

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 2019

To: ATRA Members and Friends

From: Matt Fullenbaum, Director of Legislation
Lauren Sheets Jarrell, Counsel, Civil Justice Policy
Bailey Griffith, Public Affairs and Digital Media Coordinator

Re: ATRA's Civil Justice Reform *Outlook*, 2019

The civil justice reform community faces increasing headwinds in the states. Pro-trial lawyer candidates for state legislatures made gains in the midterm elections last November and several key tort reform champions, like Governor Walker of Wisconsin, were defeated. At the same time, the influence of personal injury lawyers continues to grow with Republican lawmakers – personal injury lawyers are running more candidates and giving more money to the GOP than we have ever seen. The result is a narrower playing field in 2019 to advance affirmative legal reform legislation. However, we still forecast that there will be opportunities to pass significant civil justice reform legislation in Georgia, Missouri, and West Virginia, to name a few. On the other hand, we anticipate an increase in legislative activity by the organized trial bar to expand liability and water down or repeal previously enacted tort reforms. We know, for example, personal injury lawyers will try to repeal or significantly increase the limit on noneconomic and punitive damages in Maryland and their brethren in Vermont plan to push for the establishment of medical monitoring. We are likely to see attacks on arbitration, attempts to increase the statute of limitations in certain types of cases, and pushes to expand the types of damages available under and who can recover for wrongful death.

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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.

ALABAMA

SESSION CALENDAR 03/05/19 - 06/17/19
HOUSE 28 D 77 R
SENATE 8 D 27 R

GOVERNOR: Kay Ivey (R)

Mr. Matthew C. McDonald
General Counsel
Alabama Civil Justice Reform
Committee
11 N. Water Street, Suite 1200
Mobile, Alabama 36602
251-439-7576
mcdonald@joneswalker.com

Larry Vinson
Executive Director
Alabama Civil Justice Reform
Committee
P. O. Box 240757
Montgomery, Alabama 36124
334-260-7970
larry@gmail.com

Ms. Rosemary Elebash
State Director
NFIB/Alabama
7550 Halycon Summit Drive
Montgomery, Alabama 36117
334-264-2261
rosemary.elebash@nfib.org

No activity reported.

ALASKA

SESSION CALENDAR 01/15/19 - 4/14/19
HOUSE 16 D 22 R 1 O 1 V
SENATE 7 D 13 R

GOVERNOR: Mike Dunleavy (R)

Mr. Thor Stacey
State Director
NFIB/Alaska
P O Box 211231
Anchorage, Alaska 99821
907-723-1494 thorstacey@gmail.com

Mr. Michael Haugen
Executive Director
Alaska State Medical Association
4107 Laurel Street
Anchorage, Alaska 99508
907-562-0304 mhaugen@asmadocs.org

No activity reported.

ARIZONA

SESSION CALENDAR 01/14/19 – 04/23/19
HOUSE 29 D 31 R
SENATE 13 D 17 R

GOVERNOR: Doug Ducey (R)

Mr. Chic Older
Executive Vice President
Arizona Medical Association
810 West Bethany Home Rd.
Phoenix, Arizona 85013
602-246-8901 chicolder@azmedassn.org

Mr. Garrick Taylor
SVP, Government Relations and Communications
Arizona Chamber of Commerce
3200 N. Central Avenue, Suite 1125
Phoenix, Arizona 85012
602-248-9172 gtaylor@azchamber.com

The environment continues to be favorable in the Grand Canyon State as Governor Ducey (R) is supportive of legal reform and pro-tort reform. Republicans hold majorities in both chambers of the legislature. It is important to note, though, that the state is trending purple and the Republican majority in the House is a thin 31-29 because of last November's election. Civil justice reform advocates are expected to pursue legislation pertaining to assignment of benefits. Otherwise, we are expecting a relatively quiet 2019 session.

ARKANSAS

SESSION CALENDAR 01/14/19 – 04/05/19
HOUSE 24 D 76 R
SENATE 9 D 26 R

GOVERNOR: Asa Hutchinson (R)

Mr. Sylvester Smith
State Director
NFIB/Arkansas
300 S. Spring Street, Suite 300
Little Rock, Arkansas 72201
501-801-1974 sylvester.smtih@nfib.org

Scott Smith, JD
Director, Governmental Affairs
Arkansas Medical Society
P. O. Box 55088
Little Rock, Arkansas 72215
501-224-8967 ssmith@arkmed.org

No activity reported.

CALIFORNIA

SESSION CALENDAR 12/03/18 – 09/13/19
HOUSE 60 D 20 R
SENATE 29 D 11 R

GOVERNOR: Gavin Newsom (D)

Ms. Jeanne Cain
Executive Vice President, Policy
California Chamber of Commerce
P. O. Box 1736
Sacramento, California 95182
916-444-6670 jeanne.cain@calchamber.com

The political and legislative environment is always challenging in the Golden State and became even more challenging after last November's election cycle. Lawmakers who are aligned with personal injury lawyers maintained their supermajorities in the statehouse. Moreover, the state has a new governor, Gavin Newsome (D), and it remains to be seen whether he will be willing to veto many of the liability-expanding proposals as did his predecessor Jerry Brown (D). At the top of the agenda for the Consumer Attorneys of California and their allies in the legislature is attacking arbitration. We expect plenty of additional liability-expanding proposals during the year-round session and will keep ATRA members apprised as new bills emerge.

COLORADO

SESSION CALENDAR 01/04/19 – 05/03/19

HOUSE 41 D 24 R

SENATE 19 D 16 R

GOVERNOR: Jared Polis (D)

Mr. Mark Hillman
Executive Director
Colorado Civil Justice League
3700 Quebec Street, Suite 117
Denver, CO 80207
719-342-1433 markhillman@ccjl.org

Mr. Tony Gagliardi
State Director
NFIB/Colorado
1580 Logan Street, Suite 520
Denver, Colorado 80203
303-860-1778 tony.gagliardi@nfib.org

Pro-trial lawyer Democrats control both houses of the legislature and the governor's mansion and, therefore, contacts in Denver expect a flurry of liability-expanding legislation this year. Proposals we are likely to see include increases on the limits on noneconomic damages for general torts and medical liability, anti-arbitration legislation similar to H.B. 1261 and H.B. 1262 from 2017, so-called "pay equity" legislation, bans of potential employers on inquiring about salary history, homeless right-to-sue which creates right-to-rest and right-of-privacy for homeless on some private property and government properties, and prescription drug "price gouging" legislation, to name a few. We do not expect any affirmative legal reform legislation to gain traction in the current environment.

CONNECTICUT

SESSION CALENDAR 01/09/19 – 06/05/19

HOUSE 92 D 59 R

SENATE 24 D 12 R

GOVERNOR: Ned Lamont (D)

Ms. Louise DiCocco
Counsel
Connecticut Business & Industry
Association
350 Church Street
Hartford, Connecticut 06103
860-244-1169 louise.dicocco@cbia.com

Ms. Bonnie Stewart
Executive Director
Connecticut Society of Certified
Public Accountants
716 Brook Street, Suite 100
Rocky Hill, Connecticut 06067
860-258-0214 bonnies@ctcpas.org

Pro-trial lawyer Democrats took control of the Senate last November and significantly increased their margin in the House. As a result, allies in Hartford tell ATRA they do not expect to see any affirmative legal reform legislation, but instead expect to play defense most of the session on such issues as statute of limitations and arbitration. Governor Ned Lemont (D) is not viewed as a civil justice reform ally.

DELAWARE

SESSION CALENDAR 01/08/19 – 06/30/19
HOUSE 26 D 15 R
SENATE 12 D 9 R

GOVERNOR: John Charles Carney (D)

Mr. Mark B. Thompson
Director, Government Relations
Medical Society of Delaware
900 Prides Crossing
Newark, Delaware 19713
302-366-1400 mark.thompson@medsocdel.org

No activity reported.

DISTRICT OF COLUMBIA

ALL YEAR SESSION
D.C. COUNCIL

MAYOR: Muriel Bowser (D)

Mr. K. Ed Shanbacker
Executive Vice President
Medical Society of the District of Columbia
1250 23rd Street, NW Suite 270
Washington, DC 20037
202-466-1800 shanbacker@msdc.org

No activity reported.

FLORIDA

SESSION CALENDAR 03/05/19 – 05/03/19
HOUSE 47 D 73 R
SENATE 17 D 23 R

GOVERNOR: Ron DeSantis (R)

Thomas C. Feeney, III
President & CEO
Associated Industries of Florida
P. O. Box 784
Tallahassee, Florida 32302
850-224-7173 tfeeney@aif.com

Mr. William W. Large
President
Florida Justice Reform Institute
210 South Monroe Street
Tallahassee, Florida 32301
850-222-0170 william@fljustice.org

Mr. Tim Nungesser
Legislative Director
NFIB/Florida
110 E. Jefferson Street
Tallahassee, Florida 32301
850-681-0416 tim.nungesser@nfib.org

Mr. Mark Wilson
President and CEO
Florida Chamber of Commerce
P. O. Box 11309
Tallahassee, Florida 32301
850-521-1200 mwilson@flchamber.com

The political and legislative landscape in Tallahassee is as friendly as we have seen in recent memory for civil justice reform proponents. Governor DeSantis (R), Senate President Galvano (R), and Speaker Olivia (R) are all

business-friendly and supportive of legal reform. This is a pretty big departure as the previous Speaker, Richard Corcoran (R), was a former personal injury lawyer as well as a board member of the Florida Justice Association. Observers in the Sunshine State expect the legal reform community to pursue several affirmative measures including accuracy in damages, assignment of benefits, PIP reform, trial lawyer advertising, interpleader reform, ADA litigation reform, and dangerous instrumentality.

GEORGIA

SESSION CALENDAR 01/14/19 – 03/29/19

HOUSE 74 D 106 R

SENATE 21 D 35 R

GOVERNOR: Brian Kemp (R)

Kade Cullefer
Counsel
Smith, Gambrell & Russell
Promenade, Suite 3100
1230 Peachtree St. N.E.
Atlanta, Georgia 30303
404-815-3706 kcullefer@sgrlaw.com

Nathan Humphrey
State Director
NFIB/Georgia
229 Peachtree Street, NE, Suite 515
Atlanta, Georgia 30303
404-522-1290
nathan.humphrey@nfib.org

The environment in Atlanta is generally favorable as both houses of the legislature contain pro-legal reform majorities and newly sworn-in Governor Brian Kemp (R) is supportive as well. However, the business community lost several key allies in the House last November, particularly on the House Judiciary Committee. Contacts tell us this will make the advancement of affirmative reform a bit more challenging. Nevertheless, allies in the Peachtree State tell ATRA they expect to pursue an aggressive agenda this year, including: products liability reform; seat belt evidence admissibility; and business courts legislation.

HAWAII

SESSION CALENDAR 01/16/19 – 05/02/19

HOUSE 46 D 5 R

SENATE 24 D 1 R

GOVERNOR: David Ige (D)

Gary Slovin, Esq.
Director
Hawaii Liability Task Force
999 Bishop Street, Suite 1400
Honolulu, Hawaii 96813
808-539-0834 gslovin@awlaw.com

No activity reported.

IDAHO

SESSION CALENDAR 01/07/19 – 03/22/19
HOUSE 14 D 56 R
SENATE 7 D 28 R

GOVERNOR: Brad Little (R)

Mr. Kenneth R. McClure
Coordinator
Idaho Liability Reform Coalition
P. O. Box 2720
Boise, Idaho 83701
208-388-1200 krm@givenspursley.com

Mr. Alex LaBeau
President
Idaho Association of Commerce & Industry
P. O. Box 389
Boise, Idaho 83701
208-343-1849 alabeau@iaci.org

Contacts in Boise tell ATRA they expect a relatively quiet year on legal reform issues in 2019. However, civil justice reform proponents are currently evaluating potential legislation to address the Idaho Supreme Court's *Herett v. St. Luke's* decision in which the court approved a jury instruction that significantly devalues the state's limit on noneconomic damages by defining reckless conduct (an exception to the limit) as "more than ordinary negligence." The new Chairman of the House Judiciary Committee, Tom Daley (R), is friendly on legal reform issues and Senate Judiciary Committee Chairman Todd Lakey (R) is characterized as being moderately friendly. The trial lawyers are not expected to pursue an affirmative agenda of liability-expanding legislation this year.

ILLINOIS

SESSION CALENDAR 01/09/19 – 05/31/19
HOUSE 74 D 44 R
SENATE 40 D 19 R

GOVERNOR: J. B. Pritzker (D)

Mr. John Pastuovic
President
Illinois Civil Justice League
110 Schiller Street, Suite 207
Elmhurst, Illinois 620126
312-925-9092- pastuovic@icjl.org

Ms. Suzanne Nelson
VP, Government Affairs
Illinois State Medical Society
20 North Michigan Avenue Suite 700
Chicago, Illinois 60602
800-782-4767 suzannenelson@isms.org

It is not an understatement to say that corruption permeates all levels of government in Illinois. Several governors have wound up in prison and most recently the longest serving member of the Chicago City Council, Alderman Edward Burke (D), was arrested late-last year by federal authorities and charged with extortion. It is interesting to note that Burke was a key figure in selecting and approving judges in the notoriously pro-plaintiff Cooke County. The all-powerful House Speaker Mike Madigan (D) has failed to clean up the corruption and is closely aligned with the organized trial bar. Pro-trial lawyer Democrats hold super majorities in the House and Senate, and the new governor, J.B. Pritzker (D), is a friend of personal injury lawyers as well.

In short, affirmative civil justice reform legislation faces an uphill climb in the Land of Lincoln but our allies in Springfield are expected to introduce a number of very strong legal reform bills to highlight the need for reform with legislators and the public. These include the following: asbestos litigation reform; personal jurisdiction reform; increased standards for admitting expert testimony and evidence; noneconomic damages reform; class action reform; joint and several liability reform; products liability reform; and venue reform. Meanwhile, the Illinois Trial Lawyers Association (ITLA) is expected to take advantage of the friendlier environment and pursue its own affirmative, liability-expanding agenda to create new torts in the data privacy and geolocation areas. Expect ITLA to also pursue workers' compensation "reform" as well as potential legislation targeting local governments that would codify recent Illinois Supreme Court opinions on duty of care owed to pedestrians and others regarding sidewalk issues and (perceived) defects to public infrastructure.

INDIANA

SESSION CALENDAR 01/03/19 – 04/29/19
HOUSE 33 D 67 R
SENATE 10 D 40 R

GOVERNOR: Eric Joseph Holcomb (R)

Mr. Marty Wood
President
Insurance Institute of Indiana
115 W. Washington Street
Indianapolis, Indiana 46204
317-464-2450 mpw@insuranceinstitute.org

Mr. Andrew Berger
Sr. Vice President, Government Affairs
Indiana Manufacturers Association
101 W. Washington Street, Suite 1050 E
Indianapolis, Indiana 46204
317-632-2474 aberger@imaweb.com

No activity reported.

IOWA

SESSION CALENDAR 01/14/19 – 05/3/19
HOUSE 46 D 54 R
SENATE 18 D 32 R

GOVERNOR: Kim Reynolds (R)

Ms. Nicole Crain
Senior Vice President, Public Policy
Iowa Association of Business and Industry
400 East Court Avenue, Suite 100
Des Moines, Iowa 50309
515-822-1315 ncrain@iowaabi.org

Mr. Matt Everson
State Director
NFIB/Iowa
200 East Grand Avenue, Suite 390
Des Moines, Iowa 50309
515-243-4723 matt.everson@nfib.org

Newly sworn-in Governor Kim Reynolds (R) is friendly to business and supportive of legal reform as are the Republican majorities in both houses of the legislature. Our contacts in Des Moines tell ATRA they do not expect a particularly active year on legal reform though they assess there is potential for legislation regarding limits on noneconomic damages. In that regard, ATRA will keep readers apprised on new developments in our weekly *Legislative Watch*.

KANSAS

SESSION CALENDAR 01/14/19 – 05/31/19
HOUSE 41 D 84 R
SENATE 11 D 29 R

GOVERNOR: Laura Kelly (D)

Mr. Eric Stafford
Vice President, Government Affairs
Kansas Chamber of Commerce
835 SW Topeka Blvd.
Topeka, Kansas 66612
785-357-6321 mikeo@kansaschamber.org

No activity reported.

KENTUCKY

SESSION CALENDAR 01/08/19 – 03/30/19
HOUSE 39 D 61 R
SENATE 10 D 28 R

GOVERNOR: Matthew Bevin (R)

Ms. Ashli Watts
Senior Vice President, Public Affairs
Kentucky Chamber of Commerce
464 Chenault Road
Frankfort, Kentucky 40601
502-695-4700 awatts@kychamber.com

Mr. Steve Bryant
Director
The Partnership for Commonsense Justice
464 Chenault Road
Frankfort, Kentucky 40601
502-296-1863 runswitchpr.com

Allies in Frankfort tell ATRA they expect an active session on civil justice reform. Issues likely to be considered by lawmakers, include: a proposed amendment to Section 54 of the Kentucky Constitution to allow the General Assembly the power to limit noneconomic damages for injuries resulting in death or for injuries to persons or property, and to provide a uniform statute of limitations; regulation of trial lawyer advertising; phantom damages reform; certificate of merit; pre-dispute arbitration reform and; venue reform pertaining to cases involving the Commonwealth (including legislation). Republicans hold sizable majorities in the House and Senate, but as in other states, Republican leadership in both chambers now include personal injury lawyers, which complicates the calculus in advancing affirmative tort reform legislation.

LOUISIANA

SESSION CALENDAR 04/08/19 – 06/06/19
HOUSE 39 D 62 R 3 O 1 V
SENATE 14 D 25 R

GOVERNOR: John Bel Edwards (D)

Ms. Dawn Starns
State Director
NFIB/Louisiana
530 Lakeland, Suite 201
Baton Rouge, Louisiana 70801
225-281-6847
Dawn.starns@nfib.org

Ms. Lauren Chauvin
Director, Civil Justice Reform
Louisiana Association of Business & Industry
451 Florida Street, 11th Floor
Baton Rouge, Louisiana 70808
337-501-8620
laurenc@labi.org

Governor John Bel Edwards (D) is a staunch ally of the organized trial bar and pushes their agenda at every opportunity to expand liability and make it easier to sue. Contacts in Baton Rouge tell ATRA they expect personal injury lawyers to pursue bills that would extend the time period to sue, expand direct actions, and increase jury trial threshold. Meanwhile, the business community is expected to pursue a number of objectives with lawmakers including seat belt admissibility and collateral source legislation pertaining to workers' compensation claims, all of which Governor Edwards would veto should these proposals make it through the legislature.

MAINE

SESSION CALENDAR 12/05/18 – 06/19/19
HOUSE 89 D 57 R 5 O/V
SENATE 21 D 14 R

GOVERNOR: Janet Mills (D)

Mr. Andrew B. MacLean
Deputy EVP & General Counsel
Maine Medical Association
P. O. Box 190
Manchester, Maine 04351
207-622-3374 info@mainemed.com

Mr. David R. Clough
State Director
NFIB/Maine
P. O. Box 4629
Portland, Maine 04112
207-807-4900 david.clough@nfib.org

Democrats hold majorities in both houses of the legislature and the new governor, Janet Mills (D), the former state attorney general and a former legislator, is not a champion of legal reform. Although contacts in Augusta expect a quiet session, they advise the trial bar could potentially pursue a liability-expanding agenda on such issues as the following: raising the limit on noneconomic damages in wrongful death cases; increasing the statute of limitations in product liability cases; and changing the law regarding offers of settlement.

MARYLAND

SESSION CALENDAR 01/09/19 – 04/08/19
HOUSE 98 D 43 R
SENATE 32 D 15 R

GOVERNOR: Larry Hogan (R)

Mr. Carville Collins
Maryland Tort Reform Coalition
c/o DLA Piper
6225 Smith Avenue
Baltimore, Maryland 21209
410-580-4125
carville.collins@dlapiper.com

Mr. Lawrence Richardson, Jr.
Vice President, Government Affairs
Maryland Chamber of Commerce
Business & Law Task Force
60 West Street, Suite 100
Annapolis, MD 21401
410-269-0642 lrichardson@mdchamber.org

Democrats have dominated the political landscape in the Free State for generations, particularly in the General Assembly where they continue to hold large majorities. The one counter to this trend was the reelection, last November, of Governor Larry Hogan who became the first Republican governor to win reelection since 1954. Nevertheless, we expect pro-trial lawyer forces to push several liability-expanding proposals, including: abolishing contributory negligence for all tort actions in favor of comparative fault; tripling or removing the statutory limits on noneconomic damages for actions in medical liability and for actions of general tort liability; changing the standard for the award of punitive damages from actual malice to implied malice; and abolishing the 20% rule for expert witnesses testifying in medical liability actions (under current law experts may not devote more than 20% of their professional time to serving as an expert witness). The trial lawyers nearly succeeded with their 20% legislation in 2018 and as a result civil justice reform proponents may pursue legislation of their own this year that makes some concessions to the plaintiff's bar in order to keep the overall prohibition in place. Senate Judicial Proceedings Committee and House Judiciary Committee are both big obstacles to the advancement of affirmative reform legislation.

MASSACHUSETTS

SESSION CALENDAR 01/02/19 – 11/20/19
HOUSE 127 D 32 R 1 O/V
SENATE 34 D 6 R

GOVERNOR: Charlie Baker (R)

Mr. Brad MacDougall
Vice President, Government Affairs
Associated Industries of Massachusetts
One Beacon Street
Boston, Massachusetts 02108
617-262-1180 bmacdougall@aimnet.org

Mr. Christopher Carozzi
State Director
NFIB/Massachusetts
10 High Street, Suite 1003
Boston, Massachusetts 02110
617-482-1327 christopher.carozzi@nfib.org

Allies in Boston tell ATRA they are still a bit uncertain about what to expect during the 2019 session with respect to either affirmative or liability-expanding legislation. Democrats hold super majorities in both houses of the legislature. Governor Charlie Baker (R) cruised to reelection last November winning nearly 67% of the vote.

MICHIGAN

SESSION CALENDAR 01/09/19 – 12/31/19
HOUSE 52 D 58 R
SENATE 16 D 22 R

GOVERNOR: Gretchen Whitmer (D)

Ms. Wendy Block
Director, Health Policy and Human Resources
Michigan Chamber of Commerce
600 South Walnut Street
Lansing, MI 48933
517-371-7678 wblock@michamber.com

Mr. Colin Ford
Sr. Director, State/Federal Gov't Relations
Michigan State Medical Society
120 West Saginaw Street
East Lansing, Michigan 48826
517-337-1351 cford@msms.org

Contacts in Lansing do not expect a particularly active year on legal reform issues. Pro-legal reform lawmakers hold slim majorities in the legislature while the newly sworn in Governor Gretchen Whitmer (D) is aligned with the Michigan Association for Justice.

MINNESOTA

SESSION CALENDAR 01/08/19 – 05/20/19
HOUSE 75 DFL 59 R
SENATE 33 DFL 34 R

GOVERNOR: Tim Walz (DFL)

Mr. Mike Hickey
State Director
NFIB/Minnesota
380 Jackson Street, Suite 780
St. Paul, Minnesota 55101
651-235-7401 mike.hickey@nfib.org

Mr. Bob Johnson
Board Chairman
Minnesotans for Lawsuit Reform
3500 American Blvd. Suite 700
Bloomington, Minnesota 55431
651-303-8902 bjohnson@insurancemn.org

There is a new political landscape in the Land of 10,000 Lakes as the Minnesota Democratic-Farmer- Labor Party (DFL) took control of the House last November by winning 18 seats and now holds a 75-59 majority. The new speaker, Melissa Hortman (DFL), and majority leader, Ryan Winkler (DFL), are very friendly to personal injury

lawyers as is the new governor, Tim Walz (DFL). Contacts in St. Paul expect personal injury lawyers and their allies in the legislature to pursue a number of liability- expanding measures, including: expansion of insurance bad faith lawsuits; increase damages available in wrongful death cases; and prohibit waivers of liability for negligence. The civil justice reform community plans to pursue an aggressive agenda of its own, including: trespasser responsibility; reduction in the statutory judgment interest rate; and repeal of the seat belt gag rule.

MISSISSIPPI

SESSION CALENDAR 01/08/19 – 04/07/19

HOUSE 46 D 74 R 2 V

SENATE 19 D 33 R

GOVERNOR: Phil Bryant (R)

R. David Roberts III
Director of Government Affairs
Mississippi State Medical Association
P. O. Box 2548
Ridgeland, Mississippi 39157
601-853-6733 droberts@msmaonline.com

Mr. Derek Easley
President & CEO
BiPEC
P. O. Box 23021
Jackson, Mississippi 39225
601-250-7689 derek@bipec.org

We expect a relatively quiet session in the Magnolia State. The main civil justice priority this year is premises liability reform. Contacts in Jackson tell ATRA they do not expect the trial lawyers to pursue a liability-expanding legislative agenda of their own.

MISSOURI

SESSION CALENDAR 01/09/19 – 05/17/19

HOUSE 47 D 116 R

SENATE 10 D 24 R

GOVERNOR: Mike Parson (R)

Mr. Justin Arnold
General Counsel
Missouri Chamber of Commerce
& Industry
428 East Capitol Avenue
Jefferson City, Missouri 65102
573-634-3511
jarnold@mochamber.com

Mr. Brad Jones
State Director
NFIB/Missouri
308 E. High Street
Suite 110
Jefferson City, Missouri 65101
573-634-7660
brad.jones@nfib.org

Mr. Stephen Witte
Government Affairs Director
Missouri Insurance Coalition
220 Madison Street
3rd Floor
Jefferson City, Missouri 65101
573-893-4241
switte@moinsurancecoalition.com

Last year's session was derailed by the unexpected scandal and resignation of then-Governor Eric Greitens as well as general dysfunction in the Senate. Allies in Jefferson City tell ATRA they expect a much more productive session in 2019 on legal reform. The coalition on the ground is considering a broad agenda on such issues as venue reform, punitive damages reform, changes to the Missouri Merchandising Practices Act (MMPA), seat belt admissibility, asbestos litigation reform, statute of repose, and joint and several liability reform, among others. Governor Mike Parson (R) supports legal reform and is an experienced deal maker. Legislative leadership in both the House and Senate recognize the need for and support the legal reform agenda.

MONTANA

SESSION CALENDAR 01/07/19 – 05/01/19
HOUSE 42 D 58 R
SENATE 20 D 30 R

GOVERNOR: Steve Bullock (D)

Mr. Bridger Mahlum
Government Relations Director
Montana Chamber of Commerce
900 Gibbon Street
Helena, Montana 59601
406-442-2405 bridger@montanachamber.com

Ed Bartlett
Chair
Montana Liability Coalition
P O Box 1730
Helena, Montana 59624
406-431-6024 efbartlett@charter.net

The legislature is expected to consider several legal reform proposals during this year's session such as: attorney general sunshine legislation to regulate the hiring of private attorneys by the state on a contingency fee basis; legislation to curb forum shopping that affirms the U.S. Supreme Court's decision in *BNSF Railway Co. v. Tyrell* which overturned a Montana Supreme Court decision; and, potentially, seat belt admissibility legislation. The legislature supports these measures. Governor Bullock (D), however, notwithstanding his claim that he is business-friendly, has close ties to personal injury lawyers and it is uncertain which, if any, legal reforms bills he would sign into law.

NEBRASKA

SESSION CALENDAR 01/09/19 – 05/24/19
UNICAMERAL, NON-PARTISAN LEGISLATURE (49)

GOVERNOR: Pete Ricketts (R)

Mr. Ronald J. Sedlacek
Vice President & General Counsel
Nebraska Chamber of Commerce & Industry
1320 Lincoln Mall, Suite 201
Lincoln, Nebraska 68508
402-474-4422 rsedlacek@nechamber.com

Mr. Robert Hallstrom
State Director
NFIB/Nebraska
233 S. 13th Street, Suite 700
Lincoln, Nebraska 68501
402-474-3570
bob.hallstrom@nebankers.org

Contacts in Lincoln expect a quiet year in 2019. Asbestos trust transparency legislation may be introduced but no other bills were expected at the time we went to press. New Senate Judiciary Committee Chairman Steve Lathrop is a current member and past president of the Nebraska Association of Trial Attorneys.

NEVADA

SESSION CALENDAR 02/04/19 – 06/03/19
HOUSE 29 D 13 R
SENATE 13 D 8 R

GOVERNOR: Steve Sisolak (D)

Catherine O'Mara, JD
Executive Director
Nevada State Medical Association
3660 Baker Lane, Suite 101
Reno, Nevada 89509
775-825-6788 catherine@nvdoctors.org

Mr. George Ross
McMullen Strategic Group
3336 Los Olivos Lane
La Crescenta, CA 91214
702-290-0018
george@mclobby.com

In four short years, the political and legislative environment has gone from very friendly to very challenging, particularly in the legislature where pro-trial lawyer Democrats have significant majorities in both the House and the Senate. Newly sworn-in Governor Sisolak (D) is not a champion of legal reform either. Allies in Carson City expect trial lawyers to aggressively pursue several liability-expanding bills in areas such as construction defects, medical liability, and banning mandatory arbitration for consumer contracts and in employment agreements.

NEW HAMPSHIRE

SESSION CALENDAR 01/02/19 – 06/30/19
HOUSE 234 D 166 R
SENATE 14 D 10 R

GOVERNOR: Chris Sununu (R)

James Potter, CAE
Executive Vice President
New Hampshire Medical Society
7 North State Street
Concord, New Hampshire 03301
603-224-1909 james.potter@nhms.org

No activity reported.

NEW JERSEY

SESSION CALENDAR 01/02/19 – 01/14/20
HOUSE 54 D 26 R
SENATE 25 D 15 R

GOVERNOR: Phil Murphy (D)

Ms. Laurie Ehlbeck
State Director
NFIB/New Jersey
118 S. Warren Street
Trenton, New Jersey 08608
609-989-8777 laurie.ehlbeck@nfib.org

Ms. Alida Kass
President and Chief Counsel
New Jersey Civil Justice Institute
112 West State Street
Trenton, New Jersey 08608
609-392-6557 akass@civiljusticenj.org

The political environment is hostile to tort reform issues. Both chambers of the legislature contain pro-trial lawyer majorities, key committee chairmen are aligned with plaintiffs lawyers, and Governor Murphy (D) is opposed to tort reform as well. We expect personal injury lawyers and their allies in the legislature to pursue several liability-expanding bills, including: expansion of insurance bad faith; unlimited emotional damages for

wrongful death; changes in the statute of limitations for certain types of cases; statutory prohibition on arbitration in employment contracts; bar on state contracts for companies that use arbitration; anti-independent contractor legislation; and restrictions on non-competes.

NEW MEXICO

SESSION CALENDAR 01/15/19 – 03/16/19

HOUSE 46 D 24 R

SENATE 26 D 16 R

GOVERNOR: Michelle Lujan Grisham (D)

Ms. Jason Espinoza
State Director
NFIB/New Mexico
Albuquerque, New Mexico 87102
505-417-4001
Jason.espinoza@nfib.org

Rhiannon Samuel
Executive Director
Viante New Mexico
P. O. Box 27156
Albuquerque, New Mexico 87125
505-798-2255 rsamuel@viantenm.org

No activity reported.

NEW YORK

SESSION CALENDAR 01/09/19 – 06/19/19

ASSEMBLY 106 D 43 R 1 O

SENATE 40 D 23 R

GOVERNOR: Andrew Cuomo (D)

Mr. Adam Morey
Government Affairs Manager
Lawsuit Reform Alliance of
New York
19 Dove Street, Suite 201
Albany, New York 12210
518-512-5265
amorey@lranv.org

Mr. Michael P. Durant
State Director
NFIB/New York
100 State Street
Suite 1010
Albany, New York 12207
518-434-1262
mike.durant@nfib.org

Mr. Mike Elmendorf
President & CEO
Associated General Contractors
of NY State
10 Airline Drive, Suite 203
Albany, NY 12205
518-456-1134
Melmendorf@agcnys.org

The political environment in Albany is as challenging as any in the country. Pro-trial lawyer Democrats took control of the Senate last November and maintained their large majority in the House. Legal reform allies in the Empire State tell ATRA they expect a number of defensive issues to arise, including: expansion of the statute of limitations; Martin Act expansion; insurance bad faith; noneconomic damages for wrongful death; limits on arbitration; consent to general jurisdiction; consumer protection law expansion; and new private rights of action. Affirmative issues for the legal reform community, include: scaffold law reform; asbestos trust transparency; lawsuit lending regulation; medical liability reform / expert witness disclosure, physician apology, affidavit of merit; judgment interest reform; class action minimum damages reform; trial lawyer advertising regulation; and autonomous vehicle liability.

NORTH CAROLINA

SESSION CALENDAR 01/09/19 – 06/30/19
HOUSE 55 D 65 R
SENATE 21 D 29 R

GOVERNOR: Roy Cooper (D)

Mr. Gary Salamido
Vice President, Government Affairs
North Carolina Chambers
701 Corporate Center Drive
Raleigh, N.C. 27607
919-600-0763
gsalamido@ncchamber.net

Mr. Stephen Keene
COO & General Counsel
N.C. Medical Society
P. O. Box 27617
Raleigh, N.C. 27611
919-833-3836
skeene@ncmedsoc.org

Mr. Gregg Thompson
State Director
NFIB/North Carolina
150 Fayetteville Street
Raleigh, N.C. 27601
919-833-9480
gregg.thompson@nfib.org

Though pro-tort reform Republicans maintained their majorities in both chambers last November, they lost their supermajorities and thus are not in a position to override vetoes of the new governor, Roy Cooper (D). At the time we went to press, observers in Raleigh were unsure what, if any, affirmative legal reform legislation lawmakers plan to pursue this year.

NORTH DAKOTA

SESSION CALENDAR 01/03/19 – 04/26/19
HOUSE 15 D 79 R
SENATE 10 D 37 R

GOVERNOR: Doug Burgum (R)

Ms. Courtney Koebele
Executive Director
North Dakota Medical Association
1622 E. Interstate Avenue
Bismarck, North Dakota 58502
701-223-9475 ckoebele@ndmed.com

Mr. Jon Godfread
Vice President, Government Affairs
Greater North Dakota Chamber
P. O. Box 2639
Bismarck, North Dakota 58502
701-222-0929 jon@ndchamber.com

No activity reported.

OHIO

SESSION CALENDAR 01/07/19 – 12/31/19
HOUSE 37 D 62 R
SENATE 8 D 25 R

GOVERNOR: Mike DeWine (R)

Mr. Chris Ferruso
Chair, Ohio Alliance for Civil Justice
Executive Director, NFIB/Ohio
10 West Broad Street, Suite 2450
Columbus, Ohio 43215
614-221-4107 chris.ferruso@nfib.org

Mr. Rob Brundrett
Director, Public Policy Services
The Ohio Manufacturers' Association
33 N. High Street, Suite 600
Columbus, Ohio 43215
614-224-5111 rbrundrett@ohiomfg.com

Contacts in Columbus tell ATRA they expect the tort reform community to pursue two issues during the 2019 session: (1) third party litigation financing – discussions continue about whether to pursue an outright ban or limit to class actions; and (2) statute of limitations on written contracts – Ohio made improvements several years ago by moving from 15 years to 8 years. H.B. 694, introduced last session, would have reduced the time period to

three years. We expect similar legislation to be considered in 2019. Personal injury lawyers and their allies are also expected to push their own affirmative agenda, including: a bill to make an exception to the limit on damages in sexual assault cases; and (2) legislation that would expand the exception to the limits on punitive or exemplary damages with respect to an act resulting in a felony conviction involving purposeful or knowing conduct so that it also applies when the act results in a felony conviction for a strict liability defense.

OKLAHOMA

SESSION CALENDAR 02/04/19 – 05/31/19

GOVERNOR: Kevin Stitt (R)

HOUSE 25 D 76 R

SENATE 9 D 39 R

Ms. Adria Berry
Vice President, Government Affairs
State Chamber of Oklahoma
P. O. Box 53217
Oklahoma City, Oklahoma 73152
405-272-4417 aberry@okstatechamber.com

The Sooner State has maintained its pro-business Republican trifecta with the GOP controlling both chambers of the legislature and governor's mansion. Legal reform proponents tell ATRA they plan to pursue three priorities during this year's session: (1) fix to the medical marijuana statute – Oklahoma employers are vulnerable to discrimination suits and since there was no remedy written into the law, employees may bring policy torts, which have no limit on damages; (2) pleading code update – move Oklahoma's pleading standards from the liberal notice pleading standard to the *Iqbal & Twombly* plausibility standard; and (3) judicial redistricting – current districts are based on Congressional districts from the 1960s. Proponents of redistricting would like to update to the current five Congressional districts and leave four seats as at-large districts. This will enable the Judicial Nominating Commission to pull from a much larger pool of qualified candidates and thus address the very imbalanced court. Oklahoma has passed as much if not more tort reform legislation than any state in the country over the last decade with friendly governors and supportive legislators. The current chairman of the House Judiciary Committee, Chris Kannady (R), is Senior Counsel at Foshee & Yaffe, an Oklahoma City-based law firm that does personal injury work. The Committee did not pass any tort reform legislation in 2018.

OREGON

SESSION CALENDAR 01/14/18 – 06/30/19

GOVERNOR: Kate Brown (D)

HOUSE 38 D 22 R

SENATE 18 D 12 R

Ms. Fawn Barrie
Executive Director
Oregon Liability Reform Coalition
1249 Commercial Street, SE
Salem, Oregon 97301
503-967-6214 fbarrie@legadv.com

Contacts in Salem tell ATRA they expect the business community to have to play defense in 2019. Personal injury lawyers have supermajorities in both houses of the legislature and they are expected to pursue an aggressive liability-expanding agenda. Issues we are likely to see, include: repeal of the \$500,000 limit on noneconomic damages; "bad faith" legislation; and new private rights of action pertaining to data breach and privacy; and private attorney general act legislation.

PENNSYLVANIA

SESSION CALENDAR 01/01/19 – 12/31/19
HOUSE 93 D 110 R
SENATE 21 D 29 R

GOVERNOR: Tom Wolf (D)

Ms. Rebecca Oyler
Legislative Director
NFIB/Pennsylvania
225 State Street, Suite B
Harrisburg, Pennsylvania 17101
717-232-8582 rebecca.ovler@nfib.org

Curt Schroder, Esq.
Executive Director
Pennsylvania Coalition for Civil Justice Reform
P. O. Box 653
Harrisburg, Pennsylvania 17108
717-461-3577 curt@pccjr.org

The civil justice reform community has a broad agenda planned for 2019 that includes asbestos trust transparency, attorney general sunshine legislation, punitive damages limits in long-term care cases, and emergency room physician immunity. Allies in Harrisburg anticipate that the organized trial bar will seek to take advantage of decreased Republican majorities in the House and Senate, and will focus their liability-expanding efforts through amendments rather than stand-alone bills. We do expect, however, stand-alone False Claims Act legislation.

RHODE ISLAND

SESSION CALENDAR 01/01/19 – 06/30/19
HOUSE 66 D 9 R
SENATE 33 D 5 R

GOVERNOR: Gina Marie Raimondo (D)

Mr. Steve DeToy
Rhode Island Medical Society
405 Promenade Street, Suite A
Providence, Rhode Island 02908
401-331-1401
sdetoy@rimed.org

Mr. Michael B. Isaacs
Executive Director
Defense Counsel of Rhode Island
46 Bunker Hill Lane
East Greenwich, Rhode Island 02818
401-884-7307 michael.b.isaacs@gmail.com

No activity reported.

SOUTH CAROLINA

SESSION CALENDAR 01/08/19 – 05/09/19
HOUSE 44 D 80 R
SENATE 19 D 26 R 1 V

GOVERNOR: Henry McMaster (R)

Mr. Earl Hunter
Executive Director
South Carolina Civil Justice Coalition
826 Assembly Street
Columbia, South Carolina 29201
803-771-0008 ehunter@sccjc.org

On paper, the political and legislative environment looks favorable for civil justice reform. Pro-business Republicans hold the governorship and majorities in both houses of the legislature. However, conservative personal injury lawyers have infiltrated the Republican caucus and hold key committee positions and influence which has stymied the advancement of affirmative legal reform legislation. Contacts in Columbia tell ATRA that

Senator Gerald Malloy (R) plans to pursue False Claims Act legislation. Moreover, they anticipate legislation to be introduced that would repeal previously enacted tort reform legislation. Civil justice reform advocates are expected to pursue an affirmative agenda that includes seat belt admissibility, attorney general sunshine legislation, asbestos trust transparency, and joint and several liability reform.

SOUTH DAKOTA

SESSION CALENDAR 01/09/19 – 03/29/19
HOUSE 11 D 59 R
SENATE 5 D 30 R

GOVERNOR: Kristi Noem (R)

Ms. Barbara A. Smith
Chief Executive Officer
South Dakota State Medical Association
P. O. Box 7406
Sioux Falls, South Dakota 57117
605-336-1965 bsmith@sdsma.org

Mr. David Owen
President
South Dakota Chamber of Commerce
232 E. Capitol, Suite 15
Pierre, South Dakota 57501
605-224-6161

No activity reported.

TENNESSEE

SESSION CALENDAR 01/08/19 – 05/15/19
HOUSE 26 D 73 R
SENATE 5 D 28 R

GOVERNOR: Bill Lee (R)

Mr. Jim Brown
State Director
NFIB/Tennessee
53 Century Blvd., Suite 110
Nashville, Tennessee 37214
615-874-5288 jim.brown@nfib.org

Mr. Bradley Jackson
VP, Government Relations
Tennessee Chamber of Commerce & Industry
611 Commerce Street
Nashville, Tennessee 37203
615-256-5141 bradley.jackson@tnchamber.org

Allies in Nashville tell ATRA the 111th General Assembly will be a significant reset with a new governor, Bill Lee (R), new Speaker of the House in Glen Casada (R), and new Senate Majority Leader Jack Johnson (R). They also tell ATRA there are nearly 30 new House members, the largest turnover in the House since the Civil War. While civil justice reform legislation may be introduced, the focus of legislators will center on criminal justice reform.

TEXAS

SESSION CALENDAR 01/08/19 – 05/27/19

HOUSE 67 D 83 R

SENATE 12 D 19 R

GOVERNOR: Greg Abbott (R)

Ms. Carol Sims
Executive Director
Texas Civil Justice League
400 West 15th Street, Suite 1400
Austin, Texas 78701
512-320-0474
carol@tcjl.com

Ms. Mary Tipps
Executive Director
Texans for Lawsuit Reform
919 Congress, Suite 455
Austin, TX 78701
512-478-0200
mary@tortreform.com

The overall environment in the Lone Star State continues to be favorable as the Governor, Speaker of the House, and Lieutenant Governor are all supportive of legal reform, though it is important to note that Republican trial lawyers coupled with increased gains by Democrats in the House will present challenges to civil justice reform proponents. The legal reform community was still finalizing their agenda at the time we went to press, but we do expect legislation on perennial issues like paid/incurred and judicial selection.

UTAH

SESSION CALENDAR 01/28/19 – 04/03/19

HOUSE 17 D 58 R

SENATE 6 D 23 R

GOVERNOR: Gary Herbert (R)

Michelle McOmber, MBA, CAE
Chief Executive Officer
Utah Medical Association
310 East 4500 South, Suite 500
Salt Lake City, Utah 84107
801-747-3500
michelle@utahmed.org

Mr. Justin Stewart
Executive Director
Utah Civil Justice League
288 W 570 N
Lincoln, Utah 84042
801-372-8734
utahtortreform@gmail.com

We have seen very little legislative activity in the Beehive State the last few years and contacts in Salt Lake City expect that trend to continue in 2019. Legislation pertaining to strict liability with respect to dog bites may be considered, but we otherwise do not anticipate a particularly active session.

VERMONT

SESSION CALENDAR 01/09/19 – 05/17/19
HOUSE 95 D 42 R 13 O
SENATE 22 D 6 R 2 O

GOVERNOR: Phil Scott (R)

Ms. Shawn S. Shouldice
State Director
NFIB/Vermont
189 Grandview Terrace
Montpelier, Vermont 05602
802-498-0059 shawn.shouldice@nfib.org

Ms. Sandra Dragon
President
Associated Industries of Vermont
P. O. Box 630
Montpelier, Vermont 05601
802-223-3441 sandra@aivt.org

Montpelier was the scene of a huge battle with personal injury lawyers in 2018 over legislation that would have subjected defendants to strict liability and medical monitoring claims by those who were merely exposed to though not necessarily harmed by “toxic” substances. The legislation was vetoed by Governor Phil Scott (R) and his veto was not overridden. However, at the time we went to press with the *Outlook*, new medical monitoring legislation had already been introduced and we expect proponents to make a very aggressive push for passage and enactment this year.

VIRGINIA

SESSION CALENDAR 01/09/19 – 02/23/19
HOUSE 48 D 51 R 1 V
SENATE 19 D 21 R

GOVERNOR: Ralph Northam (D)

Ms. Nicole Riley
State Director
NFIB/Virginia
919 E. Main Street, Suite 1160
Richmond, Virginia 23219
804-377-3661
nicole.riley@nfib.org

Mr. Keith Martin
EVP, Public Policy & General Counsel
Virginia Chamber of Commerce
919 E. Main Street, Suite 900
Richmond, Virginia 23219
804-237-1456
K.martin@vachamber.com

The political environment in the Commonwealth is mixed. Republicans hold slim majorities in both the House and Senate. Meanwhile, Democrat Ralph Northam defeated Republican Ed Gillespie for the governorship. Contacts in Richmond expect a number of civil justice issues to be considered this year, including: (1) summary judgment – allow depositions and affidavits to support a motion for summary judgment in business-to-business cases where the amount at issue is \$50,000 or more; (2) depositions of corporate officers – establish a process for deposing certain corporate officers with a publicly-traded company or a major subsidiary. In such case, the party seeking the deposition must demonstrate that (i) the officer's deposition is reasonably calculated to lead to the discovery of admissible evidence, (ii) the officer may have personal knowledge of discoverable information that cannot be discovered through other means, and (iii) a deposition of a representative other than the officer or other methods of discovery are unsatisfactory, insufficient, or inadequate; and (3) legislation pertaining to spoliation of evidence.

WASHINGTON

SESSION CALENDAR 01/14/19 – 04/28/19
HOUSE 57 D 41 R
SENATE 28 D 21 R

GOVERNOR: Jay Inslee (D)

Mr. Cliff Webster
Chairman
Washington Liability Reform Coalition
701 Fifth Avenue, Suite 3600
Seattle, Washington 98104
206-607-4162
cwebster@carnevlaw.com

Ms. Dana Bieber
Executive Director
Washington Liability Reform Coalition
2001 Sixth Avenue, Suite 2700
Seattle, Washington 98121
206-953-0342
dana@walrc.org

Olympia is dominated by elected officials who are aligned with personal injury lawyers. Both chambers of the legislature are dominated by pro-trial lawyer, liability-expanding majorities and allies in the Evergreen State tell ATRA they expect to play defense during session on issues such as expansion of the wrongful death statute, phantom damages, and punitive damages. We do not expect lawmakers to consider any affirmative legislation in 2019.

WEST VIRGINIA

SESSION CALENDAR 01/09/19 – 03/09/19
HOUSE 41 D 59 R
SENATE 14 D 20 R

GOVERNOR: Jim Justice (R)

Mr. Steve Roberts
President
West Virginia Chamber of Commerce
1624 Kanawha Blvd., East
Charleston, West Virginia 25311
304-342-1115 sroberts@wvchamber.com

Mr. Jordan Burgess
West Virginia Citizens Against Lawsuit Abuse
P. O. Box 422
Pinch, West Virginia 25156
304-415-4227
jburgess5690@gmail.com

The overall environment in Charleston continues to be favorable for legal reform. Governor Jim Justice (R) called for the establishment of an intermediate court of appeals during his state of the state address on January 9th and legislators are poised to tackle a number of ATRA priorities including seat belt admissibility and medical monitoring. Contacts in the Mountain State also advise that legislators may pursue legislation pertaining to trial lawyer advertising.

WISCONSIN

SESSION CALENDAR 01/07/19 – 12/31/19
HOUSE 34 D 64 R 1 V
SENATE 14 D 19 R

GOVERNOR: Tony Evers (D)

Mr. Andy Cook
Wisconsin Civil Justice Council
c/o Hamilton Consulting
10 E. Doty Street, Suite 500
Madison, Wisconsin 53703
608-258-9506
cook@hamilton-consulting.com

Mark M. Grapentine, JD
SVP, Government Relations
Wisconsin Medical Society
P. O. Box 1109
Madison, Wisconsin 53701
608-442-3800
mark.grapentine@wismed.org

The political environment underwent a seismic shift when Tony Evers (D) defeated long time Governor and tort reform champion Scott Walker (R) last November. Evers was heavily supported by personal injury lawyers and will be an impediment to the enactment of affirmative civil justice reform legislation. Republicans maintained their sizable majority in the House and surprisingly increased their majority in the Senate. Republicans do not have veto-proof majorities, however, and so it is uncertain how aggressively civil justice reform proponents will pursue tort reform bills such as seat belt admissibility and phantom damages reform. On the other hand, observers in Madison expect Governor Evers to pursue *qui tam* for Medicaid fraud in his budget. *Qui tam* was repealed in 2015. Finally, third party litigation companies are likely to pursue repeal of third party litigation regulatory legislation, 2017 Wisconsin Act 235.

WYOMING

SESSION CALENDAR 01/08/19 – 03/01/19
HOUSE 9 D 50 R 1 O
SENATE 3 D 27 R

GOVERNOR: Mark Gordon (R)

Mr. Eric Boley
President
Wyoming Hospital Association
2005 Warren Avenue
Cheyenne, Wyoming 82001
307-632-9344 eric@wyohospitals.com

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.

Prepared by

*Matt Fullenbaum, Director of Legislation
Lauren Sheets Jarrell, Counsel, Civil Justice Policy
Bailey Griffith, Public Affairs and Digital Media Coordinator*

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