

ATRA Legislative Watch

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ATRA's Annual Membership Meeting and Legislative Conference Set for March 20th

ATRA will hold its Annual Membership Meeting and Legislative Outlook at the Capital Hilton in Washington, DC, on Tuesday, March 20th. Registration materials are attached, and agenda details will be forthcoming.

Federal Activity

Today, February 2, 2012, the House Judiciary Committee's Subcommittee on the Constitution held a hearing today entitled, "Contingent Fees and Conflicts of Interest in State Attorney General Enforcement of Federal Law." The purpose of the hearing was to shine the light on the potential for abuse in enforcement federal law, as well as questionable state attorney general practices more generally, to discourage such practices in the future. For additional information, please contact Matt Fullenbaum of ATRA at mfullenbaum@atra.org.

State Activity

Highlights

Arizona- PARSA bill reported favorably out of committee

Florida- Junk Science bill heard in Committee

Georgia- False Claims Act bill introduced

Hawaii- Medical Liability reform bill introduced

Indiana- Lawsuit Lending Bill Defeated!

Kansas- Trespass bill introduced

Kentucky - Ant-Arbitration Bill Poised for Vote; Assistance Needed to Defeat Bill

Minnesota- Four affirmative civil justice reform bills sent to governor's desk!

Missouri- Trespass bill introduced

New Hampshire- Jury Trial bill introduced

Ohio- Senate passes Trespass bill by a vote of 26-4

Tennessee- Trespass bill introduced

Washington- Workplace Bullying bill heard in committee

West Virginia- Senate unanimously passes Trespass bill

*** Other states covered in this report include Colorado, California, Iowa, Massachusetts, Mississippi, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, and Virginia.

Arizona

On January 31, 2012, S.B.1142 (Adam Driggs-R) passed out of the Senate Veterans and Military Affairs committee by a unanimous vote. This bill seeks to allow jurors to begin being paid out of the lengthy trial fund on the first day of service, instead of the fourth day, if their employer does not compensate them. For additional information, please contact Suzanne Taylor of the Arizona Chamber of Commerce and Industry at staylor@azchamber.com.

Senator Albert Melvin (R) introduced S.B. 1336 on January 26, 2012, and the bill was referred to the Senate Rules Committee. S.B. 1336 would prohibit the awarding of punitive or exemplary damages when a product is in compliance with state or federal regulations. This legislation recognizes that the specific purpose of an award of punitive damages is to punish and deter unlawful conduct, and a defendant should not be punished for following the law. Moreover, the bill does not prevent victims from receiving compensatory damages, nor from receiving punitive damages for manufacturer misconduct or fraud. For more information, please contact Suzanne Taylor of the Arizona Chamber of Commerce and Industry at staylor@azchamber.com.

On January 26, 2012, the House passed H.B. 2036 (Kimberly Lee-R), attorney general sunshine legislation, by a vote of 55-0 and it was sent to the Senate. The bill provides that the state may not enter into a contingency fee contract with the state's private attorney that allows the attorney to receive a contingency fee from the state's portion of a lawsuit recovery in accordance with the statute's calculations. It eliminates the discretion previously afforded to the state's attorney regarding settlement decisions. Also, the bill imposes additional requirements on the state's attorney general in contracting with a private attorney for the state, and exempts from the foregoing changes any contingent fee contract in which the state hires a private attorney to pursue debt collection and restitution cases. For more information, please contact Suzanne Taylor of the Arizona Chamber of Commerce and Industry at staylor@azchamber.com.

H.B. 2037 (Jack Harper-R) was referred to both the House Judiciary Committee and the House Rules Committee on January 10, 2012. The bill enumerates the various permissible forms of party, property, and business association representation in small claims court. For more information, please contact Suzanne Taylor of the Arizona Chamber of Commerce and Industry at staylor@azchamber.com.

On January 25, 2012, H.B. 2001 (Jack Harper-R) was referred to both the House Committee on the Judiciary and the House Committee on Rules. This legislation would repeal Article II, Section 31, and Article XVIII, Section 6 of the Arizona Constitution, which prohibits damage limits. These articles pertain to damage awards for injuries. This bill would require the proposal to provide limits on damages for injuries to go before the voters via ballot referendum. For more information, please contact Suzanne Taylor of the Arizona Chamber of Commerce and Industry at staylor@azchamber.com.

S.B. 1028 (Michele Reagan-R) was referred to the House Rules Committee on January 9, 2012. The bill makes technical corrections to the provisions pertaining to false claims against perishable agricultural food products. For more information, please contact Suzanne Taylor of the Arizona Chamber of Commerce and Industry at staylor@azchamber.com.

California

A.B. 328 (Camryn Smith-R), a bill that we tracked last year, is once again seeing movement during the current session. On January 24, 2012, A.B. 328 was read in the Senate Committee on Judiciary for a second time and amended. The bill was re-referred back to the Committee. This legislation pertains to cases where a plaintiff property owner sues a state or

local government for a property "taking." The bill permits a person to maintain an action in the inverse condemnation for the purpose of obtaining compensation for a taking and applies the doctrine of comparative fault to inverse condemnation actions. This allows a plaintiff's own actions to be considered in determining what the government owes. If the defendant, in an inverse condemnation action, makes an offer that the plaintiff does not accept, and the plaintiff fails to obtain a judgment, the plaintiff shall not recover his post-offer costs and shall pay the defendant's. The bill also provides that the plaintiff may be required to pay the defendant's costs for expert witnesses. Alternatively, if the plaintiff rejects the offer and fails to obtain a more favorable judgment, the bill prohibits the plaintiff from recovering his post offer costs. The plaintiff shall not be ordered to pay the defendant's post-offer costs. Finally, the bill requires a court or arbitrator to reduce the compensation paid to a plaintiff in direct proportion to his or her percentage of fault in the damaging of the property that constitutes a taking. This type of case arises when a government expands roads, builds a freeway, or otherwise infringes on private property. For additional information, please contact Katherine Pettibone of the Civil Justice Association of California at kpettibone@cjac.org.

On January 30, 2012, the Assembly passed A.B. 1208 (Charles Calderon-D) by a vote of 41-25. A.B. 1208, as amended on May 18, 2011, appears to remove or restrict the Judicial Council's responsibility for allocating funding that ensures statewide court functions, promotes statewide policies, and promotes the implementation of efficiencies or cost-saving measures. It also limits the Judicial Council's ability to respond to changing conditions and ensure equal access to trial courts for all the public. These statewide programs are valuable measures that promote important efficiencies to the benefit of all litigations and it is unclear that without the Judicial Council leadership whether these developments would have been successful. For additional information, please contact Katherine Pettibone of the Civil Justice Association of California at kpettibone@cjac.org.

Colorado

On January 11, 2012, Senator Morgan Carroll (D) introduced S.B. 3 and it was referred to the Senate Committee on Judiciary. The bill is scheduled to be heard in Committee on February 13th. This legislation creates the "Employment Opportunity Act", which specifies the purposes for which consumer credit information can be used by an employer or potential employer. The bill is another attack on Colorado's at-will employment policy. The bill prohibits an employer's use of consumer credit information for employment purposes if the information is unrelated to the job. Also, it requires an employer to disclose to an employee or applicant for employment, when the employer uses the employee's consumer credit information to take adverse action against him or her and the particular credit information upon which the employer relied. The legislation also authorizes an employee aggrieved by said violations, to bring suit for an injunction, damages or both. Employers are placed in the position of proving their innocence when justifying personnel decisions to a jury. For additional information, please contact Mark Hillman of the Colorado Civil Justice League at markhillman@ccjl.com.

S.B. 54 (Betty Boyd-D) was introduced on January 13, 2012, and was referred to the Senate Committee on Health and Human Services. The bill is scheduled to be heard in Committee on February 16th. This legislation prohibits disciplinary action against an employee of a licensed health care facility who performs or refuses to perform an act so long as the employee is following a patient's directive or believes the act or omission is in the best interest

of the patient. For additional information, please contact Mark Hillman of the Colorado Civil Justice League at markhillman@ccjl.com.

On January 19, 2012, Senator Lois Tochtrop (D) introduced S.B. 69, a bill that would require all actions to recover a debt for care given or delivered, services rendered, money lent, money paid, money had and received, goods sold and delivered, or open or book account or account stated to be commenced within six years after the cause of action accrues. The bill was referred to the Senate Committee on Judiciary and is scheduled to be heard on February 6th. For additional information on this bill, please contact Mark Hillman of the Colorado Civil Justice League at markhillman@ccjl.com.

H.B. 1134 (Don Pabon-D) was introduced on January 20, 2012, and referred to the House Committee on Economic and Business Development. This legislation would prohibit an employer from advertising a job vacancy that either includes a requirement that applicants be employed or states that unemployed applicants will not be considered. For additional information, please contact Mark Hillman of the Colorado Civil Justice League at markhillman@ccjl.com.

The House Committee on Judiciary held a hearing on H.B. 1036 (Jim Kerr-R) on January 31, 2012; however, a vote was postponed due to pending amendments. The bill would amend the Colorado Open Records Act to clarify that civil government investigatory files fall within the investigations exception, contrary to a ruling by the Colorado Court of Appeals in *Land Owners United LLC v. Waters*, which held that such files are not protected from disclosure. Without exemption, personal information of consumer victims and propriety information of businesses could be subject to an open records request. For additional information, please contact Mark Hillman of the Colorado Civil Justice League at markhillman@ccjl.com.

On January 20, 2012, Representative Carole Murray introduced H.B. 1116 and the bill was referred to the House Committee on Economic and Business Development. The bill would amend the Colorado Consumer Protection Act to require entities that provide time share resale services to disclose specific information related to the sale. The bill defines “deceptive trade practices” as certain false or misleading statements made in advertisements. For additional information, please contact Mark Hillman of the Colorado Civil Justice League at markhillman@ccjl.com.

Representative Claire Levy (D) introduced H.B. 1057 on January 11, 2012, and the bill was referred to the House Committee on Local Government. The bill purports to provide additional protections for purchasers of homeowner’s insurance policies. The bill mandates that homeowners’ insurance policies cover the replacement value of a home, rather than a specific dollar amount selected by the homeowner. In addition, the bill requires that policies provide for at least 24 months of “additional living expense.” Of course, more expensive coverage is more expensive. The bill is scheduled to be heard in Committee on February 8th. For additional information on this bill, please contact Mark Hillman of the Colorado Civil Justice League at markhillman@ccjl.com.

Florida

On February 1, 2012, the House Judiciary Committee heard H.B. 243 (Larry Metz-R) and the vote was temporarily postponed. The bill provides that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion as to facts at issue in the case. The bill further requires the courts to interpret and apply principles of expert testimony in conformity with the U.S. Supreme Court’s decision in *Daubert* and its

progeny, and subjects pure opinion testimony to such requirements. The Senate Companion Bill, S.B. 378 (Garrett Richter-R), was introduced on January 10, 2012, and it was referred to the Senate Committee on Budget. For more information, please contact William Large of the Florida Justice Reform Institute at William@fljustice.org.

On January 24, 2012, H.B. 313 (Leonard Bemby-D) was favorably reported out of the House Subcommittee on Agriculture and Natural Resources by a vote of 14-0-1. That same day, the amendments to the bill began being reviewed pursuant to House Rule 7.19(c) in the same subcommittee. The bill provides that the owner or lessee who makes an area available to another person for hunting, fishing, or wildlife viewing is entitled to certain limitations on liability if notice is provided to person upon entry to area. The bill also provides that the owner of an area who enters into written agreement with the state so the area can be used for outdoor recreational purposes is entitled to certain limitations on liability. For more information, please contact William Large of the Florida Justice Reform Institute at William@fljustice.org.

On January 26, 2012, H.B. 427 (Kathleen Passidomo-R) failed to pass the House Subcommittee on Civil Justice by a vote of 8-7. The bill requires that a party must provide notification to the Department of Insurance and the insurer prior to bringing a common-law bad faith action against the insurer. The bill further provides that the required contents of the notification include the amount of money that an insurer has failed to tender or pay if the violation includes such failure. For more information, please contact William Large of the Florida Justice Reform Institute at William@fljustice.org.

Representative Matt Gaetz (R) introduced H.B. 929 (Matt Gaetz-R) on January 17, 2012, and it was referred to the House Subcommittee on Business and Consumer Affairs. The bill provides procedures regarding claims against motor vehicle dealers prior to civil litigation. It requires adoption of a notice-of-claim form, for claimants to submit such form to a dealer prior to litigation, and requires dealers to provide a copy of the form to each customer. Additionally, the bill prohibits litigation against a dealer that pays actual damages claimed, and limits a dealer's further liability upon the payment of a claim. For more information, please contact William Large of the Florida Justice Reform Institute at William@fljustice.org.

On January 18, 2012, the House Subcommittee on Civil Justice favorably reported on H.B. 963 (Shawn Harrison-R) by a vote of 15-0, and the bill was referred to the House Subcommittee on Justice Appropriations. The bill re-designates the "Florida Arbitration Code" as the "Revised Florida Arbitration Code." Substantively, the bill creates and revises numerous provisions, clarifying that the code deletes arbitration from voluntary trial resolution provisions, revises provisions relating to procedures in voluntary trial resolution, and provides limits on jurisdiction of trial resolution judge. For more information, please contact William Large of the Florida Justice Reform Institute at William@fljustice.org.

Representative Larry Metz (R) introduced H.B. 1069 on January 10, 2012, and the bill was referred to the House Committee on Judiciary. The bill limits recovery of damages for medical or health care services to amounts actually paid if no balance to the provider is outstanding. The bill also limits recovery of such damages to amounts customarily accepted by providers in the same geographic area if the balance to the provider is outstanding. Further, the bill requires medical or health care services to be medically necessary in order to be recoverable, and provides for a reduction of awards. For more information, please contact William Large of the Florida Justice Reform Institute at William@fljustice.org.

Representative Jimmy Patronis (R) introduced H.B. 1233 on January 10, 2012, and the bill was referred to the House Judiciary Committee. The bill creates a Patient Compensation

System, providing for independent medical review panels, prohibiting certain conflicts of interest, creates a process for filing an application and disposing of it, as well as providing notice to providers and insurers. The bill also provides for expedited medical review, fraud review, and malpractice review. For more information, please contact William Large of the Florida Justice Reform Institute at William@fljustice.org.

Senator Steve Oelrich (R) introduced S.B. 1224 on January 10, 2012, and it was referred to the Senate Committee on the Budget. The bill provides that before bringing a common-law bad faith action against an insurer, the party bringing the action must first provide to the Department of Financial Services and the insurer prior written notification of a specified amount of money that an insurer has failed to tender or pay if the specific statutory or common-law-based violation includes such a failure. The bill further requires that a notice relating to the bringing of a common-law claim of bad faith must specify the common-law duty violated by the insurer. For more information, please contact William Large of the Florida Justice Reform Institute at William@fljustice.org.

Senator Alan Hays (R) introduced S.B. 1328 on January 10, 2012, and it was referred to the Senate Committee on the Budget. The bill limits recovery of damages for medical or health care services to amounts actually paid if no balance to the provider is outstanding. It also limits recovery of such damages to amounts customarily accepted by providers in the same geographic area if a balance to the provider is outstanding, and requires medical or health care services to be medically necessary in order to be recoverable. For more information, please contact William Large of the Florida Justice Reform Institute at William@fljustice.org.

Senator Alan Hays (R) introduced S.B. 1588 on January 10, 2012, and it was referred to the Senate Judiciary Committee, and to the Senate Budget Committee. The bill requires the board of the Department of Health to require the completion of a course relating to communication of medical errors. For more information, please contact William W. Large at William@fljustice.org.

On February 2, 2012, S.B. 1860 (Joe Negron-R) will have a hearing before the Senate Banking and Insurance Committee. The bill provides that certain entities exempt from licensure as a health care clinic must nonetheless be licensed in order to receive reimbursement for the provision of personal injury protection benefits. For more information, please contact William Large of the Florida Justice Reform Institute at William@fljustice.org.

Georgia

H.B. 822 (Edward Lindsay-D), entitled “Georgia Taxpayer Protection False Claims” Act, was referred to the House Committee on Judiciary on January 30, 2012. This bill addresses the submission of false claims to the state, the Georgia Medicaid program and local governments. The bill expands the definition of “fraud” or “fraudulent” and includes a qui tam plaintiff provision. For additional information on this bill, please contact David Raynor of the Georgia Chamber of Commerce at draynor@gachamber.com.

Hawaii

Senator Rosalyn Baker (D) introduced S.B.2656, a medical liability bill, on January 23, 2012, and it was referred to the Senate Committee on Commerce and Consumer Protection. The bill will be heard in Committee on February 7th. This legislation establishes the “Injured patients and families” compensation fund to pay the portion of a medical tort claim that exceeds the liability limit of a health care provider’s insurance coverage. It requires participating health care

providers to have a minimum level of insurance coverage and provides for assessment of fees and peer council review of claims paid. Management of the fund is vested with the board of governors, and the commissioner shall provide the necessary staff services. For additional information, please contact Gary Slovin with the Coalition to Stop Lawsuit Abuse at gslovin@goodsill.com.

Indiana – Good News!

On January 17, 2012, S.B. 5 (Randall Head – R) was defeated in the Senate Committee on Corrections, Criminal and Civil Matters. By way of background, S.B.5 was part of an ongoing effort by the lawsuit lending industry to legitimize what is otherwise an unethical, illegitimate, and in some cases illegal business practice. The industry argues that their legislation is an attempt at self regulation, but in reality it is an attempt to legalize its business model. S.B.5 provided the veneer of regulation by specifying the font size to be used in contracts with consumers, registration requirements with the Attorney General, and other window dressing requirements. Importantly, the bill did not limit or regulate the interest that lawsuit lenders charge, which in most instances would be considered usurious. Indeed, the lawsuit lending industry recognized this by explicitly providing in the legislation that they were exempt from state banking and lending laws. For additional information about the lawsuit lending industry, please visit our dedicated website on the issue: www.lawsuitlendingexposed.com, and for additional information about the Indiana bill, please contact Marty Wood of the Insurance Institute of Indiana at mpw@insuranceinstitute.org.

On January 9, 2012, Representative Ed DeLaney (D) introduced H.B. 1234 and the bill was referred to the House Committee on Judiciary. The bill would increase the liability limit in tort claims act to \$1.3 million per person and \$22 million per occurrence for causes of action accruing on or after July 1, 2011. For additional information, please contact Matt Fullenbaum of ATRA at mfullenbaum@atra.org.

S.B.406 (Doug Eckerty-R) was introduced on January 9, 2012, and was referred to the Senate Committee on Corrections, Criminal and Civil Matters. The bill provides that in a personal injury or wrongful death action, the recovery of medical or health care expenses is limited to the amount actually paid or incurred by or on behalf of the claimant. For additional information, please contact Matt Fullenbaum of ATRA at mfullenbaum@atra.org.

Iowa

S.F. 210 (Pat Ward-R), attorney general sunshine legislation, was reintroduced in December of 2011, and is currently in the Senate Judiciary Subcommittee. The bill provides that a state shall not enter into a contingency fee contract with a private attorney unless the Attorney General makes a written determination prior to entering into the contract, that contingency fee representation is both cost-effective and in the public interest. The bill limits the aggregate contingency fee a private attorney can receive to 25% of any recovery up to \$10 million, 20% of any recovery between \$10-\$15 million, 15% of any recovery between \$15-\$20 million, 10% of any portion between \$20-\$25 million, and 5% of any recovery that exceeds \$25 million. In no event shall the aggregate contingency fee of any recovery exceed \$50 million. The bill requires the contract, payments made under the contract, and the attorney general's written determinations to be posted on the attorney general's website. For additional information, please contact John Gilliland of the Iowa Association of Business and Industry at jgilliland@iowaabi.org.

Kansas

On January 27, 2011, H.B. 2106 (House Federal and State Affairs Committee) was referred to the House Judiciary Committee. The bill, which is based on ALEC's model Trespasser Responsibility Act, would codify Kansas' traditional common law rule that provides a land possessor owes no duty of care to a trespasser, except in a few narrow and well-defined circumstances. The bill would freeze current Kansas law and preempt courts from adopting the radical approach proposed by the new Restatement of Torts. For more information, please contact Eric Stafford of the Kansas Chamber of Commerce at erics@kansaschamber.org.

The House Judiciary Committee introduced H.B. 2253, concerning restrictions on private rights of action. The bill provides that any legislation enacted in this state creating a private right of action shall contain express language providing for such a right. Courts of this state shall not construe a statute to imply a private right of action in the absence of such express language. For more information, please contact Eric Stafford of the Kansas Chamber of Commerce at erics@kansaschamber.org.

Kentucky- Take Action Now!

Contacts in Kentucky tell ATRA that H.B. 88 (Johnny Bell0D), anti-arbitration, could be voted on by the House any day now. **ATRA strongly encourages members with an interest in Kentucky to engage their local lobbyists, associations and/or counsel and urge them to contact members of the House of Representatives and ask them to oppose this legislation. You may also contact the state legislature directly at 1-800-372-7181, and leave a message expressing your opposition to the bill. For additional information, please contact Bryan Sunderland at bsunderland@kychamber.com.**

By way of background, H.B. 88 seeks to amend KRS 417.050, in order to restrict the type of contract disputes that are able to be resolved by arbitration. H.B. 88 would add specific language that would force disputes about fraudulence, both in the making of an agreement and in the inducement of an arbitration provision, into the Kentucky court system. By not allowing these types of cases to be arbitrated, the legislature is in effect, voiding most arbitration clauses. The bill's fraudulence language is extremely broad, in that a plaintiff can claim fraud during the making of the contract, or he can focus specifically on the fraudulent inducement of the arbitration provision itself. Once a plaintiff has made such a claim, an arbitrator no longer has jurisdiction over the case, and it must be heard by a judge.

The bill would lead to the risk of double litigation for businesses because they would first have to fend off claims of fraud, and then if unsuccessful, the plaintiff is still able to arbitrate a different underlying claim. It would exponentially increase the business' legal fees and for them to enter into settlement agreements, in order to avoid a lengthy trial. Kentucky's court system is already oversaturated, and this bill would only exacerbate the situation.

Maryland

S.B. 136 (Bobby Zirkin-D) was withdrawn from further consideration on February 1, 2012, after the Senate Committee on Finance reported unfavorably on the bill. The bill would have authorized a consumer contract to contain a provision for the payment of legal fees by the losing party in a specified legal action only if the provision was equally applicable to both parties to the contract. It would have applied to contracts entered into on or after the effective date of the bill. For more information, please contact Ronald Wineholt of the Maryland Chamber of Commerce at rwineholt@mdchamber.org.

S.B. 137 (Bobby Zirkin-D) was withdrawn from further consideration on February 1, 2012, after the Senate Committee on Finance reported unfavorably on the bill. The bill dovetailed off of S.B. 136 in that it authorized a contract to contain a provision for the payment of legal fees by the losing party in a specified legal action only if the provision was equally applicable to both parties to the contract. It also applied the Act to all contracts entered into on or after the effective date of the Act. For more information, please contact Ronald Wineholt of the Maryland Chamber of Commerce at rwineholt@mdchamber.org.

On January 20, 2012, Senator Brian Frosh (D) introduced S.B. 221 and it was referred to the Senate Committee on Judicial Proceedings. The bill establishes specified burdens of proof in an alleged strategic lawsuit against public participation (SLAPP) suit. It also requires a court to consider specified evidence in ruling on a motion to dismiss or to stay an alleged SLAPP suit, and authorizes specified government bodies to intervene to defend or support a party in an alleged SLAPP suit. The bill further requires a court to stay specified proceedings in an alleged SLAPP suit. And, the bill requires the court to award attorney's fees under specified circumstances. For more information, please contact Ronald Wineholt of the Maryland Chamber of Commerce at rwineholt@mdchamber.org.

Senator Jennie M. Forehand (D) introduced S.B. 351 on January 30, 2012, and it was referred to the Senate Committee on Judicial Proceedings. The bill authorizes a finder of fact to determine that a person with an alcohol concentration 0.15 or more in the blood or breath who causes personal injury or wrongful death while driving or attempting to drive a motor vehicle was acting with malice and to award punitive damages under specified circumstances. A similar bill was considered last session and defeated. For more information, please contact Ronald Wineholt of the Maryland Chamber of Commerce at rwineholt@mdchamber.org.

Massachusetts

Governor Deval Patrick presented H.B. 1849 on February 17, 2011, for consideration. The proposal pertains to health care cost control reform. It provides that a person shall be unable to commence a lawsuit against a health care provider unless the person gave the provider written notice that accords with the proposal's requirements not less than 180 days before the lawsuit is commenced. Additionally, the legislation includes an "I'm sorry" statute, precluding statements of sympathy from being equated to an admission of liability or an admission against interest – while also making such statements inadmissible as evidence in either a judicial or administrative proceeding. On July 8, 2011, the bill was heard by the Joint Committee on Health Care Financing, and became eligible for executive session. For more information, please contact Bill Vernon of the NFIB/MA at bill.vernon@nfib.org.

Minnesota- Take Action Now!

On February 1, 2012, the Minnesota House of Representatives passed four affirmative civil justice reform bills and they were sent to Governor Dayton's desk. Below you will find summaries of each of the bills. **ATRA strongly encourages members who have an interest in Minnesota to engage their local lobbyist and/or counsel to urge them ask Governor Dayton to sign the bills. For additional information, please contact Mark Kulda of Minnesotans for Lawsuit Reform at mkulda@insurancemn.org.**

S.F. 373 (Julianne Ortman-R), a statute of limitations bill, passed the House by a vote of 71-56. The legislation would reduce Minnesota's general statute of limitations to four years, from the current six-year time frame.

The House passed S.F. 530 (Julianne Ortman-R) by a vote of 75-55. This legislation would reduce the prejudgment interest rate imposed in most actions from the current flat rate of 10% to a market-based rate with a floor of 4%.

S.F. 429 (Linda Scheid-D) passed the House by a vote of 76-49. The bill provides that when a statute provides for the award of attorney fees to a party that has recovered money damages, the court must take into consideration the reasonableness of the attorney fees sought in relation to the amount of damages awarded to the prevailing party and the relation between the amount of damages sought and the amount of damages awarded. Also, if an offer of judgment is made by a party and the party claiming attorney fees does not obtain a verdict in excess of the offer, exclusive of attorney fees, no attorney fees may be awarded for fees incurred after service of the offer of judgment.

S.B. 149 (Julianne Ortman-R), an interlocutory appeal bill, passed the House by a vote of 72-59. Under this legislation, Minnesota would adopt an interlocutory appeal of class action certification as a matter of right, which essentially means that expensive discovery is put on hold while it is determined if the class certification is legitimate.

Mississippi

Senator Joey Fillingane (R) introduced S.B. 2102 on January 13, 2012, and it was referred to the Senate Judiciary Committee. The bill enacts conditions required of the Attorney General before entering into a contingency fee contract for legal services. It further requires public notice of contracts entered into and contingency fees paid, and places incremental restrictions upon the amount of contingency fees that can be paid out of a specific recovery amount. For more information, please contact Chip Reno at (601) 487-2621.

Missouri

On January 31, 2012, the House Committee on General Laws recommended H.B. 1180 (Mark Parkinson-R) do pass. The bill changes the determination of a defendant's liability in a tort action for damages by specifying that the liability of each defendant for compensatory or punitive damages must be several and cannot be joint. For more information, please contact Brad Jones of the NFIB/MO at brad.jones@nfib.org.

Representative Mark A. Parkinson (R) introduced H.B. 1181 on January 5, 2012, pertaining to private attorney contracts. The bill provides that the state shall not enter into a contingency fee contract with a private attorney unless the attorney general makes a written determination prior to entering into such a contract that contingency fee representation is both cost-effective and in the public interest. Any written determination shall include specific findings for each factor enumerated within the legislation. Additionally, the bill provides that the state's attorney's aggregate contingency fee should never exceed \$50 million. For more information, please contact Brad Jones of the NFIB/MO at brad.jones@nfib.org.

Representative John W. Cauthorn (R) introduced S.B. 1196 on January 5, 2012, pertaining to landowner liability. The bill provides that a landowner owes no duty of care to a trespasser except to refrain from harming the trespasser by an intentional, willful, or wanton act. A possessor of real property may use justifiable force to repel a criminal trespasser. For more information, please contact Brad Jones of the NFIB/MO at brad.jones@nfib.org.

S.B. 453 (Jane Cunningham-R) was referred to the Senate Committee on Commerce, Consumer Protection, Energy and the Environment on January 5, 2012. The bill provides for a limitation on damages awarded in employment discrimination cases. It provides that punitive

damages shall not be awarded against the state or political subdivisions under the Human Rights Act, and establishes caps for damages for cases involving discrimination against employees who file workers' compensation claims that are the same as for employment cases. For more information, please contact Brad Jones of the NFIB/MO at brad.jones@nfib.org.

On January 30, 2012, the House Rules Committee passed H.B. 1219 (Kevin Elmer-R). The bill modifies the laws regarding unlawful discriminatory employment practices as they relate to the Missouri Human Rights Act and establishes the Whistleblower Protection Act. Also, it provides for motions for summary judgment, trials by jury and awards of damages. For more information, please contact Brad Jones of the NFIB/MO at brad.jones@nfib.org.

On January 25, 2012, H.B. 1236 (Galen Wayne Higdon-R) was referred to the House Judiciary Committee Representative. The bill codifies the common law regarding liability of a possessor of land relating to an individual trespassing on the possessor's land. The bill provides that a possessor of real property, including an owner, lessee, or other occupant, or an agent of such owner, lessee, or other occupant, owes no duty of care to a trespasser except to refrain from harming the trespasser by an intentional, willful, or wanton act. For more information, please contact Brad Jones of the NFIB/MO at brad.jones@nfib.org.

Representative Stanley Cox (R) introduced H.B. 1326 on January 17, 2012, pertaining to business owner liability and it was referred to the House Committee on General Laws. The bill provides that there is no duty upon the owners or operators of a business, individually or collectively, or upon merchants or shopkeepers, to guard against the criminal act of a third party unless: (1) they know or have reason to know that acts are then occurring or are about to occur on the premises that pose imminent probability of injury to a person; or (2) the same criminal acts have occurred on the premises within the prior twenty-four months such that there is reasonable foreseeability that such action will occur again. If either of these conditions is met, a duty of reasonable care to protect against such acts shall arise. For more information, please contact Brad Jones of the NFIB/MO at brad.jones@nfib.org.

Senator Jane Cunningham (R) introduced S.B. 453 on January 4, 2012, and it was referred to the Senate Committee on Commerce, Consumer Protection, Energy and the Environment. The bill provides for a limitation on damages awarded in employment discrimination cases. It mandates that punitive damages shall not be awarded against the state or political subdivisions under the Human Rights Act. It also establishes caps for damages for cases involving discrimination against employees who file workers' compensation claims that are the same as for employment cases. Specifically, damages awarded for employment cases under the Missouri Human Rights Act (MHRA) shall not exceed back pay and interest on back pay and \$50,000 for employers with between 5 and 100 employees, \$100,000 for employers with between 100 and 200 employees, \$200,000 for employers with between 200 and 500 employees, or \$300,000 for employers with more than 500 employees. For more information, please contact Brad Jones of the NFIB/MO at brad.jones@nfib.org.

S.B. 592 (Brad Lager-R) was amended on the Senate floor on January 25, 2012. The bill modifies the State Human Rights Act regarding employment discrimination and related civil actions. For more information, please contact Brad Jones of the NFIB/MO at brad.jones@nfib.org.

On January 26, 2012, S.B. 613 (Mike Kehoe-R) was referred to the Senate Committee on the Judiciary. The bill requires courts to award prevailing defendants their costs and attorney's fees. For more information, please contact Brad Jones of the NFIB/MO at brad.jones@nfib.org.

Senator Mike Kehoe (R) introduced S.B. 614 on January 5, 2012, and it was referred to the Senate Committee on Judiciary. The bill requires courts to award costs and attorneys fees to a party when a case has no basis in law or an attorney acts in bad faith. For more information, please contact Brad Jones of the NFIB/MO at brad.jones@nfib.org.

Senator Mike Kehoe (R) introduced S.B. 626 on January 9, 2012, legislation pertaining to product liability claims. The bill adopts a statute of repose which limits the time period under which a cause of action can arise. It further creates a presumptive useful life for a product which can be rebutted by a preponderance of evidence. The bill also ends the useful life if the product is altered, and provides that a manufacturer or seller may be subject to liability after useful life if the product is under warranty for a longer period, or there is a misrepresentation of facts about the product that causes harm. For more information, please contact Brad Jones of the NFIB/MO at brad.jones@nfib.org.

New Hampshire

On January 18, 2012, Representative George Lambert (R) introduced H.B. 1720, and the bill was referred to the House Committee on Judiciary. This bill would establish a right to jury trials for claims brought under the Consumer Protection Act, except those in which the amount in controversy does not exceed \$1,500. By way of background, the New Hampshire Supreme Court ruled in *Hair Excitement, Inc. v. L'Oreal U.S.A., Inc.*, 965 A.2d 1032 (N.H. 2009), that the New Hampshire Constitution did not protect the right to a jury trial under the Consumer Protection Act because the Act created rights that did not exist in New Hampshire common law in 1794. The Court acknowledged that the legislature has the power to protect a right to a jury under the Consumer Protection Act, but because the legislature has not done so expressly, the Court would not read the right into the statute. H.B. 1720 remedies this problem by expressly establishing a right to a jury trial for claims brought under the consumer protection act. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

H.B. 527 (Donald McClarren-R) failed to pass the House on January 4, 2012. This bill establishes a limit on noneconomic damages of \$250,000 in civil actions. In cases of wrongful death as a result of medical injury, the damages awarded shall not exceed \$3,000,000. The bill also limits the contingency fees an attorney may recover in an action for injury or damage against a medical care provider based on professional negligence. An attorney shall not recover more than 40% of the first \$50,000 recovered, 33.33% of the next \$50,000, 25% of the next \$50,000, and 15% of any amount exceeding \$600,000. Under this legislation, no medical care provider, who in good faith, renders emergency care at the scene of an emergency, shall be liable for any civil damages as a result of acts or omissions in rendering the care. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

Representative Spec Bowers (R) introduced H.B. 1178 on January 4, 2012, and it was referred to the House Committee on the Judiciary. The bill requires the losing party to pay the prevailing party's attorney's fees and court costs in tort actions, while providing that the court may waive a portion of the amount the losing party is required to pay if the losing party is able to prove inability to pay the entire amount of attorney's fees and court costs. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

Representative Spec Bowers (R) introduced H.B. 1180 on January 4, 2012, and it was referred to the House Committee on the Judiciary. The bill provides that, in determining noneconomic damages, the fact-finder may not consider: (1) evidence of a defendant's alleged wrongdoing, misconduct or guilt; (2) evidence of the defendant's wealth or financial resources;

or (3) any other evidence that is offered for the purpose of punishing the defendant, rather than for a compensatory purpose. The bill also provides a list of nonexclusive factors to analyze any noneconomic damage awards challenged as excessive. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

Representative Dick Hinch (R) introduced H.B. 1269 on January 4, 2012, and it was referred to the House Committee on the Judiciary. The bill limits the liability of sports officials at an event when: (1) the sponsoring authority has a record indicating the official was properly scheduled to officiate the specific game or event; (2) the sports official was acting in good faith and within the scope of official functions and duties during the sports event; and (3) the damage or injury was not caused by willful, wanton, or grossly negligent misconduct by the official. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

On January 4, 2012, Representative Spec Bowers (R) introduced H.B. 1594 and it was referred to the House Judiciary Committee. The bill would abolish joint and several liability. Further, the bill provides that a defendant shall be held responsible only for the portion of fault assessed to those with whom he or she acted in concert – no liability will be extended to nonparties, even when such nonparties are found at fault. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

On January 18, 2012, the Senate referred S.B. 186 (Sharon Carson-R) for interim study. The bill removes the exemption from the consumer protection act for trade or commerce under the jurisdiction of the bank commissioner, the director of securities regulation, the insurance commissioner, the public utilities commission, the financial and insurance regulators from other states, and federal banking or securities regulators with authority to regulate unfair or deceptive trade practices. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

Senator Charles Morse (R) introduced S.B. 278 on January 4, 2012, and it was referred to the Senate Committee on Judiciary. The bill limits the recovery of health care expenses in personal injury actions and removes probable duration of life but for the injury as an element that may be considered in determining damages in a wrongful death action. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

New Jersey

On January 10, 2012, Assembly Member Jay Webber (R) introduced A.B. 966 and the bill was referred to the Assembly Committee on Financial Institutions and Insurance. This is legislation that would limit noneconomic damages in medical liability actions to \$250,000. For additional information, please contact Marcus Rayner of the New Jersey Lawsuit Reform Alliance at mrayner@njlra.com.

Assembly Member Jay Webber introduced A.B. 974, the Medical Philanthropy Act, on January 10, 2012. The bill was referred to the Assembly Committee on Financial Institutions and Insurance. It would provide physicians who offer uncompensated care with a \$250,000 limit on noneconomic damages in medical liability actions. For additional information, please contact Marcus Rayner of the New Jersey Lawsuit Reform Alliance at mrayner@njlra.com.

On January 10, 2012, A.B. 1956 (Caroline Casagrande-R) was referred to the Assembly Committee on Financial Institutions and Insurance. Under the bill, in any action against a public entity where the court orders the award of attorney fees to a prevailing plaintiff, the amount of the attorney fee award can not exceed \$50,000 where the plaintiff is awarded damages of \$50,000 or less, or an amount equal to the plaintiff's award of damages, where the plaintiff's

award exceeds \$50,000. For additional information, please contact Marcus Rayner of the New Jersey Lawsuit Reform Alliance at mrayner@njlra.com.

Assembly Member Joseph Cryan (D) introduced A.B. 832 on January 10, 2012, and the bill was referred to the Assembly Committee on Health and Senior Services. The bill provides immunity for an individual or entity that acquires a defibrillator and renders emergency care, either in the course of their employment or as voluntary service. For additional information, please contact Marcus Rayner of the New Jersey Lawsuit Reform Alliance at mrayner@njlra.com.

On January 10, 2012, A.B. 241 (Gary Shaer-D) was referred to the Assembly Committee on Judiciary. This bill extends the \$50 million cap on appeal bonds in civil actions, currently only applicable to signatories to the Master Settlement Agreement, to all defendants. For additional information, please contact Marcus Rayner of the New Jersey Lawsuit Reform Alliance at mrayner@njlra.com.

A.B. 894 (Gary Chiusano-R) was introduced on January 10, 2012, and referred to the Assembly Committee on Judiciary. This bill permits litigants contesting class certification the right to immediately appeal that ruling. For additional information, please contact Marcus Rayner of the New Jersey Lawsuit Reform Alliance at mrayner@njlra.com.

On January 10, 2012, Assembly Member Herb Conaway (R) introduced A.B. 1806, a medical liability reform bill, and it was referred to the Assembly Committee on Health and Senior Services. This bill concerns liability in good faith treatment cases, standards of care, insurance coverage for medical malpractice actions and also sets time limits on medical malpractice claims being filed. For additional information, please contact Marcus Rayner of the New Jersey Lawsuit Reform Alliance at mrayner@njlra.com.

Assembly Member Caroline Casagrande (R) introduced A.B. 1926 on January 10, 2012, and the bill was referred to the Assembly Committee on Judiciary. This bill establishes limits for certain damages in medical malpractice actions. The bill provides that the total amount of damages for noneconomic loss recoverable by a plaintiff in a medical liability case may not exceed \$100,000 or three times the amount of economic loss, whichever is less, unless the plaintiff suffered certain serious injuries or death. In the case of serious injuries or death, recovery for noneconomic loss shall not exceed \$500,000 or three times the amount of economic loss, whichever is less. For additional information, please contact Marcus Rayner of the New Jersey Lawsuit Reform Alliance at mrayner@njlra.com.

On January 10, 2012, Assembly Member David Russo (R) introduced A.B. 1689, a bill that would establish a medical malpractice part in New Jersey's state superior court. The bill was referred to the Assembly Committee on Judiciary. For additional information, please contact Marcus Rayner of the New Jersey Lawsuit Reform Alliance at mrayner@njlra.com.

New Mexico

On January 27, 2012, H.B. 80 (Joseph Cervantes-D) was withdrawn from the House Committee on Rules and Order of Business, and was referred to the House Committee on Consumer and Public Affairs and the House Committee on Judiciary. The bill provides that any person may bring an action on behalf of the state pursuant to the Medicaid False Claims Act. It further provides that the state is entitled to attorney fees and costs for additional claims asserted against a defendant, a deadline for the state to intervene, and for civil investigative demands. For additional information, please contact Matt Fullenbaum of ATRA at mfullenbaum@atra.org.

Senator Lisa Curtis (D) introduced S.B. 276 on January 25, 2012, and it was referred to the Senate Judiciary Committee. The bill requests the Legislative Health and Human Services Committee to study the Tort Claims Act Lifetime Medical Cap and to consider ways in which the state or its political subdivisions may obtain additional coverage for the expenses of providing medical care for children catastrophically injured by public employees. For more information, please contact Randy Marshall of the New Mexico Medical Society at rmarshall@nmms.org.

New York

A.B. 634 (Helene Weinstein-D) was reintroduced in the Assembly and ordered to a third reading on January 9, 2012. This bill establishes that for settlements that require a court order, the order shall provide for the payment of interest on the settlement amount at the statutory rate. For additional information, please contact Tom Stebbins of the Lawsuit Reform Alliance of New York at tstebbins@lrany.org.

On January 4, 2012, A.B. 694 (Rory Lancman-D) was reintroduced in the Assembly and ordered for a third reading. The bill would enact the “Personal Healthcare Information Privacy” Act. For additional information, please contact Tom Stebbins of the Lawsuit Reform Alliance of New York at tstebbins@lrany.org.

A.B. 713 (Jeffrey Dinowitz-D) was referred to the Assembly Committee on Codes on January 4, 2012. The bill establishes a time limit on bring an impleader complaint of no later than 90 days after completion of examinations before trial of the original parties. An impleader complaint allows one party to join a third party into a lawsuit because the third party is liable to an original defendant. This complaint alleges that the third party is liable for either all or part of the damages that the original plaintiff may win from the original defendant. For additional information, please contact Tom Stebbins of the Lawsuit Reform Alliance of New York at tstebbins@lrany.org.

On January 24, 2012, A.B. 718 (Jeffrey Dinowitz-D) was referred to the Assembly Committee on Codes. The bill creates additional remedies for unlawful discharge, penalty or discrimination due to the exercise of an employee’s right to be absent from employment for jury duty. For additional information, please contact Tom Stebbins of the Lawsuit Reform Alliance of New York at tstebbins@lrany.org.

On January 9, 2012, A.B. 2139 (Michael Benedetto-D) was set on the Assembly Floor Calendar. The bill would enact provisions providing protection to employees from retaliatory actions by employers where such employees report violations of law, rules or regulations. For additional information, please contact Tom Stebbins of the Lawsuit Reform Alliance of New York at tstebbins@lrany.org.

On January 9, 2012, A.B. 2334 (Peter Rivera-D) was set on the Assembly Floor calendar. The bill prohibits a court from denying class certifications solely because the action involves governmental operations. For additional information, please contact Tom Stebbins of the Lawsuit Reform Alliance of New York at tstebbins@lrany.org.

The Assembly passed A.B. 3264 (Robin Schimminger-D) on January 30, 2012, by a vote of 143-0. This bill would expand the definition of “prevailing party” for purposes of counsel fees and expenses in certain actions against the state, to include a party whose pursuit of a non-frivolous claim or defense was a catalyst for a voluntary or unilateral change in position by the opposing party that provides any significant part of the relief sought. For additional information,

please contact Tom Stebbins of the Lawsuit Reform Alliance of New York at tstebbins@lrany.org.

A.B. 3913 (Michele Titus-D) was referred to the Assembly Committee on Codes on January 13, 2012. The bill relates to the statute of limitations for certain medical liability actions. It provides that actions related to acts or omissions of hospitals where an incident report is required to be filed may be filed within one year of the required filing. The Senate Companion bill, S.B.1098 (Kevin Parker-D), was referred to the Senate Committee on Judiciary on January 11th. For additional information, please contact Tom Stebbins of the Lawsuit Reform Alliance of New York at tstebbins@lrany.org.

On January 9, 2012, A.B. 6674 (Hakeem Jeffries-D) was amended on the Assembly floor. The bill creates a private right of action for improper debt collection procedures. It allows plaintiffs to recover punitive damages and reasonably attorneys' fees. The Senate Companion bill, S.B.4238 (Michael Gianaris-D), was referred to the Senate Committee on Consumer Protection on January 9th. For additional information, please contact Tom Stebbins of the Lawsuit Reform Alliance of New York at tstebbins@lrany.org.

On January 19, 2012, A.B. 8340 was referred to the Assembly Committee on Codes. The bill creates a private right of action for unlawful price gouging for injunctive relief and recovery of actual damages or \$1,000, whichever is greater. This private right of action is in addition to the right of action granted to the attorney general. The bill also permits the court to award a prevailing plaintiff an additional penalty of up to \$5,000 for a willful or knowing violation, and reasonably attorneys' fees. For additional information, please contact Tom Stebbins of the Lawsuit Reform Alliance of New York at tstebbins@lrany.org.

A.B. 9143 (Nick Perry-D) was referred to the Assembly Committee on Labor on January 27, 2012. The bill would limit liability for compensation in cases when the claim is made by an employee who sustained his or her injury during the commission of certain felonies. For additional information, please contact Tom Stebbins of the Lawsuit Reform Alliance of New York at tstebbins@lrany.org.

On January 4, 2012, Senator Dennis Gianaris (D) introduced S.B. 6130 and the bill was referred to the Senate Committee on Judiciary. This legislation would grant immunity from liability for personal injury and property damage sustained by a crime victim upon the premises of a business or nonprofit while seeking assistance, except in cases of gross negligence. For additional information, please contact Tom Stebbins of the Lawsuit Reform Alliance of New York at tstebbins@lrany.org.

Ohio- Good News!

The Senate passed S.B. 202 (Bill Seitz-R) on February 1, 2012, by a vote of 26-4. This bill codifies existing law with respect to trespassers by providing landowners immunity from liability for injuries to trespassers. It establishes that a possessor of land does not owe a duty of care to a trespasser, except for cases when the land possessor knows of the trespasser's presence, maintains certain types of artificial conditions on the premise, or in certain instances involving child trespassers. For additional information, please contact Chris Ferruso of the Ohio Alliance for Civil Justice at chris.ferruso@nfib.org.

Oklahoma

Oklahoma's 2012 legislative session will convene on February 6, 2012; however, several bill have already been prefiled and are summarized below.

Senator Anthony Sykes (R) introduced S.B. 1761, pertaining to the Government Tort Claims Act. The bill provides that the state shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in the Governmental Tort Claims Act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The bill was prefiled on January 20, 2012. For more information, please contact Mike Seney of the State Chamber of Oklahoma at mseney@okstatechamber.com.

Senator Greg Treat (R) introduced S.B. 1882, pertaining to the Government Tort Claims Act. The bill amends the act to include indemnification for the state when an injury is incurred through the use of indoor or outdoor school property and facilities made available for public recreation before or after normal school hours or on weekends or school vacations. The amendment excludes those claims resulting from willful and wanton acts of negligence. The bill was prefiled on January 20, 2012. For more information, please contact Mike Seney of the State Chamber of Oklahoma at mseney@okstatechamber.com.

Representative Colby Schwartz (R) introduced H.B. 1506 on February 7, 2011, pertaining to damages. The bill would reduce the limit on noneconomic damages that may be awarded for bodily injury from \$400,000 to \$250,000. The bill was referred to the House Committee on the Judiciary on February 8, 2011, and is carried over to this session. For more information, please contact Mike Seney of the State Chamber of Oklahoma at mseney@okstatechamber.com.

H.B. 1774 (Sean Roberts – R) is legislation that relates to the Affordable Access to Health Care Act and reduces the amount of recoverable noneconomic damages in cases concerning emergency care provided in the emergency room from \$300,000 to \$250,000. The bill is carried over from being in the House Judiciary Committee on February 8, 2011. For more information, please contact Mike Seney of the State Chamber of Oklahoma at mseney@okstatechamber.com.

H.B. 1995 (Daniel Sullivan – R) pertains to the Government Tort Claims Act and provides that any hospitals operated by a public trust must maintain health care malpractice liability insurance coverage with available limits of at least \$1 million. The substitute bill includes all doctors in Oklahoma and requires them to carry at least \$1 million in medical liability insurance, and it is no longer on a per claim basis. Also, the substitute does not require an annual aggregate amount. The bill was last amended April 19, 2011, and is carried over to this year's session. For more information, please contact Mike Seney of the State Chamber of Oklahoma at mseney@okstatechamber.com.

Representative Fred Jordan (R) prefiled H.B. 2663 on January 20, 2012, attorney general sunshine legislation. For more information, please contact Mike Seney of the State Chamber of Oklahoma at mseney@okstatechamber.com.

Representative Paul Roan (D) prefiled H.B. 2430 on January 20, 2012, pertaining to damages. The bill provides that in any civil action arising from a claimed bodily injury, the amount of compensation which a trier of fact may award a plaintiff for noneconomic loss shall not exceed \$350,000, regardless of the number of parties against whom the action is brought or the number of actions brought. For more information, please contact Mike Seney of the State Chamber of Oklahoma at mseney@okstatechamber.com.

Senator Patrick Anderson (R) prefiled S.B. 1725 on January 20, 2012, pertaining to tort limitations on liability. The bill updates some statutory references to tort liability limits. This is a companion to S.B. 1805 prefiled on January 20, 2012, by Senator Anthony Sykes (R). For

more information, please contact Mike Seney of the State Chamber of Oklahoma at mseney@okstatechamber.com.

Pennsylvania

H.B. 1907 (Glenn Grell-R) was referred to the Senate Committee on Judiciary on January 23, 2012. The bill would amend the Medical Care Availability and Reduction of Error Act. It provides for a limited amount of punitive damages for unlawful practices by personal care homes, assisted living communities and long term care nursing facilities, or an officer, employee or agent of these entities while acting in the court and scope of their employment. Specifically, the bill provides that punitive damages, when awarded, shall not exceed 200% of the compensatory damages awarded and shall not be less than \$100,000, unless a lower verdict amount is returned by the trier of fact. For additional information, please contact Kevin Shivers of the NFIB/PA at Kevin.shivers@nfib.org.

Rhode Island

On January 18, 2012, Representative Joseph McNamara (D) introduced H.B. 7172, a bill that provides that expressions of sympathy and statements about an outcome of treatment are inadmissible as evidence of an admission of liability. For additional information, please contact Michael Isaacs of Defense Counsel of Rhode Island at dcric@defensecounselri.org.

H.B. 7229 (Aghostino Silva-D) was introduced on January 25, 2012. The legislation would limit damages to \$100,000 in tort actions against Rhode Island Public Transit Authority. For additional information, please contact Michael Isaacs of Defense Counsel of Rhode Island at dcric@defensecounselri.org.

H.B. 7245 (Michael Marcello-D) was introduced on January 25, 2012. This bill provides that interest on judgments accrue from the date of the filing of the civil action. The Senate Companion bill, S.B.2137, was introduced on January 18th. For additional information, please contact Michael Isaacs of Defense Counsel of Rhode Island at dcric@defensecounselri.org.

Representative Marcello introduced H.B. 7246 on January 25, 2012. The bill would reduce the interest rate from 12% to 6%. The Senate Companion bill, S.B. 2140, was introduced on January 18th. For additional information, please contact Michael Isaacs of Defense Counsel of Rhode Island at dcric@defensecounselri.org.

On January 18, 2012, S.B. 2136 (Marc Cote-D) was introduced. This legislation provides that in a case of multiple defendants, a defendant shall not be held jointly liable unless he or she was more than 25% of the cause. For additional information, please contact Michael Isaacs of Defense Counsel of Rhode Island at dcric@defensecounselri.org.

Senator Ruggerio (R) introduced S.B. 2206 on January 24, 2012, and the bill was referred to the Senate Committee on Health and Human Services. The bill would prevent the disclosure of patient's medical information through ex parte contacts with a health care provider except by patient and attorney. For additional information, please contact Michael Isaacs of Defense Counsel of Rhode Island at dcric@defensecounselri.org.

Tennessee

On January 12, 2012, S.B. 2142 (Brian Kelsey-R) was referred to the Senate Committee on Judiciary. This bill codifies existing law with respect to trespassers by providing landowners immunity from liability for injuries to trespassers. It establishes that a possessor of land does not owe a duty of care to a trespasser, except for cases when the land possessor knows of the

trespasser's presence, maintains certain types of artificial conditions on the premise, or in certain instances involving child trespassers. For additional information, please contact Matt Fullenbaum of ATRA at mfullenbaum@atra.org.

S.B. 2151 (Bill Ketron-R) was referred to the Senate Committee on Judiciary on January 12, 2012. This bill would limit the liability of landowners who permit others to use their land for recreational purposes free of charge. For additional information, please contact Matt Fullenbaum of ATRA at mfullenbaum@atra.org.

On January 20, 2012, Vance Dennis (R) prefiled H.B. 2809. The bill provides that no statutory private right of action or duty of care is created unless a statute contains express language creating the right or duty. The bill also prohibits implied rights of action or duties of care unless based on common law, in cases where no controlling statute exists. For additional information, please contact Matt Fullenbaum of ATRA at mfullenbaum@atra.org.

Senator Martha Norris (R) introduced S.B. 3101 on January 25, 2012, and it was referred to the Senate Committee on Judiciary. The bill provides that recoverable damages in a health care liability action may include all actual economic losses suffered by the claimant, but only to the extent that such costs are not paid or payable and such losses are not replaced, or indemnified in whole or in part by another party. For additional information, please contact Matt Fullenbaum of ATRA at mfullenbaum@atra.org.

Senator Roy Herron (D) introduced S.B. 3739 on January 26, 2012. This bill would prohibit vendors of services for electronic medical records from entering into or renewing contracts or agreements with health care facilities and health care providers that require indemnification of the vendor by the facility or provider or that prohibit lawsuits against the vendor. For additional information, please contact Matt Fullenbaum of ATRA at mfullenbaum@atra.org.

Virginia

Delegate David Yancey (R) introduced H.B. 724 on January 11, 2012, and it was referred to the House Committee on the Courts of Justice. The bill relates to liability of real estate brokers and salespersons, and exempts a licensed real estate broker or salesperson from criminal and civil liability for making an advertisement that contains any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading if the information was provided to such broker or salesperson by his client. For more information, please contact Nicole Riley of the NFIB/VA at Nicole.riley@nfib.org.

Washington

H.B. 1032 (Roger Goodman – D) would make changes to the consumer protection act by allowing the Attorney General's office to recover attorneys' fees when it prevails, but defendants would only be able to recover its attorneys' fees when the case is frivolous. Current law provides that in consumer protection act cases brought by the Attorney General, the prevailing party is able to recover its attorney's fees. H.B. 1032 is for all intents and purposes a one-way fee-shifting bill as it is unlikely the Office of the Attorney General would bring a frivolous case. The bill was re-introduced and retained in its present status on January 9, 2012. S.B. 5079 is its companion legislation (see below). For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

On January 12, 2012, H.B. 1232 (Dean Takko-D) was referred to the House Committee on the Judiciary. The bill limits liability for making certain land and water areas available for

recreational use. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

H.B. 1360 (Joe Schmick – R) is legislation that provides for joint and several liability reform, a limit on noneconomic damages, statute of limitations reform, attorneys' fees upon summary judgment dismissal, periodic payment of future damages, and early offer of settlement. On January 9, 2012, the bill was reintroduced and retained in present status. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

Representative Kathy Haigh (D) introduced H.B. 1559 on January 24, 2011, pertaining to Indemnification Agreements and Design Professionals. The bill limits indemnification agreements involving design professionals. It was referred to House Committee on Ways and Means as of January 24, 2012. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

H.B. 1580 (Brad Klippert – R) would provide immunity from liability to law enforcement agencies, the Department of Corrections, and the Department of Social and Health Services for certain injuries to persons or property. On January 9, 2012, the bill was reintroduced and retained in present status. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

H.B. 1681 (Deborah Eddy – D) limits employer liability under the doctrine of respondeat superior. On January 9, 2012, the bill was reintroduced and retained in its present status. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

Representative Ann Rivers (R) introduced H.B. 1779 on January 31, 2012. This bill modifies provisions relating to joint and several liability. Specifically, the bill modifies the entities whose fault shall be determined to include entities that have entered into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with the claimant. The bill was reintroduced and retained in its present form on January 9, 2012. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

On January 30, 2012, H.B. 2284 (D) was reported favorably from the House Judiciary Committee. The bill modifies the civil penalties for parents or legal guardians who have custody of an un-emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

A public hearing was scheduled on January 24, 2012, for S.B. 5054 (Adam Kline-D). This legislation would regulate legal proceedings involving public hazards by lowering the threshold for the causation of bringing such cases and would limit the effectiveness of confidentiality agreements. Foreclosing a judge's discretion to issue a protective order only when the information involves a "public hazard" not only contravenes the current legal standard of "in the public interest," it increases the likelihood that trade secrets and other confidential information will be made publicly available. This change will hamper the free exchange of information in the discovery phase of a lawsuit, despite the U.S. Supreme Court stating that no public right of access to information exists during such a phase. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

S.B. 5310 (Adam Kline – D) is false claims act legislation that would allow private parties to bring lawsuits against vendors or contractors suspected of making a "false statement" for payment from a government entity. The bill was reintroduced and retained in its present form on January 9, 2012. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

(Karen Keiser – D) would establish a false claims act for such a system. The bill was reintroduced and retained in its present form on January 9, 2012. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

S.B. 5379 (Don Benton – R) provides that a person who commits a wrongful act against a governmental entity is liable to the governmental entity for: (a) a civil penalty of not less than \$5,000 and not more than \$10,000; (b) an amount equal to three times the damages sustained by the governmental entity as a result of the wrongful act; and (c) all costs incurred by the governmental entity in maintaining a civil action hereunder, including attorneys' fees. The bill was reintroduced and retained in its present form on January 9, 2012. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

S.B. 5384 (Mary Margaret Haugen – D) would revise the admissibility in a civil action of failing to wear safety belt assemblies and failing to use child restraint systems (repealing the "seat belt gag rule"). The bill was reintroduced and retained in its present form on January 9, 2012. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

S.B. 5458 (Karen Keiser – D) would establish the Medicaid fraud false claims act, and creates the Medicaid fraud penalty account. The bill was reintroduced and retained in its present form on January 9, 2012. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

A public hearing on S.B. 5605 (James Hargrove-D) was held on January 27, 2012. S.B. 5605 eliminates joint and several liability except where a party is responsible for the fault of another person or for payment of the proportionate share of another party where the two were acting in concert or when a person was acting as an agent or servant of the party. The change eliminates the "empty chair" defense for joint and several liability purposes. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

S.B. 5672 (Doug Ericksen – R) provides that in all actions for damages for injury or death occurring as a result of health care, the liability of the health care provider for noneconomic damages is several only. Under the legislation, an action based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury, death, or condition, or within one year of the time that patient discovered or reasonably should have discovered that the injury or death was caused by the act or omission, whichever occurs first. In no event may an action be commenced more than three years after the act or omission alleged to have caused the injury except upon proof of fraud, intentional concealment or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose, or in specific cases involving minors. The bill also provides that the court shall award reasonable attorneys' fees to a health care provider who obtains a summary judgment dismissal or a voluntary dismissal. S.B. 5672 also promotes period payments of future damages and encourages early settlement offers. It requires the Department of Health to develop a program to provide business and occupation tax credits for physicians who serve uninsured, Medicare, and Medicaid patients in a private practice or a reduced fee access program for the uninsured. The

bill was reintroduced and retained in its present form on January 9, 2012. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

A public hearing for S.B. 5789 (Nick Harper-D) was held on January 17, 2012. No vote was taken at the hearing and it has yet to be scheduled for an executive session. The bill addresses workplace bullying by making it an unfair practice to subject an employee to an abusive work environment. For more information, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

West Virginia- Good News!

The Senate unanimously passed S.B.367 (Robert Williams-D) on February 1, 2012. This bill codifies existing law with respect to trespassers by providing landowners immunity from liability for injuries to trespassers. It establishes that a possessor of land does not owe a duty of care to a trespasser, except for cases when the land possessor knows of the trespasser's presence, maintains certain types of artificial conditions on the premise, or in certain instances involving child trespassers. For additional information, please contact Matt Fullenbaum, ATRA, at mfullenbaum@atra.org.