



## Daily Legislative Update

91st General Assembly

Tuesday, March 21, 2017 – Day 72

### CAPITOL SCHEDULE

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

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).

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

### WORKERS COMPENSATION

**HB 1586** by Rep. John Payton, R-Wilburn, and Sen. Jason Rapert, R-Conway, continues to await consideration by the full Senate while we work on opposition. **Your contacts are most important, as this bill will require 24 votes!**

### **Please ask your Senator to Vote YES on HB 1586**

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.

This very important bill is 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.

Thus, 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. However, 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.

**If you would like to join a list of entities that support this bill, please email Kenny Hall at [khall@arkansasstatechamber.com](mailto:khall@arkansasstatechamber.com).**

**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, received a Do Pass from the Senate Revenue and Taxation Committee yesterday morning and is on this afternoon's Senate Calendar.

**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 doesn't 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, the 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**

### **DECEPTIVE TRADE**

**HB 1742** by Rep. Laurie Rushing, R-Hot Springs, and Sen. Bart Hester, R-Cave Springs, is on this afternoon’s House Calendar.

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, plaintiffs’ 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**

### **LICENSING**

**HB 2176** by Rep. Austin McCollum, R-Bentonville, is expected to be considered in the House Public Health, Welfare and Labor Committee this morning. It is also possible that HB 1551 could be considered as well. These bills are identical.

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

Here 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 PROTECTION FROM MASS PICKETING**

**SB 550** by Sen. Trent Garner, R-El Dorado, is on this morning's House Judiciary Committee agenda.

This bill 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 entrances 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**

### **FRANCHISE RELATIONS**

**SB 695** by Sen. Linda Collins-Smith, R-Pocahontas, is on this morning's agenda in the House Public Health, Welfare and Labor Committee.

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

### **STATE CHAMBER/AIA PRIORITY BILLS – ACTION YESTERDAY** **UNEMPLOYMENT INSURANCE**

**HB 1405** by Rep. Robin Lundstrum, R-Elm Springs, and Sen. Jim Hendren, R-Gravette, was approved by the full Senate yesterday by a vote of 25 yes, 7 no. It now returns to the House for concurrence in the Senate amendment.

This bill will lower employers' unemployment insurance taxes by reducing the wage base from \$12,000 to \$10,000, reduce the weeks of UI benefits from five months to four months and address severance pay in regard to unemployment insurance benefits.

Collectively, Arkansas employers will **save approximately \$50 million annually.**

### **STATE CHAMBER/AIA PRIORITY BILLS – ACTION THIS WEEK** **SCHOOL BOARD ELECTION DATES**

**HB 1621** by Rep. Mark Lowery, R-Maumelle, and Sen. Jane English, R-North Little Rock, is expected to be considered in the Senate Education Committee tomorrow.

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

### **DOUBLE DAMAGES**

**HB 1737** by Rep. Charlie Collins, R-Fayetteville, could be considered tomorrow in the Senate Judiciary Committee.

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 employers 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.**

### **ECONOMIC DEVELOPMENT – AMENDMENT 97 IMPLEMENTATION 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, has returned to the Senate for concurrence in House amendment.

### **IMPORTANT BILLS SUPPORTED BY THE STATE CHAMBER**

#### **WORKERS COMPENSATION – MULTIPLE ISSUES**

**HB 1953**, by Rep. Charlie Collins, R-Fayetteville and Sen. Jim Hendren, R-Gravette, fell one vote short of passage yesterday, but the vote was expunged so it can be considered again.

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 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.

**Please ask your Representative to vote FOR HB 1953**

### **TASK FORCE ON WORKFORCE EDUCATION EXCELLENCE**

**SB 441** by Sen. Jane English, R-North Little Rock, was approved in the Senate yesterday by a vote of 33 to 0.

This bill seeks to create the Legislative Task Force on Workforce Education Excellence.

### **HIGHWAYS**

**HB 1726** by Rep. Dan Douglas, failed to have the vote by which it failed, be expunged yesterday afternoon on the House floor. Another attempt to expunge the vote may be attempted.

### **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, awaits consideration in the Senate Public Health, Welfare and Labor Committee.

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.

### **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.

It 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” and that the FLSA does not consider such activities “work” under state or federal law.

### **THANK FOR YOUR INPUT ON TAX BILL**

#### **INCOME TAX APPORTIONMENT AMENDMENTS**

**HB 2100** by Rep. Joe Jett, R-Success, that sought to make numerous changes to the laws governing apportionment of income for multistate businesses, has been placed on the deferred list and is not expected to be considered. Thanks for your input.

### **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*, received a do-pass late yesterday from the Senate State Agencies Committee.

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 ten million dollars.

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.

#### **PIPELINE EMINENT DOMAIN RESTRICTIONS**

**HB 2086** by Rep. Warwick Sabin, D-Little Rock, is on tomorrow's agenda in the House Insurance and Commerce Committee. State Chamber President & CEO Randy Zook is scheduled to testify against this bill.

The bill has been amended, but as filed it seeks to restrict the use of eminent domain by private pipeline companies, and:

- Establish that in order to be given the right to exercise eminent domain in the state, a pipeline company must be a natural gas public utility or must be exercising the right of eminent domain in connection with the operation of a common carrier facility.
- Require pipeline companies to provide 30 days' notice of intent to property owners before exercising eminent domain on private property.
- Require pipeline companies to obtain an order from the Arkansas Public Service Commission and permit from the Director of the Arkansas Department of Environmental Quality before exercising right of eminent domain, and establishes criteria for each entity to examine and verify before issuing a permit or an order to a pipeline company.
- Outline rules for compensation for damage to property surveyed, used for maintenance, or not acquired.

### **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 analysis by 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 whom 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**

### **CONSTITUTIONAL AMENDMENT REFERRAL**

**HJR 1003** by Rep. *Jeremy Gillam*, received a Do Pass as amended recommendation from the House State Agencies Committee late yesterday afternoon. This Joint Resolution seeks to amend ballot measure laws. If approved by the House and the Senate, it will be a third ballot measure referred to the 2018 General Election ballot.

### **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.

### **LICENSING AND REGULATION BILLS**

**HB 1835** by Rep. *Jim Dotson, R-Bentonville* and Sen. *Bart Hester, R-Cave Springs*, is a bill dealing with licensing reciprocity.

**HB 1880** by Rep. *Jim Dotson, R-Bentonville*, would create a sunset of all agency rules in 24 years. It passed the House yesterday by a vote of 80 to 0.

**HB 1881** by Rep. *Jim Dotson, R-Bentonville*, would require a report on all agency rules.

**HB 2159** by Rep. *Richard Womack, R-Arkadelphia*, would set up a Legislative Oversight Committee to review state Occupational Regulations and licensing.

## **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	1,280	1,007	1,300	1,231	+273
Senate Bills	789	1,055	1,192	1,005	-266
House Joint Resolutions	22	27	19	13	-5
Senate Joint Resolutions	14	16	19	12	-2

Totals	2,105	2,105	2,530	2,261	0
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### LEGISLATIVE SESSION INFORMATION AND MESSAGE CENTER

To view schedules, calendars, bill information and legislator information, visit

[www.arkleg.state.ar.us](http://www.arkleg.state.ar.us).

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