

ATRA Legislative Watch

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States Activity

There are currently 22 states in regular session: Arizona, California, Colorado, Connecticut, DC, Delaware, Florida, Georgia, Hawaii, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, New Hampshire, New York, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Vermont.

Arizona- Good News!

S.B. 1189 (Barbara Leff-R) was passed by the Senate with a vote of 22-8 and was sent to Governor Brewer on April 28, 2010. This legislation would adopt the Daubert standard for admitting expert witness testimony and expert evidence; Arizona Courts currently embrace the less stringent Frye standard. For additional information on this bill, please contact Lorna Romero of the Arizona Chamber of Commerce at lromero@azchamber.com.

California

S.B. 1275 (Mark Leno-D) was read for a second time in the Senate and re-referred to the Committee on Appropriations on April 28, 2010. This bill imposes a host of detailed new requirements on lenders, creating new obligations for them to fulfill before they foreclose. Any violation, no matter how technical, is enforceable by a lawsuit to stop the foreclosure. Pushing non-judicial foreclosures into court only will help lawyers and clog already-overburdened California courts. California's foreclosure process already is highly regulated. There is no need to insert lawyers and lawsuits into the process. For additional information, please contact Kim Stone of the Civil Justice Association of California at kstone@cjac.org.

The hearing of A.B. 2588 (Audra Strickland-R) in the Assembly Judiciary Committee was pushed back from April 27th to May 4th. This bill provides comprehensive reform to California's class action law. Class action lawsuits have become an increasing problem in California, and A.B. 2588 seeks to protect the rights of the true victims, while providing statutory standards for judges to use when deciding whether to certify a class. This would lead to class action law becoming fairer, and it would allow defendants the same right plaintiffs already have, to appeal the class certification decision. The bill also is extremely important to California's economy because the state's unemployment rate is over 12% and their lawsuit climate is ranked 46th nationally. The changes provided by this bill would help promote economic recovery. For additional information, please contact Kim Stone at kstone@cjac.org.

On April 22, 2010, the Assembly Committee on the Judiciary recommended A.B. 1639 (Pedro Nava-D) do pass and referred it to the Committee on Appropriations. This bill would create a new costly, time-consuming, and unnecessary dispute resolution process, the "Monitored Mortgage Workout Program." The new program has unique notice requirements and provides complex and detailed rules regarding payment. The bill also serves to halt the foreclosure process, creates new requirements as to who can serve as a "monitor," and creates a new, attorney-like representative role. For additional information, please contact Kim Stone at kstone@cjac.org.

A.B. 2334 (Mary Salas-D) was read and amended in the Assembly for the second time and re-referred to the Committee on Health on April 26, 2010. This bill would prohibit medical providers from charging interest or late fees to patients who do not pay their bills on time. This will encourage patients to avoid paying the bill and, after a certain amount of time, the only recourse the health provider may have would be to take the patient to court. For additional information, please contact Kim Stone at kstone@cjac.org.

On April 22, 2010, H.B. 1680 was read in the Assembly for a third time. This is an anti-arbitration bill that would prohibit the use of arbitration agreements to resolve disputes arising out of hate crimes. The bill states that no waiver of rights or protections under the Ralph Civil Rights Act may be a condition of a contract. This prohibition on arbitration is contrary to the provisions of the Federal Arbitration Act, providing that arbitration is valid, irrevocable and enforceable, and will overburden the court system by increasing the case load. Arbitration is just as fair as a civil trial, and disputes often are resolved quicker and at a lesser expense than a trial. For additional information, please contact Kim Stone at kstone@cjac.org.

A.B. 2773 (Sandre Swanson-D) is set for a hearing next week in the Assembly Judiciary Committee. This bill changes case law to make it easier for plaintiff's lawyers in employment cases to get attorneys fees. The bill overrules the California Supreme Court's decision in *Chavez v. City of Los Angeles*, 47 Cal.4th 970, a case that held that a trial court has the discretion in a Fair Employment and Housing Act case to deny a successful plaintiff attorney's fees in an unlimited civil case when the plaintiff recovers less than the jurisdiction amount of \$25,000. For additional information, please contact Kim Stone at kstone@cjac.org.

A.B. 1881 (Bill Monning-D) is set for a hearing before the Assembly Labor Committee. This bill would double the liquidated damages that can be awarded to a plaintiff in a minimum wage action. Liquidated damages are a form of punitive damages, and they are equal to the amount of underpaid wages plus interest. These damages are awarded in addition to: (1) the underpaid wages owed; (2) interest on the underpaid wages; and (3) statutory penalties of \$100 or \$250 per pay period. Since employer defendants must make the employee whole and pay a substantial penalty, a further expansion of liquidated damages is unjustified. For additional information, please contact Kim Stone at kstone@cjac.org.

Colorado

On April 20, 2010, H.B. 1234 (Diane Primavera-D) failed second reading. According to the Colorado Civil Justice League (CCJL), legislators amended the legislation several times attempting to find a pragmatic way to achieve the sponsor's goal of requiring denied claims to be reviewed by practicing medical specialists. In the end, the process remained too cumbersome to allow an orderly and efficient review of claims. The legislation would have added more red tape to insurers' review of medical claims by prohibiting a denial of a claim for medial benefit unless denial is based on a finding of medical necessity by a licensed Colorado practitioner in the same field or specialty involved in the claim. For additional information, please contact Mark Hillman of CCJL at mh80807@yahoo.com.

The House sent H.B. 1152 (Jerry Frangas-D) back to the House Judiciary Committee last Friday, April 23, 2010. In its current form, the bill would create a litigation jackpot for claims of failure to provide access of public accommodations for people with disabilities. However, the bill does not provide the opportunity to remedy the problem before heavy fines are imposed. For additional information, please contact Mark Hillman of CCJL at mh80807@yahoo.com.

On April 27, 2010, the House passed H.B. 1357 (Buffie McFadyen-D) by a vote of 40-24. The legislation would establish the Colorado False Claims Act. For additional information, please contact Mark Hillman of CCJL at mh80807@yahoo.com.

H.B. 1395 (Bob Gardner-R) was reported favorably out of the Senate Judiciary Committee on April 26, 2010. The legislation would give initial jurisdiction to the Court of

Appeals for interlocutory appeals regarding questions of law in civil cases. For additional information, please contact Mark Hillman of CCJL at mh80807@yahoo.com.

Florida- Good News!

Governor Crist signed S.B. 2440 (Michael Bennett-R) on April 27, 2010. This bill provides that a motorsport liability release signed by a natural guardian on behalf of a minor is valid. A natural guardian is authorized to waive, in advance, any claims for injuries to a minor that may arise from the inherent risks of motorsport activities. Under the legislation, a waiver and release form does not relieve a party of liability for any intentional misconduct or gross negligence committed against the child. The legislation also takes into account the rights of children to have access to these activities and the ability of a parent to make decisions in the best interest of his or her child, understanding there is some inherent risk when children participate in activities like riding ATVs, scuba diving, and playing sports. As a result of this legislation, should a lawsuit be filed against an activity provider, the plaintiff will have a higher burden of proof, and the plaintiff will be prohibited from bringing a failure to warn claim. For additional information, please contact William Large of the Florida Justice Reform Institute at william@fljustice.org.

H.B. 449 (Richard Steinberg-D) was passed by the House and sent to the Senate on April 26, 2010. This bill prohibits monetary sanctions against a represented party for a claim that is presented as a good faith argument but that is found to not be supported by the application of then-existing law to material facts. The bill also prohibits sanctions against a party or its attorneys by a court if the case already has been settled or voluntarily dismissed by that party. For additional information, please contact William Large of the Florida Justice Reform Institute at william@fljustice.org.

H.B. 821 was sent to enrollment on April 23, 2010. The Senate companion bill, S.B. 1114 (Dan Gelber-D), was substituted by H.B. 821 on the Senate floor and laid on the table on April 22, 2010. These bills define the scope and intent of the "Florida International Commercial Arbitration Act," and limit the ability of the court to intervene in an arbitral proceeding. Also, the bills designate the circuit court in which arbitration is or will be held as the court that may take certain actions. For additional information on these bills, please contact William Large of the Florida Justice Reform Institute at william@fljustice.org.

Georgia- Good News!

S.B. 138 (John Wiles-R) passed the House on April 27, 2010, and is now eligible for the governor's desk. This bill states that legislative enactments do not create a private right of action unless expressly stated therein and is based on ALEC's model "Transparency in Lawsuits Protection Act." For additional information on this bill, please contact Matt Fullenbaum at mfullenbaum@atra.org.

Illinois

S.B. 3322 (Don Harmon-D), a Non-Recourse Civil Litigation Funding Act, was referred to the House Committee on Rules on March 18, 2010, and the Illinois Civil Justice League is working hard to keep the bill locked in committee. This bill removes lawsuit lending from current Illinois lending regulations, which gives the lenders the ability to charge any interest rate that they want to Illinois consumers. By including a third-party lender into a case, the plaintiff has greater incentive to reject a reasonable settlement offer because of his or her new obligation to share potential recoveries with the lender. The bill also opens the door to traditional third-party litigation funding because nothing in the legislation denies or regulates the industry-related practices. The industry practice threatens the civil justice system because it encourages lawsuit abuse, undercuts the plaintiff's control over his or her own claim, and creates conflicts of interest

for the plaintiff's attorney. For additional information, please contact Allen Adomite with the Illinois Civil Justice League at allen.adomite@gmail.com.

On April 22, 2010, H.B. 5951 (William Burns-D), a False Claims Act bill, was raised for a second time in the Senate and placed on the Senate calendar order for a third reading. Under this bill, the Attorney General or a private citizen can bring an action on behalf of the state. If the Attorney General chooses to proceed, then the state has the primary responsibility in the case and is not bound by the actions of the person who brought the claim. The private citizen can still remain a full party to the suit and receive 15-25% of the settlement. For additional information, please contact Allen Adomite with the Illinois Civil Justice League at allen.adomite@gmail.com.

Louisiana

The Senate adopted the committee amendments to S.B. 595 (Julie Quinn-R) on April 22, 2010, and the bill was ordered to be engrossed. This bill prohibits an increase in premium, cancellation, or failure to renew certain insurance policies due to the presence of Chinese dry wall. For additional information, please contact Jim Harris of the Coalition for Common Sense at jharris@hdaissues.com.

On April 26, 2010, the House passed H.B. 25 (Neil Abramson-R) and referred it to the Senate Committee on Judiciary A. This bill would exempt the Louisiana Citizens Property Insurance Corporation from posting bonds in any judicial proceedings arising from activities within the scope of its duties and employment. The amended version makes the bill prospective only. For additional information, please contact Jim Harris at jharris@hdaissues.com.

The House Civil Law Committee deferred H.B. 573 (Nickie Monica-R) on April 27, 2010, by a vote of 7-6. As a result, the bill is dead for the session. This bill would have reduced the monetary amount in controversy necessary for a jury trial from \$50,000 to \$10,000. For additional information, please contact Jim Harris at jharris@hdaissues.com.

H.B. 61 was deferred in the House Civil Law Committee by a vote of 10-3 on April 27, 2010. As a result, this bill also is dead for the session. This bill would have provided that a trial by jury shall not be available in a suit where the amount of the individual petitioner's cause of action does not exceed \$50,000, exclusive of interest, costs, and penalties. The current statutory limit does not exclude penalties. For additional information, please contact Jim Harris at jharris@hdaissues.com.

New York – Take Action Now!

A. 2874 (Helene Weinstein-D) and S. 7035 (Eric Schneiderman-D) are bills that would, for the first time, impose interest costs of 9% upon defendants for post-settlement delay due solely to conduct beyond the control of the defendant. The state, its municipalities, not-for-profits, health care providers, and businesses simply cannot afford to add costs to a system which is already broken. A. 2874 passed the Assembly on March 24, 2010. S. 7035 currently is on the Senate calendar. **ATRA strongly encourages members with an interest in New York to engage their local lobbyist and/or counsel to defeat these bills. Please direct follow-up and questions to Walter Pacholczak, Director of Government Affairs, at the Business Council of New York State, at walter.pacholczak@bcnys.org.**

Ohio

The House Civil and Commercial Law Committee heard proponent testimony on H.B. 427 (Mark Schneider-D) on April 27, 2010. This legislation would call for monetary awards in class actions that were not paid over to members of the class to be used for charitable public purposes. The bill would codify existing cy pres doctrine, which allows, but does not require, unclaimed settlement funds to be distributed to charities. Under this legislation, defendants would be required to pay the full amount of the settlement fund regardless of the number of

claimants that come forward. If enacted, this bill likely would increase the number of class action lawsuits filed, discourage companies from entering into settlement agreements, and inflate plaintiff attorney fees. Of great concern are the recent promises made by the trial lawyers to charities for new money, which is adding momentum and popular support for the bill. Businesses that are forced to defend against these often frivolous claims, face tremendous costs associated with fighting them, protecting their reputation and preserving customer good will. For additional information about this bill, please contact Ryan Augsburger with the Ohio Alliance for Civil Justice at raugsburger@Ohiomfg.com.

Oklahoma

On April 28, 2010, the Senate refused to concur on the House amendments to S.B. 1379 (Anthony Sykes-R) and referred to the Conference Committee. This bill would enact the Private Attorney Retention Sunshine Act (PARSA). The major change made by the House was that the Oklahoma Department of Transportation and the Oklahoma Turnpike Authority are exempt from the bill. The legislation would require a request for proposal process for retention of a lawyer or law firm on behalf of the state when the fees and expenses for the service are expected to exceed \$5,000. The bill would authorize the state to create a website to request for proposals. The website would contain a list of all persons and entities who received a request for proposal and information about the vendor awarded the state contract. The bill also would require the governor to review any state agency contract for legal services that would exceed \$500,000. The state agency would be required to provide, along with the contract, a written statement including the reasons the agency needed to retain private counsel, the reasons for the selection of the lawyer or law firm, and the past or present relationship between the lawyer and the state agency. At the conclusion of any legal proceeding, the state shall receive from the private counsel a statement of the hours worked, expenses incurred, the aggregate fee amount, and a breakdown of the hourly rate. The bill provides that in no case shall the hourly rate exceed \$1,000. For more information about this bill, please contact Mike Seney with the Oklahoma State Chamber at mseney@okstatechamber.com.

Pennsylvania- Good News!

The House hearing on H.B. 1095 (Jesse White-D), H.B. 1444 (Matthew Bradford-D), H.B. 2123 (Paul Drucker-D) and H.B. 2202 (Mike Gerber-D), previously scheduled for April 28th was cancelled, and they do not intend to run the bills before the primary. These bills would increase the cost of litigation and the amount of damages the hospitals, physicians, nursing homes, businesses, governmental entities, and individuals will have to pay in liability cases. If passed, the bills will worsen Pennsylvania's already appalling legal climate, drive up health care costs, and threaten access to health care.

In particular, H.B. 1095 and H.B. 2202 would expand the type of damages that can be recovered and the people who can sue to recover them. H.B. 1444 would permit a jury in a civil case to hear closing arguments on the amount of both economic and noneconomic damages. This change will increase the cost of litigation and damages by appealing to the jury's emotions. H.B. 2123 would prohibit the use of pre-treatment arbitration agreements. Arbitration has proven to be a more rapid, less costly, and a less formal resolution to many claims, and the use of voluntary, binding arbitration to resolve medical liability claims is becoming more common in order to help health care providers control costs. In an era when it is important to help control these costs, the Pennsylvania Legislature should not be preempting the use of this alternative dispute resolution process. For additional information, please contact Kevin Shivers with the Pennsylvania NFIB at Kevin.shivers@nfib.org.

Rhode Island

On April 27, 2010, the House Committee on the Judiciary recommended that H.B. 7289 (Edith Ajello-D) do pass. This bill provides for no liability for gratuitously rendering emergency CPR assistance. This bill applies to either a person acting in an official capacity or a private volunteer, but does not apply to acts or omissions constituting gross, willful, or wanton negligence. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

Wisconsin – Legislature Ends Regular Session

On Wednesday, April 23, 2010, at 4:00 am, the Wisconsin Legislature ended its final regular floor period for the 2010 session. The session officially adjourns sine die on January 3, 2011. No trial lawyer bills that were actively opposed by the Wisconsin Civil Justice Council (such as legislation to expand the wrongful death statute in medical liability cases) passed the legislature. For additional information, please contact Bill Smith of WCJC at bill.smith@nfib.org.