

# FINE GEDDIE

GOVERNMENT RELATIONS

## THE FINE GEDDIE REPORT

2021 REGULAR SESSION · WEEK NINE

APRIL 9, 2021

### *PROGRESS ON MEDICAL MARIJUANA, PHARMACY BENEFIT MANAGEMENT AND STATE LOTTERY, OPEN RECORDS DISCUSSIONS ARE ONGOING*

Both chambers tackled high-profile issues in an eventful week as work began to accelerate in the session's waning days. Proposals advanced regarding medical marijuana, pharmacy benefit management and a state lottery, and work continued on a controversial rewrite of the state's open records law.

After a series of delays, the House Judiciary Committee gave a favorable report Wednesday to **medical marijuana** legislation. SB46 by Sen. Tim Melson (R—Florence), which picked up 10 amendments during the lengthy committee meeting, is expected to be reviewed by the House Health Committee before being considered on the House floor.

Legislation to regulate the **Pharmacy Benefit Management** (PBM) industry began moving at a rapid pace this week. SB227 by Sen. Tom Butler (R—Madison) had been held in the Senate Banking and Insurance Committee since the early days of the legislative session over concerns brought by employers, PBMs and insurers related to costs that would be borne by employers. A substitute bill was adopted by the committee and passed the Senate the following day. Pharmacists compromised the more objectionable provisions and those that impose the greatest costs to gain support of senators. What remains places PBMs under greater regulators scrutiny, requires greater transparency and guarantees independent pharmacies access to the market without imposing draconian controls on PBMs. The bill has been assigned to the House Health Committee.

#### **Eliminated from the bill are:**

- Regulation of specialty drugs (approx. 43% of total drug expense)
- Copay accumulator requiring coupons be applied to patient out-of-pocket costs,
- Requirement that drug rebates and discounts be passed directly to patients,
- Prohibition on spread pricing,
- Prohibition on steering insureds to mail order pharmacies through incentives,
- Prohibition on steering insureds to limited network pharmacies through incentives,
- Prohibition on the use of customer data to administer the plan or to point insureds to less costly options, and
- Requirement for a PBM to act as a fiduciary.

**Remaining in the substitute bill are:**

- Placement of PBMs under the enhanced regulatory control of and examination by the Department of Insurance,
- Regulation of only non-specialty drugs,
- Prohibitions on mandatory exclusive mail order pharmacy,
- Prohibitions on mandatory exclusive PBM-affiliated pharmacy,
- Prohibition on PBMs discriminating against similar non-affiliated pharmacies on reimbursement,
- Any willing pharmacy provision allowing pharmacies to join a limited network if they meet same terms, conditions and reimbursement,
- Pharmacists may direct insureds to lower cost options,
- Use of incentives for insureds to consume lower cost care such as mail order,
- Prohibition on PBMs charging pharmacists certain retroactive fees not associated with audits,
- Allowing hospitals to direct employees to the hospital pharmacy,
- Pharmacists may provide safe delivery service, and
- Requirement that PBMs provide transparency for spread pricing and rebates to health plans.

While the bill applies to underwritten and self-insured plans, federal law generally restricts the ability of states to regulate plan design for self-insured plans, but does allow for price regulation, so much of the application of the bill could be preempted for self-insured plans as it generally relates to plan design.

The **two-bill state lottery package** from Sen. Jim McClendon (R—Springville) dominated the Senate on Wednesday. After lengthy and occasionally contentious floor debate, the Senate passed SB320 as substituted and amended to establish the Alabama Lottery Commission, direct the majority of proceeds to the Education Trust Fund for scholarships and other programs and phase out the state sales tax on groceries. SB320 is dependent on SB319, which sets up a statewide referendum on the lottery question. The Senate adopted the Senate Tourism and Marketing Committee's substitute for SB319 but did not vote final passage due to concerns that the votes were not there to pass it. SB319 is currently carried over to the call of the chair.

While there was no official action, discussions continued this week on a proposed rewrite of **Alabama's open records law** sponsored by Sen. Arthur Orr (R—Decatur). A substitute bill from the Alabama Press Association is being circulated for review. Sen. Orr has indicated his intention to push the legislation forward, possibly next week.

## *OTHER ISSUES TO WATCH*

### ELECTION REFORMS

- **Last-minute changes to election law** would be prohibited under HB388 by Rep. Jim Carns (R—Birmingham). Subject to a statewide referendum, Carns' bill,

which passed the House Wednesday, would prevent changes to state election law within six months of a general election. The companion bill – SB326 by Sen. Dan Roberts (R—Birmingham) – passed the Senate Thursday.

- In the six months before an election, the **governor could not change how the election is conducted** by executive order, with certain exceptions, according to HB351 by Rep. Arnold Mooney (R—Birmingham). The House Constitution, Campaigns and Elections Committee gave it a favorable report as substituted on Wednesday.
- If HB528 by Rep. Allen Farley (R—McCalla) becomes law, relatives of the probate judge, sheriff or circuit clerk could not serve on the **appointing board** in some situations, and individuals could not serve as **absentee election manager** if they or a relative are in a contested race. The bill received a favorable report Wednesday from the House Constitution, Campaigns and Elections Committee.
- **Poll watchers would be prohibited from assisting an individual** with voting if HB575 by Rep. Mike Holmes (R—Wetumpka) becomes law. The measure received a favorable report Wednesday from the House Constitution, Campaigns and Elections Committee.
- After Alabamians cast record numbers of **absentee ballots** in 2020, HB538 by Rep. Alan Baker (R—Brewton) would revise the timeline for requesting and other rules related to absentee ballots. The Senate Fiscal Responsibility and Economic Development Committee voted unanimously to give it a favorable report on Wednesday.
- **Campaign finance filings** would all be electronic and would be consolidated in the secretary of state’s office under HB154 by Rep. Andy Whitt (R—Harvest), which received a favorable report this week from the Senate Fiscal Responsibility and Economic Development Committee.
- A **curbside voting ban** received a favorable report from the Senate Governmental Affairs Committee this week. HB285 is by Rep. Wes Allen (R—Troy).
- **Payment for proof of voting** would be illegal under HB70 by Rep. Jamie Kiel (R—Russellville), which has a pending committee amendment. The bill is scheduled for floor consideration in the House on Tuesday.

## HEALTHCARE & PUBLIC HEALTH

- Two separate bills advanced this week to codify **civil liability protection for private mental health facilities** that step into the shoes of the state in providing care. Thursday morning, SB289 by Sen. Greg Albritton (R—Atmore) received a favorable report as substituted from the Senate Judiciary Committee. In the House, Rep. Nathaniel Ledbetter (R—Rainsville) introduced HB605 on Tuesday, and the House Health Committee gave it a favorable report Thursday morning.
- **Vaccine passports** would be prohibited under SB267 by Sen. Arthur Orr (R—Decatur), which passed the Senate in substitute form on Thursday.
- During the COVID-19 pandemic, **healthcare facilities would be required to allow one caregiver or visitor per patient** with passage of HB521 by Rep. Debbie Wood

(R—Valley). The bill passed the House Wednesday without alteration.

- HB224 by Rep. Nathaniel Ledbetter (R—Rainsville) relating to **portable “do not resuscitate” orders** received a favorable report Wednesday from the House Healthcare Committee.
- The Board of Nursing could establish standards for **student nurse apprenticeships** and certified medication assistants under SB179 by Sen. Linda Coleman-Madison (D—Birmingham), which is on the House’s working agenda for Tuesday.

#### ALCOHOLIC BEVERAGE MARKETPLACE

- **Home delivery of beer, wine and spirits** would be legalized pursuant to SB126 by Sen. Jabo Waggoner (R—Vestavia Hills), and this week the Senate concurred with changes made in the House. The bill is pending with the governor.
- On Wednesday, the Senate Tourism and Marketing Committee conducted a public hearing on HB437 by Rep. Terri Collins (R—Decatur) to authorize **direct shipment of wine** to consumers. The committee met again Thursday morning to give the bill a favorable report as substituted.
- **Small farm wineries** could sell directly to consumers and sell and deliver to licensed retailers with passage of SB294 by Sen. Andrew Jones (R—Centre). On Tuesday, the Senate passed a floor substitute version of the bill.

#### TRANSPORTATION

- Unauthorized entry of **critical infrastructure** is a crime, and protection would be extended to pipelines, mining operations and mining infrastructure under HB516 by Rep. Scott Stadthagen (R—Hartselle). The bill, which would also enhance penalties for violations, received a favorable report Wednesday from the House Public Safety and Homeland Security Committee.
- SB332 by Sen. Kirk Hatcher (D—Montgomery) to update state safety regulations related to entry-level training for **commercial driver licenses** and bring them into compliance with federal law received a favorable report Wednesday from the House Public Safety and Homeland Security Committee.
- The proposed prohibition of **certain indemnity clauses in public works contracts** and subcontracts for roads and bridges is on the House’s working agenda for Tuesday. SB220 is by Sen. Clay Scofield (R—Guntersville).

#### BANKING AND INSURANCE

- Some data and information that insurers file with the state would be considered **trade secrets** and be **shielded from public release** under HB132 by Rep. Chip Brown (R—Mobile). The bill received a favorable report from the Senate Banking and Insurance Committee this week.
- Alabama’s credit for **reinsurance** regulations would substantially mirror a model law from the National Association of Insurance Commissioners under HB32 by Rep. Kerry Rich (R—Guntersville). The bill received final passage Thursday in the Senate and is currently pending with the governor.

## EDUCATION

- In another move to expand **school choice**, the Senate Education Policy Committee conducted a public hearing and gave a favorable report Tuesday to SB365 by Sen. Del Marsh (R—Anniston). It would require K-12 school districts to enroll nonresident students, subject to some limits and exceptions.
- Rep. Danny Garrett (R—Trussville) introduced HB598 on Tuesday to expand the **Board of Trustees of the Alabama Community College System**. The governor would have authority to appoint one additional trustee from the private sector with a background in either industrial training or human resources.

## ECONOMIC DEVELOPMENT & PORT-RELATED ISSUES

- The director of the **Alabama State Port Authority** could appoint two more **executive-level employees** under SB169 by Sen. Vivian Figures (D—Mobile), which also shields some sensitive information from public disclosure. Gov. Kay Ivey signed Act 2021-184 into law Thursday.

## PROCUREMENT

- SB15 by Sen. Andrew Jones (R—Centre) exempts from competitive bid laws certain **leases and lease/purchases of goods and services** by local boards of education or other state and local governmental entities made through cooperative purchasing agreements. It is pending its third reading in the Senate, as is the House companion measure, HB187 by Rep. Terri Collins (R—Decatur).
- HB162 by Rep. Kyle South (R—Fayette) provides a **lease tax exemption** on the gross proceeds of many motor vehicle lease transactions with government agencies. The bill, which also removes a prohibition against passing lease taxes on to state or local governments, passed the Senate Tuesday and is pending with the governor.
- Legislators have criticized Gov. Kay Ivey’s multi-billion-dollar contracts to lease new state prisons, and Rep. Mike Jones (R—Andalusia) is sponsoring HB392 to give lawmakers authority to **review and delay large, multi-year contracts by General Fund** agencies. Affected agencies turned out in force for a Thursday morning meeting of the Senate Finance and Taxation Committee on the General Fund, and Jones’ bill – the meeting’s only agenda item – did not advance.

## STATE AGENCIES

- Sen. Arthur Orr (R—Decatur) is sponsoring SB352 to **extend the April 15 payment due date for state income taxes and financial institutions excise taxes** to match due dates for corresponding federal payments, which the IRS recently extended for this year. This week, the bill passed the Senate and received a favorable report from the House State Government Committee. It is scheduled for consideration on the House floor on Tuesday, April 13.

## LABOR LAW

- More people would be eligible for **criminal record expungement** with SB117 by Sen. Linda Coleman-Madison (D—Birmingham). The bill – with pending committee

amendments (1, 2, 3 and 4) – is scheduled for consideration by the full House on Tuesday.

- The permitting process for **concealed carry of a handgun** would be standardized statewide and lifetime permits authorized with SB308 by Sen. Randy Price (R—Opelika). On Thursday, it received final passage from the House with bipartisan support. It is now pending with the governor.

#### REMOTE NOTARIZATION

- **Remote notarizations** would be permissible in some situations under SB275 by Sen. Sam Givhan (R—Huntsville), which would also retroactively ratify remote notarizations done under emergency conditions. The bill, with a pending committee amendment, was scheduled for consideration on the House floor Thursday, but lawmakers adjourned before reaching it.

#### ENERGY

- A bill to prevent governmental entities from blocking use of certain **energy sources** – HB446 by Rep. David Faulkner (R—Birmingham) – received a favorable report as amended Thursday from the Senate Transportation and Energy Committee. The amendment makes it clear that the bill does not change service territories for electric suppliers.

#### 2022 ELECTION CYCLE

- With **Richard Shelby's announced retirement** after 36 years in the U.S. Senate, Alabama voters will fill an open seat in 2022. This week, Donald Trump endorsed U.S. Rep. Mo Brooks of Huntsville in the GOP primary, slighting Montgomery businesswoman Lynda Blanchard, Trump's former ambassador to Slovenia. Secretary of State John Merrill had been considered a likely candidate, but he instead announced that he will not seek elected office next year.

#### ANKLE MONITORING

- All paroled inmates would be subject to **electronic monitoring** under HB111 by Rep. Jim Hill (R—Moody), which received a favorable report Wednesday from the Senate Finance and Taxation Committee on the General Fund.

#### RETIREMENT SYSTEMS OF ALABAMA

- The **State Employees' Retirement System Board of Control** would be expanded with an additional local government representative and an additional at-large representative to better reflect the participating membership under SB79 by Sen. Garlan Gudger (R—Cullman). The bill received a favorable report as amended this week from the House Ways and Means Committee on the General Fund, and the amendment removed the option for ex-officio board members to designate someone to serve in their place. The companion bill – HB119 by Rep. Reed Ingram (R—Mathews), as amended – is scheduled for floor consideration in the House on Tuesday.

#### JUDICIAL COMPENSATION

- Compensation of elected officials always stirs strong interest, and the Senate passed SB292 by Sen. Greg Albritton (R—Atmore) Thursday to establish a **uniform pay plan for trial and appellate court judges** and eliminate local salary supplements and expense allowances.

#### LOCAL LEGISLATION OF GENERAL INTEREST

- With the House’s passage of SB74 by Sen. Jabo Waggoner (R—Vestavia Hills) on Thursday, voters will decide if **privately owned sewer systems** using public rights-of-way in **Shelby County** should be regulated by the Public Service Commission.

*The Alabama Legislature will reconvene on Tuesday, April 13.  
Nine legislative days remain in the regular session.*