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93rd General Assembly Tuesday, March 23, 2021 – Session Day 72

TODAY AT THE CAPITOL

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

Committee Meetings

7:30 a.m. – JBC-PEER Review

8:30 a.m. – Joint Budget Committee

9:30 a.m. – Senate Agriculture and City/County/Local | House Education

11:00 a.m. – Senate Transportation

Noon – House Rules

2:00 p.m. – Senate State Agencies and Insurance/Commerce | House Tax and Health

*** CALL TO ACTION ***

WORKERS' COMPENSATION – State Chamber Priority Agenda Bill

SB 530 by Sen. Dave Wallace and Rep. Jack Ladyman *received Do Pass recommendation from the Senate Public Health, Welfare and Labor Committee yesterday afternoon and is on this afternoon's Senate Calendar. **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.

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 low.

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

TODAY’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 today’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 today’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 today’s agenda in the House Transportation Committee.
The State Chamber/AIA opposes this bill.

PHASE OUT OF SOFT DRINK TAX

HB 1546 by Rep. Lanny Fite and Sen. David Wallace seeks to sunset the Soft Drink Tax Act and distributes additional funds to offset the effect of phasing out the tax on the Arkansas Medicaid Program Trust Fund. Phase out begins tax year 2023. The bill provides for transfer of funds to the Arkansas Medicaid Program Trust Fund: for the fiscal year beginning July 1, 2022, \$4,108,00; 2023, \$16,022,000; for 2024, \$30,811,000; for 2025 and onward, \$39,438,000.

This bill is on this afternoon’s House Calendar to adopt an amendment that adds triggers to the phase out.

The State Chamber/AIA supports 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 two years, and \$1,000 after three 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 today’s agenda in the House Revenue & Taxation Committee.

This is a good bill.

INDEXING WEEKS OF UNEMPLOYMENT INSURANCE

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 today'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. We have discussed upgrading the system with DWS.

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 is on this afternoon's Senate Calendar.

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 today's agenda in the House Revenue & Taxation Committee.

CONSTITUTIONAL AMENDMENT REFERRALS

The Senate State Agencies Committee will hear presentations on **SJR 6, 14, 15 & 16** today.
To review all 43 Joint Resolutions, click [here](#).

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 bill awaits 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](#).

BILLS OF INTEREST

RIGHT TO REPAIR

SB 332 by Sen. Missy Irvin and Rep. Jim Dotson seeks to require the original equipment manufacturer of digital medical equipment to make available to an independent repair provider for a medical facility or an owner of digital electronic equipment documentation, parts, service tools, etc. Would become effective on January 1, 2022.
This bill is on this afternoon's Senate Calendar.

BILLS WE OPPOSE

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.

This bill places self-insured groups under the provisions of the state PBM Licensure Act, a law that established a single rate system for every pharmacy in the state regardless of the quality of services provided. If passed:

Pharmacists will receive a guaranteed payment (NADAC or wholesale acquisition cost) for every drug dispensed at that pharmacy (brands, generics, and high-cost specialty drugs)

for all self-insured consumers. Thus, the price paid is based on state-mandated minimums determination, not a competitive marketplace. Without competition, prices go up.

It will expand price regulation to self-insured employers/groups; and expand the pricing and revenue mandate for one segment (Pharmacy) of the healthcare delivery system.

All self-insured employers would be required to share proprietary contract information including rebates received and distributed to the employer/payor; detailed itemized payor payment data to a PBM; detailed itemized data paid by the PBM for pharmacists' services.

HB 1804 expands onerous reporting requirements to all self-insured groups. Currently, these rules apply to insurance carriers and PBMs for their fully insured blocks of business.

This bill would prohibit self-insured groups from negotiating contracts to establish specialized pharmacy networks that are created to control costs for their employees.

This bill is an intrusion into private contracts between large employers and entities providing pharmacy services and allows state oversight of those private contracts.

This bill has been assigned to the House Public Health, Welfare and Labor Committee. We oppose this bill.

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.

BILLS OF CONCERN

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 bill has been assigned to the House Judiciary Committee.

YESTERDAY'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 before *sine die* adjournment.

This resolution passed 92 to 1 in the House yesterday and is on this afternoon's Senate Calendar.

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.

This bill failed yesterday afternoon 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 on 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.

STATE CHAMBER/AIA BILL TRACKING

Total Bills Filed: 1417 | New Bills Filed: Senate 11 | House 4

Bills and resolutions added to State Chamber/AIA Tracking: 6 | Total Tracked: 524

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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