



## Daily Legislative Update

91st General Assembly

Tuesday, March 28, 2017 – Day 79

### CAPITOL SCHEDULE

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

The Revenue Stabilization Act bill was laid on members' desks yesterday. This is the final piece of legislation to set the state budget and is typically a sign that the session is days away from ending. Rules require it to be in legislators' hands for three days before consideration.

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 – ACTION TODAY

#### DECEPTIVE TRADE

**HB 1742** by Rep. Laurie Rushing, R-Hot Springs, and Sen. Bart Hester, R-Cave Springs, is on this morning's Senate Insurance and Commerce Committee.

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**

#### **SCHOOL BOARD ELECTION DATES**

**HB 1621** by Rep. Mark Lowery, R-Maumelle, and Sen. Jane English, R-North Little Rock, received a Do Pass recommendation from the Senate Education Committee yesterday and could appear on today's Senate Calendar.

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**

## **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 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, 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.

**Please ask your Representative to vote FOR SB 695**

## **STATE CHAMBER/AIA PRIORITY BILLS – ACTION YESTERDAY DOUBLE DAMAGES**

**HB 1737** by Rep. Charlie Collins, R-Fayetteville, was approved yesterday in the Senate by a vote of 30 to 4. It now goes to the Governor.

This bill will:

- 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 thank your Senator for supporting HB 1737.**

## **THIRD GRADE READING**

**SB 587** by Sen. Alan Clark, R-Lonsdale, was approved yesterday in the Senate by a vote of 33 to 1.

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 upon 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, was approved by the House yesterday by a vote of 92 to 0.

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.

## **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.

### **PAY STUB REQUIREMENTS**

**HB 1625** by Rep. Greg Leding, D-Fayetteville, was approved by the House yesterday and is on this afternoon’s agenda in the Senate Public Health, Welfare and Labor Committee.

This bill would apply to employers with more five or more employees and for employees that have worked at least 60 hours. In those cases, the employer would be required to provide 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 fear that some small companies may need to update their payroll records to comply. The information it requires to be disclosed must already be provided to employees (by the FLSA, NLRA, or Equal Pay Act); just not on a pay stub.

However, it will require changes to nearly every “pay stub” including those from third-party payroll companies. For example, it will require employers to include a non-exempt employee’s number of hours worked and hourly pay rate on pay stubs (or through one month-end report). This info is not usually included on a pay stub but rather the time cards.

This bill will add more administrative requirements on businesses. Smaller businesses without a designated payroll department (or third party contractor) will be most commonly hit with the penalties for non-compliance.

**We oppose this bill.**

### **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.

## BIDDING REQUIREMENTS

**SB 521** by Sen. Jimmy Hickey, R-*Texarkana*, is on the House State Agencies Committee agenda.

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.

The American Council of Engineering Companies of Arkansas (ACECA) and the Arkansas Society of Professional Engineers (ASPE) remain opposed to SB521 despite amendments added last week. Their position is:

- While we fully support, and will participate in, a thoughtful and detailed review of the request for quotation (RFQ) process for professional services, we believe that the two-year sunset on the current RFQ process for professional services is bad policy and unnecessary.
- The existing RFQ process for professional services is fair, efficient and beneficial to governmental entities - ensuring that they receive the highest quality work at a negotiated price which they control.
- ACECA and ASPE do not oppose changes to procurement law where problems have arisen; however there have not been any identified problems with the current RFQ process involving engineers and architects.
- Current Arkansas law is consistent with federal requirements for engineering and architectural services when federal funds are used for state and local projects.
- Amendment throws an industry in to uncertainty.
  - The AE industry is founded on providing the brightest and best staff to address the needs of, and best value to, the client, the project and the state.
  - To throw that practice into uncertainty with a two-year implementation period will impact the growth of the industry.
    - Do we hire the best and brightest, knowing in 2 years we will have to redirect business practices to provide the minimum level of service required to satisfy a preliminarily developed scope and the lowest bid?
    - STEM opportunities, especially for young engineering graduates, will be curtailed until the industry can adapt to low bid contract work.
    - Keeping the best and brightest graduates in the state will be much more difficult when competing with all other states that recognize Qualifications Based Selection.
- We would support an amendment that would leave the law where the current procurement law is, that excludes Engineers and Architects from low bid selection, now - as is the law both at the state and national level. And, we would support and participate in a study to revisit the reasons and impacts to the state, in a more thorough discussion, in preparation of the 2019 legislative session where a bill could be presented if lawmakers decide engineers and architects do not build their case adequately.
- The Federal Act that requires architects and engineers to be only selected by qualifications was developed for specific reasons that allowed the industry to best serve the public. Construction Managers were added in Arkansas a few years ago in response to specific industry needs. The CM industry acceptance of the

current proposed amendment does not change the need of the AE industry to maintain quality-based selection.

## **BILLS WE SUPPORT**

### **REPEAL OF PREVAILING WAGE LAW**

**SB 601** by *Sen. Bart Hester, R-Cave Springs, and Rep. Jim Dotson, R-Bentonville*, is on this morning's agenda in the House Public Health, Welfare and Labor Committee.

This bill seeks to repeal the entirety of the Prevailing Wage Law that governs required payments by contractors. We **support** this bill.

- Prevailing Wage is an arcane law and its ineffective processes do not reflect the current construction market.
- Countless studies have examined the harm these laws can do around the country by artificially increasing costs.
- Examples can be found in a number of studies on publicly funded construction projects. The Mackinac Center issued a report finding that in Michigan prevailing wage needlessly inflated the cost of public construction by 10-15 percent.
- The nonpartisan Anderson Economic Group found that from 2002 through 2011 in Illinois local and state governments could have saved an estimated \$1.6 billion on school construction costs if they did not have prevailing wage.
- Eliminating this law in Arkansas will lower state and local government costs of doing business, creating opportunities for more schools, roads, bridges, low-income housing, and hospitals, as well as, in turn, creating more jobs in construction.

## **SOCIAL MEDIA**

**HB 2216** by *Rep. Austin McCollum, R-Clarksville*, was approved by the Senate yesterday afternoon by a vote of 33 to 0. It now goes to the Governor.

We **support** this bill developed by the Arkansas Society of Human Resource Professionals. The bill seeks to make the 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*, was approved in the Senate yesterday by a vote of 34 to 0. It now goes to the Governor. This bill clarifies that treatment for rabies can be covered under workers' compensation, without presentation of symptoms.

## **HIGHWAY FUNDING**

**HB 1726** by *Rep. Dan Douglas, R-Bentonville*, failed to gain enough votes yesterday afternoon to expunge the vote by which it previously failed. The sponsor said this would be the last effort.

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

## **BILLS OF INTEREST**

## **GUNS IN EMPLOYER PARKING LOTS**

**SB 37** by Sen. Alan Clark, R-Lonsdale, is on today's agenda in the House Judiciary Committee. This bill seeks to require employers to allow employees to keep guns in their vehicles on private employer property.

## **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 this bill.

## **CONSTITUTIONAL AMENDMENT – BALLOT PROPOSALS**

**HJR 1003** by Rep. Jeremy Gillam, R-Judsonia, was approved on the House floor yesterday by a vote of 79 yes, 10 no and 11 not voting. It is on today's agenda in the Senate State Agencies Committee.

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, was approved in the House yesterday by a vote of 90 to 0 and is on this afternoon's agenda in the Senate State Agencies Committee.

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, or support for this bill, please let us know.

## **HIGHWAY FUNDING**

**HB 2085** by Rep. Johnny Rye, R-Trumann, passed the House yesterday by a vote of 56 yes, 25 no, 17 not voting and 2 present. It is on tomorrow's agenda in the Senate Revenue and Taxation Committee.

This bill seeks to distribute a portion of the sales and use tax collected from sellers that do not have a physical presence in the state to the State Highway and Transportation Department fund.

## **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 Arkansas 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](http://www.arkleg.state.ar.us).

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