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## 92nd General Assembly March 18, 2019 – Session Day 64

### TODAY AT THE CAPITOL

The Senate will convene at 1 p.m. and the House at 1:30 p.m.  
Legislative Calendar: [www.arkleg.state.ar.us](http://www.arkleg.state.ar.us)

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

### INTERNET SALES TAX, SINGLE SALES FACTOR, THROWBACK AND NOL

**SB 576** by Sen. Bart Hester, 10 other Senators (including Senate President Pro Tem Jim Hendren) and Rep. Dan Douglas *was filed Friday and is expected to be considered this morning in the Senate Revenue & Taxation Committee. It will make the Arkansas tax system fairer and more competitive.*

**SB 576** contains major tax policy priorities that have been more than a decade in the making:

#### Require Remote Sellers and Marketplace Facilitators to Collect Sales Tax

- Enforcement of existing tax obligations to pay for state and local services—not a new tax.
- Puts our in-state sellers on equal footing with out-of-state sellers instead of a 10 percent price disadvantage.

#### Extend Net Operating Loss (NOL) Carry-forwards to Prevent Double-Taxation

- This could potentially help any business in Arkansas. Currently, past years' losses can only be offset against future years' earnings for up to five years (worst in USA).
- This will phase in an increase of the offset period to 20 years—the national standard.

#### Adopt Single Sales Factor (SSF) Apportionment

- Arkansas is one of a declining number of states that still use property and payroll factors to determine taxable income, effectively raising taxes on in-state businesses while giving out-of-state businesses a 50 percent tax cut.
- Arkansas businesses are currently double-taxed selling into states with SSF.
- Going to SSF benefits businesses who invest in employees and property in Arkansas—particularly manufacturers, wholesalers, retailers, and banks.

#### Repeal the Throwback Rule for Business Income

- Arkansas penalizes businesses that are not taxable in destination states by “throwing back” those sales to Arkansas instead of reflecting the true market state.
- This rule often doubles (or more) tax liability, especially for manufacturers and hurts competitiveness for industrial economic development.

These proposals have been Chamber policy priorities for more than a decade.

**SB 576** also includes a car wash sales tax exemption and imposes a new car wash water

user fee.

The Tax Reform Task Force educated legislators about these needs, and now is the chance to make them happen. If you haven't already, contact your **State Senator and ask them to vote FOR SB 576**.

Matt Boch of Dover Dixon Horne PLLC, has written a detailed analysis of **SB 576**. You can read the report by clicking this link: <http://www.doverdixonhorne.com/artaxandincentivesupdate/post/major-arkansas-tax-reform-bill-introduced-remote-seller-collection-apportionment-and-nols>

### **MINIMUM WAGE LAW – STATE CHAMBER/AIA PRIORITY LEGISLATION**

A package of bills designed to mitigate potential cost issues and job losses from the minimum wage increase received Do Pass recommendations last week from the House Public Health, Welfare & Labor Committee. The recommendations drew heavy opposition from liberal groups. **HB 1752 and HB 1753** have been amended to clarify their intent.

The bills are **HB 1751, HB 1752 and 1753** by Rep. Robin Lundstrum and Sen. Mat Pitsch and *are on the House Calendar this afternoon*. Only two of the three bills address the minimum wage increase.

**HB 1751** does NOT seek to amend the minimum wage amounts or create any exemptions. This bill addresses wage and payment requirements, including requiring the employer to pay a discharged employee within seven days of the next regular payday or pay double the wages due. Other provisions include: establishing a two-year statute of limitation, providing that if an employer is providing wages earned via a pre-loaded debit card, the employee is entitled to at least one free withdrawal for each deposit of wages loaded onto the card. This bill is designed to provide some clarity in employment laws.

The two bills designed to provide some mitigation to businesses, non-profits and teenagers are **HB 1752 and HB 1753**. These bills seek to mitigate the impact of minimum wage increases set for January 1, 2020 and 2021. These bills do not impact the minimum wage increase from \$8.50 to \$9.25 that went into effect January 1, 2019.

**HB 1752** seeks to increase the size of businesses that qualify for Minimum Wage Act exemption, from those with four employees to those with up to 25. It also seeks to exempt nonprofit entities with operating budgets of less than \$1 million and nonprofit developmental service providers. The purpose is to mitigate the cost increases on small businesses and non-profits.

**HB 1753** seeks to change the language of “student” to people under 20, i.e., teenagers. An age limit would be easier to administer than dealing with proof issues for determining the status of “students.” Current law allows full-time students working less than 20 hours during school or 40 hours during off-school time, to be paid 85 percent of the minimum wage. The bill’s intent is to freeze the minimum wage for teenagers at \$9.25 and eliminate the 85 percent limit.

If your business or a non-profit for which you serve as a board member has concerns about a negative financial impact from the minimum wage increases, please ask your Legislators to **vote FOR HB 1752 and 1753**. As you speak with your Legislators, provide information to them that demonstrates the impact on your business or non-profit.

### **BALLOT INITIATIVE REFORM – STATE CHAMBER/AIA PRIORITY LEGISLATION**

**SJR 10 and HJR 1008** by Sen. Mat Pitsch and Rep. DeAnn Vaught *await consideration in their respective State Agencies Committees*. These identical resolutions would repeal the 30-day signature cure period, move the filing deadline for initiatives and signatures to January 15 and set a deadline to file legal challenges on April 15, both dates in the General Election year. It also would increase the vote majority required by the Legislature to make amendment referrals from a simple majority to a three-fifths (60%) majority and increases the number of counties from which a set number of signatures are required from 15 counties to three-fifths of the counties (45).

Please **ask your Legislators to vote FOR HJR 1008 and SJR 10**.

There are two similar Joint Resolutions in the Senate. Please make sure your Legislators

know **HJR1008/SJR10** were developed by the State Chamber/AIA with the help of the attorneys who represented us in many ballot initiative challenges and in cooperation with the Arkansas Attorney General and Arkansas Secretary of State

## **BILLS WE SUPPORT**

### **LEGAL – STATE CHAMBER/AIA PRIORITY LEGISLATION**

**SB 543** by Sen. Missy Irvin, Rep. Rebecca Petty and others would amend the Uniform Contribution Among Tortfeasors Act, requiring “several” liability to be determined after consideration of the fault of all persons or entities.

**SB 544** by Sen. Missy Irvin, Rep. Doug House and others would change the prejudgment and post-judgment interest rates from 10 percent per annum to the Federal Reserve primary credit rate in effect on the date on which the judgment is entered plus two percent. It would also set the rate for an action on a contract at the rate provided by the contract unless it is less than the above rate.

**SB 545** by Sen. Missy Irvin, Rep. Rebecca Petty and others would limit the recovery of damages for necessary medical care, treatment or services to those costs actually paid by or on behalf of the plaintiff or which remain unpaid and for which the plaintiff or any third party is legally responsible.

*All three bills are on this afternoon's Senate Judiciary Committee agenda.*

### **PASS THROUGH ENTITY TAX**

**HB 1714** by Rep. Joe Jett and Sen. Dismang *awaits consideration in the House Revenue and Taxation Committee*. It creates the elective pass-through entity tax act. Here are comments by our tax counsel, Matt Boch, from the Dover Dixon Horne Tax Blog: Another Tax Reform and Relief Legislative Task Force recommendation has been introduced into the General Assembly: an elective pass-through entity tax. **HB 1714** could potentially provide federal income tax relief to business owners who can no longer deduct state income taxes at the individual level, at least for tax years beginning on or after January 1, 2020.

The Arkansas Pass-Through Entity Tax would be a tax imposed on "the aggregate net taxable income of each of the members of an affected business entity," and that "affected business entity" would be liable for the tax. Partnerships, limited liability companies, and S corporations could elect to be subject to the tax. The tax would be a flat tax using the top individual rate. The intent is that members of an electing pass-through entity would exclude their share of the pass-through entity income that was subject to the entity-level tax. (Some wording adjustments may be added by amendment to clarify this.) The election would be made by members comprising more than 50 percent of the voting rights in the pass-through entity.

Arkansas is following in the footsteps of Connecticut and Wisconsin, which have enacted pass-through entity taxes. In general, Arkansas **HB 1714** hews closer to the Wisconsin model with the entity-level tax being elective and then providing an exclusion at the individual taxpayer level.

The sponsors of **HB 1714** are Representative Jett and Senator Dismang, the respective Chairs of the House and Senate Revenue and Tax Committees. The bill may move quickly.

If **HB 1714** is enacted, Arkansas pass-through business will need to consult with their tax advisers about the appropriate course of action. The validity of elective pass-through entity taxes as a way to preserve the benefit of the federal SALT deduction has not been clearly established, and taxpayers would need to weigh their federal benefits and risks in addition to their state income tax analysis. At least with the delayed effective date until tax years beginning on or after January 1, 2020, there will be plenty of time to do so. We support this bill.

### **WORKFORCE DEVELOPMENT – STATE CHAMBER/AIA PRIORITY LEGISLATION**

**SB 522** by Sen. Jane English *awaits consideration in the Senate Education Committee*. It

is being amended to clarify the intent. The bill seeks to amend the duties of the Career Education and Workforce Development Board and renames it as the Office of Skills Development and the Career Education and Workforce Development Board. It also would authorize a voting member of the board to establish a subcommittee that is made up of members relevant to the specific industry in order to better develop recommendations. Finally, it would add one representative from the Department of Human Services, the Department of Correction, and the Arkansas Economic Developers and Chamber of Commerce Executives (AEDCE) as nonvoting members.

### **LOW READING ASSESSMENT LEVELS**

**SB 349** by Sen. Alan Clark *awaits consideration in the Senate*. It seeks to create personnel reporting requirements for schools based on low reading assessment levels, revising achievement gap categorical funding and making the school ineligible in year three for funding if no improvements are made.

### **WEIGHTED CREDIT COURSES – STATE CHAMBER/AIA PRIORITY LEGISLATION**

**SB 478** by Sen. Jane English and Rep. Jana Della Rosa *awaits consideration in the House Education Committee*. It would apply new standards for the Department of Education in approving courses for weighted credit. It would also allow teachers in advanced placement programs to satisfy requirements by attending a College Board-endorsed training or other similarly rigorous training approved by the department. Finally, it would allow the Department of Education to approve a course weighted for credit if the course exceeds the curriculum standards for non-weighted credit class or meets or exceeds the standards of a comparable advanced placement class.

## **BILLS OF INTEREST**

### **PROPERTY TAX ASSESSMENT CHALLENGES**

**HB 1562** by Rep. Stephen Meeks and Sen. Missy Irvin *was amended as we requested and given a Do Pass recommendation by the House Revenue and Taxation Committee last week*.

### **ASSESSMENT DISCLOSURES**

**SB 530** by Sen. Lance Eads and Rep. Dan Douglas *was approved by the Senate 34 to 0*. It would impose disclosure requirements relating to protests and appeals of commercial and industrial property taxes or assessments before county equalization boards, providing that evidence not disclosed within a specified time period will be inadmissible. It would also require the following be disclosed at least five days prior to an appeals hearing: if the property was occupied or unoccupied at the time of the transaction, and if the property was subject to any use, deed, or lease restriction at the time of transaction that prohibits the property from being used for the purpose of which a presiding structure or building was designed.

### **GOVERNMENT TRANSFORMATION**

**HB 1763** by Rep. Andy Davis and Sen. Bart Hester *is on tomorrow's agenda in the Senate State Agencies Committee*. This is the Governor's plan to transform state government by reducing the number of agency direct reports from more than 40 to 15 new Departments that will be managed by a Secretary. Those 15 Secretaries will report directly to the Governor.

### **TOBACCO TAX AND EARNED INCOME TAX CREDIT**

**SB 571** by Sen. Jim Hendren and Rep. Lee Johnson and 16 other Senators and 39 other House members *awaits consideration in the Senate Revenue & Taxation Committee*. It seeks to reduce individual income taxes by creating an earned income tax credit and increased standard deduction to be offset by new taxes on cigarettes and e-cigarettes. The bill sets the effective tax year date beginning on January 1, 2020.

### **TAX APPEALS COMMISSION**

**SB 560** by Sen. Blake Johnson *awaits consideration in the Senate Revenue & Taxation Committee*. It would create the Tax Appeals Commission, separate and apart from the Department of Finance and Administration (DFA), who shall have jurisdiction over any administrative hearing by a taxpayer who seeks administrative relief from a DFA decision. It would require the Tax Appeals Commission provide written decisions,

including statement of facts, conclusions of the law, and orders to grant relief, invoke remedies, and issue orders. It also would require decisions be public in either print or electronic form, allow the Tax Appeals Commission to establish a Small Claims Division and allow the DFA to seek judicial relief from a decision made by the Tax Appeals Commission.

## **TAX REFORM**

**SB 561** by Sen. Jim Hendren *awaits consideration in the Senate Revenue & Taxation Committee*. It seeks to make changes to various tax provisions and related administrative procedures, enforcement, assessment guidelines, penalties for noncompliance and certain exemptions. It would place administration of the franchise tax with the Department of Finance and Administration rather than the Secretary of State. It would also require the department to report before each regular session to the Legislative Council and the Governor on the effect of each exemption, discount, credit, and deduction relating to state income, sales and use tax.

## **BILLS WE OPPOSE**

### **WAIVER OF JURY TRIAL CLAUSES**

**SB 558** by Sen. Gary Stubblefield is on this afternoon's agenda in the Senate Judiciary Committee. It seeks to repeal the validity of any contractual waiver of rights to a trial by jury, retroactive to March 18, 2018. We oppose this bill.

### **NOTICE TO ADJACENT LANDOWNERS**

**HB 1796** by Rep. Jana Della Rosa and Sen. Cecile Bledsoe *awaits consideration in the House Public Health, Welfare and Labor Committee*. It would require ADEQ to notify adjacent landowners of new applications for permits or modifications to existing permits by certified mail and to consider input received in the department's decision to approve or deny the permit or modification. We are concerned about this bill as it was filed.

### **SPECIAL ELECTIONS**

**HB 1402** by Rep. Justin Gonzales and Sen. David Wallace *awaits consideration in the House State Agencies Committee*. It would require any special elections in years with a preferential primary election or general election to be held on those election dates. It would also require special elections in off-cycle years to be held on the Tuesday next after the first Monday in May or the Tuesday after the first Monday in November. Additional provisions include: requiring special elections be announced 75 days prior to election; providing exemptions for special elections to fill vacancies, special runoff elections, or emergency special elections; providing local boards that vote for a tax levy must be approved by voters in the next available election and makes its effective date contingent upon sufficient funding. We are one of multiple interests opposed to this bill.

### **CONSUMER PROTECTION**

**HB 1704** Rep. Jimmy Gazaway *awaits consideration in the House Insurance and Commerce Committee*. It seeks to prohibit unconscionable terms in standard-form contracts, requiring the court to limit the application of terms it finds unconscionable and refuse to enforce the contract in whole or part. The bill also would designate unconscionable terms: that resolution of legal claims take place in an inconvenient venue, a waiver of an individual's right to asset claims or seek remedies provided by a federal statute, a waiver of an individual's right to seek punitive damages as provided by law, a provision that limits the time in which an action may be brought under the standard-form contract or that waives the statute of limitations, or a requirement that an individual pay fees and costs to bring a legal claim subsequently in excess of required fees and costs to bring a claim in state or federal court. Finally it would exempt contracts to which one party is regulated by a regulatory body or officer under statutory state or federal authority, and a financial institution as defined under 23-45-102. We oppose this bill because:

- **HB1704** is an effort to invalidate arbitration clauses contained in contracts; these clauses provide that a dispute is taken to arbitration, as opposed to court
- **HB1704** not only seeks to invalidate those provisions, but would authorize the Attorney General to file suit against a party for simply placing an arbitration provision in a contract and obtain civil penalties that could run into the hundreds of thousands of dollars

- Arkansas adopted an arbitration act authorizing such agreements many years ago (ACA 16-108-101) and has proven to be a useful form of alternative dispute resolution
- To not only prohibit those provisions, but to go so far as to punish someone for including an arbitration provision is not conservative; it is the exact opposite and is detrimental to those who create jobs and support our economy
- HB1704 is legislation based on the Model State Consumer and Employee Justice Enforcement Act” developed several years ago by the National Consumer Law Center based in Boston; that organization shouldn’t be setting policy in Arkansas
- Finally, the U.S. Supreme Court has ruled that state laws that discriminate against, or disfavor, arbitration provisions are preempted; as a result, HB1704 not only seeks to adopt bad policy, it seeks to adopt policy that the State cannot enforce

### **SNAP BENEFITS**

**HB 1743** by Rep. Mary Bentley and Sen. Scott Flippo *awaits consideration in the House Public Health, Welfare and Labor Committee*. It would prohibit the use of Supplemental Nutrition Assistance Program (SNAP) benefits for purchases of candy, soft drinks, energy drinks and dietary supplements. We oppose this bill.

### **DECEPTIVE TRADE PRACTICES**

**HB 1462** by Rep. Jimmy Gazaway *awaits consideration in the House Insurance & Commerce Committee*. It provides that a person has a cause of action for actual damages or injury resulting from deceptive trade practices and may recover those damages and attorney's fees. It also removes the definition of actual financial loss as used for deceptive trade practices. This bill seeks to repeal a bill we filed in 2017. We oppose this bill.

### **PHARMACY BENEFIT MANAGEMENT**

**SB 520** by Sen. Kim Hammer *awaits consideration in the Senate Public Health, Welfare and Labor Committee*. This 2019 version of a pharmacy benefit managers (PBM) bill seeks to make various changes to the regulation and licensure of PBMs, including redefining the maximum allowable cost list and adding a defined professional dispensing fee to the list. It also would require a PBM to report the following to the Insurance Commissioner on a quarterly basis: amount of rebates received, amount of rebates distributed to healthcare insurers, amount paid by the healthcare insurer for pharmacist services itemized by pharmacy, product, and goods and services, and the amount a pharmacy benefits manager paid for pharmacist services itemized by pharmacy, product, and goods and services This report is exempt from the FOIA.

### **FREEDOM OF INFORMATION ACT**

**SB 521** by Sen. Kim Hammer *awaits consideration in the Senate State Agencies Committee*. It seeks to amend the Freedom of Information Act and the definition of public records contained therein to exclude identifying information of donors, potential donors, non-donors or individual donor amounts to a private foundation that receives public funds.

### **INVASION OF PRIVACY**

**SB 230** by Sen. Kim Hammer *awaits consideration in the Senate Judiciary Committee*. It seeks to create a statutory civil action for invasion of privacy, authorizing a person to bring suit for damages and injunctive relief against a person who improperly intrudes into his or her private affairs or publicizes the person in a false light. We oppose this bill.

### **NEW BILL TO WATCH**

**HB 1850** by Rep. Austin McCollum and Sen. Bart Hester *was filed Friday*. The bill seeks to establish the Empower Independent Contractors Act amending the definitions of “employee,” “employer” and “employment status” on the basis of a 20-factor test.

At a minimum, we will want to amend this bill. But most likely, we will oppose it outright. There are many different definitions of independent contractor in state and federal law. It can be very confusing for employers and we have discussed this problem for years. But we could never identify a solution that would fix the problem and not cause more confusion. There are two conflicts we can see immediately. First, workers’ compensation laws have their own definitions and our workers’ comp laws were implemented by an Initiated Act; therefore, any changes require a two-thirds vote. Second, this bill cannot

change federal law, so even if it were possible to create a single Arkansas definition of Independent Contractor, it would still leave employers open to confusion. Also, creating a 20-factor test to identify an Independent Contractor will be very difficult to establish.

### STATE CHAMBER TRACKED BILLS

New House bills filed Friday: 2 | Total House bills filed: 851  
New Senate bills filed yesterday: 8 | Total Senate bills filed: 582  
New bills added to our tracking: 4 | Total tracked bills and resolutions: 453

New bills added to our tracking: [https://arkansasstatechamber-my.sharepoint.com/:w:/p/khall/EV5cC5\\_V4mdJtHuQY6llzWsBgsIzXsDNNF11QimJGIUDKA?e=WhPCqg](https://arkansasstatechamber-my.sharepoint.com/:w:/p/khall/EV5cC5_V4mdJtHuQY6llzWsBgsIzXsDNNF11QimJGIUDKA?e=WhPCqg)

All bills we are tracking are posted on our website, by category, and can be reviewed by clicking this link: <https://www.arkansasstatechamber.com/governmental-affairs/legislative-tracking/>

### LEGISLATIVE SESSION INFORMATION

To view schedules, calendars, bill information and legislator information, click [www.arkleg.state.ar.us](http://www.arkleg.state.ar.us).

### Legislative Message Center

House of Representatives: 501-682-6211  
Senate: 501-682-2902

### State Chamber/AIA 2019 Legislative Agenda

To review our 2019 Legislative Agenda, click this link:  
<https://www.arkansasstatechamber.com/wp-content/uploads/2019/01/AR-StateChamberAIA-2019-Legislative-Agenda.pdf>

### Live Streaming from the Capitol

The House and Senate have links to live streaming of their committee meetings and floor session online.

- House: <https://www.arkansashouse.org/>
- Senate: <http://www.arkansas.gov/senate/>

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