

# ATRA Legislative Watch

Volume 22, Number 4

February 19, 2009

Editors: Matt Fullenbaum, Director of Legislation  
Elizabeth Emery, Assistant Director of Legislation

Mark Your Calendars: ATRA will hold its annual Membership and Legislative Outlook Meeting at the [JW Marriott](#) in downtown Washington, DC, on Tuesday, March 31<sup>st</sup>. Registration materials are attached, and agenda details are forthcoming.

## State Activity

### **California**

A.B. 298 (Van Tran – R), sponsored by the Civil Justice Association of California, would allow defendants an equal opportunity to appeal a judge’s important decision to formally “certify” a class of plaintiffs and allow a lawsuit to proceed. Current law only allows the plaintiff to appeal a judge’s denial of class certification. The defendant can only appeal the judge’s ruling after the class action lawsuit has gone to trial, and the defendant has lost — a long and costly endeavor. The situation puts defendants at a disadvantage, forcing them to undergo a costly legal challenge, regardless of whether the lawsuit has merit and even if the certification decision deserves a second look. A.B. 298 was introduced on February 17, 2009. For additional information, please contact Kim Stone of the Civil Justice Association of California at [kstone@cjac.org](mailto:kstone@cjac.org).

A.B. 83 (Mike Feuer – D) was amended in the Assembly Judiciary Committee from an intent bill to a bill with specific language on February 5, 2009. The bill now states that non-medical good Samaritans who provide non-medical help (such as rescue) in an emergency are exempt from civil liability, as would be medical professionals providing medical help, unless their actions constitute gross negligence or willful or wanton misconduct. This bill would, in effect, change the law after the court's decision in *Van Horn v. Watson*, which held that non-medical Good Samaritans are not entitled to liability protection if they cause an injury providing assistance. The California Supreme Court said that Health and Safety Code Section 1799.102, as currently written, only provides liability protection to *medical* professionals who provide emergency *medical* care, even though the plain language of the statute says that “no person, who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission.” A.B. 83 was re-referred to the Assembly Judiciary Committee on February 6th. For additional information, please contact Kim Stone of the Civil Justice Association of California at [kstone@cjac.org](mailto:kstone@cjac.org).

A.B. 90 (Anthony Adams – R) would provide that no person who in good faith, and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. A.B. 90 was introduced on January 6, 2009. For additional information, please contact Kim Stone of the Civil Justice Association of California at [kstone@cjac.org](mailto:kstone@cjac.org).

S.B. 39 (John Benoit – R) would enact the Good Samaritan Protection Act to provide that any person, who in good faith and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency not be liable for any civil damages resulting from any act or omission. For additional information, please contact Kim Stone of the Civil Justice Association of California at [kstone@cjac.org](mailto:kstone@cjac.org).

## **Colorado**

S.B. 110 (John Morse – D) was scheduled to be heard in the Senate Judiciary Committee on February 18, 2009, but the hearing date was postponed for the third time. No future hearing date has been scheduled yet. S.B. 110 would have been a routine bill to re-authorize the Colorado Civil Rights Commission, but an amendment added in the Senate Judiciary Committee now would cause the bill to add federal remedies to state employment claims. Under existing Colorado law, plaintiffs who win employment discrimination and other types of employment claims recover actual economic damages, such as lost wages. The CCRD Sunset bill would allow plaintiffs and their attorneys to meaningfully raise the stakes against Colorado businesses by permitting awards of additional compensation for pain and suffering, punitive damages and attorney fees. For additional information, please contact Kelly Maher of the Colorado Civil Justice League at [okmaher@gmail.com](mailto:okmaher@gmail.com).

S.B. 54 (Mark Scheffel – R), brought forth by the Office of the Attorney General, passed the Senate (35-0) on February 10, 2009, with two amendments. One was written in response to concerns raised by the Colorado Civil Justice League. The Colorado Consumer Protection Act has never been absolutely clear that civil damages can only be imposed by the Attorney General. When damages were limited, it was never an issue, but since S.B. 54 proposed to remove limits entirely, the need for additional clarifying language became apparent. The sponsor added the amendment to clarify that amendment once and for all. The sponsor also added an amendment setting the limit at a much higher \$500,000 (the current limit is \$100,000) instead of proposing that limits be removed completely.

H.B. 1117 (K. Jerry Frangas – D) was postponed indefinitely by the House Business Affairs & Labor Committee on February 17, 2009, effectively killing it. H.B. 1117 was legislation that would have prohibited unearned compensation given to a principal of a publicly traded business entity if the entity is undercapitalized or expected to become undercapitalized, and authorizes an action by a shareholder, creditor, receiver, assignee, trustee, or the attorney general to recover the prohibited payment. The legislation also would have authorized damages and attorney fees, prohibited retaliation, and subjected a person liable for retaliation to treble damages plus attorney fees. For additional information, please contact Kelly Maher of the Colorado Civil Justice League at [okmaher@gmail.com](mailto:okmaher@gmail.com).

S.B. 13 (Dan Gibbs – D) was passed unanimously by the Senate on February 17, 2009. S.B. 13 would enact the “Marc Mullenix Volunteer Firefighter Protection Act,” providing limited civil immunity for fire departments and other entities that donate surplus firefighting equipment, and volunteer firefighters, their commanders, and organizations that employ them in connection with fires and other emergencies. For additional information, please contact Kelly Maher of the Colorado Civil Justice League at [okmaher@gmail.com](mailto:okmaher@gmail.com).

S.B. 58 (Al White – R) was postponed indefinitely in the Senate Judiciary Committee on February 11, 2009, killing the bill. S.B. 58 would have provided governmental immunity to attorneys who contract with the alternate defense counsel and the office of the child’s

representative to provide statutorily mandated services. For additional information, please contact Kelly Maher of the Colorado Civil Justice League at [okmaher@gmail.com](mailto:okmaher@gmail.com).

S.B. 69 (Betty Boyd – D) passed the Senate on February 18, 2009. S.B. 69 would provide that a parenting coordinator appointed by the court is immune from liability for any claim for injury arising from an act or omission of the parenting coordinator during the performance of duties, so long as the coordinator is acting within the scope of his or her duties and the act or omission is not willful or wanton. For additional information, please contact Kelly Maher of the Colorado Civil Justice League at [okmaher@gmail.com](mailto:okmaher@gmail.com).

### **Florida – Good News!**

H.B. 215 ([Eisnaugle, Eric](#) – R) was passed favorably (4-3) out of the Civil Justice & Courts Policy Committee on February 17, 2009, and is now in the Criminal & Civil Justice Policy Council Committee. Florida Attorney General Bill McCollum (R) personally appeared before the committee to testify, and ATRA commends him for his support of H.B. 215. H.B. 215 is legislation based on the ALEC model bill, *Private Attorney Retention Sunshine Act* (PARSA), and would restore accountability to the Department of Legal Affairs of the Office of Attorney General when entering into contingency fee agreements with private attorneys. For additional information, please contact William Large of the Florida Civil Justice Institute at [william@fljustice.org](mailto:william@fljustice.org).

S.B. 1650 (Steve Oelrich – R) is insurance “bad faith” reform legislation that, among other things, would provide that the insurer of an insured person is not liable for extracontractual damages for failing to pay the insurer’s policy limits, under certain circumstances. S.B. 1650 was filed on February 17, 2009. For additional information, please contact William Large of the Florida Civil Justice Institute at [william@fljustice.org](mailto:william@fljustice.org).

### **Georgia**

S.B. 101 (Bill Cowser – R) is legislation that would create the FDA defense in Georgia, and limit liability for pharmaceutical and medical device manufacturers and sellers who meet or exceed federal safety standards. S.B. 101 was withdrawn from the Special Judiciary Committee and recommitted to Senate Economic Development Committee on February 17, 2009. For additional information, please contact Joe Fleming of the Georgia Chamber of Commerce at [jfleming@gachamber.com](mailto:jfleming@gachamber.com).

### **Illinois**

H.B. 53 (David Reis – R) is asbestos liability reform legislation that would provide the following issues are relevant to the determination of liability and damages, the court will allow the parties to present evidence concerning these issues, and the trier of fact must determine liability and damages based on these issues: (1) whether the plaintiff had exposure to any asbestos manufactured by, processed by, or otherwise associated with any entity other than the defendant; (2) whether the plaintiff’s exposure to asbestos was to asbestos exclusively manufactured by, processed by, or otherwise associated with the defendant; and (3) whether there is a causal relationship between the plaintiff’s alleged injuries and the asbestos manufactured by, processed by, or otherwise associated with the defendant. H.B. 53 was introduced and referred to the House Judiciary I – Civil Law Committee on February 4, 2009. For additional information, please contact Ed Murnane with the Illinois Civil Justice League at [emurnane@icjl.org](mailto:emurnane@icjl.org).

H.B. 374 (Arthur Turner – D) would create the Abusive Work Environment Act. Among other things, the bill would, provide that an employer is liable for an abusive work environment under its control. Also, it would provide that it is unlawful to subject an employee to an abusive work environment or to retaliate against an employee who acted pursuant to the Act or filed an action or participated in any proceeding under the Act. The bill would allow damages including reinstatement, removal of the offending party from the work environment, lost wages, medical expenses, emotional distress damages, punitive damages, and attorney's fees. H.B. 374 was introduced and assigned to the House Labor Committee on February 9, 2009. For additional information, please contact Ed Murnane with the Illinois Civil Justice League at [emurnane@icjl.org](mailto:emurnane@icjl.org).

H.B. 545 (JoAnn Osmond – R) would amend the Good Samaritan Act and provide that any person licensed under the Medical Practice Act of 1987 or any person licensed to practice the treatment of human ailments in any other state or territory of the United States who, in good faith, provides emergency care without fee to a person while participating with local, state or federal law enforcement personnel in training or active duty missions, shall not, as a result of his or her acts or omissions, except willful or wanton misconduct on the part of the person, in providing the care, be liable for civil damages. H.B. 545 was introduced and referred to the House Judiciary I – Civil Law Committee on February 9, 2009. For additional information, please contact Ed Murnane with the Illinois Civil Justice League at [emurnane@icjl.org](mailto:emurnane@icjl.org).

S.B. 84 (Ira Silverstein – D) would amend the Metropolitan Transit Authority (MTA) Act, and provide that a civil action against the MTA for an injury to one's person must be commenced within one year from the date the cause of action accrues. However, the bill would delete provisions requiring any person about to commence a civil action in court against MTA to provide written notice to MTA. S.B. 84 was introduced and referred to the Senate Judiciary Committee on February 4, 2009. For additional information, please contact Ed Murnane with the Illinois Civil Justice League at [emurnane@icjl.org](mailto:emurnane@icjl.org).

S.B. 85 (Ira Silverstein – D) would create the Firearm Liability Act and provide that a firearm transferor is strictly liable in a civil action for death, injury, or property damage resulting from the use of a firearm that was unlawfully sold, transferred, or caused to be sold or transferred. It would allow a plaintiff to recover punitive damages in addition to all other lawful damages, court costs, and attorney's fees, and provide that a defendant found liable under this Act must pay \$10,000 in a civil penalty to the Department of State Police if the defendant sold, transferred, or caused to be sold or transferred a firearm in violation of certain provisions of the Firearm Owners Identification Card Act or the Criminal Code of 1961. Any action under this Act must be commenced within 5 years after the cause of action accrued. S.B. 85 was introduced and referred to the Senate Judiciary Committee on February 4, 2009. For additional information, please contact Ed Murnane with the Illinois Civil Justice League at [emurnane@icjl.org](mailto:emurnane@icjl.org).

## **Indiana**

H.B. 1492 (Craig Fry – D) passed the House (54-44) on February 17, 2009, and was transmitted to the Senate. H.B. 1492 is legislation that would allow individuals bringing actions in court against the department of environmental management to receive compensation for attorney's fees incurred in bringing the actions. For additional information, please contact Elizabeth Emery, ATRA, at 202-682-1163, ext. 16 or [eemery@atra.org](mailto:eemery@atra.org).

## **Kentucky**

S.B. 166 (Damon Thayer – R) is jury service reform legislation that would allow a prospective juror to have one postponement of jury service upon request, provide that a person summoned for jury duty need only serve on one petit jury, prohibit an employer from requiring an employee to use leave time while absent from work to serve on a jury, and prohibit the concurrent summoning of two or more employees from a business consisting of five or fewer employees. S.B. 166 was introduced on February 13, 2009, and referred to the Senate Judiciary Committee. For additional information, please contact Elizabeth Emery, ATRA, at 202-682-1163, ext. 16 or [emery@atra.org](mailto:emery@atra.org).

### **Maryland – Take Action Now!**

H.B. 304 is false claims legislation, companion bill to S.B. 272. Entitled the “Maryland False Health Claims Act of 2009,” it is the same bill that nearly passed last year. H.B. 304 is scheduled for a hearing in the Judiciary & Appropriations Committee on March 5, 2009. **ATRA encourages members with an interest in Maryland to get involved in the effort to defeat this proposal. For more information about how to become involved, please contact Ron Wineholt of the Maryland Chamber of Commerce at [rwineholt@mdchamber.org](mailto:rwineholt@mdchamber.org).**

S.B. 830 (Mike Lenett – D) is another bill to institute the Maryland False Claims Act, this one a reintroduction of S.B. 845 from 2008. S.B. 830 would apply to any false claim to the state, not merely healthcare claims. S.B. 830 is scheduled for a hearing in the Senate Judicial Proceedings Committee on March 4, 2009. For additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at [rwineholt@mdchamber.org](mailto:rwineholt@mdchamber.org).

H.B. 915 (Michael Smigiel – D) is false claims legislation similar to other bills that have been introduced in Maryland. H.B. 915 was introduced on February 12, 2009, and referred to the Judiciary Committee, where it is scheduled to be heard on March 5, 2009. For additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at [rwineholt@mdchamber.org](mailto:rwineholt@mdchamber.org).

S.B. 238 (Delores Kelley – D) was heard in the Senate Judicial Proceedings Committee on February 16, 2009, and reported unfavorably, effectively killing the bill. S.B. 238 was legislation that would have removed the statute of limitations in certain cases and permitted causes of action otherwise barred by the statute of limitations. For additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at [rwineholt@mdchamber.org](mailto:rwineholt@mdchamber.org).

H.B. 1011 (Christopher Shank – R) would provide that legislation implying a private right of action must contain language expressly stating the right, and would prohibit courts from implying a private right of action in the absence of express statutory language. H.B. 1011 was introduced on February 13, 2009, and is scheduled to be heard in the House Judiciary Committee on March 18<sup>th</sup>. For additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at [rwineholt@mdchamber.org](mailto:rwineholt@mdchamber.org).

H.B. 1208 (Michael Smigiel – D) is pet liability legislation that would increase the compensatory damages for tortious death of, or injury to, a pet that may be awarded to an owner of the pet. H.B. 1208 was introduced on February 13, 2009, and is scheduled for a hearing in the House Judiciary Committee on March 18, 2009. For additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at [rwineholt@mdchamber.org](mailto:rwineholt@mdchamber.org).

S.B. 906 (Anthony Muse – D) would repeal an exception to the provision of law that an expression of regret or apology made by a health care provider is inadmissible as evidence of an admission of liability or an admission against interest in a malpractice proceeding or civil action against the health care provider. House bills H.B. 279 and H.B. 280, both containing similar language, have both been withdrawn. S.B. 906 was introduced on February 12, 2009. For

additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at [rwineholt@mdchamber.org](mailto:rwineholt@mdchamber.org).

S.B. 938 (Alexander Mooney – R) is legislation based on the ALEC model, *Transparency in Lawsuits Protection Act*, and would provide that legislation enacted in the state that creates a private right of action must contain language expressly stating the right. The bill would prohibit courts from implying a private right of action in the absence of express statutory language. S.B. 938 was introduced on February 17, 2009. For additional information, please contact Ron Wineholt of the Maryland Chamber of Commerce at [rwineholt@mdchamber.org](mailto:rwineholt@mdchamber.org).

## Mississippi

H.B. 1122 (Earle S. Banks – D) failed to pass the House (49-69) on February 12, 2009 and is now dead. H.B. 1122 was legislation that would have dissolved arbitration between sellers or providers and any citizen of Mississippi. For additional information, please contact Elizabeth Emery, ATRA, at 202-682-1163, ext. 16 or [eemery@atra.org](mailto:eemery@atra.org).

H.B. 61 (Bobby Moak – D) passed the House (62-58) on February 5, 2009, even after several efforts to weaken and slow the bill. It was transmitted to the Senate and is currently in the Senate Judiciary, Division A and Fees, Salaries & Administration Committees. H.B. 61 is Consumer Protection Act expansion legislation that would amend the current statute to include charging an unreasonable amount for goods or services to those actions prohibited. It also would allow the Attorney General to authorize a person to bring action on his behalf and on the behalf of others. For additional information, please contact Elizabeth Emery, ATRA, at 202-682-1163, ext. 16 or [eemery@atra.org](mailto:eemery@atra.org).

H.B. 793 (Sherra Hillman Lane – D) passed the House (67-53) and was transmitted to the Senate on February 11, 2009. It is now in the Senate Judiciary, Division A Committee. H.B. 793 is legislation that would adopt the False Claims Act. For additional information, please contact Elizabeth Emery, ATRA, at 202-682-1163, ext. 16 or [eemery@atra.org](mailto:eemery@atra.org).

H.B. 869 (Stephen Holland – D) died on the House Judiciary A Committee calendar on February 12, 2009. H.B. 869 was legislation that would have created the Children's Product Safety Act and provided that violations of the act constitute a violation of the Consumer Protection Act. For additional information, please contact Elizabeth Emery, ATRA, at 202-682-1163, ext. 16 or [eemery@atra.org](mailto:eemery@atra.org).

S.B. 2795 (Sidney Albritton – R) died on the Senate Judiciary, Division A Committee calendar on February 12, 2009. The bill would have authorized the attorney general to apply for a court order authorizing the interception of wire or oral communications. It also would have expanded the criminal offenses for which wire-tapping orders may be issued. For additional information, please contact Elizabeth Emery, ATRA, at 202-682-1163, ext. 16 or [eemery@atra.org](mailto:eemery@atra.org).

## Missouri

H.B. 96 (Wallace Maynard – R) is reform legislation regarding school employee liability that, among other things, would:

- Expand employee immunity from correctly following discipline policies to following all policies;
- add the use of force to protect persons or property to the provisions regarding spanking and requires that spanking be administered by certificated personnel, while use of force is permissible by any school personnel as long as it is within the school's policy guidelines. These incidents are not to be regarded as child abuse as long as no allegation of sexual misconduct arises and another employee witnesses the spanking;

- exempt unqualified employees who refuse to administer medication or medical services from disciplinary action for the refusal; and
- exempt qualified employees from any civil liability for administering medication or medical services, including cardiopulmonary resuscitation and other lifesaving methods, in good faith and according to standard medical practices.

H.B. 96 passed the House on February 18, 2009, and was transmitted to the Senate. For additional information, please contact Brad Jones of the NFIB/Missouri at [brad.jones@nfib.org](mailto:brad.jones@nfib.org).

### **North Dakota – Good News!**

H.B. 1390 (Wesley Belter – R) was defeated on the House floor when it failed to pass (31-63) on February 19, 2009. H.B. 1390 was legislation to repeal the state’s \$500,000 limit on noneconomic damages in medical liability cases. For additional information, please contact Bruce Levi, Executive Director of the North Dakota Medical Association, at [blevi@ndmed.com](mailto:blevi@ndmed.com).

H.B. 1560 (Jasper Schneider – D) failed to pass the House (26-66) on February 16, 2009. H.B. 1560, specifically section 4 (a) of the bill, would have provided that in an action regarding a defective product, a seller, wholesale supplier, or importer of the product is liable if the product or a component was manufactured in a foreign country. For additional information, please contact Elizabeth Emery, ATRA, at 202-682-1163, ext. 16, or [eemery@atra.org](mailto:eemery@atra.org).

H.B. 1384 (Kim Koppelman – R) failed to pass the House (73-19) on February 10, 2009, after voted “do not pass” in the Judiciary Committee on February 4th. H.B. 1384 would have provided that any legislation introduced in the state that creates a private right of action must contain express language that provides for such a right, and that a court of this state may not construe a statute to imply a private right of action in the absence of such express language. For additional information, please contact Elizabeth Emery, ATRA, at 202-682-1163, ext. 16, or [eemery@atra.org](mailto:eemery@atra.org).

### **New Hampshire**

H.B. 108 (Patrick Long – D) would establish an employers’ private right of action to enforce the payment of workers’ compensation coverage. H.B. 108 is scheduled for a hearing in the House Labor, Industrial & Rehabilitative Services Committee on February 19, 2009. Results of the hearing were not available by our deadline, but we will update you in future editions of the *Legislative Watch*. For additional information, please contact Elizabeth Emery, ATRA, at 202-682-1163, ext. 16 or [eemery@atra.org](mailto:eemery@atra.org).

### **New York**

A. 1254 (Rory Lancman -D) passed the Assembly (100-39) on February 5, 2009. A. 1254 is legislation that would bar the use of informal discovery techniques in civil litigation. For additional information, please contact Mark Kriss of NY Tort Reform Now at [mkriss@krisslaw.com](mailto:mkriss@krisslaw.com).

### **Oklahoma – Good News!**

H.B. 1602 (Daniel Sullivan – R) passed (54-46) the House yesterday, February 19, 2009, and was transmitted to the Senate. H.B. 1602 would allow voters to decide whether or not to limit contingency fees in any civil judgment to 33 percent of the first million dollars recovered and 20 percent of any amount exceeding one million dollars. For additional information, please contact Mike Seney of the Oklahoma Chamber of Commerce at [mseney@okstatechamber.com](mailto:mseney@okstatechamber.com).

## **Oregon**

H.B. 2584 (Dave Hunt – D) is scheduled for a public hearing on March 11, 2009, in the House Judiciary Committee. H.B. 2584 would modify antitrust laws so that a person with indirect dealings with an adverse party may sue and recover treble damages. For additional information, please contact Chris Shultz with the Oregon Liability Reform Coalition at [staff@orlrc.org](mailto:staff@orlrc.org).

H.B. 2612, introduced by the House Judiciary Committee, is companion legislation to S.B. 307, and would extend the ten-year statute of ultimate repose for product liability civil actions to an unknown number. Coalition members in Oregon expect it to be extended to 25 years. H.B. 2612 is scheduled for a hearing in the House Judiciary Committee on March 11, 2009. For additional information, please contact Chris Shultz with the Oregon Liability Reform Coalition at [staff@orlrc.org](mailto:staff@orlrc.org).

S.B. 306, introduced at the request of the Senate Committee on Judiciary, would raise the amount allowed by law for award of attorney fees in small tort actions from \$5,500 to \$10,000. S.B. 306 is scheduled for a hearing in the Senate Judiciary Committee on February 24, 2009. For additional information, please contact Chris Shultz with the Oregon Liability Reform Coalition at [staff@orlrc.org](mailto:staff@orlrc.org).

S.B. 404, introduced at the request of the ACLU of Oregon, would prohibit defendants from recovering court awarded costs from the lawyers who represent out-of-state plaintiffs. S.B. 404 was heard in the Senate Judiciary Committee on February 16, 2009, without vote. For additional information, please contact Chris Shultz with the Oregon Liability Reform Coalition at [staff@orlrc.org](mailto:staff@orlrc.org).

## **Rhode Island**

H. 5226 (Joseph McNamara – D) was heard in the House Judiciary Committee on February 11, 2009, and the Committee recommended that the bill be held for further study. H. 5226 would provide that expressions of sympathy and statements regarding the outcome of treatment be inadmissible as evidence of an admission of liability. For additional information, please contact Elizabeth Emery, ATRA, at [eemery@atra.org](mailto:eemery@atra.org) or (202) 682-1163, ext. 16.

## **South Carolina**

H.B. 3553 (Bakari Sellers – D) would provide that, notwithstanding another provision of law, a statute of limitations or statute of repose may not apply to an action brought by the State of South Carolina or for its benefit. H.B. 3553 was introduced and referred to the House Judiciary Committee on February 17, 2009. For additional information, please contact Cam Crawford of the South Carolina Civil Justice Coalition at [scciviljusticecoalition@yahoo.com](mailto:scciviljusticecoalition@yahoo.com).

## **Tennessee**

H.B. 67 (Henry Fincher – D) would provide that if a court grants a motion to quash a subpoena, the court may award the party subpoenaed its reasonable attorney's fees and expenses incurred in defending against the subpoena. H.B. 67 will be heard in the Civil Practice & Procedure Committee on February 24, 2009. For additional information, please contact Elizabeth Emery, ATRA, at [eemery@atra.org](mailto:eemery@atra.org) or (202) 682-1163, ext. 16.

## **Texas**

H.B. 1288 (Craig Eisland – D) would expand a property owner's liability for injuries that occur in connection with construction on the owner's premises, even if the owner did not have actual knowledge of the danger or condition alleged to have caused the employee's injury. This bill would substantially change current law, which says that an owner is not liable for personal injury, death, or property damage to a contractor or subcontractor, or their employees, arising from a construction-related accident unless: (1) the property owner exercises or retains some control over the work, or (2) the owner had actual knowledge of the danger or condition resulting in the injury and failed to adequately warn. H.B. 1288 was filed on February 16, 2009. For additional information, please contact Carol Sims of the Texas Civil Justice League at [carol@tcjl.com](mailto:carol@tcjl.com).

S.B. 327 (Leticia Van de Putte – D) would amend part of the Texas Business & Commerce Code to mandate that a business that collects or stores sensitive personal information through an “access device” (e.g., credit card, debit card, stored value card, or device issued by a financial institution) comply with payment card industry (PCI) security standards. The bill further authorizes a financial institution to sue a business that is subject to a breach of system security if at the time of the breach that business is not in compliance with PCI security standards. H.B. 327 was introduced and referred to the Senate Business and Commerce Committee on February 11, 2009. For additional information, please contact Carol Sims of the Texas Civil Justice League at [carol@tcjl.com](mailto:carol@tcjl.com).

S.B. 496 (Jeff Wentworth – R) is false claims legislation that would allow private bounty hunter plaintiffs to file lawsuits for “false” claims in the name of the State of Texas and would override legal reform measures passed in the last three legislative sessions. S.B. 496 was referred to the Senate State Affairs Committee on February 17, 2009. For additional information, please contact Carol Sims of the Texas Civil Justice League at [carol@tcjl.com](mailto:carol@tcjl.com).

## **Utah**

H.B. 294 (Kay McIff – R) is wrongful death legislation, passed favorably out of the House Judiciary Committee on February 17, 2009, and is expected to be heard on the floor next week. The bill would expand wrongful death damages to include pain and suffering and loss of enjoyment of life. It would also allow heirs of a wronged individual to continue to receive damages if the wronged person were to die from something unrelated to the incident for which they were receiving damages. For additional information, please contact Casey Hill of the Utah Civil Justice League at [recovery.utah@gmail.com](mailto:recovery.utah@gmail.com).

S.B. 79 (Peter Knudson – R) passed favorably out of the Senate Health & Human Services Committee on February 19, 2009. The bill would change the standard of proof for medical malpractice cases based on emergency room care, and establish that an emergency room health care provider is only liable for civil damages if fault is established by clear and convincing evidence. S.B. 79 also contains language that would specify additional requirements for those serving as expert witnesses in medical malpractice suits. For additional information, please contact Casey Hill of the Utah Civil Justice League at [recovery.utah@gmail.com](mailto:recovery.utah@gmail.com).

## **Virginia – Good News!**

H.B. 2057 (Philip Hamilton – R) passed the Senate (40-0) on February 18, 2009. H.B. 2057 is legislation that would expand the list of expressions of sympathy that are not admissible in medical malpractice actions and wrongful death actions brought against a health care provider to include commiseration, condolence, or compassion, together with apologies. H.B. 2057 was

amended in the House Courts of Justice Committee to remove expressions of explanation from the list of expressions of sympathy not admissible. For additional information, please contact Elizabeth Emery, ATRA, at 202-682-1163, ext. 16, or [eeemery@atra.org](mailto:eeemery@atra.org).

## Washington

According to the Washington Liability Reform Coalition, the below bills are among the most dangerous faced in the Washington State Legislature this year. For additional information on any of the below legislation, please contact Dana Childers, Executive Director of the Washington Liability Reform Coalition, at [dana@walrc.org](mailto:dana@walrc.org).

- [SB 5531](#) / [HB 1683](#) – these measures increase the damages available under the Consumer Protection Act by a staggering 750% (from \$10,000 to \$75,000 per violation) and they make it significantly easier for a private plaintiff to bring a lawsuit for a single instance rather than a pattern of violations. Status: both bills heard in committee Feb. 5 and Feb. 9, respectively.
- [SB 5144](#) – the so-called false claims bill allows private citizens to dig through public records and file a lawsuit against a state contractor for improper billing. The Office of Financial Management says this bill will [cost taxpayers \\$7.5 million](#) per biennium and the state attorney general says “the bill will not achieve the recoveries anticipated and will cost the State more money than it will receive pursuant to the proposed Act.” The AG’s full comments are attached. Status: heard today in the Senate Judiciary Committee.
- [HB 1393](#) – with a crumbling housing market it seems odd, at the very least, that lawmakers would consider legislation that would make it even more costly and more prohibitive for those in the home construction business. But HB 1393 is a measure that provides more construction liability, hence increasing the cost of building more homes. Status: heard in House Judiciary Committee Feb. 4.
- [SB 5886](#) – this measure regulates legal proceedings involving public hazards and lowers the threshold for the causation of bringing such cases. The real intent of this bill is to limit confidentiality agreements in legal matters, therefore providing trial lawyers all the information they need to bring more lawsuits. Status: schedule to be heard in the Senate Judiciary Committee Feb. 17.
- [HB 2054](#) / [SB 5964](#) – these bills are an end-run around two Supreme Court decisions which held that makers of nonhazardous component parts, such as pipes or valves, have no duty to warn ultimate users about asbestos products made by others and attached to the components post-sale. Many people see these bills as an effort on the part of trial lawyers to go after new defendants in asbestos cases because most manufacturers who used asbestos products have already filed for bankruptcy. Status: both bills are introduced but have not yet been scheduled for a hearing.