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93rd General Assembly Friday, March 19, 2021 – Session Day 68

TODAY AT THE CAPITOL

The House and Senate are in recess until 1 p.m. Monday, March 22.

*** CALL TO ACTION ***

WORKERS' COMPENSATION – State Chamber Priority Agenda Bill

SB 530 by Sen. Dave Wallace and Rep. Jack Ladyman *is on Monday afternoon's agenda in the Senate Public Health, Welfare and Labor Committee.*

Please ask your State Senator to vote for SB 530.

This is a very important bill that impacts all but the very smallest Arkansas employers. It seeks to re-establish the right of subrogation in workers' compensation claims. This common insurance procedure is authorized in the workers' compensation laws, but was taken away by a judge's decision.

Subrogation is the right held by insurance carriers to legally pursue a third party that caused an insurance loss to their insured and recover amounts they paid from the third party.

Subrogation is common in the property and casualty insurance world. A simple example is a car wreck. Person A runs a red light and hits Person B. A's insurance company tells B they want to investigate the traffic light before agreeing to fix B's car. B doesn't want to wait on the investigation, so B has their own insurance company fix their car. B's insurance company then has the right to "subrogate" the amount they paid to fix B's car from A's insurance company or A.

In workers' compensation cases involving serious injuries, the disability and medical payments made by the workers' compensation carrier can be significant. Subrogation is a fair way to prevent an injured worker from collecting disability and medical payments from workers' compensation and then recovering those same amounts again from a third party. Such double recovery is contrary to insurance theory. It is important for employers to have their workers' compensation payments recovered to avoid being charged for the claim payments, which will impact their rates.

The judicial decision that blocked the use of subrogation in workers' compensation did so by applying the common law principle of "made whole" to statutory coverage. This decision made Arkansas one of only six states in the country that apply the "made whole" doctrine. Even California allows subrogation.

If adopted, **SB 530** will set the maximum amount of subrogation a workers' compensation carrier can collect from a third party settlement at 50 percent or the amount they paid.

The Arkansas Court of Appeals has stated the right of subrogation under Arkansas law, in

part, is to “protect the rights of the workers’ compensation carrier and the employee.” *Wentworth v. Sparks Regional Medical Center*. 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 low.

SB 530 requires a two-thirds majority to pass, so your contacts are important and needed.
Vote Yes on SB 530.

YESTERDAY’S BILLS

INDEPENDENT TAX APPEALS COMMISSION-State Chamber/AIA Priority Agenda bill

HB 1468 by Rep. Joe Jett and Sen. Jonathan Dismang is our bill that seeks to create an Independent Tax Appeals Commission and a technical companion bill, **HB 1705**.

Both bills passed in the House yesterday 95 to 0 and 97 to 0.

The State Chamber/AIA supports **HB 1468 & HB 1705**.

FIREARMS IN VEHICLES ON BUSINESS PARKING LOTS

SB 555 by Sen. Alan Clark seeks to repeal and replace the subsection that prohibits employers from restricting the storage of firearms inside employees' cars in an employer parking lot. It exempts parking lots owned by the Department of Corrections or an entity contracting with a division of the department to provide work release or post-incarceration housing services. It provides that an employer has the right to prohibit firearms for the following circumstances: a person who is not an employee storing a firearm in an employee’s vehicle, having a firearm if the employee is using an employer-owned vehicle, the employee is the subject of an active or pending employment disciplinary proceeding, and from bringing a firearm on a parking lot if the premises is being used for residential housing.

This Senate passed this bill 26 to 6 yesterday.

CHANGES TO ADFA BOARD

SB 475 seeks to change the board composition and appointment process of the Arkansas Development Finance Authority and require house-related tax credits to be awarded equally among the four congressional districts each year.

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

AUTONOMOUS VEHICLES

HB 1562 by Rep. Austin McCollum and Sen. Lance Eads would make various changes to autonomous vehicle regulations and limit local entities’ authority to impose requirements. It also would authorize on-demand driverless capable vehicle networks, which may connect a passenger or goods to a fully autonomous vehicle.

The House passed this bill yesterday afternoon 93 to 0.

We support this bill.

CHANGES TO MINIMUM ROYALTY PAYMENTS

HB 1725 by Rep. Rick Beck seeks to clarify laws relating to the minimum royalty to be paid to a royalty owner from a gas drilling unit following an integration order including lawful deductions and leases with a working interest owner. It would remove language regarding lawful deduction including federal and state taxes levied and provide that the lawful deduction is established by the commission or a court of competent jurisdiction. It also provides that if a royalty owner has a lease with a working interest owner, the interest owner will pay the difference on the amount of the one-eighth royalty required; if a working interest owner markets the working interest owner's gas through the operator, the operator will distribute the difference on the amount of one-eighth royalty required.

This bill addresses a complicated statutory royalty framework whereby oil and gas working interest owners (industry owners of oil and gas leases from landowners) and the operator of a drilling and production unit share responsibility for paying a blended minimum royalty of one-eighth from gas sold by all interest owners to each royalty owner in the unit proportionately. The bill attempts to alter the existing statute to shift more expenses to the owners of oil and gas leases, and to provide the Oil and Gas Commission with authority to determine the meaning of royalty expense deduction provisions in oil and gas leases. The

existing statutory scheme has been in place since 1985.

Concerns about this bill include: (1) it attempts to allow an administrative agency to adjudicate or override the provisions in a private contract; (2) it disturbs a longstanding statutory system that has been the basis of extensive financial investment in the Arkansas natural gas industry; (3) it would create an adverse business environment for future natural gas industry investment in Arkansas; and (4) it contains serious ambiguities that would be expected to generate a large volume of litigation against the oil and gas industry. *This bill was amended yesterday and is on Monday's agenda in the House Agriculture, Forestry and Economic Development committee.*
We oppose this bill.

NEW BILLS

PHARMACY BENEFITS MANAGEMENT

HB 1804 by Rep. Brian Evans and Sen. Ron Caldwell seeks to make changes to the Arkansas Pharmacy Benefits Manager Licensure Act. It provides that rules adopted under the subchapter shall not require a pharmacy to maintain a distance greater than five miles for purposes of pharmacy network adequacy. It also would require the Insurance Commissioner to administer and enforce the chapter, as well as promulgate rules to implement the purposes and requirements of the subchapter. It replaces references to healthcare insurers with healthcare payors and includes health insurance companies, health maintenance organizations, hospital and medical services corporations, and entities providing a self-funded health benefit plan, including governmental plans. *This bill has been assigned to the House Public Health, Welfare and Labor Committee.*
We are concerned about this bill.

BILLS WE OPPOSE

OCCUPATIONAL LICENSING

HB 1667 by Rep. Tony Furman would require all occupational licensing entities to recognize licenses from other states. A provision related to granting licenses to people coming from other states who do not have licensing has been removed by a sponsor's amendment. The bill defines "applicant" as an individual seeking an occupational or professional license. *This bill awaits consideration in the House Public Health, Welfare and Labor Committee.*
The State Chamber/AIA opposes this very broad bill.

STATE CHAMBER/AIA BILL TRACKING

Total Bills Filed: 1398 | New Bills Filed: Senate 16 | House 34

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

LEGISLATIVE SESSION INFORMATION

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

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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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