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93rd General Assembly Monday, March 22, 2021 – Session Day 71

TODAY AT THE CAPITOL

The House and Senate will convene at 1 p.m.

Committee Meetings

8:30 a.m. – Public Retirement

9:30 a.m. – Senate Tax | House State Agencies and Insurance/Commerce

10:30 a.m. – Senate Judiciary

Noon – Arkansas Legislative Council-Executive Subcommittee.

2:00 p.m. – Senate Education and Health | House Agriculture, Aging and City/County/Local

*** CALL TO ACTION ***

WORKERS' COMPENSATION – State Chamber Priority Agenda Bill

SB 530 by Sen. Dave Wallace and Rep. Jack Ladyman *is on this 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 property and casualty insurance and it is in the Workers' Compensation law. Workers' Compensation was adopted through an Initiated Act by the people of Arkansas and modified by an Act of the General Assembly in 1993. But the decision of a single judge took subrogation out of workers' compensation.

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 Regl. Med. Ctr.* 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...

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

TODAY'S BILLS

SESSION EXTENSION

HCR 1015 by House Speaker Matthew Shepherd and Senate President Jimmy Hickey would extend the Regular Session from a targeted recess date of April 30 until the body is able to complete work on congressional redistricting, with sine die adjournment to follow.

The legislature needs census data to accomplish congressional redistricting. That data is not expected to be available until September. This Concurrent Resolution would allow the General Assembly to enter an extended recess. During the recess, Interim Committees would meet. It also includes provisions to set the effective date of bills without an emergency clause.

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 deductions including federal and state taxes levied and provide that the lawful deductions are 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 amended bill is on this afternoon's agenda in the House Agriculture, Forestry and Economic Development committee.*

We oppose this bill.

SCHOOL START DATE

HB 1237 by Rep. Mark Lowery has been amended to set the school start day no earlier than two weeks before Labor Day and would begin in the 2022-23 school year. *This bill is on this afternoon's House Calendar.*

LANDLORD TENANT BILLS

HB 1563 by Rep. Jimmy Gazaway would establish a civil eviction process, including

provisions or notice, complaint requirements, jurisdiction, civil pleadings, etc. and prohibits certain terms and conditions in rental agreements and also create a duty that the landlord maintain habitable premises.

This bill is on this afternoon House Calendar.

The State Chamber/AIA is concerned about this bill.

HB 1769 by Rep. Spencer Hawks and Sen. Jason Rapert seeks to establish implied residential quality standards at the time of delivery to a tenant in residential lease or rental agreements that do not contain an option to purchase.

a) Includes all lease or rental agreements entered into or renewed after November 1, 2021, excluding circumstances when standards are not met due to force majeure events, including the failure of public utilities and epidemics or pandemics.

b) Includes an available source of hot and cold running water, electricity, potable drinking water, a sanitary and up-to-code sewer system, a functioning roof and building envelope, and a functioning heat and air system to the same extent as the time of the agreement.

c) Excludes circumstances when the tenant agrees in writing to renovate or remodel the property.

d) Provides that a landlord is in compliance with the requirements if the tenant signs or fails to return within 2 days a form on which they can list defects at the time of initial possession.

e) Provides that the landlord is in compliance if they cannot remedy noncompliance because the tenant refuses them entry or if noncompliance was caused deliberately or negligently by anyone other than the landlord or their agent.

f) Authorizes tenants to remedy noncompliance solely by terminating the agreement without penalty, if the payment of rent is current and the landlord does not remedy noncompliance within 30 days of receiving notice.

g) Requires a tenant to pay rent regardless of a violation of the standards.

h) Prohibits agreements from prohibiting tenants from installing smoke or carbon monoxide detectors.

i) Removes, from notice to issue writ of possession, the process for defendants to deposit to the court rent due, in order to continue to possess the property.

This bill is on this morning's agenda in the House Insurance & Commerce Committee.

HB 1769 is an alternative option to **HB 1563**.

STATE CHAMBER/AIA PRIORITY AGENDA 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**.

These bills await consideration in the Senate Revenue and Taxation Committee.

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

To view a summary and the status of bills from the State Chamber/AIA's Priority Agenda, click [here](#).

TOMORROW'S BILLS

MEDICAID EXPANSION

SB 410 by Sen. Missy Irving seeks to create the Arkansas Health and Opportunity for Me Act of 2021 (ARHOME), replacing the Arkansas Works Program for expanded Medicaid coverage. Creates incentives for individuals to gain qualified health insurance premium assistance.

This bill is on Tuesday's agenda in the House Public Health, Welfare and Labor Committee.

We support this bill.

PROHIBIT MANDATORY COVID IMMUNIZATIONS OR VACCINES

HB 1547 by Rep. Robin Lundstrum and Sen. Breanne Davis proposes an Act to Prohibit Mandatory 2019 (COVID-19) Immunizations or Vaccines for students and employees. This bill has been amended since it was filed.

This bill is on Tuesday's agenda in the House Public Health, Welfare and Labor Committee.

We oppose this bill.

MAXIMUM TRAIN LENGTHS

HB 1631 by Rep. Vivian Flowers seeks to set the maximum length of a railroad train operating on a main line or branch line at 8,500 feet subject to administrative penalties imposed by the Department of Transportation.

This bill is on Tuesday's agenda in the House Transportation Committee.

The State Chamber/AIA opposes this bill.

TAX CREDIT FOR HIRING FORMER OFFENDERS

HB 1719 by Rep. Robin Lundstrum would allow an income tax credit for employers of former offenders for each offender employed for at least 40 hours per week at pay that is at or above the state minimum wage. It includes former offenders incarcerated for felonies and released within a year prior to the date they were hired. It authorizes funds provided by the credit exceeding tax liability to be refunded to the taxpayer. The credit is calculated at \$3,000 after one year of consecutive employment, \$2,000 after 2 years, and \$1,000 after 3 years. It would require a) the taxpayer to register with the Division of Workforce Services as a participant in the program, enroll the offender in their health insurance plan after 24 months of employment, if provided, and ensure random drug testing and b) the offender to register with the Division as a participant, enroll in the health insurance program offered through the Arkansas Works Program, and agree to random drug testing.

This bill is on Tuesday's agenda in the House Revenue & Taxation Committee.

This is a good bill.

UNEMPLOYMENT INSURANCE WEEKS

HB1676 by Rep. Austin McCollum seeks to scale back the duration of unemployment compensation benefits in increments as indexed to the current unemployment rate. It would set the lower cap at 12 times the weekly benefit amount at or below 5.5 percent unemployment and sets the upper cap at 16 times the weekly benefit at more than 7 percent unemployment. The effective date would be January 1, 2022. *This bill is on Tuesday's agenda in the House Public Health, Welfare and Labor Committee.*

This is a concept that is used in a few states. We have plans to consider this for the 2023 session. The current UI system is very old and most likely cannot handle this type of change before it is upgraded.

INCOME TAX REDUCTION

HB 1403 by Rep. John Maddox seeks to adjust the rate of taxation for the top two income brackets. It would change the rates for incomes \$22,200 to \$79,300 from 5.9 to 5.8 percent. And change the rates for those earning over \$79,300 to 2 percent on the first \$4,000 of income; 4 percent on \$4,001 to \$8,000 of income; and 5.8 percent on income of \$8,001 and above. The effective date would be January 1, 2022.

This bill is on Tuesday's agenda in the House Revenue & Taxation Committee.

BILLS OF CONCERN

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 35
Bills and resolutions added to State Chamber/AIA Tracking: 20 | Total Tracked: 518

To view a list of the 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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