



Daily Legislative Update

91st General Assembly

Friday, March 17, 2017 – Day 68

CAPITOL SCHEDULE

The House will convene at 10:00 a.m. this morning.

The Senate will reconvene at 1:30 p.m. Monday afternoon.

Next week, the Senate is planning to work part of Thursday and be off Friday. The House is hoping to take off Thursday and Friday, so members can enjoy some spring break with their families. (Lobbyists too) But they may have to work some on Thursday.

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.

* * * CALL TO ACTION * * *

WORKERS COMPENSATION

HB 1586 by Rep. John Payton, R-Wilburn, and Sen. Jason Rapert, R-Conway, awaits consideration by the full Senate.

This bill will require 24 votes, so your contacts are very important!

Please ask your Senator to Vote YES on HB 1586

If you would like to join a list of entities that support this bill, please email Kenny Hall at khall@arkansasstatechamber.com

This is the State Chamber/AIA's workers' compensation bill that is supported by other business associations and will impact practically every employer in Arkansas. So, it's a very important bill, designed to replace a cap on employers' indemnity exposure that will go away when the Workers' Compensation Death and Permanent Total Disability Trust Fund (Trust Fund) stops taking new claims of this type after June 30, 2019.

With the Trust Fund in place, employers pay the first part of these claims (currently \$215,000) and the Trust Fund pays the rest. Without the Trust Fund, employers' liability for indemnity payments becomes unlimited.

The Trust Fund was established in 1973 and replaced a 450-week cap on the death and permanent total disability claims. Medical benefits were not capped by the Trust Fund and are NOT capped by this bill.

So, this bill seeks to establish a cap on employers' indemnity costs by returning to the 450-week cap on death and permanent total disability injuries that occur on or after July 1, 2017. Total claim costs can be \$500,000 to \$1 million.

An injured worker entitled to these benefits should qualify for Social Security Disability (SSD) if they met the work credit threshold. An injured worker's SSD benefits may be offset by the amount of workers' compensation benefits they receive if SSD and workers' compensation benefits exceed 80 percent of the pre-disability monthly income. The SSD is reduced until the total combined benefits reaches the 80 percent. Once the 450 weeks of workers' compensation benefits is paid, the SSD is then increased up to the 80 percent pre-disability monthly income.

For insured employers, loss of the Fund will cause a modest premium increase, but adoption of the 450-week cap will offset the premium increase. But, for self-insured employers, loss of the Fund means their indemnity costs would increase from \$215,000 to unlimited on each claim of this type.

Again, please ask your Senator to VOTE FOR HB 1586

PROPERTY TAXPAYER PROTECTIONS

HB 1772 by Rep. Joe Jett, R-Success, and Sen. Jake Files, R-Fort Smith, awaits consideration next week in the Senate Revenue and Taxation Committee.

Please ask your Senator to VOTE FOR HB 1772!

This bill is the result of several months of discussions between the Tax Committee of the **Arkansas State Chamber of Commerce**, the **Association of Arkansas Counties** on behalf of the Arkansas Assessors' Association, the **Assessment Coordination Department** and the Tax Division of the **Arkansas Public Service Commission**. This is an agreed bill among all that participated in the process.

HB 1772 is intended to **Improve Property Tax Administration** in several ways:

The Bill provides better support for your County Equalization Boards (EQ Boards): by calling for more comprehensive training under the direction of the Assessment Coordination Department (ACD); directing all materials used in training and education to be available online; making ACD Staff available to respond to questions from EQ Board members; directing the Director of the ACD to issue uniform hearing procedures; prohibiting private communications with EQ Board Members about hearing issues; and removing a couple of restrictions that were viewed as "tying the hands" of EQ Boards in certain ways, in favor of improving education and support. All without requiring any increase to the Assessment Coordination Department appropriation.

If the Taxpayer or Assessor does not like the way an EQ Board appeal turned out appeals to the County Judge sitting as the County Court, or to Circuit Court, **HB1772** clarifies that the appealing party has the Burden of Proof, applying the same standards as a taxpayer has when appealing an income tax, sales tax or other state tax assessment made by the DFA. The standard notice of appeal rights issued after all EQ Board decisions will also alert taxpayers to an Arkansas Supreme Court Rule that

requires any appeal by a business entity be signed by a licensed attorney.

The Bill also clarifies that certain types of errors on the tax books, such as erroneous property descriptions and listings, can be corrected outside of the EQ Board appeal process at any time, and confirms that under the Arkansas Property Taxpayer Bill of Rights passed in 1999, taxpayers may be entitled to refunds for up to 3 years on a “no fault” basis, same as is the case for State taxes handled by DFA. The Bill also adds a new provision that gives an additional year to make refunds if a mistake impacts more than one year.

And finally, the Bill makes some technical changes in the procedure for appeals by utilities and carriers handled by the Tax Division of the Arkansas Public Service Commission.

Please ask your Senator to vote FOR HB 1772

LICENSING

HB 2176 by Rep. Austin McCollum, R-Bentonville, is on the agenda in the House Public Health, Welfare and Labor Committee and we believe it wise to assume an attempt to run this bill may happen next week. This bill is identical to **HB 1551**, which remains on the Committee’s deferred list.

We are collecting names of entities that are **opposed** to **HB 2176** and **HB 1551**. If you would like to join this list, please email Kenny Hall at khall@arkansasstatechamber.com

To view a list of organizations that oppose, click [here](#).

Below are three legal opinions we’ve received explaining the reason’s we oppose these bills:

McCorkle & Curry letter [here](#).

Wright Lindsey Jennings letter [here](#).

Cross Gunter Witherspoon and Galchus letter [here](#).

We join many business types and groups that **oppose these bills**.

Please ask your Representative to OPPOSE HB 2176.

STATE CHAMBER/AIA PRIORITY BILLS – ACTION TODAY **ECONOMIC DEVELOPMENT – AMENDMENT 97 IMPLIMENTATION BILLS**

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, is on this morning’s House Calendar.

This bill seeks to:

- Implement legislation to reflect the voters support of Issue 3 in the past general election – 65 percent voted for passage.

- Remove the 5 percent cap on Amendment 82 bonds – what the voters approved.
- Provide a framework for municipalities/counties to appropriate money for economic development projects and economic development services while also maintaining safeguards for judicious use of municipal/county resources.
 - Cost Benefit Analysis required for expenditures above \$100,000
 - Recapture provisions and reporting are included.
 - 5 percent cap on expenditures of the municipality's/county's general revenue and reserves of the previous fiscal year but does allow for exceeding the 5 percent upon issuance of a financial forecast of the governing body by an independent CPA. Revenue that is specifically dedicated by law or public vote for economic development purposes is excluded from these limitations/restrictions.
- Does not prohibit or restrict funding economic development projects through revenue bonds.
- Bill was reviewed and drafted in cooperation with the Arkansas Economic Development Commission, the Arkansas Municipal League, the State Chamber/AIA and the Arkansas Economic Developers and Chamber Executives.

Please ask your Representative to vote FOR SB 581

SCHOOL BOARD ELECTION DATES

HB 1621 by Rep. Mark Lowery, R-Maumelle, and Sen. Jane English, R-North Little Rock, received a Do Pass from the House Education Committee yesterday morning and is on this morning's House Calendar.

This is an issue we've worked on for many years. This bill 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 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

Please ask your Representative to support HB 1621

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

PROPERTY PROTECTION ACT

HB 1665 by Rep. DeAnn Vaught, R-Horatio, 23 additional Representatives and Sen. Gary Stubblefield, R-Branch. The House Judiciary Committee concurred in the Senate amendment yesterday morning and the bill is on this morning's House Calendar to concur in the Senate amendment.

This bill seeks to:

- 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.
- Prohibit employees from capturing or removing the employer's data, papers or records, or from recording sounds or images.

An amendment has been added that exempts healthcare and medical service providers from the bill. It also modifies the third-party liability section to apply only to third parties that direct or assist in a violation of the act. This bill is opposed by animal rights groups.

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.

DECEPTIVE TRADE

HB 1742 by Rep. Laurie Rushing, R-Hot Springs, and Sen. Bart Hester, R-Cave Springs, is on this morning's agenda in the House Insurance and Commerce Committee where an amendment will be discussed.

As it currently exists, Arkansas's consumer protection law exposes the state's businesses to frivolous lawsuits from individuals who have suffered no real harm. **HB 1742** would amend the Arkansas Deceptive Trade Practices Act to ensure fairness for all litigants in consumer protection actions.

The Problem:

- Arkansas ranks 44th in the nation in its treatment of class action lawsuits and mass consolidation suits. The current Arkansas Deceptive Trade Practices Act (ADTPA) is one of the elements of such class action lawsuits, and an element that invites abuse.
- Under the current ADTPA, plaintiff's lawyers have become the primary beneficiaries of our state consumer protection laws.
- Under the current ADTPA, lawyers bring massive class actions on behalf of individuals who experienced no financial loss.
- Arkansas courts take an extremely liberal approach when certifying class action lawsuits, making Arkansas a hot bed for class actions lawsuits by out of state lawyers in addition to our own.
- Arkansas is already 44th in the nation for class action lawsuits, our citizens do not need those cases from around the country coming to our already busy courts.

HB1742 Solutions:

- Clarifies the measure of damages and thereby discourages baseless claims and provides greater guidance to the courts.

- Clarifies that to prevail in a claim, an individual must be able to show that they suffered an actual financial loss that was a direct result of their reliance on the alleged activity.
- Narrows the discretion currently practiced by the courts in the class certification process, which will help protect businesses from having a class certified against an otherwise meritless lawsuit.
- Codifies that parties to ADTPA litigation have the right to a trial by jury.

HB1742 Facts:

- This bill in no way changes other uses of class action lawsuits. Federal civil rights and Americans with Disability Act laws can all be pursued in federal courts. This bill fixes a loophole in Arkansas Deceptive Trade Practices Act that allows for class action litigation.
- The Arkansas Attorney General retains the right to bring Arkansas DTPA lawsuits as needed against bad actors. Therefore, Arkansas consumers can continue to be protected from outrageous corporate claims.

Please ask your Representative to vote FOR HB 1742

PROTECTION FROM MASS PICKETING

SB 550 by *Sen. Trent Garner, R-El Dorado*, is having an amendment added today before going to the House Judiciary Committee for consideration.

It seeks to create a Class A misdemeanor for unlawful mass picketing, defined as engaging in demonstration 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.

Please ask your Representative to vote FOR SB 550

STATE CHAMBER/AIA PRIORITY BILLS – ACTION MONDAY UNEMPLOYMENT INSURANCE

HB 1405 by *Rep. Robin Lundstrum, R-Elm Springs, and Sen. Jim Hendren, R-Gravette*, now has the correct amendment engrossed into the bill's language and is on Monday afternoon's Senate Calendar.

This bill seeks to:

- Lower employers' unemployment insurance taxes by reducing the wage base from \$12,000 to \$10,000.
 - This change will save the business community approximately \$50 million annually.
- Reduce the weeks of UI benefits from five months to four months
- Addresses severance pay regarding unemployment insurance benefits

Please ask your Senator to VOTE FOR HB 1405!

DOUBLE DAMAGES

HB 1737 by Rep. Charlie Collins, R-Fayetteville, is on Monday morning's Senate Judiciary Committee agenda.

It seeks to:

- 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.
- Establish that individual employees, agents of employer or employees of an employer's agent are not liable for violation found to have been committed by employers.

Please ask your Senator to Vote FOR HB 1737.

STATE CHAMBER/AIA PRIORITY BILLS – ACTION YESTERDAY **EMPLOYER CLARITY REGARDING MARIJUANA**

HB 1460 by Rep. Carlton Wing, R-North Little Rock, and Sen. Missy Irvin, R-Mountain View, was approved by the Senate on a vote of 26 yes, 3 no, and 4 not voting. The bill now goes to the Governor for signing.

This is an important bill that we had developed and support to protect and maintain the safety of the workplace. This bill seeks to create new definitions or modify existing definitions for employers in matters related to the use of marijuana. These definitions include:

Please say thank you to any Senator you asked to vote FOR HB 1460.

FRANCHISE RELATIONS

SB 695 by Sen. Linda Collins-Smith, R-Pocahontas, was approved by the Senate yesterday afternoon by a vote of 34 to 0. It now goes to the House.

This bill seeks to clarify the relationship between a Franchisor and Franchisee regarding employees. We **support** this bill.

ABOVE GROUND STORAGE TANKS

HB 1721 by Rep. Andy Davis, R-Little Rock and Sen. John Cooper, R-Jonesboro, was approved in the Senate yesterday by a vote of 34-0. It now goes to the Governor.

This 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.**

BILLS WE SUPPORT – ACTION TODAY

ARKANSAS WORKFORCE CHALLENGE SCHOLARSHIP PROGRAM

SB 528 by Sen. Jimmy Hickey, Jr., R-Texarkana, was not considered yesterday but is on this morning's House Calendar.

This bill would create the Arkansas Workforce Challenge Scholarship Program to award scholarships from excess lottery funds for students seeking associate degrees or certificates in industry, healthcare or information technology. It also seeks to reduce the total annual Lottery Scholarship award to nontraditional students from \$16 million to \$12 million and would redirect certain excess funding that is returned to the lottery, and remaining net proceeds of the lottery, to the Workforce Challenge Scholarship Program fund account. We **support** this bill.

BILLS WE SUPPORT – ACTION YESTERDAY

SOCIAL MEDIA

HB 2216 by Rep. Austin McCollum, R-Bentonville, Rep. Grant Hodges, R-Rogers, Rep. Clarke Tucker, D-Little Rock and Rep. Greg Leding, D-Fayetteville, was approved in the House yesterday by a vote of 85 to 2. It now goes to the Senate.

This bill was developed by the Arkansas Society of Human Resource Professionals and seeks to make restrictions on employers regarding their employees' social media account apply only to requirements to add the employer to a social media contact list and not to requests, suggestions or otherwise. We **support** this bill.

WORKERS COMPENSATION – MULTIPLE ISSUES

HB 1953, by Rep. Charlie Collins, R-Fayetteville, and Sen. Jim Hendren, R-Gravette, was amended yesterday and then received a Do Pass as amended recommendation from the House Public Health, Welfare and Labor Committee. It is on today's House Calendar to formally adopt the amendment. The amendment removed the "major cause" portion of the bill.

This workers' compensation bill was filed by the Arkansas Self Insured Association and addresses issues that we **support** and have worked on for more than a decade.

HB1953 will, among other things, correct several court decisions that have substantially changed the Workers' Compensation Act of 1993 and have negatively impacted the workers' compensation forum. If passed, the legislation provides:

If a claimant is provided transitional work following a work-related injury and is ultimately terminated for cause, that claimant will not be entitled to temporary total disability (TTD) benefits unless he/she is taken completely off work again by a doctor. Medical treatment and other expenses related to the injury will continue to be covered.

A prescription for muscle relaxers will not be deemed an objective finding (for muscle spasms) sufficient to establish a compensable injury.

When a third-party settlement or judgment has been reached with the party at fault associated with a workers' compensation injury, the employer will be reimbursed for expenses paid in the workers' compensation claim from the third-party settlement/judgment. This places the responsibility for payment of expenses associated with an injury caused by a third party on that party/entity and not the employer.

With a Medicare-eligible claimant, the Workers' Compensation Commission will have the discretion to allow for a full and final settlement of all claims, other than future medical treatment.

STATE CHAMBER/AIA PRIORITY BILLS – ACTION PENDING

DONNING & DOFFING

HB 1846 by Rep. Charlie Collins, R-Fayetteville, and Sen. Bart Hester, R-Cave Springs, awaits consideration in the House Public Health, Welfare and Labor Committee.

This bill 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 principal 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, warned that the opinion “undermines the collective-bargaining process and destroys any confidence employers and employees have in the enforceability of their agreements,” and that the FLSA does not consider such activities “work” under state or federal law.

BILL NEEDING YOUR INPUT

INCOME TAX APPORTIONMENT AMENDMENTS

HB 2100 by Rep. Joe Jett, R-Success, makes numerous changes to the laws governing apportionment of income for multistate businesses. These amendments are based on the Multistate Tax Commission (MTC) model language. The bill would:

- Broaden the kinds of income subject to apportionment.
- Require market-based sourcing for services, intangibles, etc., instead of the current origin-based place of performance approach.
- Establish a throw-out rule for such sales, excluding from the sales factor calculation any sales to destination states where the business is not taxable.
- Expand the impact of the existing throwback rule on sales of tangible personal property (using new language that goes beyond the MTC model).
- Provide a more detailed framework for alternative apportionment determinations.

HB2100 is moving quickly, has been recommended by the House Revenue & Taxation Committee, and is expected to go to the House floor this week. The State Chamber/AIA has not yet taken a formal position on this complex bill. **Please contact us asap with any comments about this bill.**

[Here](#) is a letter from COST regarding this bill.

BILLS WE SUPPORT – ACTION PENDING

COLLECTING SALES TAXES FROM REMOTE SELLERS

SB 140 by Sen. Jake Files, R-Fort Smith, and Rep. Dan Douglas, R-Bentonville, awaits consideration 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.

HB 1388 by Rep. Dan Douglas, R-Bentonville, and Sen. Jake Files, R-Fort Smith, awaits consideration in the Senate Revenue and Taxation Committee. 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.

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

WORKERS COMPENSATION – RABIES COVERAGE

HB 1813 by Rep. David Hillman, R-Almyra, awaits consideration on the Senate floor. Action on this bill depends on the outcome of our workers' comp bill, **HB 1586**, because this bill addresses the rabies issue that is in our workers' comp bill. The purpose of the bill is to clarify that treatment for rabies can be covered under workers' compensation, without presentation of rabies symptoms.

BILLS WE OPPOSE

BIDDING REQUIREMENTS

SB 521 by Sen. Jimmy Hickey, R-Texarkana, has been amended and is on Monday's afternoon Senate State Agencies Committee agenda.

Prior to the amendment, this bill sought to amend various laws related to public contracts by:

- Restricting disbursements from being made during any fiscal period in excess of the appropriations made available by the General Assembly for the fiscal period, except as provided for contracts for which an appropriation has been made available for that purpose.
- Restricting the evaluation process for proposals submitted in response to the request for proposals from beginning if a request for proposals is amended, unless notice is provided at least seven calendar days before the evaluation process begins.
- Allowing a state agency to solicit a request for information to determine whether a contract that is about to expire is competitively priced before the fourth year of a four-year contract.
- Requiring a state agency to hire an expert evaluation committee for the purpose of evaluating responses to a request for proposals or a request for qualifications.
- Requiring an attorney at the Office of State Procurement or the Attorney General's office to review a proposed contract for goods or services before the contract is executed if the total projected contract amount is at least \$10 million.

Multiple associations are working against this bill and will likely remain opposed after it is amended. Be sure to look at the amended bill if you are involved in the bidding process.

EMPLOYER PAYMENTS

HB 1624 by Rep. Greg Leding, D-Fayetteville, is on the agenda in the House Public Health, Welfare and Labor Committee.

It would require an employer to pay, without conditions, all wages or parts of wages that the employer concedes to be due the employee in a dispute over the amount of wages due to the employee. It also seeks to require an employee to return any property belonging to an employer after a discharge in order to receive wages due.

HB 1625 by Rep. Greg Leding, D-Fayetteville, is on the agenda in the House Public Health, Welfare and Labor Committee.

This bill would require an employer of four or more employees to provide to each current employee at least one time each month a pay stub that lists, for hourly employees, the total hours worked and the gross and net wages or for non-hourly employees, the gross and net wages. It would also require the pay stub to include the rate of pay for the pay period, overtime hours and compensation work during the pay period, the pay period for which the payment is being made, itemization of deductions describing at a minimum the name, title, or other identifying words or numbers for each deduction, and the employer's name, address, and telephone number. Finally, it would permit a pay stub under this section to be provided in either a paper or electronic format.

We **oppose** these bills based upon the advice of employment attorneys.

CREDIT CHECKS

HB 2000 by Rep. Greg Leding, D-Fayetteville, is on the agenda in the House Public Health, Welfare and Labor Committee.

This bill seeks to prohibit employers from requiring an employee or job applicant to consent to a credit report check. It also seeks to require employers that obtain a background check on an employee or a job applicant to provide a copy to the employee or applicant upon request.

Many businesses, especially financial institutions, must rely on credit checks for hiring employees who they trust to help customers with their finances. Also, a number of state and federal statutes require credit checks of employees hired by a state agency or for a state agency to license an applicant.

We **oppose** this bill.

BILLS OF INTEREST

GUNS IN EMPLOYER PARKING LOTS

SB 37 by Sen. Alan Clark, R-Lonsdale, awaits consideration in the House Judiciary Committee. This bill addresses the rights of employees to keep a firearm in their vehicle on business property.

CONSTITUTIONAL AMENDMENT REFERRAL

HJR 1003 by Rep. Jeremy Gilliam, R-Judsonia, was approved for consideration as a possible third legislative referral to the 2018 General Election Ballot by resolutions in the House and Senate. It is on this morning's agenda in the House State Agencies Committee. This is an amendment to the Arkansas Constitution concerning ballot measures.

STATE CHAMBER/AIA BILL TRACKING

TRACKED BILLS

House bills filed 1,280

Senate bills filed 789

State Chamber/AIA tracking 656

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

BILL FILING STATISTICS

By AR Legislative Digest

Bill Type	2017	2015	2013	2011	+/-
House Bills	1280	1007	1300	1231	+273
Senate Bills	789	1055	1192	1005	-266
House Joint Resolutions	22	27	19	13	-5
Senate Joint Resolutions	14	16	19	12	-2
Totals	2105	2105	2530	2261	0

LEGISLATIVE SESSION INFORMATION AND MESSAGE CENTER

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