



Daily Legislative Update

91st General Assembly Fiscal Session
Monday, March 12, 2018

AT THE CAPITOL

The House and Senate convened at 2 p.m. this afternoon and then adjourned the 2018 Fiscal Session Sine Die in less than 10 minutes.

After adjournment, the House went into a Caucus meeting to elect a Speaker Designate for the 92nd General Assembly. The candidates were Rep. Andy Davis, R-Little Rock and Rep. Matthew Shepherd, R-El Dorado. Rep. Shepherd was elected with 57 votes.

SPECIAL SESSION

This afternoon Governor Hutchinson issue a Proclamation Calling for a Special Session that will convene at 9 a.m., Tuesday, March 13. The call included 10 substantive issues for consideration. The State Chamber/AIA supports Item #4. Here's the full text of the call:

FOR IMMEDIATE RELEASE

03.12.2018

Governor Hutchinson Issues Call for Special Legislative Session of the 91st General Assembly

LITTLE ROCK – Governor Asa Hutchinson today issued the official call to legislators for an Extraordinary Session of the 91st General Assembly to convene Tuesday, March 13, 2018, at 9:00 a.m. A list of call items can be found below, and the official proclamation can be found [HERE](#).

“Prior to the fiscal session, a number of matters that warranted immediate action by the legislature were brought to my attention, including issues such as highway funding and pharmacy benefit manager oversight legislation,” said Governor Hutchinson. “I made a commitment then to hold a special session following the Fiscal Session to address these items, as well as other issues deemed unique in circumstance, if legislators could reach a two-thirds consensus in both chambers. The items on the call reflect that commitment, and

I look forward to working with the legislature to address these issues in a quick and efficient manner over the next three days.”

Call items are as follows:

1. To provide for the payment of expenses and per diem of the House of Representatives and the Senate for this Extraordinary Session.
2. To make technical corrections to Ark. Code Ann. § 5-71-101 for the purpose of aligning state law with federal law to avoid federal highway penalties, by adding changes to the definitions of alcoholic beverages, motor vehicle, and open alcoholic beverage container, also by making changes to Ark. Code Ann. § 5-71-218 regarding areas within a motor vehicle where it is illegal for a person to possess an alcoholic beverage in an open beverage container.
3. To make technical corrections to Ark. Code Ann. § 23-114-102 concerning the definition of equipment to be used by charitable organizations in licensed games under Ark. Code Ann. § 23-114-101, et seq., for visually impaired participants to include electronic devices used to mark a bingo face or an electronic facsimile of a paper bingo sheet, within certain limitations and conditions approved by the Director of the Department of Finance and Administration.
4. To alter Arkansas code title 16, Chapter 30, by adding a new section concerning a contractual waiver of the right to a jury trial pursuant to Article 2 § 7 of the Arkansas Constitution by creating an enforceable agreement whereby the parties agree to waive their respective rights to a jury trial before or after a lawsuit is filed.
5. To alter Arkansas code concerning the licensure of pharmacy benefit managers providing services for health benefit plans under the Arkansas Insurance Department; amend applicable definitions; require a reasonably adequate and accessible pharmacy benefits manager network; regulate the conduct of pharmacy benefit managers; authorize the Arkansas Insurance Department to examine and audit pharmacy benefit manager records; establish reporting requirements for pharmacy benefits managers; prohibit deceptive and unconscionable trade practices pursuant to the Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 et seq., the Arkansas Pharmacy Benefits Manager Licensure Act, Ark. Code Ann. § 23-92-501 et seq., and the Trade Practices Act, Ark. Code Ann. § 23-66-201 et seq.; and authorize the Arkansas Insurance Department to establish rules concerning the licensing, application fees, financial solvency requirements, network adequacy, prohibited practices, reporting requirements, compliance, enforcement requirements, rebates, compensation, and the listing of plans, by pharmacy benefits managers in the State of Arkansas.
6. To amend Arkansas code to provide that only those permit conditions subject to the modification are open for review when an application for modification of an existing state permit for a liquid animal waste management system is filed with the Arkansas Department of Environmental Quality and an existing state permit for a liquid animal waste management system that is in good standing is not subject to review or third-party appeal for siting or location issues that were not raised during the applicable review or appeal period at the time of the permit issuance.
7. To amend Ark. Code Ann. § 27-21-109 in order to provide a defense to the prosecution of operation of an all-terrain vehicle on a public street or highway: if it is the most reasonable route from an off-road trail to another or to their private property, the operator's purpose was to get from one off-road trail to another or to

his or her own private property and removing the limitation of driving more than three miles on the public street or highway as well as removing the requirement of providing proof of their property interest.

8. To amend the Arkansas code concerning the design and construction of certain trail projects that are donated to and managed by the State Parks, Recreation and Travel Commission rather than the Building Authority Division of the Department of Finance and Administration, these projects must still adhere to the minimum standards and criteria established by the Building Authority Division of the Department of Finance and Administration.
9. There is a need to amend the Arkansas code concerning tax deferred tuition savings programs established under 26 U.S.C. § 529 as it existed on January 1, 2018 that may be deducted from the taxpayer's adjusted gross income for the purpose of calculating Arkansas income tax. The aforementioned deductible contributions cannot exceed \$5,000 per taxpayer in any tax year, and if established by another state the deductible contribution cannot exceed \$3,000 per taxpayer in any tax year. Further, the deductible contributions that are rolled over into a tuition savings account shall not exceed \$7,500 per taxpayer in the tax year in which they were rolled over. The aforementioned deductions are to be made available to tuition being paid to both institutions of higher education as well as primary and secondary educational institutions.
10. There is a need to amend the Arkansas code concerning how siblings are to be treated in the counting of transfer students pursuant to Ark. Code Ann. § 6-18-1906(b)(1)(B) by allowing siblings to meet or exceed the 3% cap found in Ark. Code Ann. § 6-18-1906(b)(1)(A).
11. To confirm gubernatorial appointees.

JURY WAIVERS IN CONTRACTS

As indicated above, the State Chamber/AIA fully supports passage of a bill that will address the issue set forth in Item #4 of the Governor's Call.

Jury waiver provisions are common features of contracts into which Arkansans routinely enter. Studies have found jury waiver provisions in as many as 20 percent of all contracts and in more than half of certain types of contracts, such as security and credit agreements. Like businesses everywhere, Arkansas businesses routinely include these provisions in their contracts because they ensure quicker, more efficient resolutions of disputes through trials in front of a judge rather than a jury.

These standard contractual provisions are enforced in federal courts and in the courts of almost every state. Nevertheless, in *Tilley v. Malvern National Bank*, 2017 Ark. 343, the Arkansas Supreme Court, in a 4-3 ruling, made Arkansas the third state—following Georgia and California—to reject these basic contract provisions. The Court held that any jury trial waiver in a contract was invalid because Article 2, Section 7 of the Arkansas Constitution says that a jury trial may only be waived “in the manner prescribed by law,” and neither the General Assembly nor the Supreme Court had enacted statutes or rules permitting waivers. Under the four-justice majority's ruling, waivers must be approved by either statute or court rule.

The holding in *Tilley* invalidated jury waiver provisions in thousands of contracts entered into by Arkansans. The parties to those contracts bargained for any disputes to be resolved without a

jury but have lost the benefit of that bargain. The only solution is an act by the General Assembly approving pre-dispute contractual jury waivers.

This bill therefore expressly permits parties to enter into contractual waivers of jury trials and establishing standards for considering those provisions should they be challenged. The bill also applies retroactively to contracts and jury proceedings in existence before it goes into effect, which protects parties whose contractual provisions were invalidated by *Tilley*. The bill also declares the infringement of the right to contract imposed by the *Tilley* ruling to be an emergency that must be remedied immediately upon passage of the bill.

LEGISLATIVE SESSION INFORMATION

During Fiscal Sessions, this update is provided periodically based upon information of interest. To view schedules, calendars, bill information and legislator information, visit: www.arkleg.state.ar.us.

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