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92nd General Assembly March, 21, 2019 – Session Day 67

TODAY AT THE CAPITOL

The House and Senate are in recess until Monday, March 25.
Legislative Calendar: www.arkleg.state.ar.us

Our next Daily Legislative Update will be on Monday, March 25

***** DISCUSS WITH YOUR LEGISLATORS *****

CORPORATE INCOME TAX REFORM

SB 576 by Sen. Bart Hester, 10 other Senators (including Senate President Pro Tem Jim Hendren) and Rep. Dan Douglas *received a Do Pass recommendation from the Senate Revenue & Taxation Committee. It will likely be on Monday's Senate Calendar. Please ask your State Senator to vote FOR SB 576.*

SB 576 contains major tax policy priorities we've advocated for more than a decade. If adopted, this bill will make Arkansas's corporate income taxes fairer and more competitive with other states. Details of the amended bill:

Require Remote Sellers and Marketplace Facilitators to Collect Sales Tax

- Enforcement of existing tax obligations to pay for state and local services—not a new tax.
- Puts our in-state sellers on equal footing with out-of-state sellers instead of a 10 percent price disadvantage.

Extend Net Operating Loss (NOL) Carryforwards to Prevent Double Taxation

- This could potentially help any business in Arkansas. Currently, past years' losses can only be offset against future years' earnings for up to five years (worst in USA).
- This will phase in an increase of the offset period to 10 years.

Adopt Single Sales Factor (SSF) Apportionment

- Arkansas is one of a declining number of states that still use property and payroll factors to determine taxable income, effectively raising taxes on in-state businesses while giving out-of-state businesses a 50 percent tax cut.
- Arkansas businesses are currently double taxed selling into states with SSF.
- Going to SSF benefits businesses that invest in employees and property in Arkansas—particularly manufacturers, wholesalers, retailers and banks.

Decrease the corporate income tax rate from 6.5 percent to 5.9 percent

SB 576 also includes a car wash sales tax exemption and imposes a new car wash water user fee.

EMPLOYMENT LAW – STATE CHAMBER/AIA PRIORITY LEGISLATION

HB 1751 by Rep. Robin Lundstrum and Sen. Mat Pitsch *was approved by the House*

yesterday 56 to 0 and has been assigned to the Senate Public Health, Welfare and Labor Committee. This bill addresses wage and payment requirements, including requiring the employer to pay a discharged employee within seven days of the next regular payday or pay double the wages due. Other provisions include: establishing a two-year statute of limitation, and providing that if an employer is providing wages earned via a pre-loaded debit card, the employee is entitled to at least one free withdrawal for each deposit of wages loaded onto the card. This bill is designed to provide some clarity in employment laws. Please ask your Legislators to **vote FOR HB 1751.**

MINIMUM WAGE LAW – STATE CHAMBER/AIA PRIORITY LEGISLATION

HB 1752 by Rep. Robin Lundstrum and Sen. Mat Pitsch *was not considered yesterday*. It seeks to increase the size of businesses that qualify for Minimum Wage Act exemption, from those with four employees to those with up to 25. It also seeks to exempt nonprofit entities with operating budgets of less than \$1 million and nonprofit developmental service providers. The purpose is to mitigate the cost increases on small businesses and non-profits.

HB 1753 by Rep. Robin Lundstrum and Sen. Mat Pitsch *has been amended and sent back to the House Public Health, Welfare and Labor Committee*. It seeks to change the language of “student” to “people under 20,” i.e., teenagers. An age limit would be easier to administer than dealing with proof issues for determining the status of “students.” Current law allows full-time students working less than 20 hours during school or 40 hours during off-school time, to be paid 85 percent of the minimum wage. The bill’s intent is to freeze the minimum wage for teenagers at \$9.25 and eliminate the 85 percent limit.

HB 1752 and HB 1753 seek to mitigate the impact of minimum wage increases set for January 1, 2020 and 2021 and protect businesses, non-profits and teenagers. These bills do not impact the minimum wage increase from \$8.50 to \$9.25 that went into effect January 1, 2019.

Please ask your Legislators to **vote FOR HB 1752 and 1753.** It would also be very helpful if you would provide information about how your business or non-profit will be negatively impacted if these bills do not pass.

BALLOT INITIATIVE REFORM – STATE CHAMBER/AIA PRIORITY LEGISLATION

SJR 10 and HJR 1008 by Sen. Mat Pitsch and Rep. DeAnn Vaught *await consideration in their respective State Agencies Committees*. These identical resolutions would repeal the 30-day signature cure period, move the filing deadline for initiatives and signatures to January 15 and set a deadline to file legal challenges on April 15, both dates in the General Election year. They also would increase the vote majority required by the Legislature to make amendment referrals from a simple majority to a three-fifths (60 percent) majority and increase the number of counties from which a set number of signatures are required from 15 counties to three-fifths of the counties (45).

There are two similar Joint Resolutions in the Senate. Please make sure your Legislators know **HJR1008/SJR10** were developed by the State Chamber/AIA with the help of the attorneys who represented us in many ballot initiative challenges and in cooperation with the Arkansas Attorney General and Arkansas Secretary of State.

Please ask your Legislators to vote FOR HJR 1008 and SJR 10.

WORKFORCE DEVELOPMENT – STATE CHAMBER/AIA PRIORITY LEGISLATION

SB 522 by Sen. Jane English *is expected to be considered in the Senate Education Committee early next week*. The bill seeks to increase industry involvement in workforce training by amending the duties of the Career Education and Workforce Development Board and renames it as the Office of Skills Development and the Career Education and Workforce Development Board. It also would authorize a voting member of the board to establish a subcommittee that is made up of members relevant to the specific industry in order to better develop recommendations. Finally, it would add one representative from the Department of Human Services, the Department of Correction, and the Arkansas Economic Developers and Chamber of Commerce Executives (AEDCE) as nonvoting members.

WEIGHTED CREDIT COURSES – STATE CHAMBER/AIA PRIORITY LEGISLATION

SB 478 by Sen. Jane English and Rep. Jana Della Rosa *awaits consideration in the House Education Committee*. It would apply new standards for the Department of Education in approving courses for weighted credit. It would also allow teachers in advanced placement programs to satisfy requirements by attending a College Board-endorsed training or other similarly rigorous training approved by the department. Finally, it would allow the Department of Education to approve a course weighted for credit if the course exceeds the curriculum standards for a non-weighted credit class or meets or exceeds the standards of a comparable advanced placement class.

LEGAL – STATE CHAMBER/AIA PRIORITY LEGISLATION

SB 543 by Sen. Missy Irvin, Rep. Rebecca Petty and others *received a Do Pass recommendation yesterday from the Senate Judiciary Committee*. It would amend the Uniform Contribution Among Tortfeasors Act, requiring “several” liability to be determined after consideration of the fault of all persons or entities.

SB 544 by Sen. Missy Irvin, Rep. Doug House and others *was approved by the Senate yesterday 23 to 3. It has been assigned to the House Judiciary Committee*. It would change the pre-judgment and post-judgment interest rates from 10 percent per annum to the Federal Reserve primary credit rate in effect on the date on which the judgment is entered plus 2 percent. It would also set the rate for an action on a contract at the rate provided by the contract unless it is less than the above rate.

SB 545 by Sen. Missy Irvin, Rep. Rebecca Petty and others *received a Do Pass recommendation yesterday from the Senate Judiciary Committee*. It would limit the recovery of damages for necessary medical care, treatment or services to those costs actually paid by or on behalf of the plaintiff or which remain unpaid and for which the plaintiff or any third party is legally responsible.

OTHER BILLS WE SUPPORT

LOW READING ASSESSMENT LEVELS

SB 349 by Sen. Alan Clark *was amended yesterday and awaits consideration in the Senate Education Committee*. It seeks to create personnel reporting requirements for schools based on low reading assessment levels. The amendment addresses concerns of the bill’s critics.

HISTORIC REHABILITATION INCOME TAX CREDIT

HB 1800 by Rep. Andy Davis *awaits consideration in the House Revenue and Taxation Committee*. It seeks to create the Arkansas Major Historic Rehabilitation Income Tax Credit and the Arkansas Major Historic Rehabilitation Trust Fund to be issued by the Department of Arkansas Heritage. The bill would allow an income tax credit only once in a two-year period for each eligible property to be an amount of 25 percent of the total qualified rehabilitation expenses incurred to complete. It also would allow for an income tax credit on properties completed as a certified rehabilitation service after January 1, 2019 for a minimum investment of \$1.5 million and is not receiving a separate tax credit under state law on the same property. Finally, it provides a freely transferable certification of completing for properties designated as undergoing rehabilitation by the Department of Heritage.

TAX APPEALS COMMISSION

SB 560 by Sen. Blake Johnson *received a Do Pass recommendation yesterday morning from the Senate Revenue & Taxation Committee*. This is a concept we support. However, the bill needs some adjustments.

It would create the Tax Appeals Commission, separate and apart from the Department of Finance and Administration (DFA), which shall have jurisdiction over any administrative hearing by a taxpayer who seeks administrative relief from a DFA decision. It would require the Tax Appeals Commission to provide written decisions, including statements of facts, conclusions of the law, and orders to grant relief, invoke remedies and issue orders. It also would require decisions be public in either print or electronic form, allow the Tax Appeals Commission to establish a Small Claims Division, and allow the DFA to seek judicial relief from a decision made by the Tax Appeals Commission.

NEW BILLS

PROTECTION FROM DISORDERLY CONDUCT – STATE CHAMBER/AIA BILL

HB 1898 by Rep. Lee Johnson and Sen. Mat Pitsch seeks to create a criminal offense and cause for civil action for aggravated disorderly conduct. Details of the bill:

- Defines such actions as obstructing the entrance to a business or school with the purpose to cause public inconvenience, annoyance or alarm.
- Includes obstructing roads, highways, airports, and other rights-of-way of travel
- Includes threatening violence against people entering or exiting
- Includes the refusal to comply with a lawful order to desist or disburse by law enforcement or other person with authority to execute the law
- Designates aggravated disorderly conduct as a Class A misdemeanor.

This bill seeks to protect business property, business operations, customers, employees, schools, students and personal homes. In extreme cases, disorderly activity can obstruct public streets, interfere with private property, encourage coercive conduct and even result in threats of violence. Such activity can result in private property damage and frighten employees, customers, innocent neighbors and family members. The bill does not infringe, discourage or disrupt any individual's ability to peacefully exercise their Constitutionally protected right to free speech or assembly.

We support this bill.

PAID PETITION CANVASSERS

SB 611 by Sen. Greg Leding seeks to change reporting requirements for paid canvassers so that they must provide only a permanent domicile address and not a current residential address. **We oppose this bill** and have already passed a bill that addresses petitioners.

BILLS WE OPPOSE

NIGHT SKY PROTECTION

HB 1309 by Rep. Stephen Meeks *awaits consideration on the House floor.* This bill will increase utility costs that will be passed on to consumers. We join multiple members in opposing this bill.

The bill seeks to create the Nighttime Environment Protection Act to regulate outdoor night lighting fixtures. It would also establish cost and other considerations for a state agency, public corporation, county, or municipality to use public funds to operate, maintain, install, or cause to be installed, shielded outdoor lighting in new or replacement outdoor lighting fixtures.

SNAP BENEFITS

HB 1743 by Rep. Mary Bentley and Sen. Scott Flippo, which *received a Do Pass recommendation from the House Public Health, Welfare and Labor Committee Tuesday morning, is on the House Calendar to adopt an amendment.* The bill seeks to prohibit the use of Supplemental Nutrition Assistance Program (SNAP) benefits for purchases of candy, soft drinks, energy drinks and dietary supplements. We oppose this bill.

WAIVER OF JURY TRIAL CLAUSES

SB 558 by Sen. Gary Stubblefield *awaits consideration in the Senate Judiciary Committee.* It seeks to repeal the validity of any contractual waiver of rights to a trial by jury, retroactive to March 18, 2018. We oppose this bill.

CONSUMER PROTECTION

HB 1704 Rep. Jimmy Gazaway *awaits consideration in the House Insurance and Commerce Committee.* It seeks to prohibit unconscionable terms in standard-form contracts, requiring the court to limit the application of terms it finds unconscionable and refuse to enforce the contract in whole or part. The bill also would designate unconscionable terms: that resolution of legal claims take place in an inconvenient venue, a waiver of an individual's right to asset claims or seek remedies provided by a federal statute, a waiver of an individual's right to seek punitive damages as provided by law, a provision that limits the time in which an action may be brought under the standard-form contract or that waives the statute of limitations, or a requirement that an

individual pay fees and costs to bring a legal claim subsequently in excess of required fees and costs to bring a claim in state or federal court. Finally it would exempt contracts to which one party is regulated by a regulatory body or officer under statutory state or federal authority, and a financial institution as defined under 23-45-102. We oppose this bill because:

- HB1704 is an effort to invalidate arbitration clauses contained in contracts; these clauses provide that a dispute is taken to arbitration, as opposed to court
- HB1704 not only seeks to invalidate those provisions, but would authorize the Attorney General to file suit against a party for simply placing an arbitration provision in a contract and obtain civil penalties that could run into the hundreds of thousands of dollars
- Arkansas adopted an arbitration act authorizing such agreements many years ago (ACA 16-108-101) and has proven to be a useful form of alternative dispute resolution
- To not only prohibit those provisions, but to go so far as to punish someone for including an arbitration provision is not conservative; it is the exact opposite and is detrimental to those who create jobs and support our economy
- HB1704 is legislation based on the “Model State Consumer and Employee Justice Enforcement Act” developed several years ago by the National Consumer Law Center based in Boston; that organization should not be setting policy in Arkansas
- Finally, the U.S. Supreme Court has ruled that state laws that discriminate against, or disfavor, arbitration provisions are preempted; as a result, HB1704 not only seeks to adopt bad policy, it seeks to adopt policy that the State cannot enforce

PHARMACY BENEFIT MANAGEMENT

SB 520 by Sen. Kim Hammer *awaits consideration in the Senate Insurance and Commerce Committee*. This 2019 version of a pharmacy benefit managers (PBM) bill seeks to make various changes to the regulation and licensure of PBMs, including redefining the maximum allowable cost list and adding a defined professional dispensing fee to the list. It also would require a PBM to report the following to the Insurance Commissioner on a quarterly basis: amount of rebates received, amount of rebates distributed to healthcare insurers, amount paid by the healthcare insurer for pharmacist services itemized by pharmacy, product, and goods and services, and the amount a pharmacy benefits manager is paid for pharmacist services itemized by pharmacy, product, and goods and services. This report is exempt from the FOIA.

FREEDOM OF INFORMATION ACT

SB 521 by Sen. Kim Hammer *awaits consideration in the Senate State Agencies Committee*. It seeks to amend the Freedom of Information Act and the definition of public records contained therein to exclude identifying information of donors, potential donors, non-donors or individual donor amounts to a private foundation that receives public funds.

DECEPTIVE TRADE PRACTICES

HB 1462 by Rep. Jimmy Gazaway *awaits consideration in the House Insurance & Commerce Committee*. It provides that a person has a cause of action for actual damages or injury resulting from deceptive trade practices and may recover those damages and attorney's fees. It also removes the definition of actual financial loss as used for deceptive trade practices. This bill seeks to repeal a bill we filed in 2017. We oppose this bill.

INVASION OF PRIVACY

SB 230 by Sen. Kim Hammer *is on this morning's agenda in the Senate Judiciary Committee*. It seeks to create a statutory civil action for invasion of privacy, authorizing a person to bring suit for damages and injunctive relief against a person who improperly intrudes into his or her private affairs or publicizes the person in a false light. We oppose this bill.

INDEPENDENT CONTRACTOR

HB 1850 by Rep. Austin McCollum and Sen. Bart Hester *awaits consideration in the House Public Health Welfare and Labor Committee*. The bill seeks to establish the Empower Independent Contractors Act amending the definitions of “employee,” “employer” and “employment status” on the basis of a 20-factor test.

At a minimum, we will want to amend this bill. But most likely, we will oppose it outright.

There are many different definitions of independent contractor in state and federal law. Some state laws regarding independent contractors must be consistent with certain federal guidelines. Unemployment insurance laws are the best example. In these situations, there can be consequences to Arkansas for being out of compliance with federal guidelines.

It can be very confusing for employers and we have discussed this problem for years. But we could never identify a solution that would fix the problem and not cause more confusion. There are two conflicts we can see immediately. First, workers' compensation laws have their own definitions and our workers' comp laws were implemented by an Initiated Act. Therefore, any changes require a two-thirds vote. Second, this bill cannot change federal law. So, even if it were possible to create a single Arkansas definition of Independent Contractor, it would still leave employers open to confusion. Also, creating a 20-factor test to identify an Independent Contractor will be very difficult to establish.

We are concerned about this bill and are having attorneys from human resources, unemployment insurance and workers' compensation review the bill.

BILLS OF INTEREST

TAX REFORM

SB 561 by Sen. Jim Hendren *passed the Senate yesterday by a vote of 32 to 1*. It seeks to make changes to various tax provisions and related administrative procedures, enforcement, assessment guidelines, penalties for noncompliance and certain exemptions. It would place administration of the franchise tax with the Department of Finance and Administration rather than the Secretary of State. It would also require the department to report before each regular session to the Legislative Council and the Governor on the effect of each exemption, discount, credit and deduction relating to state income, sales and use tax.

TOBACCO TAX AND EARNED INCOME TAX CREDIT

SB 571 by Sen. Jim Hendren and Rep. Lee Johnson and 16 other Senators and 39 other House members *passed the Senate yesterday 18 to 14*. It seeks to reduce individual income taxes by creating an earned income tax credit and increased standard deduction to be offset by new taxes on cigarettes and e-cigarettes. The bill sets the effective date tax year beginning on January 1, 2020.

GOVERNMENT TRANSFORMATION

HB 1763 by Rep. Andy Davis and Sen. Bart Hester *awaits consideration in the Senate State Agencies Committee*. This is the Governor's plan to transform state government by reducing the number of agency direct reports from more than 40 to 15 new Departments that will be managed by a Secretary. Those 15 Secretaries will report directly to the Governor.

PROPERTY TAX ASSESSMENT CHALLENGES

HB 1562 by Rep. Stephen Meeks and Sen. Missy Irvin *passed in the House yesterday by a vote of 80 to 4*. This bill addresses payment obligations when tax assessments are challenges.

ASSESSMENT DISCLOSURES

SB 530 by Sen. Lance Eads and Rep. Dan Douglas *was amended yesterday*. It would impose disclosure requirements relating to protests and appeals of commercial and industrial property taxes or assessments before county equalization boards, providing that evidence not disclosed within a specified time period will be inadmissible. It would also require the following to be disclosed at least five days prior to an appeals hearing: if the property was occupied or unoccupied at the time of the transaction, and if the property was subject to any use, deed, or lease restriction at the time of transaction that prohibits the property from being used for the purpose of which a presiding structure or building was designed.

STATE CHAMBER TRACKED BILLS

New House bills filed yesterday: 13 | Total House bills filed: 900

New Senate bills filed yesterday: 14 | Total Senate bills filed: 624

New bills added to our tracking: 16 | Total tracking bills and resolutions: 505

New bills added to our tracking: https://arkansasstatechamber-my.sharepoint.com/:w:/p/khall/EZRjyZMwQ1RAhcoAnvckTK4B_WtrS-XqfaV05mCthlkdQw?e=eJclgf

All bills we are tracking are posted on our website, by category, and can be reviewed by clicking this link: <https://www.arkansasstatechamber.com/governmental-affairs/legislative-tracking/>

LEGISLATIVE SESSION INFORMATION

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Legislative Message Center

House of Representatives: 501-682-6211
Senate: 501-682-2902

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The House and Senate have links to live streaming of their committee meetings and floor session online.

- House: <https://www.arkansashouse.org/>
- Senate: <http://www.arkansas.gov/senate/>

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