To: ATRA Members and Friends

From: Matt Fullenbaum, Director of Legislation
        Lauren Sheets, Assistant Director of Legislation and Communication

Re: ATRA’s Civil Justice Reform Outlook, 2014

We forecast that the 2014 state legislative sessions are expected to be quieter than 2013, due to a number of factors. This fall many states are holding elections and, consequently, many legislatures have scheduled shorter sessions to give legislators more time to campaign. In addition, four states will not meet in regular session: Montana, Nevada, North Dakota and Texas. Taken together, we expect a decrease in overall bill volume in 2014.

As a result of the enactment of the historic federal health care law, a new Standard of Care Protection Act model bill will be widely considered in states across the country. This legislation would help ensure that no provisions of the federal health care law may be inappropriately used to create new threats for medical liability litigation. Opportunistic trial lawyers may seek to use the provisions in a way that was not intended and argue that they establish new federal standards of care when it comes to determining medical liability in court cases. To date, Georgia and Florida have enacted a form of this model bill.

Despite the fact that it is an election year, there are still some opportunities in a number of states. For example, comprehensive reform legislation is expected to be considered in Missouri, North Carolina, and South Carolina. We expect other states, such as Arizona, Florida, Georgia, Kansas and Michigan, to aggressively push civil justice reform.

We are optimistic that we will continue to see a sustained level of reform activity in the states and we hope to build off of the successes of a very productive 2013.

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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.
The 2014 legislative session in Alabama is expected to be a busy one. Several affirmative civil justice reform bills will be introduced, including a certificate of merit bill for architects and engineers, a products liability bill, and a loser pays bill that was heard in 2013.

Since it is an election year in Alabama, the opposition is not expected to take on an active role. Typically, controversial legislation is not considered during an election year, and 2014 should be no different. There is a chance a False Claims Act bill may be introduced; however, it is not expected to gain much traction.

No activity reported.
ARIZONA

SESSION CALENDAR 01/13/14 - 5/14/14
GOVERNOR: Jan Brewer (R-Term Limited)
RE-ELECTION YEAR: 2014

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Two very important pieces of civil justice reform legislation are expected to be introduced in 2014. The first bill would direct workers’ compensation bad faith claims to the Industrial Commission and make it the exclusive or primary jurisdiction for the handling of these claims. Arizona has seen a spike in bad faith claims being filed at the superior court and federal district court level, thereby usurping the authority of the Industrial Commission. The bill’s purpose is to maintain the IC as the primary jurisdiction in order to help keep workers’ compensation costs down for businesses.

The other bill would extend the Lengthy Jury Trial Fund for another ten years to June 30, 2024. Arizona’s Lengthy Jury Trial Fund was established in 2003 as a part of a comprehensive jury service reform package to attract better jurors. The fund, unless reauthorized, is scheduled to sunset on July 1, 2014.

The only issue the trial bar is expected to pursue in 2014 is an increase in minimal liability insurance coverage for motor vehicles.

ARKANSAS

SESSION CALENDAR 02/10/14 - 03/21/14
GOVERNOR: Mike Beebe  (D-Term Limited)
RE-ELECTION YEAR: 2014

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No activity reported.
As has been the case for the past several years, California presents a very challenging environment for affirmative civil justice reform legislation because the legislature is dominated by trial lawyer interests. The trial bar has publicly stated that they intend to try to overturn MICRA and they have filed an initiative to do so. A bill also is expected to be introduced. Governor Brown signed the original MICRA bill back in 1975. However, his position is less relevant with regards to an initiative. MICRA’s noneconomic damage restriction has faced constitutional challenges in the past two years, but the appellate courts have rejected those challenges. It unknown at this point whether or not there will be any additional court challenges in 2014.

The trial bar also will likely introduce a bill once again to extend the statute of limitations for certain types of claims, continue to attack the provision of consumer arbitration, and increase insurance amounts in automobile accidents. Additionally, there will be many efforts to regulate internet privacy with the provision of attorneys’ fees and penalties for technical violations.

The likelihood of any affirmative bills passing is extremely low; however, there are a few bills that potentially will be introduced in 2014. First, a class action reform bill that mimics federal law and uses the criteria that the federal circuits have used to grant appellate review of class certification may be introduced. Also, there may be a frivolous motion sanction bill that would add teeth to the current law allowing sanctions for frivolous filings and would increase oversight of attorneys. Another possibility is a Prop 65 reform bill that would try to reduce the shakedown lawsuits and tactics used by plaintiffs suing under California’s Prop 65. A similar bill was signed into law this past year, and this bill would help bolster its effects. Finally, a bill is expected to be introduced that would provide an affirmative defense to a business that relies on a government agency interpretation of the law when there is no other guidance.
In 2014, the number one priority of the Colorado civil justice reform groups is to push for reform in the area of construct defect lawsuits, specifically in cases involving multi-family housing developments and near transit-oriented development. This area of construction has virtually ground to a halt in Colorado due to the rising cost of homebuilders’ insurance. As a result, the supply of new, middle-income family housing has been greatly diminished. The Denver metro mayors may be helping to lead these efforts.

As was the case in 2013, the trial bar is expected to be very active once again in 2014. The labor unions are leading an effort to overhaul the state’s no-fault system. Although details are uncertain, it would likely include expansion of noneconomic damages. It also is expected that the trial lawyers will introduce a reprise of last year’s H.B. 1227, which targeted employers for civil and criminal prosecution related to claims of “wage theft.” This bill was killed in its first committee last year. There also is continued discussion that the state’s homebuilder lawsuit guru will propose an expansion of damages, perhaps to allow homeowner associations to sue for noneconomic damages.

2014 does bring some good news with regards to the Colorado Supreme Court. Chief Justice Michael Bender will retire in January, and his replacement is Denver District Court Judge William Hood. Judge Hood has an exemplary record on the bench and is known to meticulously follow statute. He has received very high praise from the civil justice reform groups on the ground in Colorado. The current composition of the Court is fairly moderate, with most justices leaning conservative.
No affirmative civil justice reform legislation is expected to be introduced in 2014. The Connecticut General Assembly is very much a pro-trial lawyers legislature, so all efforts will be focused on fighting to stop the trial bar’s agenda. The Connecticut Trial Lawyers Association is expected to pursue changes to the certificate of merit process, as well as a workers’ compensation measure concerning so-called “timeliness of treatment.” There also is a possibility that the trial bar will seek to make changes to the state’s Unfair Trade Practices Act. On a positive note, this year is a “short session”, which means the legislature is supposed to focus state fiscal matters and the session will only last for three months.
Two key pieces of legislation are expected to be introduced in 2014 in Florida. The first bill is the Fair Settlement Act. This bill proposes reforms to the insurance settlement laws. The bill would limit the ability for parties to bring a bad faith cause of action to a right of policyholders and not one that extends to third parties. It would provide logical and well-defined timeframes within which an insurer must be responsive to a party before it is found to have acted in bad faith. Also, the bill establishes timeframes to give insurance companies a reasonable opportunity to investigate a claim before making a settlement decision and defines reasonable standards as to what constitutes bad faith on the part of an insurer.

The second piece of legislation to be introduced in 2014 involves accuracy in damages. The Accuracy in Damages legal reform bill is designed to fairly and accurately account for the claimant in a personal injury lawsuit who already has health insurance, so that the evidence the jury sees reflects the amount the health care provider was actually paid for his or her treatment of the claimant. When there is a medical bill not yet paid, as a result of a Letter of Protection or future anticipated medical care, the bill allows juries to award an amount customarily accepted in payment for such services by area providers. In addition, the bill allows a defendant to present valid evidence of medically unnecessary treatment to a jury without incurring a “Stuart instruction” and becoming liable for those costs under medical negligence.

The Florida Supreme Court also will play an active role in shaping tort law in 2014. The Court is currently considering three cases that challenge the constitutionality of three aspects of the Florida workers’ compensation law- exclusive remedy, cap on temporary indemnity benefits and calculation of attorney fees based on a percentage of benefits secured.
GEORGIA

GOVERNOR: Nathan Deal (R)
RE-ELECTION YEAR: 2014

SESSION CALENDAR 01-13/14 - 04/11/14
HOUSE 60 D 118 R 1 Ind.
SENATE 18 D 38 R

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Three pieces of affirmative tort reform legislation, which were introduced in 2013, once again are expected to be considered in Georgia in 2014.

- H.B. 643 (Wendell Willard-R) involves e-discovery and contains a provision that allows parties to meet and confer, a proportionality provision, and a provision that provides a safe harbor for preservation of certain information.
- H.B. 532 (Mike Jacobs-R) provides that the non-use of a seatbelt is admissible evidence to mitigate damages.
- S.B. 125 (Jesse Stone-R) seeks to codify the common law of trespasser liability.

There has been mention of an attempt by trial lawyers to weaken the apportionment of damages statute, but the Georgia Trial Lawyers Association is largely expected to be on the defensive in 2014. Also, the Supreme Court will hear a case that challenges Georgia’s punitive damages limit.

HAWAII

GOVERNOR: Neal Abercrombie (D)
RE-ELECTION YEAR: 2014

SESSION CALENDAR 01/15/14 - 05/01/14
HOUSE 44 D 7 R
SENATE 24 D 1 R

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2014 is expected to be a very low key year in Hawaii with regards to tort reform. No affirmative civil justice reform legislation is expected to be introduced, and there are no indications that the trial lawyers will take on an aggressive role. They may try to once again increase liability thresholds in the no-fault law, but they were defeated in 2013, and they are not expected to be successful this year.
### Idaho

**Session Calendar:** 01/06/14 - 04/12/14  
**Governor:** C.L. Butch Otter (R)  
**Re-Election Year:** 2014

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Two specific pieces of affirmative civil justice reform legislation are expected to be introduced in 2014: (1) a bill that would introduce a state Standard of Care Protection Act; and (2) a bill that will address patent trolling. The Standard of Care Protection Act would ensure that no provisions of the federal health care law may be inappropriately used to create new threats for medical liability.

The trial bar is expected to be minimally active. They will oppose the Standard of Care Protection Act, but not do much more.

### Illinois

**Session Calendar:** 01/29/14 - 05/31/14  
**Governor:** Pat Quinn (D)  
**Re-Election Year:** 2014

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At this time, no major changes are expected to occur in 2014. It is a gubernatorial election year and all four of the Republican candidates are tort reform supporters. There is a possibility that they might use it as a significant issue during their campaigns. Governor Quinn will be running for reelection; however, it is expected to be a very tight race. The Republican primary will be held on March 18th.

No major affirmative legislation is expected to be introduced, and the trial bar also is not expected to be active.
INDIANA

SEASON CALENDAR   01/07/14 - 03/14/14
HOUSE  31 D 69 R
SENATE  37 D 13 R

GOVERNOR: Mike Pence  (R)
RE-ELECTION YEAR: 2016

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The 2014 legislative session in Indiana is expected to be a relatively quiet one, with regards to civil justice reform. It is possible that a “no pay, no play” bill will be introduced during the session, but other than that, no affirmative civil justice reform legislation is expected to be considered.

The trial bar will only be playing defense, and is not expected to pursue a legislative agenda.

IOWA

SEASON CALENDAR   01/13/14 - 04/22/14
HOUSE  46 D 53 R
SENATE  26 D 24 R

GOVERNOR: Terry Branstad  (R)
RE-ELECTION YEAR: 2014

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2013 was a “historic” session in Iowa. The state’s divided government accomplished many things through comprise including property tax reform, education reform and the Iowa Health and Wellness Plan after Governor Brandstad rejected the Medicaid expansion made optional by the US Supreme Court. Because of that historic billing, both sides do not have much desire or political will to do much this session before the campaigns. The only issue that may be tackled in 2014 is workers’ compensation reform.
The Kansas Chamber of Commerce is planning to push a package of civil justice reform bills in 2014 that is expected to include trespasser liability, the collateral source rule, and a provision that would adopt the federal standard for expert testimony. A collateral source bill was previously struck down by the state Supreme Court because it did not have universal application. The language in this year’s bill will address the Court’s concern and is expected to survive any judicial challenge.

The opposition is not expected to be active in 2014 due to the makeup of the legislature. It provides a very favorable environment for reform initiatives.

The 2014 legislative session is expected to be a busy one in Kentucky. Several pieces of affirmative civil justice reform legislation will be considered. The bills include transparency in private attorney contracting, sensible changes to statute of limitations laws on written contracts, reasonable changes to judgment interest, a bill that would establish medical review panels for medical claims, legislation to protect property owners from dog bites where the pet was owned by a tenant (needed to correct a bad court decision) and legislation to correct a problem with past legislation on soliciting accident victims.

The plaintiffs’ bar is expected to introduce legislation that would change arbitration laws. This is an issue the trial lawyers have been pursuing for the past few years and 2014 is expected to be no different.
Two specific pieces of civil justice reform legislation are expected to be introduced in 2014; (1) a bill that would eliminate or lower Louisiana’s jury trial threshold of $50,000 in tort cases, which is the highest in the nation; and (2), a bill that would set forth appropriate rules in lawsuits, including class action, multi-party, and toxic tort cases.

The opposition is expected to pursue two bills of its own in 2014; (1) a bill that would allow the state’s attorney general to hire contingency fee lawyers; and (2) a bill that would raise the jury trial threshold.

The 2014 legislative session in Maine will be very short; therefore, neither side is expected to be active. The only affirmative reform bill expected to be introduced is one that will increase reimbursement for chairs of Maine’s Medical Malpractice Screening panels.
MARYLAND

SESSION CALENDAR  01/08/14 - 04/07/14
GOVERNOR: Martin O’Malley (D)
HOUSE      98 D 42 R    RE-ELECTION YEAR: 2014
SENATE      35 D 12 R

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The Maryland legislature presents a nearly impossible environment for affirmative civil justice reform. The legislature is dominated by trial lawyers and Governor O’Malley is a major roadblock as well. In 2014, there will be a package of medical malpractice reform bills introduced; however, due to the political environment, the bills are not expected to see much movement. The primary focus of these efforts will center on expanding the definition of “health care provider” to protect additional health care workers from certain medical malpractice claims. A similar bill, H.B. 1310, was introduced in 2013.

The trial bar is expected to raise the long-standing limit on noneconomic damages. The current limit stands at $750,000 and gradually escalates annually based on a formula. Over the past few years, the plaintiffs’ bar has launched several constitutional challenges seeking to strike down the limit; however, if legislation is introduced this year, the trial bar is not expected to launch another court challenge.

MASSACHUSETTS

SESSION CALENDAR  01/02/14 - 01/06/15
GOVERNOR: Deval Patrick (D)
HOUSE  130 D  28 R           RE-ELECTION YEAR:  2014
SENATE   36 D      4 R

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Massachusetts is entering the second year of its two-year session. It is expected to be a very busy session, with several dangerous trial lawyer bills gaining traction. First, S.B. 848, Defense Against Abusive Waivers, was given a favorable report by committee and is currently with the Senate Committee on Ways & Means. Next, H.B. 1758 would make the discrimination on the basis of height and weight unlawful. This bill is currently before the House for a formal vote. Finally, there is a workplace bullying bill that is pending in the Joint Committee on Labor and Workforce Development.

No affirmative civil justice reform is expected to be introduced in 2014 and the reform groups will spend most of their energy opposing the legislation described above.
Three different civil justice reforms are expected to be introduced in Michigan in 2014: (1) trespasser liability; (2) limited liability for emergency treatment in hospital (H.B. 4354); and (3) asbestos trust transparency legislation (H.B. 4917).

The trial bar is expected to be active in 2014; however, they are not likely to have much success given the composition of the legislature. The opposition’s agenda will include three bills: (1) S.B. 132, which would repeal the FDA defense law; (2) H.B. 4057, which would eliminate the “open and obvious” doctrine; and (3) H.B. 5120, which would expand the consumer protection act to sale of medical goods and services to a consumer.

The civil justice reform community will continue to advocate for the four bills initially passed in the 2012 session that were eventually vetoed by Governor Mark Dayton (see below). Since 2012, the legislature has shifted from being very business friendly to one dominated by the DFL, which is aligned with the trial bar. Governor Dayton also is a trial bar supporter and is a major roadblock to any civil justice reform efforts.

**H.F. 1467**: Offer of settlement bill which disallows the award of attorneys’ fees in cases where an offer of settlement was rejected and then the plaintiff eventually won less at trial.

**H.F. 1495**: Legislation that would reduce the prejudgment interest rate from a fixed 10% to a market rate, which is currently 4%.

**H.F. 1729**: A bill which would decrease the general tort statute of limitations from six to four years.

**H.F. 211/S.F. 149**: A bill that grants, as a matter of right, the authorization of an interlocutory appeal of a class action certification which stays other court matters, including discovery, until
the certification issues can be adjudicated. This bill was not introduced in the 2013 session, and will have to be formally introduced in 2014 to get a new bill number.

A trespasser liability reform bill also will be introduced in 2014. All of the surrounding states have passed similar legislation over the past few years, and the bill has a lot of support from rural Minnesota lawmakers.

The Minnesota Association for Justice will likely continue to push for H.F. 482, which allows actions to survive the death of the plaintiff in a lawsuit and would allow survivors to recover damages that were meant to accrue to the victim of the tort in the case. This bill nearly passed but was barely defeated on a tie vote in the Senate in the last two hours of the 2013 session. The bill is expected to gain a lot of traction in 2014, and is of great concern to the civil justice reform groups in Minnesota.

The MAJ also will strongly support H.F. 642, which seeks to legislatively deem that every action brought under Minnesota’s Consumer Fraud laws are “in the public interest.” This designation would then allow all such cases to circumvent a finding in a seminal Minnesota case known as *Ly v. Nystrom*, which requires that any case under the Consumer Fraud law that seeks the shifting of attorneys’ fees to be “in the public interest.” The bill passed through the House Committees last session and was not heard in the Senate.

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**MISSISSIPPI**

**SESSION CALENDAR** 01/07/14 - 04/06/14  
**GOVERNOR:** Phil Bryant (R)  
**RE-ELECTION YEAR:** 2015

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The Mississippi legislature is not expected to consider many civil justice reform issues in 2014. The only bill that may see any action is “phantom damages” legislation. The opposition is not expected to be active; however, they will aggressively fight against the “phantom damages” bill. The legislation was introduced in 2013, and the trial attorney groups were able to create enough confusion around the issue that the bill died.
Several pieces of civil justice reform legislation are expected to be introduced in Missouri in 2014. There is a favorable environment in the legislature; however, Governor Nixon is a major roadblock. Senate leadership is expected to introduce its own package of civil justice reform legislation which will include the following:

- A medical liability limits bill that will seek to reinstate the medical liability limits that the state Supreme Court struck down in 2012.
- A joint and several liability provision
- TIPAC reform with caps on contract amounts and exclusion of fines and penalties
- Regulation of the lawsuit lending industry.
- Prejudgment interest rate reform.

There also are a few other civil justice reform bills that are expected to be introduced as stand alone legislation, including:

- Premises liability similar to H.B 372 (2013).
- Product liability similar to S.B. 356 (2013).
- Shield bill to protect businesses from private nuisance actions when a defendant is operating legally and under the parameters of a state issued permit.
- Discriminatory actions employment law reform legislation that will place caps on damages and change the legal standard from contributing factor to a motivating factor.

At this time, the opposition is not expected to try and further its agenda through legislation. The trial bar in Missouri tends to work through the courts and the same is expected in 2014.
MONTANA

GOVERNOR: Steve Bullock (D)
RE-ELECTION YEAR: 2016

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The Montana legislature will not meet in 2014.

NEBRASKA

GOVERNOR: Dave Heineman (R-Term Limited)
RE-ELECTION YEAR: 2014

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The Nebraska legislature is not expected to consider any affirmative civil justice reform legislation in 2014. The opposition will push legislation pertaining to workers’ compensation and employee rights. There also may be some efforts to address insurance subrogation issues, as well.

NEVADA

GOVERNOR: Brian Sandoval (R)
RE-ELECTION YEAR: 2014

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The Nevada legislature will not meet in 2014.
No affirmative civil justice reform legislation is expected to be considered in 2014; however, we expect the trial bar to introduce two bills. The first bill will deal with apportionment of damages, but the exact language is not currently available, and the second bill (H.B. 582) proposes to amend the early offer law. The “early offer” bill is expected to pass the House in January, but should not fare well in the Senate.

NEW JERSEY

No activity reported.

NEW MEXICO

No activity reported.
Several pieces of affirmative civil justice reform legislation will carry over into 2014 from the 2013 legislative session. The bills are not expected to advance given the make-up of the Assembly and Speaker Sheldon Silver’s involvement. Speaker Silver is aligned with the trial lawyers and is employed by a plaintiff’s firm; therefore, it is nearly impossible for any civil justice reform measures to gain traction. The group of bills include the following:

- S.B. 4383/A.B. 5221: Expert Witness Disclosure
- A.B. 7930: Asbestos Transparency
- S.B. 3619/A.B. 4824: Trespasser Responsibility
- S.B. 3114: Judgment interest
- S.B. 111/A.B. 3104: Scaffold law reform
- A.B. 5190: Attorney contingency fee schedule
- S.B. 2531: Health care courts

The opposition also has its own agenda of bills that will carry over from 2013. They include:

- S.B. 1277/A.B. 6674: Private right of action for improper debt collection
- S.B. 7930: Expansion of statute of limitations for medical lawsuits
- S.B. 965/A.B. 6585; A.B. 9282; S.B. 942/A.B. 659: Martin Act
- S.B. 551/A.B.1001: Wrongful death
- S.B. 3809/A.B. 1771: Expansion of statute of limitations for sexual abuse
- S.B. 2544/A.B. 3305: Bad faith

The Court of Appeals recently tried to extend the mandatory judicial retirement age from 70 to 80 via a ballot initiative. The initiative failed spectacularly, with five initiatives passing, and this being the only one rejected by the voters. The mandatory retirement age means that three Court of Appeals judges will step down: Chief Judge Lippman (Liberal), Judge Smith (Conservative) and Judge Graffeo (Conservative). Governor Cuomo will have an opportunity to remake the court with three appointments.
North Carolina is in its second year of a 2-year session. S.B. 648, an affirmative civil justice bill, is still alive and currently pending in the Senate Committee on Rules and Operations. This bill includes an employment fraud section, a ban on lawsuit lending, and a TiPAC provision.

The trial bar is expected to actively oppose S.B. 648 and attempt to stop all hearings on the bill. Also, plaintiffs’ attorneys are expected to launch a piece by piece assault on workers’ compensation reforms to mitigate the medical liability reforms passed in 2010. In addition to a legislative attack, the medical liability reforms also are expected to be challenged in the courts sometime during the next 18 months, as is the phantom damages law.

North Dakota

There is no legislative session in 2014.
Ohio is in the second year of a two-year session. There are four pieces of affirmative civil justice legislation that are currently pending:

- **H.B. 238**: Transparency in Private Attorney Contracting. The bill is currently pending before the Ohio House Judiciary Committee.
- **H.B. 103**: Aimed at reducing shotgun medical liability lawsuits by permitting a longer window for discovery. Pending before the Ohio House Judiciary Committee.
- **H.B. 123**: Legislation that provides that release of information during health care peer review committee does not affect confidentiality of any other information produced or presented during proceedings. The bill passed the House, and is currently pending before the Ohio Senate Medicaid, Health & Human Services Committee.
- **H.B. 276**: Expansion of “I’m Sorry” statute. Additionally, would grant civil immunity to a health care facility for injury, death, or loss caused by a health care practitioner who is not an employee or agent of, and provides medical services at the facility. It is currently pending before the Ohio House Judiciary Committee.

The opposition is expected to continue to play defense. The composition of both chambers as well as the Governor is not typically favorable to the trial bar’s position.

Oklahoma

After passing 22 pieces of civil justice reform in a five-day special session in September, no affirmative civil justice reform legislation is expected to be introduced in 2014. All efforts will be focused on judicial reform.

The trial bar will be focused on blocking any attempts at judicial reform and has no interest in legislatively rolling back any tort reforms.
OREGON

SESSION CALENDAR  02/03/14 - 03/09/14
GOVERNOR: John Kitzhaber (D)
HOUSE  33 D  26 R
RE-ELECTION YEAR: 2014
SENATE  16 D  14 R

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The 2014 legislative session in Oregon is a short session with limited bill introductions. As a result, no affirmative civil justice reform legislation is expected to be introduced. Senator Chip Shields, Chair of the Senate Consumer Protection Committee, may continue to pursue legislation that would place the insurance industry under the state’s Unfair Trade Practices Act. Currently, the insurance industry is the only one that is exempt, but it is heavily regulated by the Insurance Division of the Department of Consumer and Business Services. The senator pursues this legislation every session.

PENNSYLVANIA

SESSION CALENDAR  01/07/14 - 11/30/14
GOVERNOR: Tom Corbett (R)
HOUSE      92 D  110 R  1 Und.
RE-ELECTION YEAR: 2014
SENATE     23 D   27 R

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In 2014, the Pennsylvania lawsuit abuse reform efforts will focus on the passage of the asbestos bankruptcy trust reform legislation (H.B. 1150) and TiPAC (H.B. 1236). There may be some efforts to pass venue reform as well; however, H.B. 1976 from the prior session has yet to be reintroduced. The Senate Judiciary Chair, Stewart Greenleaf, will serve as a major roadblock for these pieces of legislation.

The trial bar has introduced several bills which they will likely offer as amendments to Title 42 legislation: H.B. 1493 (False Claims act); H.B. 238, S.B. 1103, H.B. 1046 and H.B. 1185, which pertains to the reviver of a claim after the statute of limitations has run; and S.B. 484 which would enact a state-level anti-trust statute.
RHODE ISLAND

SESSION CALENDAR  01/07/14 - 06/23/14
HOUSE  69 D   6 R
SENATE  32 D   5 R   1 Ind.

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No activity reported.

SOUTH CAROLINA

SESSION CALENDAR  01/14/14 - 06/30/14
HOUSE  46 D  78 R
SENATE  18 D  28 R

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South Carolina is entering its second year of a two-year cycle. At the end of the 2013 session, two comprehensive tort reform bills were introduced and both bills will be the main focus of the 2014 session. On paper, the environment is favorable for reform, but there are a lot of influential Republican trial lawyers in the legislature that may slow down the momentum surrounding the bills. The bills are expected to easily pass out of the Senate Judiciary Committee, but a difficult fight is expected on the Senate floor. The House is expected to be less of a challenge.

S.B. 773 is labeled the “court transparency” bill and includes the following sections:
- Transparency in Private Attorney Contracting, certificate of merit for counterclaims, phantom damages-awards based on actual amount paid or reasonably expected to pay, asbestos transparency, commercial driver’s licenses (protects employer’s from liability for negligent hiring, negligent retention, or negligent entrustment if employee/contract employee with valid CDL is involved in an accident), and a section that would strike the seatbelt admissibility statute that prohibits introduction of non-use evidence.

S.B. 788 is labeled the “liability reform” bill and it includes the following sections: caps on noneconomic damages, punitive damages (bifurcated process- if plaintiff is seeking punitive damages, it must be stated in initial pleadings, and can only be awarded for willful, wanton, or malicious actions), and trespasser liability.

The trial bar is fully expected to continue attempts to pass a False Claims Act. This has been tried continuously for several years, either through individual legislation or as an amendment to any related bill with a chance of passage. A current False Claims bill, S.B. 73, was introduced early in 2013 and remains active through 2014.
SOUTH DAKOTA

SESSION CALENDAR 01/14/14 - 03/31/14
GOVERNOR: Dennis Daugaard  (R)
RE-ELECTION YEAR: 2014

HOUSE 17 D 53 R
SENATE 7 D 28 R

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No activity reported.

TENNESSEE

SESSION CALENDAR 01/14/14 - 04/17/14
GOVERNOR: Bill Haslam  (R)
RE-ELECTION YEAR: 2014

HOUSE 28 D 70 R 1 Ind.
SENATE 7 D 26 R

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Two pieces of affirmative civil justice reform legislation are expected to be considered in 2014: (1) a bill that would establish new requirements for bringing healthcare liability actions against emergency departments of hospitals (S.B. 475/H.B. 272); and (2) a bill that would limit recovery for medical costs in personal injury or wrongful death actions to amounts paid by or on behalf of the claimant, amounts necessary to satisfy unpaid charges for medical care, and amounts necessary to satisfy future medical charges (S.B. 1184/H.B. 978).

The opposition is not expected to be active in 2014.
TEXAS

SESSION CALENDAR  Out of Session
HOUSE  55 D  94 R  1 Und.
SENATE  12 D  18 R  1 Und.

GOVERNOR: Rick Perry (R)
RE-ELECTION YEAR:  2014

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There is no legislative session in 2014; however, in light of the expanding practice of “patent trolling,” Lt. Governor David Dewhurst recently charged the Senate State Affairs Committee to examine the negative economic impact on Texas businesses from legal issues involving patent litigation by “patent assertion entities” (PAEs), or “patent trolls.” He also instructed the committee to make recommendations on how the State of Texas can address problems related to frivolous tort action and unsubstantiated patent claims against legitimate businesses and Texas job creators. No hearing dates have been set at this time.

The opposition is expected to be very active in the political process in 2014 by giving significant funds to anti-reform or anti-regulation candidates in both the primary and general elections. Governor Perry will not be running for reelection but the Republican Party is expected to retain control of the governor’s mansion.

There are also four Supreme Court seats up for election in 2014. Chief Justice Nathan Hecht is running for reelection and he will be opposed in the GOP primary by former state representative Robert Talton. Recently appointed Justice Jeff Brown will face a difficult challenger in both the primary and general election. In the GOP primary, he will face Joe Pool Jr., who ran against Justice Medina and now-Justice Devine in a three-way primary in 2012. Justice Jeff Boyd will be running for re-election unopposed in the GOP primary. Finally, Justice Phil Johnson will be faced in the GOP primary by Justice Sharon McCally, who was elected to Houston’s Fourteenth Court of Appeals in 2010.

UTAH

SESSION CALENDAR  01/27/14 - 03/13/14
HOUSE  14 D  60 R
SENATE  5 D  24 R

GOVERNOR: Gary Herbert (R)
RE-ELECTION YEAR:  2016

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In 2014, the civil justice reform community is expected to proactively run three pieces of legislation: (1) a prejudgment interest bill that would change the trigger date and lower the interest rate; (2) a TiPAC bill that would codify the rule from the Attorney General’s office; and (3) asbestos trust transparency legislation.

The trial bar is expected to introduce a bill that would expand liability to the importer of record on items that do not have a nexus in the state of Utah.
VERMONT

SESSION CALENDAR 01/07/14 - 05/14/14
GOVERNOR: Peter Shumlin (D)
HOUSE  96 D  45 R  9 Other
SENATE  19 D  7 R  4 Other

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No activity reported.

VIRGINIA

SESSION CALENDAR  01/08/14 - 03/08/14
GOVERNOR: Terry McAuliffe (D- Term Lim.)
HOUSE  33 D  67 R
SENATE  20 D  20 R

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We do not anticipate any civil justice reform activity in 2014.

WASHINGTON

SESSION CALENDAR  01/13/14 - 03/12/14
GOVERNOR: Jay Inslee (D)
HOUSE  55 D  43 R
SENATE  24 D  24 R  1 Und.

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No affirmative civil justice reform legislation is expected to be introduced in Washington during the 2014 session; however, the trial bar is expected to be active in pursuing its own agenda. The trial bar’s agenda includes two key bills; (1) a bill that would expand Washington’s wrongful death statutes; and (2) a bill that would expand the state’s consumer protection act. This bill would allow the Attorney General’s office to recover attorneys’ fees but prevailing defendants can only recover the fees if he shows the action to be “frivolous”. 
WEST VIRGINIA

SESSION CALENDAR  01/08/14 - 03/08/14  GOVERNOR:  Earl Ray Tomblin  (D)
HOUSE    53 D  47 R  RE-ELECTION YEAR:  2016
SENATE    24 D  10 R

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House of Delegates Speaker Tim Miley  (D) is aligned with personal injury lawyers and has already announced his intention to push several liability-expanding bills, such as false claims act legislation with a qui-tam provision. Democrats hold a slim 53-47 majority in the House of Delegates, and there are a lot of competitive races in this fall’s election which could result in Republicans taking the House. In the Senate, there is a vocal minority that is supportive of civil justice reform. If elections in November go the right way, the landscape for civil justice reform could improve significantly for 2015 and beyond.

WISCONSIN

SESSION CALENDAR  01/07/14 - 05/01/14  GOVERNOR: Scott Walker  (R)
HOUSE    39 D  59 R  1 Und.  RE-ELECTION YEAR:  2014
SENATE    15 D  18 R

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Republicans control both the Senate and Assembly, and Governor Walker is supportive of tort reform efforts, so the civil justice reform community will be pushing two key pieces of legislation in 2014- asbestos trust funds transparency and phantom damages legislation.

Due to the political makeup of the legislature, there is no legitimate threat for legislation to repeal or expand liability.
WYOMING

SESSION CALENDAR  02/10/14 - 03/07/14  GOVERNOR: Matthew Mead  (R)
HOUSE    8 D  52 R  RE-ELECTION YEAR:  2014
SENATE    4 D  26 R

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No 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.

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