



Daily Legislative Update

Friday, March 13, 2015

61st Day of 90th General Assembly

TODAY AT THE CAPITOL

House convenes at 10:00 a.m.

The Senate does not meet.

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

www.arkleg.state.ar.us

STATE CHAMBER/AIA PRIORITY BILLS

* * * CALL TO ACTION * * *

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 next week.

If you see your legislators this weekend, please ask them to support HB 1768.

HB 1768 seeks to solve the unfunded liability of the Workers' Compensation Commission's Death and Permanent Disability Trust Fund by stopping new claims from going into the Fund on or after July 1, 2015. It would also restore subrogation to workers' compensation cases.

Labor unions are preparing a significant campaign against this bill. If we cannot resolve concerns of the Arkansas Trial Lawyers Association, they will most certainly join the opposition.

If you don't see your legislator in person, be sure to write or call.

UNEMPLOYMENT INSURANCE – HEADED TO GOVERNOR!

HB 1489 was approved by the Senate yesterday afternoon by a vote of 22-7 with five not voting. It now goes to the Governor for his signature.

Here is a link to the Senate vote:

<http://www.arkleg.state.ar.us/assembly/2015/2015R/Pages/votes.aspx?rcsnum=797&votechamber=Senate>

Thank you to all who made legislative contacts on this bill. Be sure to say thank you to any legislator you contacted.

TAXPAYER FAIRNESS

SB 490 by Sen. Bill Sample and Rep. Ken Bragg awaits consideration in the House Tax Committee.

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.

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.

Please ask your Representative to support SB 490.

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.

PENDING STATE CHAMBER/AIA PRIORITY BILLS

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 and the bills are beginning to move through the system. Our bills include:

SB 368 by Sen. Jane English, Rep. Charlotte Douglass and others that is on Monday's Senate calendar.

SB 369 by Sen. English

SB 370 by Sen. English

SB 371 by Sens. Jane English and Bobby Pierce that is also on Monday's Senate calendar.

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

BILLS WE OPPOSE

ADEQ PERMITTING

HB 1701 by Rep. Warwick Sabin will complicate businesses seeking environmental permits at the Arkansas Department of Environmental Quality (ADEQ) and reduce Arkansas's competitiveness with other states in industrial recruitment.

The State Chamber/AIA joins the Arkansas Environmental Federation and the Arkansas Farm Bureau in opposing this bill.

This bill will add regulatory burdens to: hazardous waste treatment facilities; Title V Facilities – these are major facilities that are permitted under the U.S. Clean Air Act; NPDES Facilities – these are facilities that are permitted by the authority of the National Pollution Discharge Elimination System; Permits for confined animal feeding operations issued under Arkansas law, solid waste transfers, processing or disposal facilities; and Surface mines.

The bill also requires these facilities to post a two-foot by three-foot sign on the road nearest the entrance to the site. HB 1701 is on the House Agriculture, Forestry and Economic Development Committee Agenda.

EXTENDING INTENTIONAL TORT STATUTE 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. The bill has passed the House and been referred to the Senate Judiciary Committee.

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.

An amendment to SB 573 has been filed 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.

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. SB 726 passed the Senate yesterday by a vote of 32-1 with 1 not voting. It has been referred to the House Insurance and Commerce Committee.

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.

HB 1870 by Rep. Warwick Sabin and **HB 1908** by Rep. Charlotte Douglas were both amended yesterday.

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

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.

HB 1618 has been amended twice. The first amendment provides that this section does not preempt other required criminal background checks. The second amendment, which was filed yesterday and has not been formally adopted, 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.

The bill has been referred to the House Public Health, Welfare and Labor Committee.

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

This issue always produces one of, if not the most, intense lobbying battles of each session. After a few sessions of less intensity, this session's battle has reached the higher end of intensity seen over the past decade.

Again, our efforts have been to represent the interests of our membership through a longstanding position. This is an extremely complicated issue that is practically not understandable unless you are a pharmacist, health insurer or a well-educated and engaged lobbyist. Consequently we are frequently given talking points and bill comments from those lobbying the position we have chosen to represent. As in past sessions, accusations of false statements are being made. Following our posting here of two different sets of statements, we have been accused of making false statements. It is never our intent to make an inaccurate statement. If any statement we make turns out to be inaccurate, we stop making it and correct it if possible.

The PBM bills, like any, are subject to amendments for a variety of reasons. Those amendments can quickly make statements only a day or so old, suddenly obsolete.

We have no desire to get caught up in the emotions of this legislative battle and have plenty of other battles to work on. We have the utmost respect for everyone's point of view. Pharmacists and businesses alike are trying to make a living. Likewise, we are doing our job of representing the viewpoint adopted long ago by our leadership—to control healthcare costs for employers and employees.

Our position remains that we are opposed to SB 688, SB 542 and SB 487. We will continue to report the status of these bills to keep our membership informed.

The bill texts and amendments can be found on the General Assembly website and there is a link posted at the top and bottom of this Update.

SB 688 by Sen. Ron Caldwell and Rep. Michelle Gray was amended on the Senate floor and then passed 32-0 yesterday afternoon. It has now been assigned to the House Public Health, Welfare and Labor Committee.

SB 542 by Sen. Jason Rapert and Rep. Dan Douglas is on the Senate Insurance and Commerce Committee agenda.

SB 487 by Sen. Jason Rapert and Rep. Dan Douglas is on the House Insurance and Commerce Committee agenda.

BILLS WE SUPPORT

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. The bill received a Do Pass recommendation from the Senate Committee on Transportation, Technology and Legislative Affairs on Wednesday. It is on Monday's Senate calendar for final consideration. The State Chamber/AIA supports this bill.

ECONOMIC DEVELOPMENT

SJR 16 by Sen. Jon Woods would allow public entities to finance economic development activities with financial incentives. The State Chamber/AIA supports this bill.

SB 994 by Sen. Ron Caldwell, which was filed as a shell bill, will be amended to change the method for calculating surcharge rates for gas utilities and repeals the current cost-of-service recovery method. The State Chamber/AIA supports this bill.

ACHIEVEMENT SCHOOL DISTRICTS

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 received a Do Pass recommendation from the House Public Health, Welfare and Labor Committee yesterday. The State Chamber/AIA supports this bill.

WORKERS' COMPENSATION

HB 1761 by Rep. Micah Neal is a shell bill Rep. Neal filed for the State Chamber to hold for potential additional legislation we might choose to pursue. An amendment to set forth the bill's proposals is being prepared. However, the plan is to hold the bill until the State Chamber/AIA's primary bill starts moving.

CONTINUING BILLS

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 received a Do Pass recommendation from the House Revenue and Taxation Committee yesterday and is on Monday's House calendar.

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 coalition would prefer an interim legislative review to determine which, if any, of Arkansas's current licensing requirements need adjusting or eliminating. HB 2001 was amended yesterday. The amendment adds 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.

Other bills addressing the licensing issue include:

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 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.

HB 1823 by Rep. Jim Dotson was filed as a shell bill but has been amended to add text and Sen. Bart Hester as a co-sponsor. It 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 a standards, achievements, etc. It is also on the House Agriculture, Forestry and Economic Development Committee agenda.

FORMER EMPLOYEE REFERENCE FORMAT

HB 1637 by Rep. Camille Bennett allows employer references requested from previous employers to be delivered in the media and in 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 passed the Senate yesterday by a vote of 34-0 and has been referred to the House 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

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

To date the State Chamber/AIA is tracking 527 bills and resolutions, but we will likely continue to alter our tracking list as shell bills are amended.

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.

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