



Daily Legislative Update

Monday, March 23, 2015

71st Day of 90th General Assembly

TODAY AT THE CAPITOL

Senate convenes at 1:30 p.m.

House convenes at 1:30 p.m.

To view the most current and complete Legislative meeting schedule, go to:

www.arkleg.state.ar.us

PRIORITY BILLS

CAPITAL GAINS INCOME TAX EXEMPTION

HB 1402 by Rep. Matthew Shepherd and Sen. Jake Files seeks to return the capital gains tax reduction adopted in the 2013 session that was reduced at the beginning of the 2015 session. The bill has been amended to reduce the current 2015 capital gains tax rate from 50 to 45 percent and leaves the proposed 50 percent exemption that begins in 2016. HB 1402 is on today's House calendar. The State Chamber/AIA supports this bill.

TAXPAYER FAIRNESS

SB 490 by Sen. Bill Sample and Rep. Ken Bragg is on today's House calendar. The bill 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. It was amended last week to push the one-time \$700,000 revenue loss, caused by moving the corporate income tax filing deadline, to income tax year 2017. The State Chamber/AIA supports this bill, which was adopted as a priority issue prior to the session.

LAWSUIT LENDING

SB 882 by Sen. Jason Rapert would prohibit consumer lawsuit lending or purchasing of a contingent right to a share of a settlement. It would also make violations of this Act a deceptive and unconscionable trade practice and subject to its penalties. The Committee ran out of time on Friday, but we expect the bill to be heard in the House Insurance and Commerce Committee this morning. The State Chamber/AIA supports this bill.

WORKFORCE DEVELOPMENT

SB 368 by Sen. Jane English and Rep. Charlotte Douglass was approved on the House floor March 20 by a vote of 86-1. It now goes back to the Senate for adoption of House amendments.

The bill seeks to replace the State Board of Career Education with the Career Education and Workforce Development Board. Members are appointed by the Governor to three-year terms and each voting member will represent specific industry sectors. Non-voting members will represent Education, Higher Education, Career Education and Economic Development. The Board's duties will be to create and monitor a comprehensive, statewide career and workforce education program focused on educational and career opportunities.

It also creates the Office of Skills Development to administer and award grants to public and private organizations for the development and implementation of workforce training programs for new and incumbent workers.

This bill creates the foundation for improving the workforce education system in Arkansas. We are grateful to Senator English for taking on this significant effort.

SB 371 by Sens. Jane English and Bobby Pierce seeks to expand the opportunity for higher education institutions to provide concurrent and technical courses to students in grades 8-12. It received a Do Pass recommendation from the House Education Committee last week, and is expected to be considered on the House floor tomorrow.

The State Chamber/AIA supports these bills, which were adopted as priority issues prior to the session

TIPAC

SB 204 by Senator Jane English and Rep. Karilyn Brown was not debated by the House on Friday due to time constraints. It remains on today's House calendar. The State Chamber/AIA supports 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.

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. Meetings are ongoing, but the bill's revenue has put it in a challenging position to achieve any tax cut in this fiscal year. However we expect the bill to adopt the opportunity for employers to use a Limited Direct Pay Permit to claim the previously adopted tax reduction.

The State Chamber/AIA supports this bill, which was adopted as a priority issue prior to the session.

UNEMPLOYMENT INSURANCE INDEPENDENT CONTRACTOR AGREEMENT

HB 1679 by Rep. Mickey Gates is on the House Public Health, Welfare and Labor Committee agenda. It seeks to authorize two or more persons to file an agreement with the Department of Workforce Services that a party to a contract is an independent contractor, rather than an employee, with regard to service performed for another party.

This bill has been declared in violation of U.S. Department of Labor (USDOL) guidelines, which can create a risk of federal unemployment (FUTA) tax increases on employers if adopted. The increase could be as much as \$378 per employee!

The State Chamber/AIA is very concerned and strongly opposes this bill.

BILLS TO BE CONSIDERED TODAY

PHARMACY BENEFIT MANAGEMENT (PBM)

SB 688 by Sen. Ron Caldwell and Rep. Michelle Gray received a Do Pass recommendation from the House Public Health, Welfare and Labor Committee on Thursday. An amendment was filed on Friday, which is on today's House calendar for adoption. A list of companies opposed to this bill is in the "Bills we Oppose" section below. The State Chamber/AIA remains opposed to SB 688.

TRANSPORTATION

SB 871 by Sen. Jimmy Hickey and Rep. Prissy Hickerson authorizes special permits for containerized cargo units for up to one year on specified routes if they meet specific regulations and are inspected monthly. It was not considered in the House on Friday, and remains on today's House calendar. The State Chamber/AIA supports this bill.

LICENSING AND PUBLIC REGULATION REVIEW

HB 1823 by Rep. Jim Dotson and Sen. Bart Hester as originally filed seeks to amend the state's licensing laws by requiring licensing entities to adopt reduced requirements for reinstatement of a license, registration or certification for people that can demonstrate a set of standards, achievements, etc. After failing to gain the approval of the House Agriculture, Forestry and Economic Development Committee on Wednesday, the bill was amended to delete the provision that requires applicants seeking expedited reinstatement of licenses be residents of the state or prove that they will be residents of the state when they practice the profession they are seeking licensure for. The amendment also requires applicants to have been previously licensed in Arkansas rather than in any state. After the Committee recommended Do Pass on the amended bill Friday morning, HB 1823 is on today's House calendar.

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 also extends for another four years a portion of the Stabilization Tax portion of unemployment insurance (UI) taxes to be used for administration and employee training. It was not considered by the House last week, but remains on today's House calendar.

HOLD HARMLESS CLAUSES UNENFORCEABLE

SB 726 by Sen. Jake Files and Rep. Reginald Murdock 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 indemnitors, their agents, representatives, subcontractors or suppliers. SB726 was not debated by the House on Friday, and remains on today's House calendar.

The State Chamber/AIA Executive Committee voted 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.

POULTRY PRODUCTION CONTRACTS

HB 1963 by Rep. Jon Eubanks and Sen. Bobby Pierce would establish the Production Contract Arbitration Procedure Act to govern the arbitration process between poultry and livestock growers and contractors. The poultry industry is very concerned about this bill. It also was not considered by the House on Friday, but remains on today's calendar.

VEHICLE MILEAGE TAX

HB 1716 by Rep. Matthew Pitsch would create a pilot program for personal type vehicles to voluntarily use in-vehicle technology to record highway miles driven and be taxed at 1.5 cents per mile while driving on Arkansas highways. It is on today's House calendar.

LAST WEEK AT THE CAPITOL

EMINENT DOMAIN

HB 1870 by Rep. Warwick Sabin failed to gain the approval of the House Insurance and Commerce Committee on Friday. The bill addresses eminent domain by private pipeline companies.

HB 1908, originally filed by Rep. Charlotte Douglas, has been amended to make Rep. Rick Beck the prime sponsor. As originally filed, the bill would establish the rights of property owners in dealings with entities authorized by law to exercise the power of eminent domain. In addition to changing the primary sponsor, the amendment requires the circuit court to impanel a 12-

person jury to determine compensation, makes the state liable to the owner for court/attorney costs when the final compensation is 20 percent or more above the entity's initial assessment, changes property owner's right to "market value compensation" to "just compensation" and requires the assessment of the just compensation to be provided to the property owner or filed with the complaint for condemnation when the owner can't be located. HB 1908 received a Do Pass as amended recommendation from the House Judiciary Committee on Friday and is on today's House calendar to formally adopt the amendment.

The State Chamber/AIA has concerns about these bills.

BILLS WE OPPOSE

LICENSING AND PUBLIC REGULATION REVIEW

HB 2001 by Rep. Womack was filed after a coalition we hosted met with Rep. Womack. This bill has a reduced impact compared to HB 1158, but the coalition disagrees with allowing legal challenges by individuals to existing licensing requirements. The State Chamber/AIA opposes this bill because of its use of the judicial system to address regulatory and licensing concerns.

HB 2001 was amended to add a provision that the bill does not sanction the illegal practice of a licensed occupation, adds government employees and public school teachers to the list of persons owing a duty of good faith and trust to others when performing a lawful occupation, and adds there is no right to engage in an occupation for which the person is not certified, registered or licensed as required by law. HB 2001 remains on the House Public Health, Welfare and Labor Committee agenda.

We believe an interim legislative review to determine which, if any, of Arkansas's current licensing requirements need adjusting or eliminating is a better approach.

HB 1729 Rep. Donnie Copeland creates the Arkansas Sunset Act of 2015. It provides for a systematic review of agencies with the intent to identify state agencies that do not effectively serve a public peace, health or safety function and either restructure or eliminate them. HB 1729 is on the House State Agencies and Government Affairs Committee agenda.

HB 1730 by Rep. Nate Bell would create a systematic review of old rules, to prevent rules from becoming antiquated, and to require approval of old rules by the legislative council. It is on the House State Agencies and Government Affairs Committee agenda.

HB 1582 by Reps. Bill Gossage and Jim Dotson takes a different but overbroad approach by requiring state boards, commissions, departments, officers, or other authorities of state government to host a public meeting in each calendar quarter in each Congressional district annually. The bill is on the House Agriculture, Forestry and Economic Development Committee agenda.

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.

An amendment to SB 573 has been filed, but not adopted, that would require the firearm to be in a locked and stored container if the employee's duties include transport of children or adults, or if the employing facility serves children or disabled adults.

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.

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.

SB 753 by Sen. Bryan King, which was filed as a shell bill, was amended yesterday to require entities exercising eminent domain to compensate property owners for reduced property value on property that is not the subject of the eminent domain proceeding. It provides that major utility facilities are not entitled to eminent domain if the utility requires parties to enter into nondisclosure agreements. The bill has been referred to the Senate Judiciary Committee.

SB 757 by Sen. Jim Hendren establishes procedures for compensating owners whose private property is devalued as a result of state and local regulatory programs and use of eminent domain. The bill passed the Senate last week and has been referred to the House City, County and Local Affairs Committee.

The State Chamber/AIA has concerns about these bills.

HUMAN RESOURCES ISSUES

HB 1277 by Rep. Greg Leding would require employers, in a dispute with an employee, to pay all wages that the employer concedes are due to the employee without condition. A second

amendment has been adopted that would allow employers to pay discharge wages on the next payday according to their existing pay schedule rather than requiring they be paid within seven days of discharge.

We had multiple conversations with Rep. Leding and appreciate his efforts to satisfy our concerns, but we could not reach an agreement. HB 1277 is on the House Public Health, Welfare and Labor Committee agenda.

HB 1276 by Rep. Leding, which was defeated in committee last week, has also been amended a second time. The bill would require employers of four or more employees to provide a detailed pay stub to each employee at least once per month. The second amendment adds a provision that a pay stub may be provided in either paper or electronic format and provides that former employees who did not receive a pay stub with final check may request a pay stub within 30 days after termination. It remains on the House Public Health, Welfare and Labor Committee agenda.

HB 1275 by Rep. Greg Leding 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.

The State Chamber/AIA opposes all three of these bills

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.

HB 1618 has been amended twice. The first amendment provides that this section does not preempt other required criminal background checks. The second amendment allows an employer to inquire into the criminal record of an applicant for employment if he or she becomes the finalist or one of the finalists for the position. It also deletes consideration of when the arrest occurred but allows the employer to consider whether the applicant's conduct underlying any arrest found in the check makes the applicant unfit for the position and whether the arrest was for a felony or a misdemeanor.

We have shared the amended bill with several employment attorneys and corporate people and find there are still strong concerns about this bill. The bill has been reassigned to the House Judiciary Committee. The State Chamber/AIA opposes this bill.

BEER AND ALCOHOL SALE

A series of shell bills were filed on the bill filing deadline that has owners of convenience stores very concerned about potential limitations on their ability to sell beer. Three of the shell bills have been amended to include language and are summarized below. The remaining shell bills include: **SB 872**, **SB 1029** and **SB 1030**.

HB 1795 by Rep. Bill Gossage was amended yesterday to prohibit the number of permits authorizing the off-premises sale of small-farm wines or beer and light wine in counties authorizing such sales from exceeding 1 permit per 2,500 population.

HB 1959 by Rep. Jeff Wardlaw has been amended to prohibit the Alcoholic Beverage Control Division from issuing or transferring a new beer permit for off premises consumption to a business within 1,000 feet of a gas pump located on property the applicant controls or has an interest.

HB 1965 by Rep. Donnie Copeland would vest the power to create or alter types of alcoholic beverage permits with the General Assembly rather than the Alcoholic Beverage and Control Division, requiring a two-thirds vote in each house for approval of such actions.

All three bills have been referred to the Committee on House Rules.

PHARMACY BENEFIT MANAGEMENT (PBM)

Historically, the State Chamber/AIA has opposed legislation that seeks to reduce the impact of PBMs. This historic opposition arises from employers' concerns about elimination or reduction in pharmacy cost savings that PBMs provide to employer health plans.

The State Chamber/AIA joins the following entities that have been identified as opposing PBM bills: Tyson Foods, The City of Fort Smith, OK Industries, Harry G Barr Company, Jimmy Hart Conway County Judge, Pleasant Valley Country Club, Petit Jean State Bank, Dollar Investments, LLC, Petit Jean Liquor, ACE Hardware Haynes Home Center, Inc., Roberson Tire Service, Inc., Anderson Minnow Farm, B & C Ink, MARVA Workshop, Inc., Mobley Contractors, Inc., Conway Country Regional Water Distribution District, Cooper Administrative Services, Open Arms Shelter, First Collection Services, Budweiser, Koontz Electric Company, Inc., Med-Tech EMS, Inc., Housing Authority of the City of Morrilton, Cloyes Gear & Products, Inc., AWI Supply, B&C Ink, Blue Cross Blue Shield, Centene, City of Conway, Conway Chamber of Commerce, Conway Financial Services, Employers Health Coalition, Falk Plumbing Supply, HealthSCOPE Benefits, Hot Springs Village, JB Hunt, Otto Lienhart, Inc., Packaging Specialties, Stepka and Associates, The TOOL Source, Triumph Airborne Structures, Koch Industries and Arkansas Forest and Paper Council.

SB 688 by Sen. Ron Caldwell and Rep. Michelle Gray received a Do Pass recommendation from the House Public Health, Welfare and Labor Committee on Thursday, but an amendment

was filed on Friday. It is on today's House calendar to adopt the amendment. The State Chamber/AIA remains opposed to SB 688.

SB 542 by Sen. Jason Rapert and Rep. Dan Douglas received a Do Pass as amended recommendation from the Senate Insurance and Commerce Committee last week. The amendment will be formally adopted today.

REFUSE DISPOSAL

HB 1872 by Rep. Bob Johnson as originally filed would allow cities and counties to prescribe by ordinance reasonable rates for landfill host fees if the county or municipality has all or part of a refuse landfill located within the county or municipal limits. The host fees shall not exceed two dollars per tonnage of refuse disposed in the landfill on or after September 1, 2015. It has been amended to allow only cities of the first class to prescribe by ordinance the fee allowed by the bill, rather than all municipalities. HB 1872 is on the City, County and Local Affairs Committee agenda. The State Chamber/AIA joins the Arkansas Environmental Federation in opposing this bill.

CONTINUING BILLS

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 has been referred to the Senate Public Health, Welfare and Labor Committee.

BOARDS AND COMMISSIONS

HB 1851 by Rep. Micah Neal amends the membership composition of various state boards, commissions and other administrative bodies. It also requires that the Governor consult with representatives of the relevant industries before making appointments to those entities. We have been told the agriculture boards and commissions will be amended out of the bill, but no amendment has been filed yet. Currently, the affected boards and commissions include: Arkansas Catfish Promotion Board, Cotton Growers' Organization, Arkansas Rice Research and Promotion Board, Arkansas Wheat Promotion Board, Arkansas Corn and Grain Sorghum Promotion Board, Arkansas Beef Council, Arkansas Wine Producers Council, Academic Facilities Review Board, Interstate Compact on Educational Opportunity for Military Children, Distance Learning Coordinating Council, State Apprenticeship Coordination Steering Committee, Arkansas Higher Education Coordinating Board, Board of Visitors for the University of Arkansas at Pine Bluff, Advisory Committee on Petroleum Storage Tanks, State Judge Advocate, Arkansas Workforce Investment Board, Commission on Information Age Communities, Arkansas Natural and Cultural Resources Council, Arkansas Natural Heritage

Commission, Arkansas Waterways Commission, Nongame Preservation Committee, Arkansas Fair Housing Commission , Arkansas Appraiser Licensing and Certification Board, Arkansas State Board of Architects, Landscape Architects and Interior Designers, State Board of Collection Agencies, Residential Contractors Committee, Arkansas Board of Examiners in Counseling, State Board of Embalmers and Funeral Directors, Arkansas Board of Private Investigators and Private Security Agencies, Arkansas Real Estate Commission, Arkansas State Board of Sanitarians, Arkansas State Board of Registration for Professional Soil Classifiers, Arkansas State Board of Chiropractic Examiners, Arkansas Dietetics Licensing Board, Arkansas Board of Hearing Instrument Dispensers, Medication Assistive Person Advisory Committee, Arkansas Board of Dispensing Opticians, Medications Administration Advisory Committee, Arkansas State Medical Board , Examining Board in section 17-96-201(a)(2), Arkansas Psychology Board, State Board of Disease Intervention Specialists, State Respiratory Care Examining Committee, Board of Examiners in Speech-Language Pathology and Audiology, Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board, Tobacco Prevention and Cessation Advisory Committee, State Board of Health, Long-Term Care Facility Advisory Board, Trauma Advisory Council, Universal Newborn Screening, Tracking, and Intervention Advisory Board, Arkansas Fire Protection Services Board, Elevator Safety Board, Arkansas Manufactured Home Commission, Arkansas Youth Suicide Prevention Task Force, Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program Advisory Council, Arkansas Lifeline Individual Verification Effort Corporation, State Banking Board, Arkansas Fire and Police Pension Review Board, Board of Division of State Services for the Blind, Director of the Arkansas Department of Environmental Quality, Board of the Information Network of Arkansas, Arkansas Deaf and Hearing Impaired Telecommunications Services Corporation, Arkansas Tobacco Control Board and Marine Sanitation Advisory. It is on the House State Agencies and Governmental Affairs Committee agenda.

EDUCATIONAL DATA SYSTEM

HB 1748 by Rep. Clarke Tucker and Sen. David Johnson provides for establishment of the Arkansas P20W Education Data Initiative System, a statewide longitudinal data system maintained by the Arkansas Research Center to support evaluation of public education policies and programs. It is on the House Education Committee agenda.

A&P TAX COLLECTION REPORTING

HB 1941 by Rep. Micah Neal would exempt from disclosure under the Freedom of Information Act information related to taxes collected by certain entities or industries under the Advertising and Promotion Commission Act, although the total of taxes collected may be released. It is on the Senate Revenue and Taxation Committee agenda.

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.

CONSOLIDATING STATE AGENCIES

SB 382 by Sen. Eddie Joe Williams and Rep. Nate Bell addresses the issue of consolidating state agencies into 10 or more principal departments. The bill is on the Senate State Agencies and Governmental Affairs Committee agenda. Rep. Bell advised last week that a major amendment is being developed.

STATE CHAMBER/AIA BILL TRACKING

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

The State Chamber/AIA is tracking 535 bills and resolutions.

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

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.

State Chamber/AIA Staff:

Randy Zook, President/CEO: rzook@arkansasstatechamber.com

Kenny Hall, Executive Vice President: khall@arkansasstatechamber.com

Angela DeLille, Director of Governmental Affairs: adelille@arkansasstatechamber.com

Andrew Parker, Director of Governmental Affairs: aparker@arkansasstatechamber.com

State Chamber/AIA phone: (501) 372-2222

State Chamber/AIA web site: www.arkansasstatechamber.com