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92nd General Assembly April 2, 2019 – Session Day 79

TODAY AT THE CAPITOL

The Senate will convene at 1 p.m. and the House at 1:30 p.m.
Legislative Calendar: www.arkleg.state.ar.us

***** CALLS TO ACTION *****

CORPORATE INCOME TAX REFORM – STATE CHAMBER/AIA PRIORITY BILL

SB 576 by Sen. Bart Hester, 10 other Senators (including Senate President Pro Tem Jim Hendren) and Rep. Dan Douglas *is expected to be considered in the House Revenue and Taxation Committee this morning.*

It is very important that you ask your State Representative to vote FOR SB 576.

SB 576 contains major tax policy priorities that 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 at 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 U.S.).
- 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
- Modifies sales taxes paid by car washes.

BALLOT INITIATIVE REFORM – STATE CHAMBER/AIA PRIORITY LEGISLATION

HR 1073 and SR 40 by Rep. DeAnn Vaught and Sen. Mat Pitsch were filed yesterday. They seek authority for the General Assembly to consider a third referral to the 2020 General Election Ballot. These resolutions will have to be passed, after the Senate approves SJR 15 as the second ballot referral, for our ballot initiative reform joint resolutions to be considered as the third referral.

HJR 1008 by Rep. DeAnn Vaught and Sen. Mat Pitsch *is expected to be considered in the House State Agencies Committee in the mid to latter part of this week .*

This joint 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).

HJR1008 was 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 State Representative to vote FOR HJR 1008.

EMPLOYMENT LAW – STATE CHAMBER/AIA PRIORITY LEGISLATION

HB 1751 by Rep. Robin Lundstrum and Sen. Mat Pitsch *is on tomorrow's agenda in 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 Senator to vote FOR HB 1751.**

WORKFORCE DEVELOPMENT – STATE CHAMBER/AIA PRIORITY LEGISLATION

SB 522 by Sen. Jane English *is on this morning's agenda in the House Education Committee.* 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. **We developed and support this bill.**

EXPANDED HIGHER EDUCATION SERVICE AREAS – STATE CHAMBER/AIA PRIORITY LEGISLATION

SB 659 by Sen. Jane English and Rep. Bruce Cozart *is on this afternoon's Senate Calendar.* It would allow state-supported two-year institutions of higher education to market, offer courses or provide services to any individual who resides in the state, regardless of the service area.

We developed and support this bill.

UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT - STATE CHAMBER/AIA PRIORITY LEGISLATION

SB 543 by Sen. Missy Irvin, Rep. Rebecca Petty and others *is on this morning's agenda in the House 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. **We support this bill.**

PRE-JUDGMENT AND POST-JUDGMENT INTEREST RATES – STATE CHAMBER/AIA PRIORITY LEGISLATION

SB 544 by Sen. Missy Irvin, Rep. Doug House and others *is on this morning's agenda in 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. **We support this bill.**

WORKERS' COMPENSATION – STATE CHAMBER/AIA PRIORITY BILL

HB 1955 by Rep. Jack Ladyman and Sen. Dave Wallace *is on this morning's agenda in the House Public Health, Welfare and Labor Committee.* It seeks to create a priority lien for recovery of workers' compensation payments when a third party is responsible for

harm done to a person covered by workers' compensation.
[Please ask your State Representative to vote FOR HB 1955.](#)

BILLS WE SUPPORT WITH ACTION TODAY

LOW READING ASSESSMENT LEVELS

SB 349 by Sen. Alan Clark *is on this morning's agenda in the House 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. **We support this bill.**

HISTORIC REHABILITATION INCOME TAX CREDIT

HB 1800 by Rep. Andy Davis *is on this afternoon's House Calendar.* 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. **We support this bill.**

TAX REFORM

SB 561 by Sen. Jim Hendren *awaits concurrence by the Senate of a House amendment.* 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.

PENDING BILLS WE OPPOSE

PHARMACY BENEFIT MANAGEMENT

SB 520 by Sen. Kim Hammer *is on this afternoon's Senate Calendar.* This 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 paid for pharmacist services itemized by pharmacy, product, and goods and services.

UNEMPLOYMENT INSURANCE

SB 626 by Sen. Kim Hammer *is on tomorrow's Senate Public Health, Welfare and Labor Committee agenda.* It seeks to increase the number of days that an employer has to respond to an initial claim of unemployment benefits before the right to respond is waived, from 10 to 15 days. This bill would create several program compliance issues that would be insurmountable. The current 10 days to respond is more than sufficient. Employers have options to gain more time if needed.

We oppose this bill.

SNAP BENEFITS

HB 1743 by Rep. Mary Bentley and Sen. Scott Flippo *is on this morning's agenda in the House Public Health, Welfare and Labor Committee.* 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.

INVASION OF PRIVACY

SB 230 by Sen. Kim Hammer *remains on the Senate Judiciary Committee agenda*. 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.**

FREEDOM OF INFORMATION ACT

SB 521 by Sen. Kim Hammer *is on today's agenda 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.

CONSUMER PROTECTION

HB 1704 Rep. Jimmy Gazaway *is on tomorrow's agenda 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 assert 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

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.**

INDEPENDENT CONTRACTOR

HB 1850 by Rep. Austin McCollum and Sen. Bart Hester *is on tomorrow's agenda in the Senate 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 that is similar to a 20-factor test used by the IRS to determine who is considered an independent contractor.

The stated goal of this bill is to create consistency in the definition of independent contractor. Unfortunately, the bill only addresses the independent contractor definitions in unemployment insurance and workers' compensation. There are additional independent contractor definitions, such as U.S. Department of Labor and EEOC and others, which will not be changed. We are uncomfortable with this bill.

BILLS OF INTEREST

CONSTITUTIONAL AMENDMENT REFERRAL

SJR 15 by Sen. Alan Clark *was approved by the House yesterday afternoon 51 to 26. It now goes back to the Senate for concurrence in a House Amendment.* It seeks to refer a modification to term limits laws to the 2020 General Election ballot. It would set term limits for newly elected legislators at 12 years. Current legislators can complete 16 years of service as provided in existing law. Members could return after sitting out for four years.

If the Senate concurs, this would become the second of three potential ballot referrals. The first was a measure to allow a vote on making permanent an existing half cent sale tax for highways.

As discussed above, we want **HJR 1008** to be the third referral.

TAX DEBT COLLECTION

HB 1930 by Rep. Michelle Gray *awaits consideration in the House Revenue and Taxation Committee.* It seeks to create a pilot program to authorize DFA to assign debt collection to a third party. We proposed an amendment to this bill yesterday that would satisfy our concerns.

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 *is on this morning's agenda in the House Revenue and Taxation Committee.* 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 *is on today's agenda 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.

TAX APPEALS COMMISSION

SB 560 by Sen. Blake Johnson *is on this morning's agenda House Revenue and Taxation Committee.* This is a concept we support. However, the bill needs some adjustments.

The bill seeks to 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.

YESTERDAY AT THE CAPITOL

FRAUDULENT LIENS

HB 1463 by Rep. Jimmy Gazaway and Sen. Bart Hester *was approved by the Senate yesterday 35 to 0.* This bill will require a filing official with reason to believe that a financial filing under the Uniform Commercial Code is fraudulent to notify the Office of the Secretary of State. It will also provide procedures for determining if the financing

statement is void. Finally, it will require concurring findings of fact by the director and counsel for refused financing statements be submitted by the director and request reasoning for why the financing statement should not be refused to the secured party. The Secretary of State's office made changes to this bill that we requested on behalf of member companies. **We support this bill.**

MINIMUM WAGE LAW

The two bills developed to mitigate the impact of the minimum wage increase were defeated on the House floor yesterday afternoon. The vote on **HB 1752** was 29 to 45 and the vote on **HB 1753** was 34 to 42.

STATE CHAMBER TRACKED BILLS

New House bills filed yesterday: 12 | Total House bills filed: 977
New Senate bills filed yesterday: 5 | Total Senate bills filed: 669
New bills added to our tracking: 4 | Total tracked bills and resolutions: 545

New bills added to our tracking: https://arkansasstatechamber-my.sharepoint.com/:w:/p/khall/EZGiU2YxJqdCrvtzwxZDfS4B5EKf-M6Cf2-711mphgqA_w?e=h0ul3B

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

To view schedules, calendars, bill information and legislator information, click www.arkleg.state.ar.us.

Legislative Message Center

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

Live Streaming from the Capitol

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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