



## Daily Legislative Update

91st General Assembly

Tuesday, March 7, 2017 – Day 58

### CAPITOL SCHEDULE

The House and Senate will both convene at 1:30 p.m.

Yesterday was the last day for bills and to be filed. 588 new bills were filed, which over the past 18 years is probably in the top three to five of largest deadline date filings. We have only been able to check titles on about 535 of those. We will be receiving summaries of the new bills all week and will continuously review them to make adjustments to our tracking. Our tracking now totals 637 bills after we added 176 new bills yesterday. This, too, is a top five record in the last 18 years.

To view schedules for all of today's activities, committee agendas, bills and other information related to the Session, visit [www.arkleg.state.ar.us](http://www.arkleg.state.ar.us).

### STATE CHAMBER/AIA PRIORITY BILLS – WITH ACTION TODAY REPAIR AND REPLACEMENT PARTS EXEMPTION FOR MANUFACTURERS

**SB 362** by Sen. Lance Eads, R-Springdale, and Rep. Andy Davis, R-Little Rock, along with eight Senators and 13 Representative co-sponsors was not considered yesterday as the House only considered House bills, but it is on this afternoon's House Calendar.

This bill creates a sales tax exemption for manufacturers on their repair and replacement parts by phasing out the entire sales tax by 1 percent a year until complete, along with the Constitutional taxes, by June 30, 2022. Manufacturers must continue to seek a rebate until the tax is completely removed. To mitigate revenue impact to the state, it will also phase out the InvestArk incentive.

**Please ask your Representative to SUPPORT SB 362**

### PROPERTY TAXPAYER PROTECTIONS

**HB 1772** by Rep. Joe Jett, R-Success and Sen. Jake Files, R-Fort Smith and 21 additional members, is on this morning's agenda in the House Revenue and Taxation Committee (previous reports that it had been given a do pass were in error).

This bill was developed by the State Chamber/AIA Tax Committee. It seeks to amend various aspects of property tax administration and the adjustment and appeal of

assessments through county equalization boards.

- Allows for the deadline for filing a petition for review of a property tax assessment to be extended by 15 days by order of the appropriate commission for good cause shown.
- Requires a county assessor to present to the county equalization board any evidence that the county assessor's office or a contracted appraisal company considered when determining the valuation of the property that is the subject of the hearing.
- Requires the Director of the Assessment Coordination Department to: approve curricula and provide materials for use in training and educating members of county equalization boards, supervise a comprehensive course for training and educating members of county equalization boards, and issue certificates indicating course completion among other duties.

**Please ask your Representative to vote FOR HB 1772**

### **WINE SALES IN GROCERY STORES**

**SB 284** by Sen. Bart Hester, R-Cave Springs, Sen. Linda Chesterfield, D-Little Rock, and Rep. Jon Eubanks, R-Paris, was passed over in the Senate yesterday but remains on the Senate Calendar to concur in House amendments.

This bill would permit grocery stores to sell wine for off-premises consumption. This bill does not change existing laws regarding the ability to sell alcohol in any location in the state. We join our member grocers and retail merchants in **support** of this bill.

### **STATE CHAMBER/AIA PRIORITY BILLS – WITH ACTION YESTERDAY PROPERTY PROTECTION ACT**

**HB 1665**, by Rep. DeAnn Vaught, R-Horatio, 23 additional Representatives and Sen. Gary Stubblefield, R-Branch, was approved by the House yesterday afternoon by a vote of 67 yes, 10 no, 4 present and 19 not voting.

This bill will strengthen employers' defenses against common forms of corporate espionage by prohibiting any person from placing a camera or electronic surveillance device on the employer's premises without permission. The bill also prohibits employees from capturing or removing the employer's data, papers or records, or from recording sounds or images.

This bill is **supported by** the State Chamber/AIA, Arkansas Farm Bureau, Agricultural Council of Arkansas, Farm Credit Services of Arkansas and the U.S. Chamber of Commerce. It is on today's agenda in the House Judiciary Committee.

### **EMPLOYER CLARITY REGARDING MARIJUANA**

**HB 1460** by Rep. Carlton Wing, R-North Little Rock, and Sen. Missy Irvin, R-Mountain View, was approved in the House yesterday afternoon by a vote of 87 yes, 1 no and 12 not voting. This bill required a two-thirds (67) majority vote. **This is an important bill that we had developed and support to protect and maintain the safety of the workplace. Please ask your Senator to vote FOR HB 1460.**

This bill seeks to create new definitions or modify existing definitions for employers in matters related to the use of marijuana. These definitions include:

- Employer
- Under the Influence

- Current use of marijuana
- Good faith belief
- Safety-sensitive position
- Clarify that a “written certification” for marijuana is not a medical prescription

## **STATE CHAMBER/AIA PRIORITY BILLS – ACTION PENDING**

### **UNEMPLOYMENT INSURANCE**

**HB 1405** by Rep. Robin Lundstrum, R-Elm Springs, and Sen. Jim Hendren, R-Gravette, is expected to be considered in the Senate Public Health, Welfare and Labor Committee this week. **Please ask your Senator to VOTE FOR HB 1405!**

This bill seeks to lower the unemployment insurance taxes paid by employers by reducing the wage base from \$12,000 to \$10,000. This change will save the business community approximately \$50 million annually. The bill also seeks to reduce the weeks of UI benefits from five months to four months.

### **WORKERS COMPENSATION**

**HB 1586** by Rep. John Payton, R-Wilburn, and Sen. Jason Rapert, R-Conway, awaits consideration in the Senate Health, Welfare and Labor Committee.

**Please ask your senator to VOTE FOR HB 1586**

This bill will establish a cap on employers’ indemnity costs at 450 weeks for death and permanent total disability injuries occurring on or after July 1, 2017. A cap on employers’ exposure is needed to replace a cap lost by closing the Death and Permanent Total Disability Trust Fund (Fund). Medical benefits are NOT capped by this bill.

The Fund paid the entire amount of the claim after employers paid a designated initial portion of the claim, which currently is \$215,000. Without the Fund, employers’ responsibility is limitless on these claims. Total claim costs can be \$500,000 to \$1 million. For insured employers, loss of the Fund will cause a premium increase. For self-insured employers, loss of the Fund means their cost would increase from \$215,000 to unlimited.

**SB 682 and SB 760** by Sen. David Sanders, R-Little Rock, are shell bills we had filed in case we are not able to get **HB 1586** passed.

### **SCHOOL BOARD ELECTION DATES**

**HB 1621** by Rep. Mark Lowery, R-Maumelle, and Sen. Jane English, R-North Little Rock, is a bill **we support** that seeks to set annual school elections in each school district of the state on: (A) the date of the preferential primary election in even-numbered years and the date that would be designated as the preferential primary election in odd-numbered years if a general election was held in the odd-numbered year, or (B) the first Tuesday following the first Monday in November of each year. This bill will be considered tomorrow in the House Education Committee.

This bill was developed to:

- Substantially increase voter turnout by holding elections when most voters vote
- Save taxpayer dollars in even-numbered years by combining school elections with general or preferential primary elections

- Allow local districts to continue to choose dates for millage elections
- Allow local districts to choose between preferential primary and general elections for school board elections
- Allow local districts to continue holding isolated, stand-alone elections in odd-numbered years
- Alternate candidates running in preferential primary/general elections and isolated, stand-alone elections

**SB 504** by *Sen. Jane English, R-North Little Rock*, would set the school board elections at the General Election date in November.

### **DECEPTIVE TRADE**

**HB 1742** by *Rep. Laurie Rushing, R-Hot Springs* and *Sen. Bart Hester, R-Cave Springs*, would require a claimant in civil cases, related to deceptive trade practices, to demonstrate actual financial loss in order to prevail. It also defines actual financial loss to mean: an ascertainable amount of money that is equal to the difference between the amount paid by a person for goods or services and the actual market value of the good or services provided. This bill awaits consideration in the House Insurance & Commerce Committee. **We support this bill**

### **HIGHWAY FUNDING**

**HB 1726** and **HB 1727**, by *Rep. Dan Douglas, R-Bentonville*, is a highway funding plan that **we support**.

**HB 1726** would authorize the State Highway Commission to issue bonds if such authority is approved by voters in a one-time statewide election. It would: a) require the issued bonds to finance the maintenance or construction of state highways, b) authorize the election to be in conjunction with a general election or to be a special election and c) establish rules governing the specific nature of bonds issued by the Commission.

**HB 1727** would apply the existing state sales tax to the wholesale price of motor fuel and wholesale distillate special motor fuel. It would make the levy of such taxes dependent on the results of an election to approve the issuance of highway maintenance and construction improvement bonds. It would also require the tax, if levied as a result of the election, to be an amount equal to the annually adjusted 6.5% of the average monthly wholesale price over the previous year.

### **DOUBLE DAMAGES**

**HB 1737** by *Rep. Charlie Collins, R-Fayetteville*, would prohibit damages awarded in discrimination and retaliation cases under the Arkansas Civil Rights Act of 1993, from duplicating or increasing any award for damages over those allowed for by any other state or federal law as the federal law existed on January 1, 2017. It would also establish that individual employees, agents of employers or employees of an employer's agent are not liable for violations found to have been committed by employers. It awaits consideration in the House Judiciary Committee this week. **We SUPPORT this bill!**

### **ECONOMIC DEVELOPMENT – AMENDMENT 97 IMPLEMENTATION BILLS**

**HB 1732** by *Rep. Matthew Shepherd, R-El Dorado*, and *Sen. Lance Eads, R-Springdale*, amends the Local Government Bond Act of 1985, approved by Amendment 62, to reflect language in Amendment 97 that authorizes local governments to fund economic

development projects, land and infrastructure for industries. It was approved in the House last week and has been assigned to the Senate City, County & Local Committee. We support this bill.

**SB 581** by Sen. Jim Hendren, R-Gravette, Sen. Missy Irvin, R-Mountain View, Rep. Justin Boyd, R-Fort Smith and Rep. Bob Johnson, D-Jacksonville, seeks to limit local government appropriations for economic development projects under new provisions implementing Amendment 97, to five percent of the city or county's total unobligated general revenue. It also repeals the five percent limitation on the issuance of Amendment 82 bonds. It awaits consideration in the Senate City, County and Local Committee. We support this bill.

**SB 538** by Sen. Bruce Maloch, D-Magnolia, addresses the same issues in the bills above and may not be considered.

### **DONNING & DOFFING**

**HB 1846** by Rep. Charlie Collins, R-Fayetteville, and Sen. Bart Hester, R-Cave Springs, seeks to establish that an employer is not subject to liability on account of the failure of the employer to pay an employee minimum wage or to pay an employee overtime compensation for or on account of certain activities that are not principle to the employee's job. This is an important bill that we had developed and support.

This bill does not cut into employee protections but instead puts employers and employees back where they were before a court case was decided. A dissent in the court case cautioned against opening the floodgates of litigation at the expense of businesses in Arkansas, and warned that the opinion “undermines the collective-bargaining process and destroys any confidence employers and employees have in the enforceability of their agreements.” The dissent also noted that the FLSA does not consider such activities “work” under state or federal law.

### **NET OPERATING LOSS CARRY FORWARD**

**HB 1788** by Rep. Jim Dotson, R-Bentonville, seeks to gradually extend the duration over which net operating losses can be carried forward to the following tax year for income tax purposes, beginning with six years on January 1, 2017, and building to 10 years on January 1, 2021. This is an issue we've been working on for about eight years. We support this bill.

### **INCOME TAX THROWBACK RULE**

**HB 1790** by Rep. Jim Dotson, R-Bentonville, seeks to repeal the provision that business income is taxable in another state based on having out-of-state activities that exceed those protected by 15 U.S.C. 381-385. It seeks to repeal the throwback rule for sales to states where the taxpayer is not taxable. This is an issue our Tax Committee would like to see addressed by the legislature. We support this bill.

### **PROTECTION FROM MASS PICKETING**

**SB 550** by Sen. Trent Garner, R-El Dorado, seeks to create a Class A misdemeanor for unlawful mass picketing, defined as engaging in demonstrations that hinder or prevent the pursuit of lawful work or employment, obstruct entrance to a place of employment or interfere with the use of roads. This is a bill we had developed, filed and support.

### **STATE CHAMBER/AIA PRIORITY BILLS – NEW FILINGS**

## FRANCHISE RELATIONS

**SB 695** by Sen. Linda Collins-Smith, R-Pocahontas, is a bill to clarify the relationship between a Franchisor and Franchisee in regard to employees. We support this bill.

## BILLS WE SUPPORT

### WORKERS COMPENSATION

**HB 1951, HB 1952 and HB 1953**, by Rep. Charlie Collins, R-Fayetteville, and Sen. Jim Hendren, R-Gravette, are workers' compensation bills filed by the Arkansas Self Insured Association that we support. **HB 1952** and **HB 1953** address issues we have been working on for more than 10 years.

**HB 1951** seeks to clarify effectiveness of settlements made in Workers' Compensation that involve federal benefits.

**HB 1952** provides that an employer is required to provide medical treatment to an employee only if a compensable injury is the major cause of the need for medical treatment.

**HB 1953** seeks to: a) reverse case law that required former employees who are properly terminated for misconduct are not entitled to temporary total or temporary partial disability benefits, b) required that for muscle spasms to constitute an objective finding of injury, a specific diagnosis of palpable muscle spasms is necessary, and the presence of muscle spasms may not be inferred from diagnosis or treatment that involves a prescription for a type of muscle relaxant in the absence of objective findings; and c) addresses the issue of subrogation in workers' compensation cases.

**SB 652** by Sen. David Sanders, R-Little Rock, is a shell bill filed by trucking interests to address medical providers. This is a bill we will support.

## ECONOMICS EDUCATION

**HB 1442**, by Rep. Andy Davis, R-Little Rock, is on today's Senate Calendar. The bill seeks to amend the personal finance curriculum standard to include job-seeking skills, soft job skills and employment benefits. It also would require high school students to earn a course credit under this curriculum for graduation. We support this bill.

## EMPLOYER PAYROLL PAYMENTS

**HB 1609** by Rep. Clarke Tucker, D-Little Rock, received a Do Pass recommendation from the Senate Public Health, Welfare and Labor Committee last week and is on this afternoon's Senate Calendar. We support this bill.

This bill is designed to provide a clarification in the law that will be beneficial to employers. Currently, the law requires employers to pay employees semimonthly. The intent of that law was to ensure that employees are paid at least twice per month. The problem is that the language implies employers are required to pay employees exactly twice per month. Accordingly, employers who pay employees biweekly, and therefore have two months per year with three pay periods, are in violation of the law for those two months each year. Further, employers who pay employees on a weekly basis are in violation of the law twelve months per year.

While the current law is not widely enforced, the legislation is intended to provide clarity and security for employers who currently pay more than twice per month so that they

have certainty that they are not in violation of the law and no rogue investigator will be able to fine them or otherwise penalize them for going beyond what the law intended.

### **ABOVE GROUND STORAGE TANKS**

**HB 1721** by Rep. Andy Davis, R-Little Rock, and Sen. John Cooper, R-Jonesboro, is a bill submitted by the Arkansas Environmental Federation, our partner in all things environmental. This bill would authorize reimbursement for corrective actions paid by the owner of an unregistered above ground petroleum storage tank if the owner voluntarily registers the tank. We support this bill that was approved in the House yesterday by a vote of 92 to 0.

### **COLLECTING SALES TAXES FROM REMOTE SELLERS**

**HB 1388** by Rep. Dan Douglas, R-Bentonville, and Sen. Jake Files, R-Fort Smith, awaits consideration in the Senate. It would require out-of-state sellers to provide notice to Arkansas purchasers that taxes are owed, provide information regarding purchases, and apply fines for failure to implement the requirements of this bill.

**SB 140** by Sen. Jake Files, R-Fort Smith, and Rep. Dan Douglas, R-Bentonville, awaits reconsideration in the House Revenue and Taxation Committee. It would require certain high-volume merchants that sell products in Arkansas, but do not have a physical presence in Arkansas, to remit sales taxes to Arkansas. It remains on the House Revenue and Taxation Committee agenda.

We support these bills that would equalize the sales tax playing field between in-state brick and mortar sellers and out-of-state sellers.

### **BILLS WE OPPOSE** **LICENSING**

**HB 1551** by Rep. Richard Womack, R-Arkadelphia, is on the Deferred List in the Public Health, Welfare and Labor Committee. We join many business types and groups that OPPOSE this bill.

A bill with identical language, HB 2176 by Rep. Austin McCollum, R-Bentonville, was filed yesterday.

We are still evaluating other recently filed bills and more that were filed yesterday that address licensing. Be sure to look at **HB 1835**, **HB 1880** and **HB 1881**.

### **GENDER EQUITY**

**HB 1021**, by Rep. Fred Love, D-Little Rock, is set as a Special Order of Business in the House Public Health, Welfare and Labor Committee on March 14.

This bill would authorize an employee to file a gender discrimination complaint with the Labor Department, without retaliation by the employer. It would require the Labor Department to investigate and supervise the payment of unpaid salaries or prosecute a civil action.

We visited with Rep. Love about this bill right after it was filed early in the Session. We also had the bill reviewed by an employment attorney. We could not find a way to amend the bill in a way in which employers would be comfortable. Consequently, we oppose this bill.

## **EMPLOYER PAYMENTS**

**HB 1624** by Rep. Greg Leding, D-Fayetteville, would establish that overdue wage payments do not release an employee's other claims to balances due to them by employers and amends the processes governing disputes over wages.

## **BILLS OF INTEREST**

### **WORKERS' COMPENSATION**

Five other bills regarding Workers' Comp were filed yesterday, but are only shells making their purpose and intent unclear. Those bills are **SB 675** and **SB 717**, by Sen. Missy Irvin, R-Mountain View, **SB 747** by Sen. Bart Hester, R-Cave Springs, **SB 653** by Sen. David Sanders, R-Little Rock, and **HB 2108** by Rep. Bob Johnson, D-Jacksonville.

### **GUNS IN EMPLOYER PARKING LOTS**

**SB 37** by Sen. Alan Clark, R-Lonsdale, remains on the Senate Calendar. This bill addresses the rights of employees to keep a firearm in their vehicle on business property. We have been working with Sen. Clark and Sen. Hickey, who has a similar bill, **SB 33**. We expect this bill to be held.

## **STATE BOARDS, COMMISSIONS AND COMMITTEES**

**SB 341**, by Sen. Lance Eads, R-Springdale, nine additional senators and 14 representatives, awaits consideration in the House State Agencies Committee.

It seeks to make various revisions to the composition and membership of numerous stage boards, committees, commissions, and other administrative bodies, including:

- Repealing the Commission for Coordination of Educational Efforts
- Repealing the Distance Learning Coordinating Council
- Amending the membership of the Apprenticeship Coordinating Steering Committee
- Amending the membership of the Coalition for Juvenile Justice Board
- Repealing the Museum of Natural Resources Advisory Committee
- Repealing the Commission on Information Age Communities Act
- Repealing the Scenic Resources Preservation Coordinating Committee
- Making members of the Board of Examiners in Counseling subject to Senate confirmation
- Repealing the Board of Health Education
- Various other changes

## **STATE CHAMBER/AIA BILL TRACKING**

### **TRACKED BILLS**

The Senate has filed at least 785 bills.

The House has filed at least 1,280 bills.

We are tracking 637 bills, which includes 176 new bills added yesterday.

The most recent list of bills added to our tracking can be viewed [here](#).

Our entire list of tracked bills are posted on our website, by category, which you can access by clicking [here](#).

## **LEGISLATIVE SESSION INFORMATION AND MESSAGE CENTER**



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