



American Tort Reform Association

1101 Connecticut Avenue, NW ■ Suite 400 ■ Washington, DC 20036
(202) 682-1163 ■ Fax: (202) 682-1022 ■ www.atra.org

CIVIL JUSTICE REFORM *OUTLOOK* **January 2010**

To: ATRA Members and Friends

From: Matt Fullenbaum, Director of Legislation

Re: ATRA's Civil Justice Reform *Outlook*, 2010

Attached is the 2010 edition of ATRA's tort reform *Outlook*, our compendium of the civil justice reform activity expected in the states for 2010. Over the past few years, we have noted a substantial and unprecedented increase in legislative activity by the trial bar to expand liability and/or repeal previously enacted tort reform legislation. And while the trial bar will be active in 2010, ATRA is forecasting an overall decrease in legislative activity for several reasons. First, a number of states either are not meeting this year or are meeting in short, fiscal-only sessions. Second, 2010 is an election year and personal injury lawyers in many states are shifting resources from the legislative arena to elect trial-bar friendly candidates. Third, many states that are in regular session are facing large budget deficits, which are likely to occupy the attention of lawmakers for most of the session.

Notwithstanding these factors, we still expect the trial bar to aggressively and actively pursue their legislative agenda. Accordingly, ATRA will continue to work with state coalitions and supporters to prevent successful enactment of liability-expanding legislation. With respect to affirmative legislation, in addition to some of the factors above that constrain consideration of any type of civil justice legislation, the political environment in many states still remains hostile to civil justice reform (though this may change after November). But we still expect state coalitions to capitalize on available opportunities to advance affirmative legislation; in particular, there are substantial comprehensive bills pending in South Carolina which have a good opportunity to pass this year.

~ ~ ~

While we try to be comprehensive with our *Outlook*, this document is by no means meant to be exhaustive. If you have supplemental information, please do not hesitate to share it with us.

ALABAMA

SESSION DATE 01/12/10 – 04/30/10
HOUSE 60 D 44 R
SENATE 21 D 14 R

GOVERNOR: Bob Riley (R)
RE-ELECTION YEAR: 2010

| | |
|--|---|
| Mr. Skip Tucker Alabama Voters Against Lawsuit Abuse (AVALA) P. O. Box 2487 Montgomery, Alabama 36102 334-263-0052 Fax # 334-206-1044 | Mr. Tom Dart Chairman Alabama Civil Justice Reform Committee P. O. Box 240757 Montgomery, Alabama 36124 334-260-7070 Fax # 334-272-7128 |
|--|---|

The majority of seats on both the House and Senate Judiciary Committees are stacked with lawmakers sympathetic to personal injury lawyers. This all but ensures that civil justice reform legislation will not receive favorable consideration and makes it nearly impossible to move such measures to the floor. On the other hand, over the past few sessions, personal injury lawyers have aggressively attempted to expand liability and create new causes of action, and this is expected to continue during this year's session. We also expect the other side to pursue workers' compensation "reform" legislation.

2010 is an election year with all members of the House and Senate up for election; civil justice reform proponents advise they are likely to hold off pursuing a package of affirmative reforms until 2011, when a new legislature is seated. This package will probably consist of three bills covering: (1) products liability reform; (2) prejudgment interest reform; and (3) limits on noneconomic damages.

ALASKA

SESSION DATE 01/19/10 – 04/18/10
HOUSE 18 D 22 R
SENATE 10 D 10 R

GOVERNOR: Sean Parnell (R)
RE-ELECTION YEAR: 2010

| | | |
|---|--|--|
| Mr. Jim Jordan Executive Director Alaska State Medical Association 4107 Laurel Street Anchorage, Alaska 99508 907-562-0304 Fax # 907-561-2063 | Mr. Dennis Dewitt Dewitt & Dewitt, LLC P O Box 34761 Anchorage, Alaska 99508 907-723-6667 Fax # 907-789-2626 ddewitt@gci.net | Al Tamagni, Sr. Alaskans for Liability Reform 520 E. 34 th Avenue Suite 303 Anchorage, Alaska 99503 907-562-3938 Fax # 907-562-1366 |
|---|--|--|

No legislative activity reported.

ARIZONA

SESSION DATE 01/11/10 – 04/10/10
HOUSE 25 D 35 R
SENATE 12 D 18 R

GOVERNOR: Jan Brewer (R)
RE-ELECTION YEAR: 2010

| | | |
|---|---|---|
| Mr. Glenn Hamer President Arizona Chamber of Commerce 1850 N. Central Avenue, Suite 1010 Phoenix, Arizona 85004 602-248-9172 Fax # 602-265-1262 | Ms. Michelle Bolton State Director NFIB/Arizona 3550 North Central Avenue, Suite 1806 Phoenix, AZ 85012 602-263-7690 Fax # 602-263-7790 | Mr. Chic Older Executive Vice President Arizona Medical Association 810 West Bethany Home Rd. Phoenix, Arizona 85013 602-246-8901 FAX: 602-242-6283 |
|---|---|---|

The Arizona Legislature is coming off the 2009 session in which fiscal and budgetary matters dominated the landscape. This year, we expect Representative Andrew Tobin (R) to introduce legislation that would adopt the *Daubert* standard for admitting expert evidence and testimony; Arizona Courts currently embrace the less stringent *Frye* standard. Expect House Judiciary Committee Chairman Adam Driggs (R) and Senate Health Committee Chairwoman Carolyn Allen (R) to be supportive; Senate Judiciary Chairman Jonahtan Paton (R) is not expected to be supportive.

ARKANSAS

SESSION DATE 02/08/10 – 03/09/10
HOUSE 71 D 28 R 1 Ind.
SENATE 27 D 8 R

GOVERNOR: Mike Beebe (D)
RE-ELECTION YEAR: 2010

| | |
|---|---|
| Mr. Sylvester Smith State Director NFIB/Arkansas 415 Main Street Little Rock, Arkansas 72201 501-801-1974 | Mr. Nick Thompson Committee to Save Arkansas Jobs 425 West Capitol, Suite 1800 Little Rock, Arkansas 72201 501-688-8834 Fax # 501-688-8807 |
|---|---|

2010 is a fiscal/budget only session for the Arkansas Legislature and, as such, civil justice reform observers in Little Rock do not anticipate any civil justice reform legislation to be considered this year. However, there are a number of developments in Arkansas that will have a significant impact on the state's legal climate. The 2003 comprehensive reform bill, H.B. 1038, is under assault by the trial bar through judicial challenges; a case is currently pending before the Arkansas Supreme Court that challenges the constitutionality of the limit on punitive damages. This fall, voters will fill two open seats on the Court, and the civil justice reform community, led by the Committee to Save Arkansas Jobs, will work to support the election of balanced jurists to the fill those seats.

CALIFORNIA

SESSION DATE 01/04/10 – 08/31/10
HOUSE 51 D 29 R 1 Other
SENATE 25 D 15 R

GOVERNOR: Arnold Schwarzenegger (R)
Term expires 2010 (term limited)

| | |
|--|---|
| Mr. John H. Sullivan President Civil Justice Association of California 1201 K Street, Suite 1850 Sacramento, California 95814 916-443-4900 Fax # 916-443-4306 | Mr. Michael Shaw Legislative Director NFIB/California 455 Capitol Mall, Suite 225 Sacramento, California 95814 916-448-9904 Fax # 916-448-5442 |
|--|---|

On January 6, 2010, during his State of the State address before a joint session of the state Legislature, Governor Arnold Schwarzenegger said his top priority for this year is creating jobs and getting California's economy back on track. A key component of his plan is civil justice reform. A written statement released on the same day of the State of the State outlined his ideas, "To foster an atmosphere where business can thrive, the Governor will propose a series of changes to regulations governing class action lawsuits, products liability lawsuits, and seek to cap punitive damages awards."

Specifically, Schwarzenegger will seek legislation that allows for the interlocutory appeal of class action certification and will require the plaintiff, rather than the defendant, to pay for notification of other potential class members. Moreover, he will push legislation that will provide for limitations on the scope of damages assessed against business persons for defective products and eliminate unreasonable noneconomic and punitive damages awards.

The trial bar, on the other hand, is expected to attack businesses inserting lawsuit provisions in bills to regulate banks, mortgage lenders, pharmaceutical companies, and other industries. The trial bar might try to raise the \$250,000 limit on noneconomic damages in medical liability cases. Other possible proposals include the exclusion of minors from the limit and adding COLA language that will make future increases automatic. In addition, tort reform advocates will continue to monitor opposition activity and have been advised the trial bar may seek legislation in the following areas: private rights of action in privacy bills; consumer protection and disclosure bills; ban on confidential settlement agreements and limits on protective orders; industry-specific bars on the use of arbitration agreements; various bills to allow civil enforcement (and collection of attorney's fees) by "private attorneys general" for actions on behalf of the people of the state without an injured client; attempts to expand anti-trust laws; punitive damage awards to the state; requiring the award of liquidated damages for violations of gender pay equity and a lengthened statute of limitations or increased penalties; new duties on financial institutions which could lead to additional liability; additional regulation of and more liability against the accounting industry; and anti-insurance legislation.

COLORADO

SESSION DATE 01/13/10 – 05/12/10
HOUSE 38 D 27 R
SENATE 21 D 14 R

GOVERNOR: Bill Ritter (D)
RE-ELECTION YEAR: 2010

| | |
|---|--|
| <p>Mr. Jeff Weist Executive Director Colorado Civil Justice League 1512 Larimer Street Denver, Colorado 80202 303-884-0727 Fax # 303-436-1191</p> | <p>Mr. Tony Gagliardi State Director NFIB/Colorado 1410 Grant Street, Suite C-107 Denver, Colorado 80203 303-831-6099 Fax # 303-860-1787</p> |
|---|--|

Allies in Denver report that the trial bar is expected to pursue a broad agenda, including: False Claims Act -- there are two known bills to create a False Claims Act thus far; construction defects -- the trial bar has made it clear they intend to run a bill allowing for attorney's fees in construction defects cases which would increase the incentive for plaintiff's attorneys to bring cases; Substitute Service of Process -- a substitute service of process bill would allow service documents to be delivered to the Secretary of State in cases where a defendant cannot be located. A similar bill was run several years ago and was vetoed by then-Governor Owens; Expanded Employment Liability -- last year the plaintiff's employment group ran a bill attempting to extend punitive and pain and suffering damages as well attorney's fees to small businesses and this is expected to come back once again this year; Medical Malpractice Caps -- Medical malpractice cap increases have been a staple bill for the plaintiff's attorneys for the last several years and although caps have been retained thus far, it is likely a bill to raise caps will appear sometime this session; Colorado Consumer Protection Act -- a draft bill entitled the Colorado Products Safety Act would create state legislation in response to well publicized product safety problems, but would be duplicative of Federal Law, and will encourage litigation abuse by those who experience no injury.

The Colorado Trial Lawyer's Association just hired two new lobbyists who have never lobbied before and are going to spend the legislative session trying to prove themselves pursuing the liability-expanding agenda. In addition, there are still six different plaintiff's groups at the Capitol, a sympathetic legislature, and a governor who has announced he is not running for re-election and therefore is unlikely to veto bills the civil justice reform community finds objectionable.

CONNECTICUT

SESSION DATE 02/03/10 - 05/05/10
HOUSE 113 D 36 R
SENATE 24 D 12 R

GOVERNOR: M. Jodie Rell (R)
RE-ELECTION YEAR: 2010

| |
|---|
| <p>Mr. Kevin R. Hennessy Staff Attorney Connecticut Business & Industry Association 350 Church Street Hartford, Connecticut 06103 860-244-1979 Fax # 860-244-8501</p> |
|---|

| |
|--|
| <p>Mr. Ken Ferrucci Director of Government Affairs Connecticut State Medical Society 160 St. Ronan Street New Haven, Connecticut 06511 203-865-0587 Fax # 203-865-4997</p> |
|--|

Contacts in Hartford advise that that the trial bar is expected to pursue an agenda that will expand liability, including legislation that would extend the statute of limitations, allow parents of grown children to recover damages for loss of consortium, create new avenues for pursuing workers' compensation claims, and repeal prior workers' compensation reforms. The co-chairs of the Joint Judiciary Committee, Senator Andrew McDonald (D) and Representative Mike Lawler (D), are viewed as obstacles to the civil justice reform community as is Ranking Member Senator John Kissel (R).

DELAWARE

SESSION DATE 01/12/10 – 06/30/10
HOUSE 24 D 17 R
SENATE 16 D 5 R

GOVERNOR: Jack Markell (D)
RE-ELECTION YEAR: 2012

| |
|--|
| <p>Mr. Nitin S. Rao Director, Health Policy Research Medical Society of Delaware 131 Continental Drive, Suite 405 Newark, Delaware 19713 302-658-7596 Fax # 302-658-9669</p> |
|--|

No legislative activity reported.

DISTRICT OF COLUMBIA

ALL YEAR SESSION
D.C. COUNCIL

MAYOR: Adrian Fenty (D)
RE-ELECTION YEAR: 2010

| |
|--|
| <p>Mr. K. Ed Shanbacker Executive Vice President Medical Society of the District of Columbia 1115 30th Street, NW Washington, D. C. 20007 202-466-1800 Fax # 202-452-1542</p> |
|--|

No legislative activity reported.

FLORIDA

SESSION DATE 03/02/10 - 04/30/10
HOUSE 44 D 76 R
SENATE 14 D 26 R

GOVERNOR: Charlie Crist (R)
RE-ELECTION YEAR: 2010

| | |
|---|--|
| <p>Mr. Barney T. Bishop III President & CEO Associated Industries of Florida 516 N. Adams Street Tallahassee, Florida 32301 850-224-7173 Fax # 850-557-5255</p> | <p>Mr. William W. Large President Florida Justice Reform Institute 210 South Monroe Street Tallahassee, Florida 32301-1824 850-222-0170 Fax # 850-222-1098</p> |
| <p>M. Jeffery Scott Associate General Counsel Florida Medical Association 123 South Adams Street Tallahassee, Florida 32301 850-893-4155 Fax # 850-668-2852</p> | <p>Mr. Carlos Muhetaler Executive Director Florida STOP Lawsuit Abuse 595 S. Federal Hwy, Ste 600 Boca Raton, Florida 33432 561-544-2508</p> |

The civil justice reform community in the Sunshine State expects lawmakers to consider a number of affirmative reforms this year, including Parental Authority (H.B. 285), legislation based on ALEC's *Private Attorney Retention Sunshine Act* (H.B. 437 & S.B. 712), Crashworthiness Doctrine (H.B. 433 & S.B. 744), as well as slip and fall reform. As in many other states, the trial bar is expected to pursue a liability-expanding agenda of their own, including anti-arbitration legislation.

GEORGIA

SESSION DATE 01/11/10 – 03/30/10
HOUSE 74 D 105 R
SENATE 21 D 34 R

GOVERNOR: Sonny Perdue (R)
RE-ELECTION YEAR: 2010

Mr. Donald J. Palmisano, Jr.
General Counsel
Medical Association of Georgia
1849 The Exchange, Suite 200
Atlanta, Georgia 30339
678-303-9280 Fax # 678-303-9279

Senator John Wiles (R) introduced S.B. 138, the *Transparency in Lawsuits Protection Act*. The bill, based on the ALEC model of the same name, seeks to curb “implied causes of action” by requiring transparency in legislation as to whether any act of the legislature creates a new right to sue. The result will allow for the efficient use of current resources, minimize judicial and private speculation about legislative intent, create fairness in the court system, and curtail inconsistent results, and eliminate confusion in the courts and needless litigation.

HAWAII

SESSION DATE 01/20/10 - 05/06/10
HOUSE 45 D 6 R
SENATE 23 D 2 R

GOVERNOR: Linda Lingle (R)
RE-ELECTION YEAR: 2010

Gary Slovin, Esq.
Coordinator
Coalition to Stop Lawsuit Abuse
1099 Alakea Street, Suite 1800
Honolulu, Hawaii 96813
808-547-5600 Fax # 808-547-5880

Ms. Paula Arcena
Executive Director
Hawaii Medical Association
1360 S. Beretania Street, Suite 200
Honolulu, Hawaii 96814
808-536-7702 Fax # 808-528-2376

In Hawaii, much of the focus from the civil justice reform community will be on medical liability reform. Legislation with limits on noneconomic damages is expected to be the main provision of such legislation. Contacts in Hawaii do not expect the trial bar to be particularly active this year in pursuing liability-expanding legislation; it is anticipated that most of their efforts will focus on stopping medical liability reform.

IDAHO

SESSION DATE 01/11/10 – 04/09/10
HOUSE 18 D 52 R
SENATE 7 D 28 R

GOVERNOR: C.L. Butch Otter (R)
RE-ELECTION YEAR: 2010

| | |
|--|---|
| Mr. Kenneth R. McClure Coordinator Idaho Tort Reform Coalition P. O. Box 2720 Boise, Idaho 83701 208-388-1200 Fax # 208-388-1300 krm@givenspursley.com | Mr. Alex LaBeau Idaho Association of Commerce & Industry P. O. Box 389 Boise, Idaho 83701 208-343-1849 Fax # 208-338-5623 alabeau@iaci.org |
|--|---|

Neither civil justice reform proponents nor the trial bar are expected to be active during this year's session.

ILLINOIS

SESSION DATE 01/12/10 - 05/07/10
HOUSE 70 D 48 R
SENATE 37 D 22 R

GOVERNOR: Pat Quinn (D)
RE-ELECTION YEAR: 2010

| | |
|---|---|
| Mr. Edward D. Murnane President Illinois Civil Justice League P. O. Box 308 Arlington Heights, Illinois 60006 847-222-9673 Fax # 847-890-6123 | Ms. Suzanne Nelson Vice President of Government Affairs Illinois State Medical Society 20 North Michigan Avenue, Suite 700 Chicago, Illinois 60602-4890 312-782-1654 Fax # 312-782-2023 |
|---|---|

In previous years, the civil justice reform community has introduced a broad set of comprehensive reforms focused on nine areas. Contacts in Illinois advise that introductions in year-two (election years) are usually smaller than in year-one of a General Assembly for obvious reasons. The Illinois Civil Justice League (ICJL) will seek to have several bills from 2009 re-released from Rules for a potential hearing in the Judiciary Committee of the respective chambers. 2009 bills included: jury service reform, S.B. 1903 (Dillard) and H.B. 4002 (Mathias); Full/Fair Non-Economic Damages, S.B. 1904 (Dillard) and H.B. 4004 (Cross); Product Liability Reform, S.B. 1962 (Dillard) and H.B. 4005 (Cross); Venue Reform, S.B. 1963 (Dillard) and H.B. 8 (Tracy); Joint/Several Liability Reform, S.B. 1964 (Dillard) and H.B. 4003 (Stephens); Expert Testimony Reform, S.B. 1965 (Dillard) and H.B. 3719 (Kosel); Asbestos Evidence Reform, S.B. 1966 (Dillard) and H.B. 53 (Reis); Class Action Reform, S.B. 1967 (Murphy) and H.B. 4001 (Tracy); and Consumer Protection Reform, S.B. 1968 (Murphy) and H.B. 4006 (Reboletti).

ICJL might be interested in adding "Cy Pres" reform legislation or Attorney General / "Litigation Sunshine" reform laws to its legislative package. In addition, ICJL presented testimony to several campaign reform committees and is likely to seek introduction of legislation on the issue of judicial selection. They also hope to sit on the advisory committee that is being formed on the subject from the campaign finance reform legislation recently signed by Governor Quinn.

With respect to legislative activity from the other side, civil justice reform advocates expect to see more action from the Illinois Trial Lawyer's Association than in 2009, primarily due to the fact that their new full-time lobbyist was hired in the middle of last year's session and now has experience under his belt. In the past several years, ITLA has filed legislation on the inclusion of dismissed parties on the jury instruction forms, legislation to re-enact the structural work act, and legislation to re-introduce prejudgment interest to Illinois courts.

Last year, prejudgment interest was a high-priority of the Illinois State Bar Association. However, with the help of the Senate sponsor (metro-east Democrat Bill Haine), ICJL was able to hold the legislation from even a committee hearing. It is not believed that ITLA was the main proponent of this legislation, but it is very possible we could see the reintroduction (or amending) of this legislation and subject matter.

INDIANA

| | | |
|---------------------|----------------------------|-------------|
| SESSION DATE | 01/17/10 – 03/14/10 | |
| HOUSE | 52 D | 48 R |
| SENATE | 17 D | 33 R |

GOVERNOR: Mitch Daniels (R)
RE-ELECTION YEAR: 2012

Ms. Barbara Quandt
State Director
NFIB/Indiana
101 W. Ohio Street, Suite 470
Indianapolis, Indiana 46204
317-638-4447 Fax# 317-638-4450

Civil justice reform advocates do not anticipate any consideration of affirmative tort reform legislation during this year's session. On the other hand, a battle is brewing over legislation, H.B. 1128, that would modify the state's statute of repose in asbestos cases. Representative Dennis Tyler (D), sponsored the legislation at the behest of an Indianapolis-based personal injury lawyer who has over 1,000 time-bared cases, which will be revived if the legislation is passed. The business and civil justice reform communities, led by the Indiana Manufacturers Association, are expected to mount an aggressive effort to defeat the bill.

IOWA

SESSION DATE 01/11/10 – 03/30/10
HOUSE 56 D 44 R
SENATE 32 D 18 R

GOVERNOR: Chet Culver (D)
RE-ELECTION YEAR: 2010

Mr. John R. Gilliland
Senior Vice President, Government Relations
Iowa Association of Business and Industry
904 Walnut Street, Suite 100
Des Moines, Iowa 50309
515-235-0566 Fax # 515-244-8907

Mr. Andy Warren
State Director
NFIB/Iowa
200 East Grand Avenue, Suite 390
Des Moines, Iowa 50309
515-243-4723

In 2009, Iowa's trial bar scored a major victory with passage of legislation to create a private right of action under the state's consumer protection act. For a second act, this year the trial bar is expected to aggressively pursue legislation introduced in 2009, H.F. 758, that would allow recovery of damages for wrongful death to include loss of enjoyment of life. Also expect a big push by the opposition to pass another proposal introduced last year, S.F. 321, which would increase mandatory coverage limits with respect to uninsured/underinsured motorist coverage. Civil justice reform advocates, while opposing trial bar efforts, are expected to pursue an affirmative agenda too, primarily legislation based on ALEC's *Private Attorney Retention Sunshine Act*; Senator Paul McKinley (R) is likely to be the primary sponsor.

KANSAS

SESSION DATE 01/11/10 – 04/30/10
HOUSE 49 D 76 R
SENATE 9 D 31 R

GOVERNOR: Mark Parkinson (D)
RE-ELECTION YEAR: 2010

Mr. Brad Smoot
Coordinator
Kansas Civil Law Forum
800 SW Jackson Street, Suite 808
Topeka, Kansas 66612
785-233-0016 Fax # 785-234-3687

Mr. Dan Murray
State Director
NFIB/Kansas
5625 Nall Avenue
Roeland Park, Kansas 66202
913-940-4218

No legislative activity reported.

KENTUCKY

SESSION DATE 01/05/10 – 04/15/10
HOUSE 64 D 36 R 1 Vacant
SENATE 17 D 20 R 1 Ind.

GOVERNOR: Steve Beshear (D)
RE-ELECTION YEAR: 2011

| | |
|--|---|
| Mr. Bryan Sunderland Director, Public Affairs Kentucky Chamber of Commerce 464 Chenault Road Frankfort, Kentucky 40601 502-695-4700 Fax # 502-848-8745 | Mr. William Applegate Executive Vice President Kentucky Medical Association 4965 US Highway 42, Suite 2000 Louisville, Kentucky 40222 502-426-6200 Fax # 502-426-6877 |
|--|---|

We expect civil justice reform advocates to pursue affirmative reforms in several areas including disaster liability reform and a reduction in the statute of limitations for wrongful death lawsuits. On the other hand, observers in Kentucky believe the trial bar is likely to press for expanded liability in a number of areas including workers' compensation.

LOUISIANA

SESSION DATE 03/29/10 – 06/21/10
HOUSE 52 D 50 R 3 Ind
SENATE 23 D 16 R

GOVERNOR: Bobby Jindal (R)
RE-ELECTION YEAR: 2011

| | |
|---|--|
| Jim Harris Coalition For Common Sense 521 Laurel Street Baton Rouge, LA 70820 225-344-0381 | Ms. Jonica Coates Director, Civil Justice Reform Council Louisiana Association of Business & Industry 3113 Valley Creek Drive Baton Rouge, Louisiana 70808 225-928-5388 Fax # 225-929-6054 |
|---|--|

Civil justice reformers in Baton Rouge anticipate playing mostly defense during this year's session. The trial bar is expected to use the Chinese drywall issue as a pretext to pursue legislation to reinstate strict liability as well as joint and several liability. Moreover, they will likely try again to reinstate medical monitoring, having failed last year. Other issues, which may gain traction, include allowing for the recovery of punitive damages and allowing government officials to contact with private attorneys on a contingency fee basis to pursue civil litigation on behalf of state. Given the challenges of the current political environment, we do not anticipate any substantial affirmative reform efforts.

MAINE

SESSION DATE 01/06/10 – 04/21/10
HOUSE 95 D 56 R
SENATE 20 D 15 R

GOVERNOR: John Baldacci (D)
RE-ELECTION YEAR: 2010

| | |
|---|---|
| Mr. Andrew B. MacLean Deputy Executive Vice President Maine Medical Association P. O. Box 190 Manchester, Maine 04351 207-622-3374 Fax # 207-622-3332 | Mr. David R. Clough State Director NFIB/Maine P. O. Box 796 South Freeport, Maine 04078 207-846-5776 Fax # 207-846-6067 |
|---|---|

Neither civil justice reform proponents nor the trial bar are expected to be active during this year's session.

MARYLAND

SESSION DATE 01/13/10 – 04/12/10
HOUSE 104 D 36 R 1 Ind.
SENATE 33 D 14 R

GOVERNOR: Martin O'Malley (D)
RE-ELECTION YEAR: 2010

| | |
|--|---|
| Mr. Ronald W. Wineholt Vice President, Government Affairs Maryland Chamber of Commerce 60 West Street, Suite 100 Annapolis, Maryland 21401 410-269-0642 Fax # 410-269-5247 | Ms. Ellen Valentino State Director NFIB/Maryland 176 Main Street, Suite A Annapolis, Maryland 21401 410-267-0335 Fax # 410-990-9503 |
|--|---|

The Maryland General Assembly convened on January 13th for the traditional 90 day session. Observers in Annapolis expect lawmakers to consider a number of affirmative tort reform measures, though it will be extremely difficult to gain traction and passage given the current make-up of the General Assembly. Anticipated reform bills likely will include: (1) medical liability reform – “I’m sorry “ legislation; (2) appeal bond reform; and (3) ALEC’s *Transparency in Lawsuits Protection Act*.

The trial bar has been increasingly active in pushing legislation that would expand liability or roll back previously enacted tort reform legislation. Some bills to expect this year include: (1) comparative fault – Maryland is one of only four states (Alabama, North Carolina, Virginia, plus the District of Columbia) that continue to embrace the doctrine of contributory negligence and the trial bar is expected to pursue legislation to replace contributory negligence with comparative fault (there have been at least 9 previous attempts to move to comparative fault); (2) state false claims act; (3) lead paint market share – would allow persons to sue for damages relating to lead paint based on the market share of the company, or its predecessors, that may have produced lead paint during the life of the residential property; (4) consumer protection – over a dozen bills were considered during the 2009 session that would expand Maryland’s Consumer Protection Act, and we expect such legislation this year too.

Observers also note that the Maryland Court of Appeals, the state's highest court, will consider a case this term that challenges Maryland's statutory limitations on noneconomic damages. The case, *DRD Pool Service, Inc. v. Thomas Freed*, raises a constitutional challenge to the statutory limit.

MASSACHUSETTS

SESSION DATE 01/04/10 – 01/05/10
HOUSE 144 D 16 R
SENATE 35 D 5 R

GOVERNOR: Deval Patrick (D)
RE-ELECTION YEAR: 2010

| | |
|---|--|
| <p>Mr. Brian Gilmore Vice President of Public Affairs Associated Industries of Massachusetts 222 Berkeley Street Boston, Massachusetts 02117 617-262-1180 Fax # 617-536-6785</p> | <p>Mr. William Vernon State Director NFIB/Massachusetts 10 High Street, Suite 401 Boston, Massachusetts 02110 617-482-1327 Fax # 617-482-5286</p> |
|---|--|

No legislative activity reported.

MICHIGAN

SESSION DATE 01/13/10 – 12/31/10
HOUSE 67 D 43 R
SENATE 16 D 22 R

GOVERNOR: Jennifer Granholm (D)
RE-ELECTION YEAR: 2010

| | |
|--|---|
| <p>Ms. Wendy Block Director, Health Policy and Human Resources Michigan Chamber of Commerce 600 S. Walnut Street Lansing, MI 48933 517-371-7678 Fax # 517-771-7224 wblock@michamber.com</p> | <p>Mr. Robert B. Dorigo Jones President Michigan Lawsuit Abuse Watch (M-LAW) 39555 Orchard Hill Place, Suite 600 Novi, Michigan 48901 248-449-2990 Fax # 734-207-1527 bob@mlaw.org</p> |
|--|---|

The trial bar and their allies in the legislature will continue their multi-year effort to expand liability, weaken existing tort law, and outright repeal previously enacted tort reform legislation. These efforts include retroactively repealing the state's FDA defense (H.B. 4316, H.B. 4317, H.B. 4318), weakening of expert witness/affidavit of merit requirements under Michigan's medical liability law (H.B. 4571), and reducing regulatory compliance exemptions under the consumer protection law (H.B. 4915). As in prior years, the business community, led by the Michigan Chamber of Commerce, will mount an aggressive defensive campaign to protect existing reform and prevent expansion of liability.

MINNESOTA

SESSION DATE **02/04/10 - 05/17/10**
HOUSE **87 D 47 R**
SENATE **46 D 21 R**

GOVERNOR: Tim Pawlenty (R)
RE-ELECTION YEAR: 2010

| | |
|---|--|
| Mr. Mike Hickey State Director NFIB/Minnesota 380 Jackson Street, Suite 780 St. Paul, Minnesota 55101 651-235-7401 Fax # 651-293-0084 | Mr. Mark Kulda Vice President, Public Affairs Insurance Federation of Minnesota 400 Robert Street, N., Suite 208 St Paul, Minnesota 55101 651-303-8904 |
|---|--|

Civil justice reform advocates are building momentum to pursue meaningful changes to Minnesota's civil justice system by backing a new state group, Minnesotans for Lawsuit Reform (MFLR). The group, previously called Minnesotans Against Lawsuit Abuse, has formally incorporated and set-up an infrastructure to pursue an affirmative agenda and oppose trial bar legislation to expand liability. With respect to affirmative measures, legislation is likely to be pursued in four areas to: (1) reduce the general tort statute of limitations to three years; (2) provide for interlocutory appeal of class action certifications; (3) provide early offer of settlement incentives; and (4) repeal of the seat belt gag rule. On the other hand, the trial bar is expected to aggressively push H.F. 2787, a bill that would create additional private causes of action under the state's consumer protection act. In addition, the trial bar is expected to pursue H.F. 127, in which the motor vehicle definition is clarified in a statutory provision deeming the driver to be the agent of the owner in case of an accident. The House Civil Justice Committee and Senate Judiciary Committee are both viewed as pro-trial bar.

MISSISSIPPI

SESSION DATE **01/05/10 – 04/03/10**
HOUSE **73 D 49 R**
SENATE **27 D 25 R**

GOVERNOR: Haley Barbour (R)
RE-ELECTION YEAR: 2011

| | |
|---|--|
| Mr. Scott Waller Senior Vice President, Government Relations MS State Chamber of Commerce 666 North Street, Suite 104 P. O. Box 23276 Jackson, Mississippi 39225 601-969-0022 Fax # 601-353-0247 | Mr. Mark Leggett Director, Government Affairs Mississippi Manufacturers Association 720 N. President Street Jackson, Mississippi 39202 601-948-1222 Fax # 601-948-1475 |
| Ms. Charmain Kanosky Executive Director Mississippi State Medical Association P. O. Box 2548 Ridgeland, Mississippi 39158 601-853-6733 Fax # 601-853-6746 | Mr. David L. Allen Mississippians for Economic Progress 1995 Lakeland Drive P. O. Box 3025 Ridgeland, Mississippi 39158 601-352-6337 Fax # 601-352-7869 |

A key component of the Mississippi medical liability reform law was to require a 60-day notice of claim to be presented to a doctor-defendant as a pre-requisite to filing a claim. A recent Mississippi Supreme Court decision, *Price v. Clark*, held that the 60-day notice does not toll the statute of limitations and can be cured if not provided. The Mississippi Medical Association anticipates legislation which will clarify this point of law, and Senator Joey Fillingane (R) has agreed to sponsor the legislation. Another affirmative measure the civil justice reform community anticipates is legislation based on ALEC's *Private Attorney Retention Sunshine Act*, which regulates the practice of hiring private attorneys on a contingency fee basis to represent the state in civil litigation. Observers in Jackson advise that there is also a reasonable chance that the trial bar and their allies in the legislature will attempt to slip liability-expanding provisions into bills on unrelated subject matters.

Finally, readers should note there are at least two ongoing court challenges to previously enacted tort reform legislation. First, there is a constitutional challenge to the \$500,000 limit on noneconomic damages in medical liability cases pending in a lawsuit filed in the U.S. District Court of the Western District of Washington (Seattle). The case was filed under the federal tort claims act for alleged acts of negligence occurring in Mississippi. Second, pending before the Mississippi Supreme Court is the matter of *Double Quick v. Lymas*, a case challenging the state's limit on noneconomic damages. Briefs and amicus briefs have already been filed, and contacts in Mississippi noted that Governor Haley Barbour (R) filed his own, separate brief.

MISSOURI

SESSION DATE **01/06/10 – 05/16/10**
HOUSE **71 D 87 R**
SENATE **11 D 23 R**

GOVERNOR: Jay Nixon (D)
RE-ELECTION YEAR: 2012

| | | |
|--|---|--|
| Mr. Thomas L. Holloway Director of Government Relations Missouri State Medical Association P. O. Box 1028 Jefferson City, Missouri 65102 573-636-5151 Fax # 573-636-8552 | Mr. Brent Butler Director, Governmental Affairs Missouri Insurance Coalition 220 Madison Jefferson City, Missouri 65101 573-893-4241 Fax # 573-893-4996 | Mr. Brad Jones State Director NFIB/Missouri 308 E. High Street, Suite 110 Jefferson City, Missouri 65101 573-634-7660 Fax # 573-636-7010 |
|--|---|--|

We expect lawmakers to consider during this year's session false claims act legislation and legislation that would repeal the presumption that medical damages are what the healthcare provider took as payment in full. There is no expectation on the part of observers in Jefferson City that the trial bar will seek legislation to repeal previously enacted tort reform. However, the Missouri Supreme Court is slated to determine the constitutionality of the state's \$350,000 limit on noneconomic damages in medical liability cases. The case is *Klotz v. St. Anthony's Med. Ctr.*

MONTANA

SESSION DATE No 2010 session
HOUSE 50 D 50 R
SENATE 23 D 27 R

GOVERNOR: Brian Schweitzer (D)
RE-ELECTION YEAR: 2012

Mr. Jon Bennion
Government Relations Director
Montana Chamber of Commerce
P. O. Box 1730
Helena, Montana 59601
406-442-2405 Fax # 406-442-2409

Jacqueline T. Lenmark, Esq.
Director
Montana Liability Coalition
P. O. Box 598
Helena, Montana 59624
406-442-0230 Fax # 406-449-2256

The Montana Legislature does not meet in 2010.

NEBRASKA

SESSION DATE 01/06/10 – 04/14/10
UNICAMERAL LEGISLATURE
49 INDEPENDENTS

GOVERNOR: Dave Heineman (R)
RE-ELECTION YEAR: 2010

Mr. Ronald J. Sedlacek
General Counsel
Nebraska Chamber of Commerce & Industry
P. O. Box 95128
Lincoln, Nebraska 68509
402-474-4422 Fax # 402-474-5681

Civil justice reform advocates in the Cornhusker State expect lawmakers to consider liability protections for employee reference checks. Observers in Lincoln do expect some activity from the other side, particularly related to expanding liability in the worker's compensation arena and possibly trying to raise the state's limit on noneconomic damages in medical liability cases.

NEVADA

SESSION DATE no 2010 session
HOUSE 28 D 14 R
SENATE 12 D 9 R

GOVERNOR: Jim Gibbons (R)
RE-ELECTION YEAR: 2010

Mr. Lawrence Matheis
Executive Director
Nevada State Medical Association
3660 Baker Lane, Suite 101
Reno, Nevada 89509
702-825-6788 Fax # 702-825-3202

Mr. George Ross
Director, Legislative & Government Affairs
Snell & Wilmer, LLP
3883 Howard Hughes Pkwy, Suite 1100
Las Vegas, Nevada 89169-0965
702-784-5220 Fax # 702-784-5252

The Nevada Legislature does not meet in regular session in 2010.

NEW HAMPSHIRE

SESSION DATE 01/06/10 – 06/30/10
HOUSE 223 D 175 R
SENATE 14 D 10 R

GOVERNOR: John Lynch (D)
RE-ELECTION YEAR: 2010

Mr. Palmer H. Jones
Executive Vice President
New Hampshire Medical Society
7 North State Street
Concord, New Hampshire 03301
603-224-1909 Fax # 603-226-2432

The trial bar is likely to pursue legislation to weaken or outright eliminate previously enacted medical liability reform laws which are beginning to show positive results. We do not anticipate any substantial affirmative reform efforts this year.

NEW JERSEY

SESSION DATE 01/12/10 - 12/31/10
HOUSE 47 D 33 R
SENATE 23 D 17 R

GOVERNOR: Chris Christie (R)
RE-ELECTION YEAR: 2013

| | |
|---|--|
| Mr. Michael Kornett Executive Director & CEO Medical Society of New Jersey 2 Princess Road Lawrenceville, New Jersey 06648 609-896-1766 Fax # 609-896-0674 | Mr. Curt Macysyn Executive Vice President New Jersey CALA 1675 Whitehorse - Mercerville Rd Mercerville, New Jersey 08619 609-588-0030 Fax # 609-588-0040 |
| Mr. Marcus Rayner Executive Director New Jersey Lawsuit Reform Alliance 128 West State Street, 3 rd Floor Trenton, New Jersey 08625 609-392-6557 Fax: 609-392-6552 | Ms. Laurie Ehlbeck State Director NFIB/New Jersey 150 West State Street, Suite 130 Trenton, New Jersey 08608 609-989-8777 Fax # 609-393-0781 |

The election of Chris Christie as governor caused a seismic shift in the political climate in New Jersey. Christie, a pro-business Republican, included tort reform as a key element of his economic development and growth platform. Observers in Trenton have reasonably concluded Christie is sympathetic to civil justice reform and that the prospects of passing affirmative legislation have increased substantially. Certainly, Christie would not hesitate to wield his veto pen should the trial bar attempt to send him liability-expanding legislation, such as the wrongful death legislation pushed by the trial bar over the past few sessions. With respect to affirmative legislative prospects during the 2010 session, expect a push for passage of an appeal bond cap bill similar to what has been enacted by a majority of states since the year 2000. Other issues that may be introduced are consumer protection act reform and legislation based on ALEC's *Private Attorney Retention Sunshine Act*.

NEW MEXICO

SESSION DATE 01/19/10 - 02/18/10
HOUSE 45 D 25 R
SENATE 27 D 15 R

GOVERNOR: Bill Richardson (D)
RE-ELECTION YEAR: 2010

Ms. Michelle Hernandez
Chair
New Mexico Alliance for Legal Reform
P. O. Box 2168
Albuquerque, New Mexico 87103
505-848-1800
mhernandez@modrall.com

New Mexico is facing a huge budget deficit, which will likely occupy most of the attention of lawmakers. With respect to civil justice issues, one topic that has come up is a possible expansion of the limits on total damages in medical liability cases of \$600,000 (except for punitive damages and medical care and related benefits). In regard to the New Mexico Supreme Court, Justice Maes, a Democrat, may retire this year, but this has been a rumor for several years.

NEW YORK

SESSION DATE 01/06/10 – 12/31/10
HOUSE 107 D 40 R 3 Ind.
SENATE 32 D 30 R

GOVERNOR: David Paterson (D)
RE-ELECTION YEAR: 2010

Mr. Mark Kriss
New Yorkers for Lawsuit Reform
c/o Kriss, Kriss & Brignola
350 Northern Blvd.
Albany, New York 12204
518-449-2037 Fax# 518-449-7875

Mr. Mike Elmendorf
State Director
NFIB/New York
One Commerce Plaza, Suite 1119
Albany, New York 12260
518-434-1262 Fax# 518-426-8799

To say the political environment in Albany is challenging for civil justice reform advocates would be an understatement. Both houses of the New York State Legislature are dominated by trial lawyer interests, particularly the Assembly where Sheldon Silver (D), of counsel to a prominent personal injury firm in Manhattan, serves as speaker and ensures affirmative tort reform legislation never sees the light of day. Last year, we saw an avalanche of liability-expanding legislation, which we expect to continue during this year's session. The business community in New York is particularly concerned about an effort to create a private right of action under the Martin Act, New York State's securities law. Also, expect to see consideration of false claims act legislation. With respect to affirmative reform measures, we do expect a number of bills to be introduced, such as: repeal of Labor Law sections 240 and 241, which currently provide strict liability for construction and maintenance cases arising out of elevation-related causes of action; \$250,000 limit on noneconomic damages in medical liability cases; neurologically impaired infant fund; and statute of repose/design liability reform. It will be difficult, however, to gain traction on any affirmative legislation given current political dynamics.

NORTH CAROLINA

SESSION DATE 05/12/10 – 07/30/10
HOUSE 68 D 52 R
SENATE 30 D 20 R

GOVERNOR: Bev Purdue (D)
RE-ELECTION YEAR: 2012

Mr. Gregg Thompson
State Director
NFIB/North Carolina
150 Fayetteville Street, Suite 1110
Raleigh, North Carolina 27612
919-833-9480 Fax # 919-833-9497

Mr. S. Lewis Ebert
President & CEO
North Carolina Chambers
701 Corporate Center Drive, Suite 400
Raleigh, North Carolina 27607
919-836-1407 Fax # 919-836-1425

Contributory negligence is expected to dominate the agenda with respect to civil justice issues this session. Last year, the House passed H.B. 813, a bill to replace contributory negligence with comparative fault and to modify, but not eliminate, joint and several liability. The bill is currently pending in the Senate Judiciary Committee, and is the top priority of the trial bar. As mentioned in the Maryland overview, there are only four states that retain the doctrine of contributory negligence; the North Carolina business community is opposed to H.B. 813 in its current form.

NORTH DAKOTA

SESSION DATE no 2010 session
HOUSE 36 D 58 R
SENATE 21 D 26 R

GOVERNOR: John Hoeven (R)
RE-ELECTION YEAR: 2012

Mr. Dean Haas
General Counsel
North Dakota Medical Association
1622 E. Interstate Avenue
Bismarck, North Dakota 58502-1198
701-223-9475 Fax # 701-223-9476

Legislature does not meet in 2010.

OHIO

SESSION DATE 01/05/10 – 12/31/10
HOUSE 53 D 46 R
SENATE 12 D 21 R

GOVERNOR: Ted Strickland (D)
RE-ELECTION YEAR: 2010

| | | |
|---|--|--|
| Ty Pine Legislative Director NFIB/Ohio 10 West Broad Street, Suite 2450 Columbus, Ohio 43215 614-221-4107 Fax # 614-221-8677 | Ryan Augsburger Public Policy Director The Ohio Manufacturers' Association 33 N. High Street, Suite 600 Columbus, Ohio 43215 614-224-5111 | Mr. Tim Maglione Sr. Director, Government Relations Ohio State Medical Association 3401 Mill Run Drive Hilliard, Ohio 43026 614-527-6746 Fax # 614-527-6763 |
|---|--|--|

Observers in Columbus expect several bills to be considered this year that are favorable to the trial bar. In particular, S.B. 157, which would codify the *Cy Pres* Doctrine, and H.B. 361, which would revise the civil procedure rule regarding offers of judgment resulting in significantly increased amounts of personal injury awards.

OKLAHOMA

SESSION DATE 02/01/10 – 05/28/10
HOUSE 39 D 62 R
SENATE 22 D 26 R

GOVERNOR: Brad Henry (D)
RE-ELECTION YEAR: 2010

| |
|---|
| Mr. Mike Seney Senior Vice President, Operations Oklahoma State Chambers 330 N.E. 10th Street Oklahoma City, Oklahoma 73104 405-235-3669 Fax # 405-235-3670 |
|---|

After passing comprehensive tort reform legislation in 2009, observers in Oklahoma City expect a quiet 2010, with neither civil justice reform advocates nor the trial bar expected to be active in the legislature.

OREGON

SESSION DATE 02/01/10 – 03/01/10
HOUSE 36 D 24 R
SENATE 18 D 12 R

GOVERNOR: Ted Kulongoski (D)
RE-ELECTION YEAR: 2010

| | |
|--|---|
| Ms. Deborah Herron Oregon Liability Reform Coalition 1328 NW Kearney Street Portland, Oregon 97209 503-735-5093 staff@orlrc.org | Mr. Kevin L. Mannix Director Oregon Tort Reform Coalition 2007 State Street Salem, Oregon 97301 503-364-1913 Fax # 503-362-0513 |
|--|---|

The Oregon Legislature will meet in a four week supplemental session during 2010. Members of both houses and committees are limited in the number of bills that can be introduced, and due to a special election in late January on two tax measures, observers on the ground advise it is unlikely any affirmative civil justice reform legislation will be introduced. On the other hand, those same observers expect pro-trial lawyer legislation to be introduced, including: a bill to expand Oregon's Unfair Trade Practices Act to cover insurance and loans; and a bill to ban products that contain Bisphenol A.

PENNSYLVANIA

SESSION DATE 01/05/10 – 11/30/10
HOUSE 103 D 97 R
SENATE 20 D 30 R

GOVERNOR: Ed Rendell (D)
RE-ELECTION YEAR: 2010

| | |
|---|--|
| Mr. Kevin Shivers State Director NFIB/Pennsylvania 116 Pine Street, Suite 204 Harrisburg, Pennsylvania 17101 717-232-8582 Fax # 717-232-4098 | Mr. Samuel Denisco Director, Government Affairs Pennsylvania Chamber of Business & Industry 417 Walnut Street Harrisburg, Pennsylvania 17101 717-720-5580 Fax # 717-230-8733 |
|---|--|

We expect a number of tort reform measures to be introduced including joint and several liability reform, a constitutional amendment which would allow the legislature to place limits on damages, and statute of repose reform. The other side is expected to pursue false claims act legislation. It will be tough to move any affirmative legislation given the pro-trial lawyer bent in the House and Governor Rendell's sympathy for the trial bar as well.

RHODE ISLAND

SESSION DATE 01/05/10 – 06/30/10
HOUSE 68 D 6 R
SENATE 33 D 4 R 1 Ind.

GOVERNOR: Don Carcieri (R)
RE-ELECTION YEAR: 2010

| | |
|---|--|
| Mr. Paul DeRoche Rhode Islanders for Lawsuit Reform Providence Chamber of Commerce 30 Exchange Terrace Providence, Rhode Island 02903 401-621-6106 Fax # 401-751-2434 | Mr. Stephen DeToy Director of Public Affairs Rhode Island Medical Society 235 Promenade Street, Suite 500 Providence, Rhode Island 02903 401-331-3207 Fax # 401-751-8050 |
|---|--|

No legislative activity reported.

SOUTH CAROLINA

SESSION DATE 01/12/10 – 05/03/10
HOUSE 51 D 73 R
SENATE 19 D 27 R

GOVERNOR: Mark Sanford (R)
RE-ELECTION YEAR: 2010

| | |
|--|--|
| Mr. Cam Crawford Executive Director South Carolina Civil Justice Coalition PO Box 12586 Columbia, SC 29211 803-771-0008 Fax # 803-771-4272 | Otis B. Rawl, Jr. Vice President, Public Policy South Carolina Chamber of Commerce 1201 Main Street, Suite 1810 Columbia, South Carolina 29201 803-799-4601 Fax # 803-779-6043 |
|--|--|

The South Carolina Legislature convened on January 13th for year two of its two-year session. Civil justice reform proponents have employed a multi-year strategy to pass comprehensive reform, and we expect serious consideration this year of legislation that was carried over from 2009, H. 3489 (Speaker Bobby Harrell – R) and S. 350 (Senator Larry Martin – R). Elements to be considered, include: limits on noneconomic damages; limits on punitive damages; a limit on what a defendant is required to pay to appeal a civil decision; class action reform; a provision based on ALEC’s *Private Attorney Retention Sunshine Act*; admissibility of seat belt usage/non-usage evidence; consumer protection reform; and products liability reform. On the other hand, we expect the trial bar to continue to push the false claims act, which was introduced last year in the Senate, S.320; we also expect the trial bar to introduce similar legislation in the House.

SOUTH DAKOTA

SESSION DATE 01/12/10 - 03/29/10
HOUSE 24 D 46 R
SENATE 14 D 21 R

GOVERNOR: Mike Rounds (R)
RE-ELECTION YEAR: 2010

Ms. Barbara A. Smith
Chief Executive Officer
South Dakota State Medical Association
1323 South Minnesota Avenue
Sioux Falls, South Dakota 57105
605-336-1965 Fax # 605-336-0270

No legislative activity reported.

TENNESSEE

SESSION DATE 01/12/10 - 05/15/10
HOUSE 48 D 51 R
SENATE 14 D 19 R

GOVERNOR: Phil Bredesen (D)
RE-ELECTION YEAR: 2010

Mr. Gary Selvy
NFIB/Tennessee
53 Century Blvd., Suite 110
Nashville, Tennessee 37214
615-874-5288

Contacts in Nashville do not anticipate much activity during the 2010 legislative session with respect civil justice reform. They also advise that the trial bar is expected to lay low as well. Moreover, the Tennessee Medical Association and the trial bar have agreed to postpone any additional reform to assess the impact of recently implemented pre-screening panels for medical liability cases.

Observers on the ground advise ATRA that they expect Representative Jon Lundberg (R) to pursue legislation that would give 90 percent of damages won in a lawsuit against nursing homes to the client --- limiting the plaintiff's attorney's fees to 10 percent of the judgment; this legislation is not expected to make it out of subcommittee.

TEXAS

SESSION DATE no 2010 session
HOUSE 74 D 76 R
SENATE 12 D 19 R

GOVERNOR: Rick Perry (R)
RE-ELECTION YEAR: 2010

| | |
|--|---|
| George Christian Scott President Texas Civil Justice League 400 West 15th Street, Suite 404 Austin, Texas 78701 512-320-0474 Fax # 512-474-4334 | Mr. Will Newton State Director NFIB/Texas 1201 Rio Grande, Suite 100 Austin, Texas 78701 512-476-9847 Fax # 512-478-6422 |
|--|---|

Barring a special session called by the Governor, the Texas Legislature is not in session this year, and will meet next in January 2011. However, contacts in Austin advise that legislative committees will conduct interim studies. A number of civil justice issues are expected to be part of the interim study process, including: statutory employer and third party liability in a workers' compensation context; evidence of causation in mesothelioma asbestos cases; reimbursement of medical expenses in civil actions; insurance reform; eminent domain reform; and judicial selection reform. Civil justice reform advocates also plan to closely monitor the Sunset Review process for the Texas Department of Insurance and the Workers' Compensation Division of the Department.

UTAH

SESSION DATE 01/25/10 – 03/11/10
HOUSE 22 D 53 R
SENATE 8 D 21 R

GOVERNOR: Gary Herbert (R)
RE-ELECTION YEAR: 2010

| | |
|---|--|
| Michelle McOmber, MBA, CAE Executive Vice President & CEO Utah Medical Association 310 East 4500 South, Suite 500 Salt Lake City, Utah 84107 801-747-3500 Fax # 801-532-1550 | Mr. Casey Hill Executive Director Utah Civil Justice League 1927 W. Jackson Kaysville, Utah 84037 801-634-6564 Fax # 801-593-0594 |
|---|--|

No legislative activity reported.

VERMONT

SESSION DATE 01/05/10 – 04/30/10
HOUSE 94 D 48 R 8 Other
SENATE 23 D 7 R

GOVERNOR: Jim Douglas (R)
RE-ELECTION YEAR: 2010

| | |
|--|--|
| Ms. Shawn S. Shouldice State Director NFIB/Vermont 79 Main Street, Suite 3 Montpelier, Vermont 05602 802-498-0059 Fax # 802-223-1408 | Ms. Sandra Dragon President Associated Industries of Vermont P. O. Box 630 Montpelier, Vermont 05601 802-223-3441 Fax # 802-223-2345 |
|--|--|

No legislative activity reported.

VIRGINIA

SESSION DATE 01/13/10 – 03/13/10
HOUSE 39 D 59 R 2 Ind.
SENATE 21 D 19 R

GOVERNOR: Bob McDonnell (R)
RE-ELECTION YEAR: 2013

| | |
|--|---|
| Mr. Keith Hare Director, Government Affairs Medical Society of Virginia 4205 Dover Road Richmond, Virginia 23221 804-353-2721 Fax # 804-355-6189 | Mr. Charles Duvall Virginians for Law Reform Lindl Corporation P. O. Box 170 Richmond, Virginia 23218 804-644-7884 Fax # 804-644-7886 |
|--|---|

No legislative activity reported.

WASHINGTON

SESSION DATE 01/11/10 – 03/11/10
HOUSE 61 D 37 R
SENATE 31 D 18 R

GOVERNOR: Christine Gregoire
RE-ELECTION YEAR: 2012

| | |
|---|--|
| Mr. Cliff Webster Chairman Washington Liability Reform Coalition 701 Fifth Avenue, Suite 3600 Seattle, Washington 98104 206-622-8020 Fax # 206-467-8215 | Ms. Dana Childers Executive Director Washington Liability Reform Coalition 2033 Sixth Avenue, Suite 1100 Seattle, Washington 98121 425-868-2698 Fax # 425-868-8427 |
|---|--|

From attempts to expand Washington's consumer protection law and overturn state supreme court decisions on asbestos, to pursuit of a false claims act, we have seen an avalanche of trial lawyer legislation in recent sessions that would expand liability and make it easier to sue. Observers on the ground expect a relatively quiet 2010, however, particularly given the state's budget woes and this year's

short legislative session (two months). We do expect the Washington State Trial Lawyers Association to pursue a state false claims act. On the other hand, it is unlikely that any affirmative civil justice reform legislation will be introduced this year. If such legislation were introduced, it is highly unlikely to be passed out of committee. Senate Judiciary Chairman Adam Kline (D), a former trial lawyer, and House Judiciary Chairman Jaime Pedersen (D), are both favorable toward the trial bar.

WEST VIRGINIA

SESSION DATE 01/13/10 – 03/13/10
HOUSE 71 D 29 R
SENATE 26 D 8 R

GOVERNOR: Joe Manchin III (D)
RE-ELECTION YEAR: 2012

| | |
|--|--|
| Mr. George Carenbauer West Virginia Alliance for Civil Justice Steptoe & Johnson 707 Virginia Street, East P. O. Box 1588 Charleston, West Virginia 25326 304-353-8130 Fax # 304-353-8180 | Ms. Brenda Nichols Harper General Counsel & Vice President West Virginia Chamber of Commerce 1624 Kanawha Blvd. East Charleston, West Virginia 25311 304-414-2499 Fax # 304-342-1130 |
|--|--|

Observers in Charleston expect that legislation is likely to be introduced in the following areas during the 2010 session: creation of an intermediate court of appeals and corresponding right of appeal; a public financing pilot program for 2012 Supreme Court elections; non-partisan election of judges; codification of rules relating to the appointment process for judicial vacancies; and “sunshine” legislation relating to the Attorney General’s use of private outside counsel.

It is unclear what role the opposition will play during the session. Recent recommendations by Democratic Governor Manchin’s Independent Commission on Judicial Reform are likely to be debated during the session, and criticism of the recommended reforms has been limited to date.

The West Virginia Association for Justice has yet to speak on the merits of commission recommendations, instead only commenting that they don’t anticipate such reforms being passed this year. Other resistance has come indirectly from the West Virginia Supreme Court of Appeals (which would be responsible for implementing some of the proposed reforms) and directly from the West Virginia Judicial Association, which spoke against many of the recommended reforms during the public meeting process.

The biggest argument against such reforms will likely come in the form of budgetary constraints, as West Virginia is expecting across-the-board budget cuts, and the West Virginia Supreme Court of Appeals just cut \$2 million from its existing budget. Given this tough economic climate, it will be interesting to see whether legislators will create a new appeals court, the cost of which may range from \$6-8 million.

In light of the governor’s judicial reform agenda, it does not appear at this point that there will be any coordinated efforts to repeal civil justice reforms or expand liability.

WISCONSIN

SESSION DATE 01/19/10 – 06/09/10
HOUSE 52 D 46 R 1 Ind.
SENATE 18 D 15 R

GOVERNOR: James Doyle (D)
RE-ELECTION YEAR: 2010

| | |
|--|--|
| Mr. Bill G. Smith Chair Wisconsin Civil Justice Council 10 East Doty Street, Suite 519 Madison, Wisconsin 53703 608-255-6083 Fax # 608-255-4909 | Mark M. Grapentine, JD Senior Vice President, Government Relations State Medical Society of Wisconsin P. O. Box 1109 Madison, Wisconsin 53701 608-442-3800 Fax # 608-442-3802 |
|--|--|

Legislation from the 2009 session carries over to 2010, and there are several trial lawyer bills still under active consideration, including: A.B. 367 (Kim Hixson – D), legislation that would allow a job applicant to sue an employer based on credit history and provides for recovery of punitive damages and compensatory damages up to \$300,000; A.B. 354 (Kelda Helen Roys – D), increases statute of limitation for intentional torts from two years to three years; S.B. 196 (Julie Lassa – D), increases time within which a complaint may be filed or a civil action taken alleging violation of the Family Medical Leave Act; S.B. 197 and S.B. 203, both provide that a parent has the right to recover for loss of society and companionship if the parent’s adult child is injured as a result of medical malpractice. In addition, contacts in Madison believe the trial bar will once again attempt to repeal previously enacted joint and several liability reform; recall that Governor Doyle (D) slipped a provision in his budget to this affect last year, but the language was ultimately stripped out of the budget before final passage. With respect to affirmative reform legislation, S.B. 197, legislation that would create penalties for bringing frivolous lawsuit, was carried over from 2009.

WYOMING

SESSION DATE 02/08/10 – 03/05/10
HOUSE 19 D 41 R
SENATE 7 D 23 R

GOVERNOR: Dave Freudenthal (D)
RE-ELECTION YEAR: 2010

| |
|--|
| Mr. Daniel J. Perdue President Wyoming Hospital Association P. O. Box 249 Cheyenne, Wyoming 82003 307-632-9344 Fax # 307-632-9347 |
|--|

No legislative activity reported.

Editors' Notes: This publication provides information about elections in various states as reported by our sources. The American Tort Reform Association (ATRA) does not endorse or oppose any candidate for elected office, including the Judiciary.

Prepared by: *Matt Fullenbaum, Director of Legislation*

American Tort Reform Association



*1101 Connecticut Avenue, NW
Suite 400
Washington, DC 20036
(202) 682-1163
www.atra.org*