

ATRA Legislative Watch

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State Activity

Arizona- Good News!

On April 19, 2010, S.B. 1189 (Barbara Leff-R) passed the House and was sent to the Senate for concurrence. 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 about this bill, please contact Lorna Romero of the AZ Chamber of Commerce at lromero@azchamber.com.

California

A.B. 2588 (Audra Strickland-R) is scheduled to be heard in the Assembly Judiciary Committee on April 27, 2010. 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 more fair, and it would allow the defendant the same right the plaintiff already has, 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 on this bill or for information about how to join CJAC's coalition letter of support, please contact Kim Stone at kstone@cjac.org.

A.B. 1652 (Dave Jones-D) was read for a second time in the Assembly and was sent for a third reading on April 21, 2010. This bill regulates ski resorts and contains several litigation traps. Skiing has long been considered an assumption-of-risk sport, but this bill would create several pitfalls that could lead to increased liability for ski resorts. For additional information, please contact Kim Stone of CJAC at kstone@cjac.org.

On April 19, 2010, the Assembly Banking and Finance Committee recommended A.B. 1639 (Pedro Nava-D) do pass and referred it to the Committee on the Judiciary. 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. 1805 (Charles Calderon-D) was held without a vote at the author's request in the Assembly Committee on Natural Resources on April 19, 2010. This bill would provide for litigation protection to certain projects that already have completed the CEQA process. CEQA has proven to be a magnet for litigation and is a slow and expensive process of getting housing and development projects approved. The process has hurt all areas of California's economy, and A.B. 1805 hopes to create a limited safe

haven from lawsuits for certain projects that would be selected by the Business, Transportation and Housing Agency. For additional information, please contact Kim Stone at kstone@cjac.org.

S.B. 1117 (Mimi Walters-R) failed to pass the Senate Judiciary Committee on April 20, 2010, but the committee granted reconsideration. This bill would change the pre- and post- judgment interest rate from 10% to the prime rate plus 2%. The current interest rates are so low, that an interest rate of 10% is providing a windfall to plaintiffs and an unfair burden for defendants. The bill also would change the rate of interest for public entities from the statutory rate of 7% to the prime rate plus 2%, so that taxpayer money can be used for public services rather than to pay high interest on judgments. For additional information, please contact Kim Stone at kstone@cjac.org.

The Senate Judiciary Committee recommended that S.B. 1275 (Mark Leno-D) do pass and referred the bill to the Committee on Appropriations on April 20, 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 at kstone@cjac.org.

On April 20, 2010, the Assembly read A.B. 2479 (Dan Logue-R) for a second time and re-referred the amended version to the Committee on Insurance. This bill would limit punitive damages to three times the actual damages and limit all noneconomic damages to \$250,000. The bill also provides the government standards defense, whereas if a governmental or regulatory body told a company that its product met their standards and the product later turned out to cause harm, the injured party would receive full compensation for their injuries, but the company would not be subject to punitive damages. For more information about this bill, please contact Kim Stone at KStone@CJAC.org.

On April 21, 2010, A.B. 1977 (Paul Cook-R) failed to pass the Assembly Committee on Labor and Employment. This bill would create an ombudsman within the Department of Labor and Industrial Relations in order to help small businesses better understand and comply with California's confusing labor laws. Because California's labor laws are so complex, help with compliance likely would lead to fewer lawsuits. For additional information, please contact Kim Stone at kstone@cjac.org.

A.B. 2321 was pulled by its author, Pedro Nava (D), before the bill's hearing in the Assembly Elections Committee. It appears Senator Nava decided to pull the bill because of the mounting opposition and the lack of support from committee members; however, the bill is not technically dead and it may come back at any time. This bill would require corporations to report all political giving and allow shareholders to file an objection about the corporation's political giving. The bill also would allow a shareholder to request a return of his or her pro rata share of the funds and allow an individual lawsuit by the shareholder against the corporation for any violation or for any contribution that negatively affects the corporation's stock price. In addition, the bill allows the one-sided award of attorney's fees to the plaintiff. The bill certainly will encourage more shareholder lawsuits against companies. For additional information, please contact Kim Stone at kstone@cjac.org.

A.B. 2334 (Mary Salas-D) has been referred to the Assembly Health Committee. 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 8, 2010, the Assembly read A.B. 2773 (Sandre Swanson-D) for a second time and re-referred the amended version to the Committee on the Judiciary. This bill would change case law to make it easier for plaintiffs' lawyers in employment cases to get attorney's fees. The bill overrules the

holding in *Chavez v. City of Los Angeles*, which 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 jurisdictional minimum of \$25,000. For additional information, please contact Kim Stone at kstone@cjac.org.

Colorado

On April 15, 2010, H.B. 1269 (Claire Levy – D) failed on second reading. The legislation would have, for the first time, imposed 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 Mark Hillman of CCJL at mh80807@yahoo.com.

H.B. 1357 (Buffie McFadyen – D) was favorably reported from the House Appropriations Committee on April 16, 2010. The legislation would establish the Colorado False Claims Act. For additional information, please contact Mark Hillman of CCJL at mh80807@yahoo.com.

On April 19, 2010, the House passed H.B. 1395 (Bob Gardner – R) by a vote of 63-1. The bill was introduced in the Senate on April 21st and referred to the Senate Judiciary Committee. H.B. 1395 is legislation that 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.

Connecticut

The committee substitute for H.B. 5473 (Joint Committee on the Judiciary) was reported out of the Legislative Commissioner's Office and placed on the House calendar on April 15, 2010. This bill would remove the statute of limitations in certain cases. For additional information, please contact Kevin Hennessy of the Connecticut Business and Industry Association at Kevin.Hennessy@cbia.com.

Florida

On April 21, 2010, the Senate floor adopted the amendments to S.B. 1114 (Dan Gelber-D), and it was ordered to be engrossed. The House companion bill, H.B. 821 (Perry Thurston-D), was placed on the House calendar on April 15, 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.

The House passed S.B. 2440 (Michael Bennett-R) with a vote of 114-0 on April 20, 2010, and was sent to Governor Crist for approval. 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 and understanding there is some inherent risk when children participate in activities like riding ATVs, scuba diving, and even 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.

Illinois

The Senate Committee on Licensed Activities recommended that H.B. 5783 (William Burns-D) do pass on April 21, 2010, and the bill was placed on the Senate Calendar for a second reading. This legislation is intended to prevent "venue shopping." If the defendants are not residents of Illinois, then the lawsuit may only be filed in the county in which the cause of action arose, or some part of that transaction occurred. For more information about this bill, please contact Chris Guy with the Illinois Civil Justice League at cguy@icjl.org.

Louisiana

The Senate Committee on Insurance reported on S.B. 595 (Julie Quinn-R) with amendments on April 21, 2010. 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 19, 2010, the House adopted the amended version of H.B. 25 (Neil Abramson-R) and ordered it to be engrossed. 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.

H.B. 323 (Tom Wilmlmott-R) passed the House with a vote of 91-0 and was referred to the Committee on the Judiciary A in the Senate on April 15, 2010. This bill provides that a curator or undercurator who performs his or her duties and obligations without compensation shall not be held personally liable for any injury, death, damage, civil penalty or other loss caused by the interdict in his charge. This does not cover an action caused by gross negligence or willful and wanton misconduct in executing their duties and obligations. The bill shall not apply if there is applicable insurance to cover the loss or be limited to the amount of such insurance. For additional information, please contact please contact Jim Harris at jharris@hdaissues.com.

H.B. 584 (Fred Mills-D) passed the House with a vote of 93-3 and was referred to the Senate Committee on Transportation, Highways and Public Works on April 15, 2010. This bill limits the liability during a funeral procession. The bill adds law enforcement agencies and officers to those not to be held liable for a violation of procedure for motor vehicles in a funeral procession. For additional information, please contact Jim Harris at jharris@hdaissues.com.

H.B. 67 (Joseph Lopinto-R) passed the House with a vote of 87-7 and was referred to the Senate Committee on Judiciary A on April 12, 2010. This bill limits civil liability for persons using automated external defibrillators. The bill exempts from liability the use of an automated external defibrillator for the purposes of rendering emergency care, first aid or rescue, and also exempts the owner of the site from liability. For additional information, please contact Jim Harris at jharris@hdaissues.com.

H.B. 902 (Jeffrey Arnold-D) passed out of committee and off the House floor by a vote of 73-21 and was referred to the Senate Committee on Judiciary A on April 14, 2010. This legislation extends the limitation of liability for Mardi Gras parade crews, to manufacturers or lessors of trailers or floats, and to vehicles used to tow a trailer or float in a parade. The committee added an amendment that would not extend the limitation of liability to claims arising from a failure in the design, manufacture, or maintenance of a trailer or float. For additional information, please contact Jim Harris at jharris@hdaissues.com.

H.B. 1062 (Franklin Foil-R) was referred to the Senate Committee on Judiciary A on April 7, 2010. This bill would allow several cases of similar causes of action for the same defendant, to be

consolidated for trial in the first court in which one of the cases was filed. The bill was amended in committee to eliminate the requirement that a contradictory hearing be held if all plaintiffs agree to the consolidation. This bill corrects a bill that “overhauled” the civil code two years ago. For additional information, please contact Jim Harris at jharris@hdaissues.com.

The House Committee on Civil Law and Procedure reported favorably on H.B. 260 (Neil Abramson-D), and it was ordered to be engrossed on April 20, 2010. This bill provides for motions for summary judgment in civil proceedings. For additional information, please contact Jim Harris at jharris@hdaissues.com.

H.B. 317 (Neil Abramson-R) was referred to the House Committee on Civil Law and Procedure on March 29, 2010. This bill provides venue for actions involving asbestos or silica-related diseases. Under this legislation, a plaintiff is required to bring the action in the parish in which the plaintiff alleges substantial exposure to the asbestos or silica. If substantial exposure is alleged in more than one parish, then a district court may transfer the case to a more appropriate district court where the claim also may have been brought. For additional information, please contact Jim Harris at jharris@hdaissues.com.

H.B. 358 (Neil Abramson-R) was referred to the House Committee on Civil Law and Procedure on March 29, 2010. This bill provides disclosure procedures for asbestos and silica claims. The bill states within 30 days of commencing an action involving a claim for injury, disease or death, related to asbestos or silica and for cases currently pending, no less than 180 days prior to trial, a plaintiff shall provide to all parties a statement of all existing or potential claims by that plaintiff. For additional information, please contact Jim Harris at jharris@hdaissues.com.

On March 29, 2010, H.B. 427 (Fred Mills-D) was referred to the House Committee on Civil Law and Procedure. This bill provides for procedures and a limitation of liability for health care providers providing services in accordance with the Federal Emergency Medical Treatment and Active Labor Act. Under this legislation, in a medical malpractice action, the plaintiff shall have the burden of proving, by clear and convincing evidence, the degree of knowledge or skill possessed or ordinarily exercised by a health care provider practicing in a similar community, and that the defendant lacked the knowledge or skill or failed to use it. The plaintiff must prove that he or she was injured as a result of the health care provider willfully and wantonly departing from the accepted standards of emergency medical services. The bill also would allow only expert witness testimony from practicing health care providers with substantial professional experience within the last five years in the same field and at a similarly facility. Finally, this bill provides that any health care provider providing emergency medical services shall not be liable for damages as a result of any act or omission, unless the damages were caused by gross negligence or willful and wanton misconduct. For additional information, please contact Jim Harris at jharris@hdaissues.com.

H.B. 573 (Nickie Monica-R) was referred to the House Committee on Civil Law and Procedure on March 29, 2010. This bill would reduce 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. 673 (Barbara Norton-D) was referred to the House Committee on Labor and Industrial Relations on March 29, 2010. The Senate companion bill, S.B. 249 (Yvonne Dorsey-D), was introduced to the Senate Committee on Labor and Industrial Relations on March 29, 2010. These bills would enact the Equal Pay for Women Act. This Act would declare that paying wages to employees of one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work on jobs which have comparable requirements unjustly discriminates against the person receiving the lesser rate. The employees must be performing the same or substantially similar work on jobs in which their performance requires equal skill, effort, education, and responsibility and which are performed under

similar working conditions including time worked in that position. If an employee believes his or her employer is in violation of the Act, he or she must first submit a written notice of the violation to the employer. The employer has 90 days from the receipt of the notice to remedy the situation. If the employer remedies the violation, the employee is barred from bringing an action against the employer. For additional information, please contact Jim Harris at jharris@hdaissues.com.

H.B. 832 (Cedric Richmond-D) was referred to the House Committee on Labor and Industrial Relations on March 29, 2010. This bill would enact the Equal Pay for Women Act and contains the same language and provisions found in the previous bill, H.B. 673. For additional information, please contact Jim Harris at jharris@hdaissues.com.

H.B. 1091 (Neil Abramson-R) was referred to the House Committee on Civil Law and Procedure on March 29, 2010. This bill prohibits penalties against the Louisiana Citizens Property Insurance Corporation in class action lawsuits. For additional information, please contact Jim Harris at jharris@hdaissues.com.

S.B. 443 (Eric LaFleur-D) was referred to the Senate Committee on Judiciary A on March 29, 2010. This bill requires a plaintiff who is filing an action alleging professional liability against a registered architect, licensed professional engineer, professional land surveyor, or any business entity through which the individual or entity does business, or alleging medical malpractice, shall submit an expert report. The plaintiff must file the report no later than 90 days after filing the petition, and the plaintiff must serve it on each party involved in the suit. The report shall contain the professional background and qualifications of the expert, a statement that the expert is experienced in the pertinent discipline, a listing of each document or other information reviewed by the expert in preparing the report, a summary of the grounds for each opinion and conclusion supporting the claim, including the applicable standard of care, and a statement that the expert has concluded that there is a reasonable basis for filing the petition. The expert must hold a valid and current license in the state, and he or she must be actively practicing in the discipline in which the professional liability is alleged. For additional information, please contact Jim Harris at jharris@hdaissues.com.

Oklahoma – Good News!

Yesterday, April 21, 2010, Governor Henry signed into law H.B. 2946 (Fred Jordan-R). This bill provides for procedure and other requirements for construction-related accessibility claims, and it calls for dismissal of the action if the requirements are not met. The plaintiff is required to notify any defendant of an assertion that the facility does not comply with the Americans with Disabilities Act and standards relating to construction 120 days prior to filing a petition for civil action. The bill also provides for awarding of costs, attorney fees in certain circumstances, and sanctions. The bill authorizes an extension of time to complete corrections and provides for codification and an effective date. For more information, please contact Mike Seney with the Oklahoma State Chamber at mseney@okstatechamber.com.

S.B. 1379 (Anthony Sykes-R) passed the House and was sent to the Senate for concurrence on April 21, 2010. This bill would enact the Private Attorney Retention Sunshine Act (PARSA). The major change made by the House was that the 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 an Internet 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.

South Carolina- Good News!

The Senate Tort Reform Subcommittee passed an amended version of S.B. 350 today, April 22nd. The Senate adopted three sections of the House language with no amendments: the Statute of Repose, PARSA and the appeal bonds caps. The committee amended the punitive damages and the non-use of seat belts sections. Under this bill, punitive damages may be awarded if the fact finder determines that the defendant engaged in conduct intended to cause harm or that showed a reckless disregard for the health or safety of the plaintiff. In the case of the non-use of seatbelts, the bill provides that it is not negligence per se or contributory/comparative negligence and evidence of the nonuse may be admitted for the limited purpose of proving that the plaintiff's injuries would have been reduced by wearing a seat belt, provided certain conditions are met. For additional information, please contact Cam Crawford of the South Carolina Civil Justice Coalition at scciviljusticecoalition@yahoo.com.

Rhode Island

H.B. 7280 (Alfred Gemma-D) was heard and continued by the House Committee on the Judiciary on March 16, 2010. This bill provides that in actions against state and municipalities, joint and several liability shall not apply unless the proportionate liability of such public entity is equal to or exceeds 25% of the total judgment. If the percentage of their liability is less than 25%, then the government entity is only responsible for its proportionate share of the judgment. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

The House Committee on Judiciary heard and continued H.B. 7289 (Edith Ajello-D) on March 3, 2010. 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.

H.B. 7320 (Joseph McNamara-D) was heard and continued by the House Committee on the Judiciary on March 3, 2010. This bill provides that expressions of sympathy and statements about the outcome of treatment are inadmissible as evidence of an admission of liability. Under this legislation, any offers made by a health care provider to a patient or the family to undertake corrective actions to assist the patient with the patient's condition or the outcome of such patient's medical care and treatment also are inadmissible. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

The House Committee on the Judiciary recommended that H.B. 7379 (Eileen Naughton-D) be held for further study on April 14, 2010. This bill would reduce the statutory interest rate from 12% to 6%. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

The House Committee on the Judiciary recommended that H.B. 7385 (Michael Marcello-D) be held for further study on April 14, 2010. This bill would change the current law so that interest begins to accrue from the date of the filing of a civil action, not the date of the cause of action. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

On April 14, 2010, H.B. 7476 (Robert Jaguard-D) was withdrawn. This bill expands the deceptive trade practices lawsuits and allows the attorney general to promulgate regulations. The bill provides that people may obtain an injunction if he or she has not suffered any loss of money or property if it can be shown that the unfair method of competition, act or practice may have the effect of causing such loss of money or property. Under this legislation, an individual may bring an action on behalf of others who are similarly situated if the court finds in a preliminary hearing that he or she adequately and fairly represents such persons. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

The House Committee on the Judiciary recommended that H.B. 7759 (Edwin Pacheco-D) be held for further study on April 6, 2010. This bill would allow a parent or a son or daughter to recover damages for loss of companionship regardless the age of the son or daughter. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

S.B. 2047 (Marc Cote-D) was introduced and referred to the Senate Committee on the Judiciary on January 13, 2010. This bill would reduce the statutory interest rate from 12% to 6%. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

S.B. 2157 (Leo Blais-R) was introduced and referred to the Senate Committee on the Judiciary on February 4, 2010. This bill establishes the standards for admission of expert scientific and technical testimony that are very similar to the *Daubert* standards. The bill provides that expert testimony may be admitted, only if the court determines that the opinion is based on scientific knowledge and the theory or methodology was developed in accordance with the scientific method. The theory or methodology also must be generally accepted in the relevant scientific or technical community and considered reliable. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.

S.B. 2562 (Rhoda Perry-D) was introduced and referred to the Senate Committee on Judiciary on February 11, 2010. This bill provides that expressions of sympathy and statements about the outcome of treatment are inadmissible as evidence of an admission of liability. Under this legislation, any offers made by a health care provider to a patient or the family to undertake corrective actions to assist the patient with the patient's condition or the outcome of such patient's medical care and treatment also are inadmissible. For additional information, please contact Matt Fullenbaum at mfullenbaum@atra.org.