



## Daily Legislative Update

Thursday, March 26, 2015

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

### TODAY AT THE CAPITOL

Senate convenes at 1:00 p.m.

House convenes at 1:00 p.m.

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

[www.arkleg.state.ar.us](http://www.arkleg.state.ar.us)

The legislature is working hard to achieve an adjournment around the middle of next week. Many committees are meeting twice a day and first consideration of bills in committee may be over. The Senate and House floor sessions are being extended this week to get through long calendars.

### PRIORITY BILLS

#### CAPITAL GAINS INCOME TAX EXEMPTION

**HB 1402** by Rep. Matthew Shepherd and Sen. Jake Files seeks to restore the capital gains tax reduction adopted in the 2013 session, which was reduced at the beginning of the 2015 session. HB 1402 passed the House yesterday by a vote of 68-17. It has been referred to the Senate Revenue and Taxation Committee. The State Chamber/AIA supports this bill.

#### TAXPAYER FAIRNESS

**SB 490** by Sen. Bill Sample and Rep. Ken Bragg is on today's Senate calendar to concur in two House amendments. The first amendment delayed the impact of moving the corporate filing deadline back one month and the second was a technical correction.

This is the State Chamber/AIA's priority tax bill for the 2015 session. If you asked a legislator to support this bill and have not already done so, please be sure to thank them.

The bill will eliminate requiring taxpayers to pay taxes before they can challenge a tax ruling, lessen 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.

## **LAWSUIT LENDING**

**SB 882** by Sen. Jason Rapert would establish two limitations to the practice of consumer lawsuit lending or purchasing of a contingent right to a share of a settlement: (1) require disclosure to parties to a lawsuit; and (2) require that the interest rate on such loans not exceed the established usury rate as defined by Arkansas law. The bill also extends Deceptive Trade Practices Act protections to this practice. The bill passed the House yesterday by a vote of 88-2 and will now go to the Governor for his signature. The State Chamber/AIA supports this bill.

## **WORKFORCE DEVELOPMENT**

**SB 368** by Sen. Jane English and Rep. Charlotte Douglas has been transferred to the Governor's office for his signature after the Senate voted yesterday to concur in a House amendment.

The bill will 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.

The bill 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. The bill was not considered by the House yesterday and remains on today's calendar.

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

## **MANUFACTURING REPAIR AND REPLACEMENT PARTS SALES TAX EXEMPTION**

**SB 332** by Sen. Jake Files and Rep. Joe Jett has been amended to delete the further and complete reduction in the sales taxes paid by manufacturers on their repair and replacement parts. As we have been reporting, the bill's revenue put it in a position making it impossible to achieve any additional tax cut in the coming biennium. However, we were able to successfully work with the Department of Finance and Administration and work out the opportunity for employers to use a Limited Direct Pay Sales Tax Permit to claim the previously adopted tax reduction. When the original tax reduction was passed in 2013, it was limited to companies that use a Direct Pay Sales Tax Permit. The "Limited" permit will make it comfortable for more companies to participate in the tax reduction.

The amended bill passed the Senate by a vote of 34-0 yesterday. It is on today's House Revenue and Taxation Committee agenda.

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

## **BILLS TO BE CONSIDERED TODAY**

### **EMINENT DOMAIN**

**HB 1908** by Rep. Rick Beck received a Do Pass as amended recommendation from the Senate Judiciary Committee yesterday. It is on today's Senate calendar to formally adopt the amendment. 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. An 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. Yesterday's amendment adds Sen. Hutchinson and Rep. Drown as co-sponsors; provides that awards of costs, expenses or attorney's fees under this bill in a condemnation act brought by a county or municipality are governed by the laws that authorize the condemnation action. The State Chamber/AIA has concerns about this bill.

**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. It received a Do Pass as amended recommendation from House City, County and Local Affairs Committee yesterday and the amendment was formally adopted yesterday afternoon. It passed the House yesterday by a vote of 75-1. The bill has been returned to the Senate to concur in a House amendment.

## SCHOOL FACILITIES

**SB 847** by Sen. Alan Clark would require the Public School Academic Facilities and Transportation Division to identify underutilized public school academic facilities and consider petitions from open enrollment charter schools for use of the facilities. The bill passed the Senate last week and is on the House Education Committee agenda.

## LICENSING AND PUBLIC REGULATION REVIEW

**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 received a Do Pass recommendation from the House State Agencies and Government Affairs Committee yesterday and is on today's House calendar.

## 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 joined long list of companies that were concerned about their pharmacy costs going up and opposed this session's PBM bills.

**SB 688** by Sen. Ron Caldwell and Rep. Michelle Gray passed the House yesterday by a vote of 64-14. The Senate must now concur in a House amendment. The State Chamber/AIA remains opposed to SB 688.

**SB 542** by Sen. Jason Rapert and Rep. Dan Douglas received a Do Pass from the House Insurance and Commerce Committee yesterday. It is on today's House calendar.

## 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 the representatives of the relevant industries before making appointments to those entities. The bill has been amended to delete proposed changes to Research and Promotion boards and make various other revisions including specifying that the Governor's many appointments are subject to confirmation by the Senate. As reported, the amendment deleted all the agriculture boards from the bill. If your organization was listed in the original draft, please review the amendment. The bill received a Do Pass as amended recommendation from the House State Agencies and Governmental Affairs Committee yesterday. It is on today's House calendar to formally adopt the amendment.

## 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 received a Do Pass recommendation from the Senate Public Health, Welfare and Labor Committee yesterday and is on today's Senate 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 indemnitors, their agents, representatives, subcontractors or suppliers. SB 726 is on the Senate Insurance and Commerce Committee agenda for concurrence of a House amendment.

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.

## YESTERDAY AT THE CAPITOL

### 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. An amendment adopted last week expands the study beyond the original 10 principal departments, removes deadlines and reorganizes uncodified language that defines the scope of the study. The bill passed the Senate by a vote of 34-0 yesterday. It has been referred to the House State Agencies and Governmental Affairs Committee.

### BEER AND ALCOHOL SALE

**HB 1959** by Rep. Jeff Wardlaw would 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. The bill was amended yesterday to add new sections that authorize ABC to issue permits for off-premises sale of small farm wines, beer and light wine at the ratio of 1 per 2,500 population. It

also changes the permit grandfather clause date from 1991 to 2015. HB 1959 was debated in the House Rules Committee yesterday, but did not receive the Committee's support.

**HB 1795** by Rep. Bill Gossage would 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. After HB 1959 was amended, it became practically identical to HB 1795. HB 1795 remains on the House Rules Committee agenda.

## **BILLS WE OPPOSE**

### **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 1870** by Rep. Warwick Sabin failed to gain the approval of the House Insurance and Commerce Committee last week, but will remain on the Committee's agenda. The bill addresses eminent domain by private pipeline companies.

**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, but we have been told Rep. Ballinger does not plan to run the bill.

**SB 753** by Sen. Bryan King would 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 is on the Senate Judiciary Committee agenda.

The State Chamber/AIA has concerns about these bills.

## **UNEMPLOYMENT INSURANCE INDEPENDENT CONTRACTOR**

**HB 1679** by Rep. Mickey Gates seeks to authorize two or more persons to file an agreement with the Department of Workforce Services setting forth that a party to a contract is an independent contractor, rather than an employee, with regard to service performed for another party. The bill has been amended to provide that the absence of a written agreement setting forth that a party is an independent contractor does not imply that an independent contract does not exist between two parties. A second amendment, added yesterday, added that the subsection recognizes, and does not alter, amend or limit the definition of employer-employee relations under federal law and regulations.

This bill has been declared in violation of U.S. Department of Labor (USDOL) guidelines, which creates the risk of federal unemployment tax increases (FUTA) on employers of \$378 per employee or \$378 million to the business community! The State Chamber/AIA is very concerned and strongly opposed to this bill.

## **LICENSING AND PUBLIC REGULATION REVIEW**

**HB 2001** by Rep. Womack is a reduced version of HB 1158. The State Chamber/AIA opposes this bill because of its use of the judicial system to address regulatory and licensing concerns.

**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 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.

## **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 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. It remains on the House Public Health, Welfare and Labor Committee agenda.

**HB 1276** by Rep. Leding would require employers of four or more employees to provide a detailed pay stub to each employee at least once per month. An amendment adds a provision that a pay stub may be provided in either paper or electronic format and provides that former employees who do not receive a pay stub with final check may request a pay stub within 30 days after termination. The bill 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. Two amendments provide that this section does not preempt other required criminal background checks and allow employers 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 is on the House Judiciary Committee agenda. The State Chamber/AIA opposes this bill.

## **BEER AND ALCOHOL SALE**

**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.

## CONTINUING BILLS

### LICENSING AND PUBLIC REGULATION REVIEW

**HB 1823** by Rep. Jim Dotson and Sen. Bart Hester is on the Senate Agriculture, Forestry and Economic Development Committee agenda. As originally filed, the bill 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 who can demonstrate a set of standards, achievements, etc. The bill has been amended to delete the provision that requires applicants seeking expedited reinstatement of licenses be residents of the state or prove 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.

### 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.

## **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**

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To view schedules, calendars, bill information and legislator information, visit:  
[www.arkleg.state.ar.us](http://www.arkleg.state.ar.us).

To view live stream video and audio from the Arkansas House of Representatives, visit [www.arkansashouse.org](http://www.arkansashouse.org).

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