



93rd General Assembly Thursday, March 12, 2021 – Session Day 61

TODAY AT THE CAPITOL

The House and Senate are in recess until 1 p.m. on Monday, March 15.

NEW BILLS

WORKERS' COMPENSATION – State Chamber/AIA Priority Agenda Bill

SB 530 by Sen. Dave Wallace and Rep. Jack Ladyman seeks to decrease the amount of a workers' compensation third-party liability that an employer, carrier, or (newly added) self-insured carrier is entitled to, from two-thirds to one-half of the proceeds that remain after payment of costs. It also provides that the rights of the employer, carrier, or self-insured entity to recover benefits paid as a result of either settlement or judgment against the third party are absolute.

When an employee is injured on the job, the employer and/or its insurance carrier are obligated to compensate the injured employee for lost wages and/or medical bills. Arkansas law requires an employee to have Workers' Compensation (WC) insurance coverage and the injured employee is compensated regardless of whether the employer has any fault for the injury.

Oftentimes, an injured employee brings a claim against a third party alleging that it negligently caused the accident and injury. That claim seeks to recover lost wages and medical bills, all of which are already being paid by the WC insurer/employer.

Arkansas law states that the employer has a subrogation right against any such recovery for the negligence claim. That is, if the employee/plaintiff recovers lost wages and medical bills from the third party – amounts the employer has already paid to the employee/plaintiff – the employer has a right to subrogate against, or share in, that recovery.

However, the Arkansas courts have made the employer's subrogation rights subject to the "made whole" doctrine. That is, if the employee is not "made whole" by the third-party recovery, there is no right of subrogation at all. This is despite the fact that any recovery whatsoever for an injured employee against a third party is a double recovery, or a windfall.

Arkansas is one of six (6) states that applies the "made whole doctrine." While the methodology differs, the remaining states allow an employer the right to recover some portion of the third-party recovery. Texas courts, for instance, take the position that allowing employers to share in the recovery prevents double recovery and strengthens the workers' compensation system. **Even California allows the employer to share in the recovery.**

In addition to a strict adherence to the "made whole doctrine", the Arkansas Court of Appeals recently issued an opinion that exacts punishment on an employer that asks for a

made-whole determination. In that case, Liberty Mutual paid WC benefits to the injured employee. It then intervened in the personal injury lawsuit seeking a determination the employee was made whole, therefore giving rise to a right of subrogation. The court first determined that the employee was not made whole. Following that, it ordered that Liberty Mutual pay attorney's fees to the employee.

The Court of Appeals has stated that the right of subrogation under Arkansas law, in part, is to "protect the rights of the workers' compensation carrier and the employee." It is impossible to conceive of a procedure or penalty more punitive toward assertion of the carrier's right of subrogation or more of a deterrent to protecting the interests of Arkansas' small businesses in keeping their workers' compensation premiums and costs of doing business down, than this decision.

Arkansas believes that the purpose of the subrogation statute is also to ensure that an employee is not overcompensated to the detriment of the carrier, and ultimately, the greater public. Yet it penalizes not the employee for the making the routine and often spurious claim of not being made whole, but the carrier for merely asserting the right granted to it by the Arkansas legislature.

YESTERDAY AT THE CAPITOL

FEDERAL INCOME TAX SAVINGS FOR PASSTHROUGH ENTITIES | State Chamber/AIA Priority Agenda Bill

HB 1209 by Rep. Joe Jett will let passthrough businesses choose (elect) to pay Arkansas tax at the entity level, as a flat tax at the top rate of 5.9 percent, which will allow the Arkansas taxes paid to be 100 percent deductible for federal purposes.

This bill passed the Senate yesterday, 35 to 0 and it has been sent to the Governor. If you asked your Senator to vote for this bill, please say thank you.

WORKERS COMPENSATION | State Chamber/AIA Priority Agenda Bill

HB 1488 by Rep. Justin Gonzales and Sen. Ben Gilmore is designed to allow an employee to make a claim under workers' compensation for COVID-19 if the employee proves it is a workplace exposure. This provides protection for employers against workers' compensation claims becoming tort claims simply because the employer knows exposure to COVID-19 is possible, likely, or certain. Workers' Compensation is the exclusive remedy for workers injured on the job in Arkansas, which means that they cannot sue their employers in court for on-the-job injuries. The Arkansas Supreme Court has ruled that intentional acts by the employer are exempt from the exclusive remedy doctrine, allowing employees to sue employers in court for intentional acts.

This bill passed in the Senate yesterday 34 to 0 and has been sent to the Governor.

UNEMPLOYMENT INSURANCE - State Chamber/AIA Priority Agenda Bill

HB 1407 AND HB 1409 by Rep. Robin Lundstrum and Sen. Ricky Hill seek to cap the unemployment insurance stabilization tax for 2022 (**HB1407**) and cap the wage base (amount of each employee's wages subject to UI tax) at \$10,000 for 2022 (**HB1409**).

These bills passed 34 to 0 in the Senate and have been sent to the Governor.

COVID LIABILITY PROTECTION FOR BUSINESSES

HB 1487 by Rep. Justin Gonzales and Sen. Ben Gilmore would provide an entity or individual immunity from civil liability for damages or injuries caused by exposure to COVID-19 on business premises or during an activity they managed. This bill applies to claims in state or federal court or before the Arkansas State Claims Commission. It excludes willful, reckless, or intentional misconduct and workers' compensation benefits. It presumes good faith conduct if they are substantially complying or attempting to comply with issued guidelines. Set to expire May 1, 2023.

This bill received a Do Pass from the House Judiciary Committee on March 11.

The State Chamber/AIA supports HB 1487.

UTILITY RATE REVIEW

SB 489 by Sen. Breanne Davis and Rep. John Maddox seeks to make various changes to the Formula Rate Review Act, adding regulatory parameters to the Public Service Commission's electric utility rate review process.

This bill received a Do Pass recommendation from the Senate Insurance and Commerce Committee.

HB 1662 by Rep. John Maddox and Sen. Breanne Davis is identical to **SB 489**.

This bill was approved by the House 94 to 0.

The State Chamber/AIA supports **SB 489** and **HB 1662**.

COVID LIABILITY PROTECTION FOR HEALTHCARE WORKERS

HB 1521 by Rep. Austin McCollum and Sen. Ben Gilmore will provide some level of protection against COVID-19 personal injury claims against healthcare workers for any damages, injuries, or death caused by or resulting from COVID-19.

This bill passed the Senate 34 to 0 on March 11.

The State Chamber/AIA supports HB 1521.

SCIENCE OF READING

SB 349 by Sen. Alan Clark and Rep. Keith Brooks seeks to prohibit schools from using reading programs that are not aligned with the science of reading. This bill was amended March 11 to primarily address how to enforce.

This bill is on Monday's agenda in the Senate Education Committee.

The State Chamber/AIA supports the science of reading.

MEDICAL ETHICS

SB 289 by Sen. Kim Hammer and Rep. Brandt Smith seeks to ensure a right of conscience for all healthcare institutions, healthcare payers and medical practitioners, prohibiting discrimination based on medical decisions made due to religious, moral, ethical or philosophical principles with limited exceptions.

This bill was amended March 9 and received a Do Pass recommendation from the House Public Health, Welfare and Labor Committee on March 11.

SCHOOL START DATE

HB 1237 by Rep. Mark Lowery has been amended to set the school start date no earlier than two weeks before Labor Day and would begin in the 2022-23 school year.

The amendment was adopted on March 11 and awaits consideration in the House Education Committee.

STATE CHAMBER/AIA PRIORITY AGENDA BILLS

BILL SUMMARY AND STATUS OF STATE CHAMBER/AIA PRIORITY AGENDA BILLS, [CLICK HERE](#).

BILLS WE OPPOSE

OCCUPATIONAL LICENSING

HB 1667 by Rep. Tony Furman would require all occupational licensing entities to recognize licenses from other states and grant licenses based on work experience in other states if that state does not require a license. The bill defines "applicant" as an individual seeking an occupational or professional license. We hosted a meeting of our Occupational Licensing Working Group and almost 50 people participated. The group was unanimous in its opposition to this bill.

The group agreed that this bill will apply to all professional licenses as well as the trade licenses. This issue came up a few years ago by a bill that was viewed by what became our Working Group as essentially the end of occupational licensing in Arkansas. Since then, the Governor created the Red Tape Reduction Working Group, which spent almost two years studying the licensing laws and rules in Arkansas. The Occupational Licensing Advisory Group (OLAG) was formed to provide information to the Red Tape Group. The Red Tape group's charter expired, but a subsequent group was formed to which OLAG continues to report its work. OLAG consists of most of the licensing agencies in the state, along with some interest groups that include the State Chamber of Commerce. Every agency in OLAG has reviewed their licensing and reported on updates. A subsequent Act requires a set number of agencies to report to the legislature every year. So, our group views **HB 1667** as an attempt to undermine the hard work done by two previous General

Assemblies, most state licensing authorities and many business interests.

In our meeting, some of the concerns discussed included: this bill would put apprenticeship programs in Arkansas at a disadvantage, it would create a big administrative burden for the state and whatever state in the country that has the worst licensing laws could become the effectual law in Arkansas. Professional groups are extremely concerned. If a person cannot qualify for a professional or occupational license in Arkansas, all that is required is to obtain a license in another state with less rigorous standards, hold that license for a year, and then apply for a license in Arkansas. Arkansas licensing authorities would be required to accept the licenses from any state irrespective of the qualifications for the license in that state. Some licensing authorities collect fees for bonding or loss pools, which would not apply to people coming in with an out-of-state license. Two pieces of legislation from 2019 set up a good system of licensing reciprocity laws in Arkansas and rules were developed to deal with states that did not require licenses.

One of the most serious concerns about this bill is it would require Arkansas to grant a license to someone who has worked for three years in an occupation in another state that does not have a licensing requirement. Without a thorough study of the laws in other states for "on-the-job training" in various occupations, we cannot know which occupations Arkansas would be throwing open to the untrained. There is no definition for what is required to satisfy the requirement for having "worked" in the profession or occupation.

We are collecting a list of businesses and organizations that are opposed to **HB 1667**. If you'd like to add your name to the list, please let us know.

This bill awaits consideration in the House Public Health, Welfare and Labor Committee. Based upon our meeting, the State Chamber/AIA sees this as a very broad and very dangerous bill that we oppose.

CLOSING OF AEDC CHINA OFFICE

SB 252 by Sen. Trent Garner would prohibit the Arkansas Economic Development Commission from establishing or maintaining an office in China and close any existing offices in China as of the effective date of the act.

This bill awaits consideration in the House Agriculture, Forestry and Economic Development Committee.

The State Chamber/AIA opposes this bill.

STATE CHAMBER/AIA BILL TRACKING

Total Bills Filed: 1253 | New Bills Filed: Senate 7 | House 22

Bills and resolutions added to State Chamber/AIA Tracking: 13 | Total Tracked: 464

To view a list of 13 new bills added to our tracking, click [here](#).

To see all tracked bills saved by category, click [here](#).

LEGISLATIVE SESSION INFORMATION

To view schedules, calendars, bill information and legislator information, click [here](#).

To view the statement regarding Capitol access and committee attendance, click [here](#).

Legislative Message Center

House of Representatives: 501-682-6211

Senate: 501-682-2902

STATE CHAMBER/AIA INFORMATION

2021 LEGISLATIVE AGENDA

To view the State Chamber/AIA's legislative agenda, click [here](#).

BILL SCORING

Floor votes on bills that address issues in our Legislative Agenda and/or are discussed in a Daily Legislative Update are subject to being scored.

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