



Daily Legislative Update

91st General Assembly

Monday, March 27, 2017 – Day 78

CAPITOL SCHEDULE

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

Will the Session end this week or next week?

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.

STATE CHAMBER/AIA PRIORITY BILLS – ACTION TODAY DOUBLE DAMAGES

HB 1737 by Rep. Charlie Collins, R-Fayetteville, is on this afternoon's Senate Calendar.

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.

3RD GRADE READING

SB 587 by Sen. Alan Clark, R-Lonsdale, is on this afternoon's Senate Calendar.

We support this bill that seeks to require all public school districts have a reading intervention program in reading for grades K-3 and make promotion to the next grade dependent on demonstration of appropriate reading skills at grade 3.

DONNING & DOFFING

HB 1846 by Rep. Charlie Collins, R-Fayetteville, and Sen. Bart Hester, R-Cave Springs, is on this afternoon's House Calendar.

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, 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 Fair Labor Standards Act (FLSA) does not consider such activities “work” under state or federal law.

SCHOOL BOARD ELECTION DATES

HB 1621 by Rep. Mark Lowery, R-Maumelle, and Sen. Jane English, R-North Little Rock, awaits consideration in the Senate Education Committee.

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 Senator to support HB 1621

STATE CHAMBER/AIA PRIORITY BILLS – ACTION THIS WEEK

DECEPTIVE TRADE

HB 1742 by Rep. Laurie Rushing, R-Hot Springs, and Sen. Bart Hester, R-Cave Springs, awaits consideration in the Senate Insurance Committee tomorrow.

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 hotbed 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 Senator to vote FOR HB1742

PROTECTION FROM MASS PICKETING

SB 550 by Sen. Trent Garner, R-El Dorado, awaits consideration in the House Judiciary Committee.

It 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.

Please ask your Representative to vote FOR SB 550

FRANCHISE RELATIONS

SB 695 by Sen. Linda Collins-Smith, R-Pocahontas, awaits consideration 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.

Please ask your Representative to vote FOR SB 695

BILLS WE OPPOSE

REQUIREMENT TO USE RESIDENT BUSINESSES IN INCENTIVIZED PROJECTS

HB 1876 by Rep. Michael John Gray, D-Augusta, is on this afternoon's House Calendar.

We **oppose** this bill because:

- There is no practical way for companies locating or expanding in Arkansas to: “ensure that ... all of the employees and contractors used to complete the project ... are [Arkansas] residents.”
- Project companies hire construction companies to complete projects, not individuals.
- Construction companies can't be “residents” under the definition of “resident” in the Bill.
- There is a strong argument that restricting the employees that either a project company or construction company can hire would violate the Privileges and Immunities Clause of the United States Constitution.
 - “[O]ne of the privileges which the Clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that State” *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 280 (1985)
 - Invalidating an Alaskan statute challenged by nonresidents, which specifically contained a preference for hiring residents to develop the State's gas and oil reserves, as a violation of the Privileges and Immunities Clause.” *Hicklin v. Orbeck*, 437 U.S. 518, 524 (1978)
- There is a strong argument that restricting the construction companies or employees that a project company can contract with to complete a project would violate the Commerce Clause of the United States Constitution.
 - “No State, consistent with the Commerce Clause, may impose a tax which discriminates against interstate commerce. . . by providing a direct commercial advantage to local business . . . the State is using its power to tax an in-state operation as a means of requiring other business operations to be performed in the home State.” *Boston Stock Exch. v. State Tax Comm'n*, 429 U.S. 318, 329, 336 (1977)
- Passing unconstitutional laws invites litigation between citizens and the State of Arkansas.
- The Legislature should, at a minimum, obtain an Arkansas Attorney General Opinion that these restrictions can legally be imposed, before considering such a Bill.
- Large companies and industries locating and expanding in Arkansas have contractors they work with on a regular basis. These years of experience minimize costs based on shared expectations that cannot be duplicated in hiring new individuals or companies to perform projects in Arkansas.
- Imposing new regulations and restrictions on business drives up project costs and damages any reputation Arkansas may have of maintaining a “business friendly” economic environment.
- Ultimately, **HB1876** will strongly discourage companies from locating and expanding in Arkansas.

SPECIAL COUNSEL FOR STATE AGENCIES

HB 1832 by Rep. Doug House, R-North Little Rock, awaits consideration in the House State Agencies Committee.

This bill seeks to allow the employment of special counsel by a state official or entity in certain circumstances and to require special counsel to obtain approval by the attorney general before entering into a settlement agreement.

We oppose this bill.

BILL WE SUPPORT HIGHWAY FUNDING

HB 1726 by Rep. Dan Douglas, R-Bentonville, is on this afternoon's House Calendar to make another attempt to expunge the vote by which it previously failed. To expunge a vote takes a two-thirds majority (67) vote.

This bill seeks to refer bonding authority to the 2018 General Election Ballot. The bonds would provide revenue for a highway overlay program.

We support this plan.

SOCIAL MEDIA

HB 2216 by Rep. Austin McCollum, R-Clarksville, is on this afternoon's Senate Calendar.

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

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.

IMPORTANT BILL BIDDING REQUIREMENTS

SB 521 by Sen. Jimmy Hickey, R-*Texarkana*, awaits a committee assignment in the House.

We stand with our member engineers that are opposed to this bill. Our construction and architect members have become neutral on the bill after it was amended.

BILLS OF INTEREST LANDLORDS

HB 1166 by Rep. Laurie Rushing, R-Hot Springs, awaits consideration in the Senate Insurance and Commerce Committee.

This bill seeks to clarify the obligations of residential landlords and residential tenants and to require implied quality standards for tenants of residential real property. We have been contacted and asked if this bill might be a problem for landlords.

HB 2135 by Rep. Warwick Sabin, D-Little Rock, is on today's House Insurance and Commerce Committee agenda.

This bill seeks to clarify the obligations of residential landlords and residential tenants and to require minimum habitability standards for tenants of residential real estate.

If you are a landlord, you should look at these bills.

CONSTITUTIONAL AMENDMENT – BALLOT PROPOSALS

HJR 1003 by Rep. Jeremy Gillam, R-Judsonia, is on this afternoon's House Calendar.

This Joint Resolution seeks to become the Legislature's third ballot referral to the 2018 General Election Ballot. If referred and approved by voters, it would require a three-fifths vote at the polls to adopt a proposed constitutional amendment that has been submitted by petition, increase petition signature requirements and prohibit an amendment that bestows powers to an individual or business by name.

BACKGROUND CHECKS

HB 2000 by Rep. Greg Leding, D-Fayetteville, is on this afternoon's House Calendar.

This bill seeks to require employers who get background checks on applicants or employees to provide a copy of the background check information to the applicant or employer upon request.

We had this bill in the oppose category, but have not heard from anyone. If you have opinions, concerns, support for this bill, please let us know.

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
--------	-------	-------	-------	-------	---

LEGISLATIVE SESSION INFORMATION AND MESSAGE CENTER

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

www.arkleg.state.ar.us.

House of Representatives: 501-682-6211

Senate: 501-682-2902

State Chamber/AIA Governmental Affairs Team:

Randy Zook, President/CEO:

rzook@arkansasstatechamber.com

Kenny Hall, Executive Vice President:

khall@arkansasstatechamber.com

Andrew Parker, Director of Governmental Affairs:

aparker@arkansasstatechamber.com

Holly Wilson, Director of Governmental Affairs:

hwilson@arkansasstatechamber.com

Toni Bahn, Director of Governmental Affairs:

tbahn@arkansasstatechamber.com

State Chamber/AIA phone: (501) 372-2222

State Chamber/AIA web site: www.arkansasstatechamber.com

To unsubscribe to *Daily Legislative Updates*, please e-mail Deb Mathis at dmathis@arkansasstatechamber.com and write "unsubscribe DLU" in the subject box.

The Daily Legislative Update is written by Kenny Hall and edited and distributed by Jeff Thatcher.



1200 W. Capitol Ave., P.O. Box 3645
Little Rock, AR 72203-3645

501-372-2222
FAX 372-2722
