



## Daily Legislative Update

Monday, March 16, 2015

64th 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.

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

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### STATE CHAMBER/AIA PRIORITY BILLS

\* \* \* CALL TO ACTION \* \* \*

### WORKERS' COMPENSATION

**HB 1768** by Rep, Matthew Shepherd, House Speaker Jeremy Gillam, Sen. John Cooper, Sen. David Sanders and Senate President Jonathan Dismang will be run sometime this week in the House Public Health, Welfare and Labor Committee.

Ask your legislators to support HB 1768.

HB 1768 seeks to solve the currently more than \$131 million and growing unfunded liability of the Workers' Compensation Commission's Death and Permanent Disability Trust Fund (D&PD). Our plan on behalf of business is to end new claims going into the Fund on or after July 1, 2015. Currently, employers are responsible for approximately the first \$200,000 of each D&PD claim then the D&PD Fund pays the rest.

To help offset likely premium increases from employers' assumption of the entire amount of D&PD claims, the bill also would restore subrogation to workers' compensation cases. State court decisions have blocked employers/insurers' attempts to recover some of the amounts paid when a successful case is made against a third party that is responsible for injuries sustained by a worker. To accomplish this, the bill seeks to overturn the court cases and return subrogation to the statutory provisions that existed prior to the court 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.

Please speak with your legislator in person, write them or call and ask for a Yes vote on HB 1768.

## 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 this Thursday, 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

#### 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.

The piece of this bill that pushes the Arkansas corporate income tax filing back one month has about a \$700,000 revenue impact. This has caused the bill's momentum to slow. Please ask your Representative to support SB 490.

**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 this afternoon's Senate calendar.

This 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.

This 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 and we are grateful to Sen. English for taking on this significant effort.

**SB 371** by Sens. Jane English and Bobby Pierce is also on Monday's Senate calendar. This bill seeks to expand the opportunity for higher education institutions to provide concurrent and technical courses to students in grades 8-12.

**SB 372** by Sen. English, Rep. Bill Gossage and others seeks to eliminate service areas for two-year colleges and technical schools.

**SB 369** and **SB 370** by Sen. English were duplicate bills to some of those mentioned above.

## UNEMPLOYMENT INSURANCE

**HB 1489** by Rep. Lane Jean, Sen. Jim Hendren and Sen. Bart Hester will be signed into law this afternoon by Gov. Hutchinson. Thank you to all legislators who supported this important effort. Thanks also to all who made legislative contacts on this bill. Be sure to say thank you to any legislator you contacted who supported this bill.

## BILLS TO BE CONSIDERED TODAY

### 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. It received a Do Pass recommendation last week from the Senate Judiciary Committee and is on this afternoon's Senate Calendar. 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 last week and is on today's Senate calendar. The State Chamber/AIA supports this bill.

## 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 last week and is on today's Senate calendar for final consideration. The State Chamber/AIA supports this bill.

## 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 burden to: hazardous waste treatment facilities; Title V Facilities (major facilities that are permitted under the U.S. Clean Air Act); NPDES Facilities (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.

## 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 UNENFORCABLE**

**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. SB726 is on the House Insurance and Commerce Committee agenda.

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.

**HB 1870** by Rep. Warwick Sabin, which addresses eminent domain by private pipeline companies, is on the House Insurance and Commerce Committee agenda.

**HB 1908** by Rep. Charlotte Douglas would establish the rights of property owners in dealings with entities authorized by law to exercise the power of eminent domain. It is on the House Judiciary Committee agenda.

The State Chamber/AIA has concerns about all three of 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 was filed on Friday 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. The amendment has not been formally adopted.

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, is also being amended today. This bill addresses pay stub information.

**HB 1275** by Rep. Greg Leding provides tax credits of up to \$4,000 per employee per year for employers that 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 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 is on the House Public Health, Welfare and Labor Committee agenda.

The State Chamber/AIA opposes this bill.

## **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. We are seeking to acquire a list of employers that oppose this type of legislation.

**SB 688** by Sen. Ron Caldwell and Rep. Michelle Gray passed the Senate last week and is on the House Public Health, Welfare and Labor Committee agenda. The State Chamber/AIA remains opposed to SB 688

**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 received a Do Pass as amended recommendation from the House Insurance and Commerce Committee on Friday. The amendment will be formally adopted on the House floor today.

## **INTENTIONAL TORTS**

**HB 1448** by Rep. Mary Broadaway would have removed 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 is on the Senate Judiciary Committee agenda.

Rep. Broadaway spent much of last week talking to and working with members of the business community and as a result has indicated she will hold the bill with the intent to not pursue it further. We are most appreciative of Rep. Broadaway's response to and support of business concerns.

## **BILLS WE SUPPORT**

### **ECONOMIC DEVELOPMENT**

**SJR 16** by Sen. Jon Woods would allow public entities to finance economic development activities with financial incentives. The Joint Committee on Constitutional Amendments is scheduled to meet next Monday. 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 repeal 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 designated an achievement school district. 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 this 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 last week and is on today'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 has been 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. The bill is on the House Public Health, Welfare and Labor Committee agenda.

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 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.

**HB 1823** by Rep. Jim Dotson and Sen. Bart Hester 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 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 also extends for another four years a portion of the Stabilization Tax portion of UI taxes to be used for administration and employee training. It is on the House Public Health, Welfare and Labor 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 bills.

The State Chamber/AIA is tracking 528 bills and resolutions.

As we continue to sort through all of the bills filed last Monday, we will likely find bills to add to our tracking.

<a href="#">HB 1963</a>	<a href="#">Eubanks, Jon (R)</a> <a href="#">Pierce, Bobby</a>	Establishes the Production Contract Arbitration Procedure Act to govern the arbitration process between poultry and livestock growers and contractors.
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*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](http://www.arkleg.state.ar.us).

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