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State Action

Arizona

H.B. 2492 (Andrew Tobin–R) was debated in the Committee of the Whole on March 4, 2010. The Senate companion bill S.B. 1189 passed the Senate on Monday with bipartisan support 20-8-1. Supporters anticipate that the House bill's third read will occur early next week and they are expecting to have bipartisan support in the House as well. This legislation would adopt the *Daubert* standard for admitting expert witness testimony and expert evidence; Arizona Courts currently embrace the less stringent *Frye* standard. **ATRA strongly encourages members with an interest in Arizona to support the effort to pass this important legislation. For additional information about how to become involved, please contact Lorna Romero of the Arizona Chamber of Commerce at lromero@azchamber.com**

California

On February 24, 2010, S.B.X8 70 failed passage in the Senate Committee on Labor and Industrial Relations. This bill tried to clarify the employer's responsibility to "provide" meal and rest breaks, by stating that the employer must make the breaks available, but does not need to ensure that the breaks are taken. This clarification would have helped reduce the number of meal and rest employment class action lawsuits. For additional details or for information about this bill, please contact Kim Stone with CJAC at kstone@cjac.org.

S.B.X8 66 was heard on February 24, 2010, in the Senate Committee on Labor and Industrial Relations and failed passage. Under this bill, employees would be allowed to work four 10-hour days in a week (instead of five 8-hour days) without receiving overtime pay. The legislation would give the employee and employer more flexibility in scheduling without the employer having the burden of paying overtime. Similar bills have been introduced the past four years and have always failed. For additional details or for information about this bill, please contact Kim Stone with CJAC at kstone@cjac.org.

On February 25, 2010, S.B.X8 69 failed passage in the Senate Judiciary Committee. This bill was part of the Governor's package of civil justice reform ideas and was designed to promote jobs and send a message to business leaders that California was making the necessary changes to make the state more welcoming to businesses. The bill would have protected "innocent sellers" in product defect lawsuits. For additional details about this bill, please contact Kim Stone with CJAC at kstone@cjac.org.

On February 4, 2010, A.B. 1680 (Lori Saldana-D) was referred to the Committee on the Judiciary, and a hearing is scheduled for March 9th. 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 details or for information about how to get involved in defeating this bill, please contact Kim Stone with CJAC at kstone@cjac.org.

Colorado

On March 3, 2010, Senate Committee on Health and Human Services heard S.B. 167 (Betty Boyd – D), legislation that would create a False Claims Act in Colorado and allow private whistleblowers to bring claims. Results of the hearing were unavailable at the time we went to press. ATRA will report on the results of the hearing in next week's *Legislative Watch*. For additional information, please contact Kelly Maher of the Colorado Civil Justice League at okmaher@gmail.com.

On March 8, 2010, the House Judiciary Committee is scheduled to hear H.B. 1234 (Diane Primavera-D), legislation pertaining to the settlement of medical claims under an insurance policy. The bill would prohibit an insurer from denying a claim for medical benefits unless denial is based on finding of medical necessity by a licensed Colorado practitioner in the same field or specialty in the claim. For additional information, please contact Kelly Maher of the Colorado Civil Justice League at okmaher@gmail.com.

On March 1, 2010, the House Judiciary Committee was scheduled to hear H.B. 1248 (Diane Primavera-D) but it was postponed indefinitely. This legislation would prohibit the sale of personal care products that contain any amount of any substance that is or could be carcinogenic or toxic. The bill also authorizes enforcement of the statute by private litigants with proceeds from lawsuits going to the state and requires defendants to pay plaintiffs' attorney fees and costs. For more information on this bill, please contact Kelly Maher of the Colorado Civil Justice League at okmaher@gmail.com.

On March 1, 2010, the House Judiciary Committee heard H.B. 1269 (Claire Levy-D) and referred the bill as amended to the Appropriations Committee. This is legislation that would expand employer discrimination lawsuits to small employers. The bill would, for the first time, impose pain and suffering awards, punitive damages, and attorney fees on small businesses in state employment discrimination claims, while duplicating penalties that already exist in federal law for larger businesses. For additional information, please contact Kelly Maher of the Colorado Civil Justice League at okmaher@gmail.com.

H.B. 1012 (Claire Levy-D; Morgan Carroll-D) passed the House Judiciary on February 11, 2010, on a 6-4 vote, and it was referred to the House Appropriations Committee. This bill would prohibit employers or insurers from conducting surveillance to investigate possible workers compensation claims fraud without a "reasonable basis." The bill also would implement a fine of \$1,000 a day. For additional information, please contact Kelly Maher of the Colorado Civil Justice League at okmaher@gmail.com.

H.B. 1168 was passed with amendments by the House Judiciary Committee on a 10-0 vote on February 25, 2010. The bill is on the calendar for House debate on or after March 1. This legislation would limit the ability of health insurers which have paid benefits to an injured insured to recover the cost of those benefits unless the injured insured has been "fully compensated." The bill establishes the presumption that an injured party has been fully compensated if he or she settled for less than policy limits or if he or she was paid according to the terms of a court judgment. It is presumed that the injured party has not been fully compensated if he or she settled for the full amount covered under the policy. The bill excludes workers compensation, uninsured motorists and property damage. For additional information, please contact Kelly Maher of the Colorado Civil Justice League at okmaher@gmail.com.

S.B. 76 (Morgan Carroll-D) was passed by the Senate Health & Human Services on a 4-3 vote and is on the Senate calendar for debate on or after March 1. This bill provides that the payment of a salary or any financial incentive to a health insurer employee whose work may result in the denial of a claim is an illegal and unfair practice. The bill prohibits this practice and likely would lead to increased litigation as plaintiffs' attorneys look for evidence of compensation that contradicts these prohibitions. For additional information, please contact Kelly Maher of the Colorado Civil Justice League at okmaher@gmail.com.

Florida

On March 1, 2010, the Civil Justice & Courts Policy Committee heard H.B. 689, introduced by Gary Aubuchon–R, and it passed favorably 11-2; it was referred to the Criminal Justice & Courts Policy Council. The bill provides that if a person slips and falls on a transitory

foreign substance in a business establishment, the injured person must prove that the establishment had actual or constructive knowledge of the condition and should have taken action to remedy it. Constructive knowledge may be proven by circumstantial evidence. For additional information, please contact William Large of the Florida Justice Reform Institute at william@fljustice.org.

S.B. 1474 (John Thrasher-R) will be heard in the Health Regulations Committee on March 4, 2010. This bill provides sovereign immunity for emergency room health care providers. For additional information, please contact William Large of the Florida Justice Reform Institute at william@fljustice.org.

Senator Mike Bennett (R) introduced S.B. 2440 on February 25, 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. For additional information, please contact William Large of the Florida Justice Reform Institute at william@fljustice.org

On February 26, 2010, Senator Chris Smith (D) introduced S.B. 2634, the Senate companion bill to H.B. 611 (Dwayne Taylor-D). This bill would increase the recovery for first responders in a worker's compensation claim. For additional information, please contact William Large of the Florida Justice Reform Institute at william@fljustice.org.

On February 26, 2010, Senator Gary Siplin introduced S.B. 2692, legislation that would overturn the 2006 joint and several reforms. This legislation would require the division of total fault for parties and nonparties by judgment in negligence cases. The bill would abrogate the use of privilege and immunity defenses to all statutory cause of action, abuse of process, malicious prosecution, and fraud upon the court. For additional information, please contact William Large of the Florida Justice Reform Institute at william@fljustice.org.

Illinois

On March 2, 2010, S.B. 3498 (Kirk Dillard-R) was supposed to be heard in the Senate Judiciary Committee, but the hearing was postponed. This bill prohibits bringing a civil action claim if the claim is based in whole, or in part, on an act or omission that occurred more than 15 years prior to the claim being brought.

S.B. 3617 (AJ Wilhelmi-D) was heard in the Senate Judiciary Committee on March 2, 2010, and it was placed on the Senate calendar for a second reading on March 4th. Under this legislation, any civil action that is based upon a claim of civil conspiracy, concert of action, or aiding and abetting may not be established merely by alleging a defendant's participation in the conspiracy alone. The action shall be dismissed as a matter of law if the court concludes that the defendant did not owe a legal duty of care to the plaintiff.

On March 2, 2010, S.B. 3631 (Kirk Dillard-R) was heard in the Senate Judiciary Committee and referred to the Senate Judiciary Subcommittee on Civil Process and Procedure. This bill provides that in any civil litigation, execution of the judgment shall be stayed during the appellate review upon the posting of a supersedeas bond. The supersedeas bond amount shall be set in accordance with law or court rules, and it shall not exceed \$150 million, regardless of the judgment amount.

H.B. 5797 (Dennis Reboletti-R) is scheduled to be heard in the Judiciary Civil Law Committee on March 10, 2010. This is a Consumer Fraud Act Reform bill that clarifies the original intent of the Consumer Fraud Act. This legislation makes clear that the Consumer Fraud Act does not apply to damages for conduct resulting in bodily injury, death, or damage to property other than the property that is the subject of the practice claimed to be unlawful. The Act was intended to protect consumers from suffering economic injury due to deceptive and unlawful trade practices. It was not enacted in order to create another tort cause of action that could be used to recover for personal injuries.

For more information about any of these bills, please contact Chris Guy with the Illinois Civil Justice League at cguy@icjl.org.

Iowa

S.F. 2088 passed the House with a vote of 98-1 on March 1, 2010. This legislation contains a state False Claims Act, as does House companion bill, H.S.B. 565, which is pending in the House State Government Committee. Republicans were able to insert some annual reporting language into the Act. Amendment S-5036 would have stripped the state False Claims Act from the bill, but the amendment failed 24-26. For more information on these bills, please contact John Gilliland with the Iowa Association of Business and Industry at jgilliland@iowaabi.org.

Maryland

A hearing is scheduled for H.B. 1333 (Kriselda Valderrama-D; Joseph Vallario, Jr.-D) in the House Judiciary Committee on March 17, 2010. This legislation would increase the compensatory damages that may be awarded to an owner of a pet that has suffered a tortuous death or injury. The increase would go into effect on October 1, 2010. For more information, please contact Ron Wineholt at rwineholt@mdchamber.org.

S.B. 769 (Lisa Gladden-D) was reintroduced to the Judicial Proceedings Committee, and a hearing is scheduled for Tuesday, March, 9th. The bill would increase the maximum amount of noneconomic damages allowable for personal injury and wrongful death actions arising on or after a certain date. An award for noneconomic damages for causes of action arising between January 1, 2010, and September 30, 2010, may not exceed \$680,000. For causes of action arising on or after October 1, 2010, the limitation is increased to \$740,000. The bill also provides that the limitation shall increase by \$15,000 on October 1 of each year beginning October 1, 2011. Under this bill, in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation, regardless of the number of claimants. For additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at rwineholt@mdchamber.org.

On March 24, 2010, a hearing is scheduled for H.B. 824 (Samuel Rosenberg-D) in the Committee on Judicial Proceedings. This bill would provide immunity from civil liability to a health care provider, or agent or employee of a health care provider, who detains or causes the arrest of any person who is believed to have committed theft from the premises of the health care provider or obtained personal information without authorization. For additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at rwineholt@mdchamber.org.

H.B. 1250 (Tom Hucker-D) is scheduled to be heard on the House floor on March 24, 2010. This bill would alter a defendant's remedies in an alleged strategic lawsuit against public participation (SLAPP suit). The bill establishes a certain burden of proof and requires the court to consider specified evidence when they rule on a motion to dismiss. Also, the bill authorizes specific government bodies to intervene to defend or support a party in the SLAPP suit. For additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at rwineholt@mdchamber.org.

On March 10, 2010, H.B. 525 (Speaker Michael Busch-D) will be heard in the House Judiciary Committee. The bill prohibits specified false claims actions against a state health plan or health program, and it provides specified penalties for such claims. Also, the bill authorizes the state or a person on behalf of the state to file a civil action against a person who makes a false claim. For additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at rwineholt@mdchamber.org.

H.B. 1150 (Sue Hecht-D) will be heard in the Economic Matters Committee on March 11, 2010. This bill would increase the Consumer Protection Act damages to an amount not less than \$500 or more than \$5,000 and treble damages under specified circumstances. For additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at rwineholt@mdchamber.org.

On March 10, 2010, H.B. 1166 (Donald Elliott-R) will be heard in the House Judiciary Committee. This bill would require periodic payments of damages in excess of \$100,000 for specified health care malpractice causes of action under specified circumstances. For additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at rwineholt@mdchamber.org.

The House Judiciary Committee will hear H.B. 1320 (Cheryl Glenn-D) on March 17, 2010. This bill would require an employer to provide specified compensation to an employee as a result of service or prospective service as a juror. The bill also provides for penalties if the employer does not comply. For additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at rwineholt@mdchamber.org.

Minnesota

On February 25, 2010, S.F. 2468 (Steve Murphy-DFL) was favorably reported out of the Senate Transportation Committee. The bill now moves to the Senate Judiciary Committee. This legislation would repeal the seat belt gag rule, which prohibits the use/non-use of a seat belt to be admitted into evidence. For additional information, please contact Mark Kulda of Minnesotans for Lawsuit Reform at mkulda@insurancemn.org.

On February 25, 2010, H.F. 1746 (Karla Bigham-DFL) was passed as amended by the House Commerce Committee and referred to the Civil Justice Committee. The Senate companion bill, S.F. 590 (Katie Sieben-DFL) was heard in the Business, Industry and Job Committee, where they passed it as amended and referred the bill to the Judiciary Committee. These bills protect customers from injuries resulting from the use of inflatable play equipment that is used for commercial purposes. The bill requires trained supervisors to be present, and they are required to have liability insurance coverage of \$1million per occurrence and \$2million in aggregate per year with an additional \$5,000 in medical payments coverage. For additional information, please contact Mark Kulda of Minnesotans for Lawsuit Reform at mkulda@insurancemn.org.

S.F. No. 2614 (Rod Skoe-DFL) was passed as amended by the Transportation Committee and re-referred to the Commerce and Consumer Protection Committee on March 1, 2010. This bill clarifies the definition of motor vehicles and is an initiative of the Minnesota Trucking Association. For additional information, please contact Mark Kulda of Minnesotans for Lawsuit Reform at mkulda@insurancemn.org.

Missouri

On March 3, 2010, S.B. 852 (Brad Lager- R) was placed on the Senate's Informal Calendar of Senate bills for perfection. This legislation increases the burden threshold for employees bringing discrimination cases. The bill would require the protected trait to be a motivating factor instead of a contributing factor and, in age discrimination cases, the standard would be changed to require that it would not have occurred but for age. The act also modifies the definition of employer and excludes individuals working in the interest of employers. The bill also would exclude the U.S. government, corporations owned by the United States, individuals employed by employers, Indian tribes, certain departments or agencies of the District of Columbia, and private membership clubs from the definition. For more information about this bill, please contact Brad Jones at the NFIB in Missouri at Brad.Jones@nfib.org.

Mississippi

On March 2, 2010, S.B. 3059 (Joey Filligane – R) failed to pass out of Committee. The legislation was based on ALEC's *Private Attorney Sunshine Act* and would require the Attorney General to give an agency director written notice at least seven working days notice before pursuing legal action on behalf of an agency. If the agency director does not consent, the agency may retain its own separate counsel. The legislation also provided that outside counsel to the Attorney General must keep current and complete written time and expense records of their activity on behalf of the state. Moreover, any contract for legal services in which the legal fee is reasonably expected to exceed \$500,000 shall be reviewed by the Personal Service Contract Review Board (PSCRB) and any contingency fee contract for legal services is capped at 30%. Finally, the bill would have required a public docket of civil cases, including the name and address of any retained or contract counsel. For additional information, please contact Brian Perry of Mississippians for Economic Progress at bp@brianperry.ms.

New Jersey

A-1064 (Reed Gusciora-D) is scheduled to be heard in the Assembly Consumer Affairs Committee on March 4, 2010. This legislation seeks to protect business owners from abuses of the Consumer Fraud Act. The bill would eliminate the award of attorneys fees, filing fees, and costs of suit for technical violation of the Consumer Fraud Act. For more information about this bill, please contact Marcus Rayner at mrayner@njlra.org.

On March 4, 2010, the Assembly Consumer Affairs Committee is scheduled to hear A-1700 (John Burzichelli-D), legislation that would establish the "New Jersey Fair Debt Collection Practices Act." This bill would create guidelines under which debt collectors may conduct business, defines rights of consumers involved with debt collectors, and prescribes penalties and remedies for abusive practices. For more information about this bill, please contact Marcus Rayner at mrayner@njlra.org.

Oregon- Legislature Adjourns

Oregon has completed its February supplemental session and they will now enter into its 2010 election season with the filing deadline for candidates on Tuesday, March 9, 2010. Below is a wrap up of the pertinent bills that saw action during the session.

SJR 46 (Fred Girod-R) was referred to the Senate Committee on Judiciary on February 1, 2010 but it was postponed. This bill proposes a limit on noneconomic damages for health care, nonprofits, and public bodies. The Senate Judiciary Chair announced that an informational hearing on the rural health liability fund will be held during the interim work days scheduled in May. For more information on this bill, please contact Deborah Herron of the Oregon Liability Reform Coalition at dherron@ulum.com.

On February 23, 2010, the House concurred on the Senate's amendments of H.B. 3706 (Committee on Revenue), and the bill is eligible for the Governor's desk. This bill seeks to add loans and extensions of credit as a definition in "real estate, goods and services" to the Unlawful Trade Practices Act. Under the legislation, the Attorney General's enforcement actions and rulemaking authority would be limited with respect to unlawful practices of state regulated lenders. Opposition to the bill claims that it will open an entirely new venue for class action and punitive action that could cause very high costs to a single institution. For more information on this bill, please contact Deborah Herron of the Oregon Liability Reform Coalition at dherron@ulum.com.

The Senate passed H.B. 3673 (Committee on Rules) on February 20, 2010, and the bill is eligible for the Governor's desk. This bill was sponsored by the League of Cities and the Association of Counties, and it aims to modify laws relating to landowner immunity on lands that are used for recreational purposes. The bill provides that if a landowner imposes charges in excess of a specified amount for permission to use land, immunities continue to apply to uses of the land other than the activities for which the charge was imposed. For more information on this bill, please contact Deborah Herron of the Oregon Liability Reform Coalition at dherron@ulum.com.

Pennsylvania

The Pennsylvania legislature had been on a break but they are reconvening the session next week. Below is a list of the bills that are expected to see action over the coming month.

H.B. 1095 (Jesse White-D) and H.B. 2202 (Michael Gerber-D) were recommitted to the House Appropriations Committee on January 27, 2010. These bills expand the types of damages that can be recovered and the person who can sue to recover them. Also, the legislation would significantly increase liability insurance costs and establish Pennsylvania as an outlier. For additional information, please contact Kevin Shivers at Kevin.Shivers@nfib.org.

H.B. 1444 (Matthew Bradford-D) was recommitted to the House Appropriations Committee on January 27, 2010. This bill would permit a jury to hear closing arguments on the amount of damages, both economic and noneconomic, in civil cases. This change would increase the cost of damages by appealing to the emotional aspects of a jury. For additional information, please contact Kevin Shivers at Kevin.Shivers@nfib.org.

H.B. 2123 (Paul Drucker-D) was recommitted to the House Appropriations Committee on January 27, 2010. This bill prohibits the use of pre-treatment arbitration agreements. The use of voluntary, binding arbitration, rather than the court system, to resolve medical liability claims is becoming more common, and it helps the health care providers control costs. If arbitration is no longer available, health care costs will increase and access to care will be threatened. For more information, please contact Kevin Shivers at Kevin.Shivers@nfib.org.

Rhode Island

S.2469 (Michael J. McCaffrey-D) was introduced on February 11, 2010, and referred to the Senate Judiciary. Under this bill, a parent would be allowed to recover damages for the loss of consortium or parental society and companionship after the wrongful death of their child, regardless of their son's or daughter's age. For more information on this bill, please contact Matt Fullenbaum at mfullenbaum@atra.org.

South Carolina

The House passed H.B. 3489, as amended in the Constitutional Law Subcommittee, on March 2, 2010, with a vote of 104-9. The amendment addressed five issues: (1) limit on punitive damages will be set at three times compensatory damages or \$350,000, whichever is greater; (2) the language used in the Private Attorney Retention Act provides for a sliding scale on outside counsel fees and other oversights provisions; (3) the language in the statute of repose assures that building code violations do not constitute per se fraud, gross negligence or recklessness, but such violations can be used as evidence; (4) appeal bonds are limited to \$25 million for large businesses and \$1 million for small businesses; and (5) the bill would repeal the statutory prohibition on the admissibility of the failure to use a seat belt. The bill should be heard for its third reading on March 4th, then it will be sent to the Senate. For additional information, please contact Cam Crawford of the South Carolina Civil Justice Coalition at scciviljusticecoalition@yahoo.com.

South Dakota

On February 23, 2010, the Senate's reconsideration of S.B. 84 (Nancy Turbak Berry-D) failed with a vote of 16-18. This bill sought to revise certain provisions relating to comparative negligence. The bill provided that plaintiff's contributory negligence does not bar recovery if their contributory negligence was less than the negligence of the defendant or the collective negligence of all the defendants. In such cases, the damages then would be reduced by the percentage of the plaintiff's contributory negligence. For more information on this bill, please contact Matt Fullenbaum at mfullenbaum@atra.org.

Washington- Take Action Now!

On March 1, 2010, the House Committee on Ways and Means held a hearing on S.B. 6508 (Darlene Fairley-D) and recommended the bill do pass with a vote of 14-0, after the committee adopted an amendment offered by Rep. Mark Ericks (D). The Erick amendment creates a Local Government Liability Reimbursement Account. The account will be funded by an additional penalty of \$5 on traffic infractions and a \$10 filing fee on superior court filings. The account will be used to reimburse local governments for judgments related to claims based on the new cause of action for "significant involvement." The special funding mechanism will end in 2015.

Under this legislation, parents of a deceased adult child can recover for wrongful death. S.B. 6508 replaces the decades-old age limit of 18 for making a wrongful death claim for a child with the age limit of 26, and it allows the parents of an adult child to recover unlimited noneconomic damages. The bill expands liability for state and local government by holding the government accountable for any preventative action that may have been taken in advance. The bill would indirectly allow for recovery of punitive damages against governmental entities, and it would undermine the availability of important defenses that are currently available to government entities, such as the public duty doctrine and discretionary immunity. The Senate adopted an amendment which limits the joint and several liability of government entities for the class of new

claimants under the bill. It was the same amendment that was rejected on a 23-23 tie on February 13th.

This legislation is similar to a bill introduced two years ago that was the top priority of the trial bar, but it was defeated by the civil justice reform community led by the Washington Liability Reform Coalition (LRC). The Attorney General estimates that this bill would cost state taxpayers at least \$18.4 million per biennium, and local government taxpayers could expect to be responsible for an additional \$2 million per wrongful death claim. The State of Washington also expects an 80% increase in claims frequency (number of claims) against them. The bill now goes to the House Rules Committee and awaits action on the floor. **ATRA strongly encourages members with an interest in Washington to help defeat this legislation. For more information about how to become involved, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.**

On March 3, 2010, S.B. 6764 (Randy Gordon-D) passed the House with a 60-37 vote; the bill now returns to the Senate floor for consideration. This legislation raises the tort judgment interest rate from two points above the T-bill to at least 12% or 4 points above for all private sector defendants. Today's 26-week T-bill rate is approximately .17%. As a result, it creates an unfair playing field because government entities enjoy a lower interest rate, while the private sector is forced to pay almost 100% higher. The bill also would increase the interest rate by approximately 10% for non-public defendants. Further, the legislation would create a significant barrier to the basic civil right to appeal. The bill reverses the bipartisan legislation that was passed in 2004, which lowered the interest rate in order to be more in accordance with current interest rates. The amendment by the Senate allowed for the exclusion of any charity, nonprofit or employer with fewer than 50 employees from the increase in judgment interest rate. **ATRA strongly encourages members with an interest in Washington to help defeat this legislation. For more information about how to become involved, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.**

S.B. 6701 (Adam Kline-D) was placed in the Senate Rules "X" file on February 26, 2010. This bill would expand construction liability and involves real property warranties. The legislation provides that the implied warranty of habitability may not be contractually disclaimed, waived, modified, or limited. Any contract that purports to do so will be found void and unenforceable. For more information about this bill, please contact Dana Childers of the Washington Liability Reform Coalition at dana@walrc.org.

West Virginia

On March 2, 2010, the Senate Finance Committee rejected S.B.589 (Jeffrey Kessler-D), legislation that would have created an intermediate appellate court in West Virginia and guaranteed an automatic right to appeal. At this time, the only way to appeal a lower court decision is to petition the state Supreme Court. The high court currently is reviewing the state appellate procedures, and the legislature wants to give the judiciary branch an opportunity to address the situation before it intervenes. For more information on this bill, please contact Matt Fullenbaum at mfullenbaum@atra.org.

On February 24, 2010, S.B. 402 (Jeffrey Kessler-D) was referred to the House Judiciary Committee. This bill provides that the Supreme Court justices will be elected by divisions. For more information on this bill, please contact Matt Fullenbaum at mfullenbaum@atra.org.

H.B. 4352 (Tim Miley-D) was referred to the Senate Judiciary Committee on February 24, 2010. This bill would authorize the West Virginia Supreme Court of Appeals to create a Business Court division within certain circuit court districts. March 3rd was the last day for bills to be heard in their house of origin, so H.B. 4352 will be heard on March 4th or later. For more information on this bill, please contact Matt Fullenbaum at mfullenbaum@atra.org.