

# Missouri Hotel and Lodging Association

## Gamble & Schlemeier

### 2011 Legislative Session Report

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February 19, 2011

#### Quick Read Summary

After the snowstorm pushed session back a week, they are at full speed once again. The “fix six” below continue to move despite a temporary wrong turn the Senate took mid week on the workers compensation bill. Of the bills making movement this week were the workers compensation fix (co-employee liability), the minimum wage fix (removing the cost of living index), the unemployment compensation bill (allowing the state a longer period to repay the fed unemployment comp loan, easing payments on employers) and our tourism stack tax bill, which disallows a city and a county from simultaneously imposing a room tax on local hotels. The Budget committees will begin to make changes to department spending this week and deliver their recommendations to the full Budget committee by March. I don’t anticipate changes to the Tourism line item. Below are more details on each of these items.

#### Details

##### Budget

The full budget committee has asked the sub appropriations committees to finalize modifications to the Governors proposed budget and have their recommendations completed by the end of the month. I anticipate little change to the Governors recommended \$13.42M current level funding for the Division of Tourism. More encouraging numbers were reported last week (January’s numbers) regarding the growth of Missouri’s economy and specifically the state’s fiscal forecast. Below is are the committee members and if you know them, call them to encourage full funding for the division of tourism.

##### Appropriations for the Division of Tourism

Hoskins, Denny

Long, Thomas

Bahr, Kurt

Crawford, Sandy

Elmer, Kevin

Hinson, Dave

Johnson, Delus

Kander, Jason

Korman, Bart

Kratky, Michele

Lant, Bill

Pace, Sharon

Schieffer, Ed

Schupp, Jill

White, Bill

### **Tourism Tax Stack Fix Introduced**

HB400 Diehl (087) - Representative John Diehl, R-Creve Couer, has filed HB400 to clean up the state statute disallowing multiple political subdivisions from using various statutes to simultaneously impose room taxes local hotels. The stacking of taxes was proposed in the Cities of Clayton, Richmond Heights and St. Peters. As you know those were defeated however we suspect those same cities and others will attempt in future elections when the climate is different than in 2010. Still working on a Senate Sponsor. I believe we will have and have it introduced by month end.

### **Guns on Parking Lots Introduced**

#### **HB 252 Cox, Stanley**

Establishes the Business Premises Safety Act – referred to General Laws Committee and will be heard this week

This bill states “An owner or operator of a business shall not restrict any person from lawfully possessing a firearm in a motor vehicle in possession of such person except a motor vehicle owned or leased by such business”.

*“Business” is defined as, any commercial or agricultural enterprise including, but not limited to, sales, services, manufacturing, food service, property management or leasing company, or any other entity, whether for profit or not for profit, which owns, operates, or leases property that is open to the public. The term “business” shall not include commercial residential operations such as, but not limited to, hotels, motels, and apartment complexes;*

It also eliminates the owner of the property from any liability that may arise from that person using that weapon on your property. They can only possess it in their own vehicle.

**SB 281 - Kraus** - Requires the cumulative state and local tax rate to be printed on sales receipts. Below is a statement he released regarding the filing of the bill, which will give you insight and reasoning.

A Kansas City area business was overcharging customers for sales tax. An investigation, following on the heels of similar incidents in Kansas, revealed that consumers were charged a different rate at a drive-through window than at a register inside the restaurant.

Consumers had no way of knowing what the correct tax rate should have been. With more than 1,000 taxing jurisdictions in the state, each with a different total tax rate, it is nearly impossible for consumers to know the rate at any specific location.

Senate Bill 281 simply requires any business that uses electronically printed receipts to print the total tax rate on the receipt. With this change, a consumer can, if they wish, do a quick calculation to be sure they paid the correct tax. This will also give businesses a chance to double check the tax rates in their system so that they can be sure they comply with local tax laws.

Keep in mind that any extra tax collected by a business goes to the state. While there is a process in place by which the business can get a refund from the state for taxes it paid in excess of the correct rate, there is no process for any of that money to be returned to the consumer. The best way to stop erroneous taxation and protect Missourians is to give consumers the knowledge they need when they purchase a product or service.

### **“Fix the Six” Business Friendly Legislative Initiatives:**

- 1) Employment Law Reform:** In recent years, Missouri has seen a disturbing trend of legal decisions eroding the intent of Missouri’s employment law, tipping the scales against employers in court. In case after case, Missouri’s courts are positioning the state as vastly more anti-business compared to our surrounding states. The Fix the Six legislative priorities seek to address the erosion of

discrimination law that is putting Missouri business at a competitive disadvantage. One important change would reform the Missouri Human Rights Act regarding discrimination claims to more closely reflect federal Title VII protection. The MHRA has been interpreted in ways more plaintiff friendly than the federal statutes. Missouri also sets a lower threshold for employer liability under the MHRA than is required under federal laws and the laws of neighboring states. This lower threshold makes it much easier for employee plaintiffs to avoid summary judgment, to get claims to an expensive jury trial, and to impose liability on the employer and individual supervisors. Another change sought would cap compensatory jury awards and impose lower limits on punitive damages. Unlike federal discrimination statutes, compensatory damages under the MHRA are unlimited and punitive damages are capped at \$500,000 or five times the jury award. The federal laws use a sliding scale of combined compensatory and punitive damages caps ranging from \$50,000 to \$300,000. Also among legislative priorities is a tightening of whistleblower protection, so that it applies only in cases when an employee alerts authorities to an actual illegal act. **This bill will be heard in the Senate Commerce Committee this week. The House has this bill on their debate calendar for this week.**

**2) Workers' Compensation Reform:** As in the area of employment law, the courts interpretations of Missouri's workers' compensation laws are also changing the playing field for Missouri employers – in a negative way. Unintended consequences of workers' compensation reforms passed in 2005 could catch businesses off guard, because these changes are being interpreted to exclude protections for incidents that have been covered by the workers' compensation system for decades. Following the court case *Robinson v. Hooker*, employees who sustain work-related injuries may sue co-employees for negligence in a civil action. Missouri employers may find it difficult to recruit and retain employees in key supervisory and safety positions without offering to indemnify them against lawsuits from co-workers. In the *Franklin v CertainTeed Corp* case, the court ruled that occupational diseases are no longer the exclusive domain of workers' compensation. As a result, such cases may instead be pursued in civil court for damages against employers – vastly increasing the time and expense necessary to resolve cases. The Fix the Six Coalition will advocate legislation to reverse these dangerous court cases and codify the intent of the 2005 reforms. **(HB91 & SB8- below) – The House stopped short of finally passing this bill this week, unhappy about the progress of the Senate. As you recall, last week the Senate initially gave first round approval for their version of the “fix” but after an amendment was attached which many believe would have weakened the bill by expanding the types of occupational diseases for which a business would have been liable, the bill was backed up, reopened, fixed, but then the Senate stopped short of re-approving.**

**3) Franchise Tax Cap:** Missouri's corporate franchise tax also impedes Missouri's competition with

other states. Missouri is one of a few states that imposes both a corporation income tax and a franchise tax. The corporate franchise tax is an antiquated tax that was enacted as a temporary tax in 1914 before there was a corporate income tax. Still imposed today on Missouri's large employers, it represents double-taxation and should be eliminated. The Fix the Six agenda contains a provision to limit the annual assessment of corporate franchise tax at 2010 levels and seeks to phase out the tax over time. **The Senate gave final approval to this bill that caps the franchise tax at the amount that business paid in 2010. I suspect none of you pay a franchise tax. It is awaiting House Committee assignment.**

**4) Minimum Wage Escalator Elimination:** Missouri's minimum wage law allows an automatic inflation adjustment based on any increase in the cost of living as measured by the Consumer Price Index (CPI). This automatic increase could result in a higher minimum wage in Missouri than the federal minimum wage. **HB61 & SB110 below** – The House Committee passed this bill out of committee, and capped the tipped employee wage at \$3.63 per hour. Here is the language of the bill; The minimum wage calculated under this section shall not exceed the federal minimum wage. Except as may be otherwise provided under section 290.512, every employer shall pay to each employee who receives compensation in the form of gratuities a rate of \$3.63 per hour. **The Senate will hear their identical version this week. I believe the House will pass this bill this week.**

**5) Tort Reform:** The overall litigation environment is a key factor for a business deciding to invest, locate, remain or sell products and services in Missouri. A specific area in Missouri's tort system that is putting our state at a competitive disadvantage is the current law for assigning fault and business liability known as modified joint and several liability. It means that businesses can be held liable for the entire cost of litigation if found to be 51 percent or more at fault in the case. Businesses can be on the hook for the entire cost of a claim and settlement, even if there are multiple businesses at fault for alleged damages. In fact, a Missouri business can be held liable for the damages of a third party that was not in the litigation, but is also at fault. Several neighboring states have reformed laws to move toward a pure several liability system to determine fault and liability, apportioning cost between all parties according to the percentage of fault attributed to each. The Fix the Six Coalition also is advocating for Missouri to adopt a pure several liability system. **This bill was heard in committee this week and passed out. It will most likely pass the House but uncertain about the Senate.**

**6) Unemployment Insurance Reform:** Missouri's sagging economy and growing unemployment rates during the economic downturn has bankrupted the state's unemployment insurance trust fund and is pointing Missouri employers toward a tax increase to pay back federal loans. Missouri has borrowed more than \$722 million from the federal government to pay unemployment claims.

Employers will begin losing Federal Unemployment Tax Act (FUTA) tax credits this year if the state does not repay its loans, which next year could result in a tax increase of \$21 per employee employed by a Missouri business. That amount doubles the following year and triples in the year after that. Missouri could avoid this increase through bonding. The ability to issue bonds to repay these loans to the federal government already exists in the law, but the term of the bonds must be lengthened. Without lengthening the term, the principal and interest payments would exceed the amount allowed under the Hancock provisions of the Missouri Constitution. Among the Fix the Six legislative agenda is a provision to lengthen the term of bonding to aid in paying back federal UI loans, reducing interest and securing FUTA credits. This bill has passed the House and is in the Senate for their consideration. I suspect this to move quickly.

### **Other Bills of Interest**

[-HB 37](#) -[Pace](#)-Prohibits an employer from using a job applicant's personal credit history as a hiring criteria except where the credit history is shown to be directly related to the position sought by the applicant.

**Bill History:**-02-08-11 H Referred to House Committee on House-Workforce Dev. and Workplace Safety

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[-HB 45](#) -[Hoskins-121](#)-Changes the laws regarding the Big Government Get Off My Back Act and provides an income tax deduction for certain small businesses that create new full-time jobs.

**Bill History:**-01-24-11 S Reported to the Senate and first read

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[-HB 56](#) -[Brown-50](#)-Authorizes a tax credit for employers who hire certain high school students for summer employment.

**Bill History:**-01-20-11 H Referred to House Committee on House-Economic Development

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[-HB 61](#) -[Nolte](#)-Prohibits the state minimum wage from exceeding the federal minimum wage.

**Bill History:**-Referred to House Rules

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[-HB 76](#) -[Nolte](#)-Limits the tax liability of a corporation for corporate franchise taxes to no more than \$2 million annually.

**Bill History:**-01-13-11 H Referred to House Committee on House-Tax Reform and scheduled for hearing on Feb 14th

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[-HB 91](#) -[Nolte](#)-Requires co-employees to be released from liability for negligence in performing the nondelegable duty of an employer to provide a safe workplace when the negligence contributes to injury or death.

**Bill History:**-On House Debate Calendar

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[-HB 116](#) -[Flanigan](#)-Authorizes an amnesty from the assessment or payment of all penalties, additions to tax, and interest on delinquencies of unpaid taxes which occurred on or prior to December 31, 2010.

**Bill History:**-Bill was heard in committee

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[-HB 160](#) -[Brandom](#)-Requires co-employees to be released from liability for negligence in performing the nondelegable duty of an employer to provide a safe workplace when the negligence contributes to injury or death.

**Bill History:**-01-13-11 H Referred to House Committee on House-Workforce Dev. and Workplace Safety

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[-HB 161](#) -[Cox](#)-Authorizes Pettis County, upon voter approval, to change its transient guest tax from \$2 per room, per night to up to 5% per occupied room, per night.

**Bill History:**-Bill heard in committee

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[-HB 208](#) -[Meadows](#)-Prohibits certain persons from being appointed to the Regional Taxicab Commission and establishes a 10-member advisory committee.

**Bill History:**-01-13-11 H Introduced and read first time

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[-HB 316](#) -[Kelly](#)-Changes the laws regarding the collection of money owed the state and establishes the State Debt Collections Act.

**Bill History:**-02-10-11 H Public hearing completed

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[-SB 8](#) -[Goodman](#)-Restricts co-employee liability in workers' compensation cases.

**Bill History:**-Bill back on Debate calendar after being debated and temporarily approved by the Senate it was reconsidered and awaits further action.

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[-SB 15](#) -[Lembke](#)-Allows full deductibility of federal taxes for state income tax purposes.

**Bill History:**-01-12-11 S Referred to Senate Committee on Senate-Ways and Means and Fiscal Oversight

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[-SB 18](#) -[Schmitt](#)-Relating to the corporate franchise tax.

**Bill History:**-Received first round approval, awaiting final vote by Senate

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[-SB 19](#) -[Schmitt](#)-Phases-out the corporate franchise tax over a five year period.

**Bill History:**-Bill to be heard before the Senate Committee on Senate-Jobs, Eco. Devo. and Local Government this week.

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[-SB 31](#) -[Chappelle-Nadal](#)-Nadal-Reduces from 45 to 20 the different types of beer that must be served by certain restaurant bars in order to serve 32 or more ounces of beer for off-premise consumption.

**Bill History:**-01-12-11 S Referred to Senate Committee on Senate-Small Bus./Insurance/Industry

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[-SJR 1](#) -[Ridgeway](#)-Replaces all taxes on income with a sales and use tax.

**Bill History:** 01-05-11 S Read first time

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[SB 103](#) [Green](#) Bars employers from requiring employees to disclose user names or passwords.

**Bill History:** Bill was heard in committee – no action taken, and no testimony in opposition

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[-SB 110](#) -[Crowell](#)-Prohibits the state minimum wage from exceeding the federal minimum wage.

**Bill History:**-01-20-11 S Referred to Senate Committee on Senate-Small Bus./Insurance/Industry

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[-SB 141](#) -[Crowell](#)-Prohibits the receipt of tax credits by campaign contributors.

**Bill History:**-01-19-11 S Introduced and read first time

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[-SB 188](#) -[Lager](#)-Modifies the law relating to the Missouri Human Rights Act and employment discrimination.

**Bill History:**-02-22-11 S Hearing set for 3:00 PM, Senate Lounge Senate-Commerce, Energy and the Environment

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[SB290](#) - Modifies the law that limits indemnity agreements in construction work contracts

**Bill History:** Assigned to Committee: Small Business, Insurance and Industry - Introduced