonly referred to as the tort of outrage, another claim usually included in discrimination claims. The State Chamber/AIA is opposed to this bill.

## **GUNS ON EMPLOYERS' PROPERTY**

**SB 492** by Sen. Jimmy Hickey and Rep. DeAnn Vaught remains on the agenda in the Senate Judiciary Committee. The bill would authorize employees with concealed-carry permits (CHCL) to keep a handgun locked and stored out of site in a vehicle on the employer's property, but not in company cars.

**SB 573** by Sen. Alan Clark would prohibit a private employer from prohibiting or attempting to prevent an employee who is a concealed-carry licensee from having a handgun in his or her private vehicle on the employer's parking lot. It also remains on the Senate Judiciary Committee agenda.

Passage of a "parking lot" bill is a high priority for the National Rifle Association (NRA). The State Chamber/AIA opposes both of these bills because we believe the business owner's private property rights should supersede the individual's lawful right to possess a firearm.

## **HOLD HARMLESS CLAUSES UNENFORCEABLE**

**SB 726** by Sen. Jake Files is similar to a bill filed two years ago that had the construction community split and the Associated Industries of Arkansas opposed. This bill rewrites the provisions that declare a construction contract with a hold-harmless clause to be unenforceable. The bill seeks to clarify that covenants and clauses are unenforceable when they are written into construction agreements that require any dispute resolution to take place in another state. The bill also provides that indemnification clauses shall not exceed any amounts that are greater than the degree of negligence or fault attributable to the indemnitor, its agents, representatives, subcontractors or suppliers. The State Chamber/AIA Executive Committee has decided to maintain the position established in 2013 that the Associated Industries of Arkansas is opposed to this bill while the State Chamber of Commerce is neutral.

## EMINENT DOMAIN

**HB 1490** by Rep. Bob Ballinger would strike procedures for using eminent domain by various entities, making all subject to a procedure prescribed in a new code section created by this bill. A circuit court jury would decide compensation of land owners. It is on the House Judiciary Committee agenda. The State Chamber/AIA opposes this bill.

At least two shell bills were filed yesterday that address eminent domain. They are **HB 1870** by Rep. Warwick Sabin and **HB 1908** by Rep. Charlotte Douglas.

## HUMAN RESOURCES ISSUES

Rep. Greg Leding was kind enough to make amendments to two of his three bills that continue to be of concern to the business community. Unfortunately, the changes do not solve the concerns of the employment lawyers we consulted.

**HB 1277** requires employers, in a dispute with an employee, to pay all wages that the employer concedes are due to the employee without condition.

**HB1276** requires employers with more than four employees to provide a detailed pay stub to each of their employees on at least a monthly basis. It was defeated in Committee yesterday.

**HB 1275** provides tax credits of up to \$4,000 per employee per year for employers who provide family and medical leave to employees, providing that under the \$4,000 limit, the credit shall be equal to 25 percent of the wages paid to the employee while on leave. This bill appears to create a revenue issue for the state as well as a potential for expansion and/or modification of employers' leave provisions. It is on the House Revenue and Taxation Committee agenda.

## EMPLOYMENT APPLICATIONS

**HB 1618** by Rep. Donnie Copeland would prohibit employers from reviewing an applicant's criminal record until the employer has extended a conditional offer of employment to the applicant. It also sets bounds on the effect of the criminal record on employment. We believe this bill eliminates the "check box" on employee applications. It has been referred to the House Public Health, Welfare and Labor Committee.

## PHARMACY BENEFIT MANAGEMENT (PBM)

We have now heard from employers that are concerned about the PBM bills. They believe that PBMs in Arkansas are expected to create savings of \$19.1 billion over the ten-year period 2012-2021, by using tools to manage the costs of pharmacy benefits.

They further believe that PBMs ability to negotiate discounts with manufacturers and pharmacists enables consumers to receive lower prices for their prescription medications. And finally, through clinically-based services, PBMs are able to reduce medication errors, increase compliance with drug therapies, and improve health outcomes.

**SB 688** by Sen. Ron Caldwell and Rep. Michelle Gray would require PBMs to update their maximum allowable cost lists no less than seven days from an increase of 10 percent or more in the pharmacy acquisition cost; specifying the content of pharmacy acquisition cost; specifying the content of reasonable administrative appeal procedures; allowing the State Board of Pharmacy to fine and discipline PBMs; allowing pharmacists to decline to provide services to a PBM if a drug is purchased below the pharmacy acquisition cost as a result of maximum allowable cost list.

Maximum Allowable Cost (MAC) is a common methodology used in paying pharmacies for dispensing generic drugs. MAC is the maximum allowable reimbursement by a PBM for a particular generic drug that is available from multiple manufacturers and sold at different prices. SB 688 limits the types of generic drugs that can be included on a MAC list. The bill would allow pharmacies to purchase these generic drugs at a discounted rate, but force employers and other payers to reimburse them at excessive brand prices.

SB 688 essentially attempts to set specific pharmacy reimbursement terms. In particular, the bill would require that pharmacies are reimbursed above the cost of the drugs to the pharmacy—ensuring their own profit margin at the expense of consumers. Specifying reimbursement levels in statute leaves no room for employers and health plans to use a full range of tools to keep costs low for consumers.

SB 688 sets up a regulatory structure that is costly and anticompetitive. It also gives the Arkansas Board of Pharmacy (BOP) enforcement authority over PBM reimbursement provisions. This bill gives power to the BOP to manipulate the health care system to increase pharmacy profits at the expense of consumers by having oversight of private market employer prescription drug benefits through the regulation of PBMs. The BOP is qualified to oversee the practice of pharmacy—licensing of pharmacists, dispensing and labeling of drugs, patient counseling, and generic substitutions, but it is not qualified to oversee PBM activities, especially in the area of pricing terms.

**SB 542** by Sen. Jason Rapert and Rep. Dan Douglass changes the name of the Fair Disclosure of State funded “Payments for Pharmacists’ Service Act” to the “Fair Disclosure and Patient Rights Regarding Payment for Pharmacists’ Service Act.” It creates definitions for copayment and provider choice. Requires PBMs to provide quarterly written or electronic explanations of benefits itemized by individual claim to covered individuals; requires PBMs to obtain an individual’s consent before altering provider choice; and prohibits PBMs from charging a copayment to an individual that is greater than what the benefits PBM paid to a pharmacy service provider for the services originally.

SB 542 requires PBMS to send patients quarterly explanations of benefits (EOBs) regarding their pharmacy services. Health plans and employers are already required by law to provide an EOB to their beneficiaries because they have direct relationships with their member or employee who is the patient. The duplicative and inappropriate requirements in this bill would make it more difficult for pharmacy benefits managers (PBMs) to reduce overall prescription drug costs and provides no value to health care consumers. SB 542 also mandates disclosure of proprietary contract pricing information between health plans and PBMs. Publicly disclosing this type of confidential information is unnecessary and anticompetitive.

**SB 487** by Sen. Jason Rapert and Rep. Dan Douglass adds PBMs to the definition of third-party administrator for self-insured plans, multiple employer trusts or multiple employer welfare arrangements.

Regulating PBMs as fiduciaries has been tried and failed in several jurisdictions. In 2011, the last standing PBM fiduciary/disclosure law in the country was repealed in Maine. This law had a chilling effect on the health care marketplace in Maine, and was repealed in order to restore competition and lower costs for consumers and employers. In 2010, the D.C. Circuit Court of Appeals struck down the fiduciary provision of the D.C. AccessRx Act, finding it was preempted by the Employee Retirement Income Security Act of 1974 (ERISA) and therefore unconstitutional.

In the Federal Trade Commission's (FTC) analysis of this specific type of legislation, it opined that a fiduciary mandate such as in this bill would: a) Limit the abilities of health benefit plans and PBMs to design and implement certain cost-saving practices for distributing pharmaceuticals, b) Undermine the latitude that PBMs and their health plan clients now have to tailor contracts to suit a particular client's needs – which helps to foster competition between PBMs and keeps costs down, c) Impose additional litigation risks and increase legal liability by exposing PBMs to tort actions, in addition to contractual liability claims, which is likely to cause an increase in legal and administrative costs that may be passed on to clients through higher fees and d) Implicate a broad set of common law fiduciary obligations beyond those contemplated in contracts for PBM services and may conflict with or complicate express contractual or statutory duties.

This legislation is unnecessary because PBMs simply do not fit the definition of fiduciaries under ERISA. PBMs perform claims processing and other ministerial tasks that do not involve discretionary control of plan assets, an essential threshold requirement for fiduciary status under federal law.

## **BILLS WE SUPPORT**

**HB 1733** by Rep. Bruce Cozart would authorize the Education Commissioner to place a school district in academic distress into an Achievement School District. It also would authorize the Board of Education to issue binding recommendations regarding academic practices and staffing to schools in academic distress. Further, it would establish achievement school districts

under the Department of Education to provide operational oversight to school districts in academic distress. It would exempt teachers working in achievement school districts from certain provisions regarding the incorporation of personnel policies into teachers' contracts. Finally it would authorize the Education Commissioner to remove a granted charter for a public charter school that is designed an achievement school district. The State Chamber/AIA supports this bill.

## **PROJECT LABOR AGREEMENTS**

**SB 426** by Sen. Jon Woods and Rep. Bruce Cozart would prohibit public agency construction contracts from containing terms or bid specifications that encourage or discourage potential contractors from entering into collective bargaining agreements. It is on the House Public Health, Welfare and Labor Committee agenda. The State Chamber/AIA supports this bill.

## **CONTINUING BILLS**

### **LICENSING AND PUBLIC REGULATION REVIEW**

We met with legislative leaders on the entire issue of addressing overregulation and agreed that the coalition that opposed HB 1158 will look at a suggested alternative.

### **FORMER EMPLOYEE REFERENCE FORMAT**

**HB 1637** by Rep. Camille Bennett allows employer references requested from previous employers to be delivered in the media and a format convenient to the former employer. It is on the House Public Health, Welfare and Labor Committee agenda.

### **UNEMPLOYMENT INSURANCE FEDERAL COMPLIANCE**

**SB 790** by Sen. Jeremy Hutchinson is the Department of Workforce Services cleanup bill to conform Arkansas law to federal law. The bill clarifies termination of unemployment benefits to persons terminated for testing positive for an illegal drug. It also makes a determination of liability for unemployment tax binding unless the employer timely requests an administrative determination. It has been referred to the Senate Public Health Welfare and Labor Committee.

### **LEGISLATIVE SUPOENA AUTHORITY**

**HB 1643** by Rep. Richard Womack and Sen. Bart Hester specifies that the authority to administer oaths, take depositions and issue subpoenas extends to the chair or a member

acting as chair of all committees of the General Assembly. It has been referred to the Committee on House Rules.

## STATE CHAMBER/AIA BILL TRACKING

Monday was the last day for bills to be filed, with legislators filing 462 measures. We continue to sort through the filings and add bills to our tracking.

This session, the House filed 1007 bills and the Senate filed 1055.

The State Chamber/AIA is tracking 504 bills and resolutions.

New bills added to State Chamber/AIA tracking today:

<a href="#">HB 1448</a>	<a href="#">Broadaway, Mary (D)</a>	Statute of Limitations (Intentional Torts Exempted)
<a href="#">HB 1794</a>	<a href="#">Gossage, Bill (R)</a>	Provides an income tax credit of up to \$2,000 to retired law enforcement officers who investigate cold cases for the Arkansas State Police.
<a href="#">HB 1798</a>	<a href="#">Wright, Marshall (D)</a> <a href="#">Sample, Bill (R)</a>	Establishes new provisions governing rates a public utility may charge for pole attachments by providers of electric, telecommunication, communications, video and internet access services.
<a href="#">HB 1809</a>	<a href="#">Douglas, Charlotte (R)</a>	Authorizes the owner of property subject to condemnation by a public utility to require the utility to condemn additional, owned, adjacent property that is commercially viable.
<a href="#">HB 1821</a>	<a href="#">Flowers, Vivian (D)</a>	Health Prevention and Workforce Wellness Act (Shell Bill)
<a href="#">HB 1823</a>	<a href="#">Dotson, Jim (R)</a>	Professional Licensing (Shell Bill)
<a href="#">HB 1824</a>	<a href="#">Magie, Steve (D)</a>	Prohibits the use by health insurance providers of an all products clause in healthcare provider contracts.
<a href="#">HB 1825</a>	<a href="#">Davis, Andy (R)</a>	Specifies that the five percent limitation on total bonding authority for Amendment 82 projects means five percent of the current general revenue of the state.

<a href="#">HB 1846</a>	<a href="#">Baine, John (D)</a> <a href="#">Pierce, Bobby (D)</a>	Changes the definition of "journey" for purposes of carrying a weapon on a journey from traveling beyond the county of residence to traveling beyond the township in which the person resides.
<a href="#">HB 1866</a>	<a href="#">Gates, Mickey (R)</a>	Allows taxpayers subject to an audit to file an amended return or verified claim for credit or refund at any time before the audit is performed.
<a href="#">HB 1879</a>	<a href="#">Hammer, Kim (R)</a>	Permits private businesses, churches and individuals authorized to perform marriages to elect not to provide services to couples whose marriage violates their religious beliefs.
<a href="#">HB 1883</a>	<a href="#">Hammer, Kim (R)</a>	Professional Licensing (Medical Profession Boards; Shell Bill)
<a href="#">HB 1885</a>	<a href="#">Sabin, Warwick (D)</a> <a href="#">Burnett, David (D)</a>	Creates the Arkansas Clean Energy Act, requiring electric utilities to enter distributed generation contracts and buy energy produced by renewable electric generation facilities.
<a href="#">HB 1889</a>	<a href="#">Fielding, David (D)</a>	Prohibits service and handling fees by motor vehicle dealers.
<a href="#">HB 1894</a>	<a href="#">Vines, John (D)</a> <a href="#">Rapert, Jason (R)</a>	Establishes the Vision Care Plan Act regulating insurers that offer vision care plans.
<a href="#">HB 1895</a>	<a href="#">Mayberry, Julie (R)</a> <a href="#">Elliott, Joyce (D)</a>	Amends the College and Career Coaches Program, removing the priority for participation given to school districts located in Tier 3 and Tier 4 counties.
<a href="#">HB 1900</a>	<a href="#">Sabin, Warwick (D)</a>	Economic Development (Public-Private Transportation Act; Shell Bill)
<a href="#">HB 1907</a>	<a href="#">Neal, Micah (R)</a>	Amends provisions concerning property and casualty insurance contracts regarding subrogation and reimbursement rights of the parties.
<a href="#">HB 1908</a>	<a href="#">Douglas, Charlotte (R)</a>	Establishes the rights of property owners in dealings with entities authorized by law to exercise the power of eminent domain.
<a href="#">HB 1909</a>	<a href="#">Wallace, Dave (R)</a>	Establishes special fees for registration and licensing of \$80 for electric motor vehicles and

\$40 for hybrid motor vehicles.

[HB 1914](#) [Ferguson, Kenneth \(D\)](#) Utilities (Prepaid Energy Programs; Shell Bill)

[HB 1921](#) [Lemons, Tim \(R\)](#) Exempts from sales and use tax those goods withdrawn from stock for use as a charitable gift to public school, nonprofit churches and private individuals who have suffered loss as the result of a natural disaster.

*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.*

### ***LEGISLATIVE SESSION CONTACT INFORMATION***

State Senators: 501-682-2902

State Representatives: 501-682-6211

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