

State Bar Final Legislative Update

The Georgia General Assembly adjourned sine die on Friday, April 3. Following is the State Bar's legislative package and other legislation of interest and final action taken for the '09 session. All bills and resolutions that did not pass this session are still viable for the '10 session.

State Bar Legislative Package

[HB 24](#) – Rules of Evidence: This legislation, by Judiciary Chairman Wendell Willard, to conform the Georgia rules of evidence to the federal rules of evidence, passed the House Judiciary committee. This bill will be held over until the 2010 session.

[HB 308](#) - Amendments to the LLC: These technical amendments to the LLC statute, from the Business Law Section, passed the House on Thursday, 3/5, and passed the Senate on Wednesday, 3/25. The House agreed to the Senate substitute and it awaits the Governor's signature.

[SB 131](#) - Trust Code Revisions: This substantial revision of the Trust Code, from the Fiduciary Law Section, passed the Senate Banking committee on Wed., 2/25, and the Senate on Wed., 3/4. It was assigned to the House Judiciary committee, which will hold meetings on this bill over the interim.

Ga. Appellate Practice Resource Center Funding Request: The Resource Center has requested \$580,000 in the FY '10 budget to maintain its current funding level. The House and Senate passed the FY '10 budget on Friday, 4/3, and \$580,000 was included for the Resource Center.

Victims of Domestic Violence Funding Request: An appropriation of \$2 million has been requested in the FY '10 budget to maintain the current funding level. The House and Senate passed the FY '10 budget with \$2,006,548 for legal services for victims of domestic violence.

Ga. Public Defender Standards Council: The FY '10 budget passed by the House and Senate has \$41,489,395 for public defenders. The State Bar supports adequate funding for the GPDSC.

Additional Legislation Supported or Opposed By The State Bar

[HB 283](#) –Bar Exam Fee: This bill removes the maximum fee cap for the bar exam. It was amended in House Judiciary to allow Bar exam fees to go directly to the Board of Examiners, and passed the House on Tuesday, 2/24. It was amended by Senate Judiciary to require the fees to go directly to the General Fund, then passed the Senate on Monday, 3/30. The bill went to conference committee where language was changed so that fees go to the Board of Examiners and HB 331, increasing court filing for the Supreme Court and Court of Appeals was added (see page 3 of this update). The bill now goes to the Governor for his signature. The State Bar supports HB 283.

[HB 126](#) & [HB 127](#) – Electronic Filings: The Clerk's Authority initiated these bills authored by Rep. Ed Lindsey. HB 126, the "Uniform Electronic Transactions Act," passed the House on

Thursday, 3/12, passed the Senate on Wed., 3/25, and now awaits the Governor's signature. HB 127, the "Uniform Real Property Electronic Recording Act," passed the House on Wed., 3/4, passed the Senate on Monday, 3/30, and now awaits the Governor's signature. The State Bar supports HB 126, and has not taken a position on HB 127.

[SB 41](#) – Attorney Television Advertising: SB 41, authored by Senator Seth Harp, and introduced on 1/26, would provide regulations and conditions on attorney television advertising in an effort to educate and protect the consumer/ client. The Senate Special Judiciary committee discussed this bill on Tuesday, 2/10, but no action was taken. The State Bar opposes this bill.

[SB 42](#) – Amendments to the Ga. Indigent Defense Act of 2003: This legislation by Senator Preston Smith, Senate Judiciary Chair, would create the Ga. Public Defender Agency as an independent agency under the executive branch and specifies appointments to the Ga. Public Defenders Standards Council (GPDSC), an advisory body, would be made by the Governor, Lt. Governor and Speaker. The director of the Agency would be appointed by the Governor and would be responsible for all functions of the Agency. It passed the Senate Judiciary committee by a 5-4 vote and passed the Senate with a 32-21 vote on Thursday, 2/19. The House Judiciary Non-Civil committee held several lengthy hearings then amended and passed the bill on Friday, 3/27. The amended bill creates an additional state agency, "Office of Alternative Defense Counsel," to handle conflict cases, and keeps the Senate provisions to remove policy making authority from the Council and retain it in an advisory capacity. The House did not vote on this bill. The State Bar opposes this bill in its current form.

[Governor Perdue's Tort Proposals](#): [SB 101](#), which was re-assigned to the Senate Economic Development committee, would offer protection to pharmaceutical or medical device companies against lawsuits on drugs or devices that have FDA approval provided the company 1) has corporate headquarters in Georgia, 2) employs over 200 Georgia citizens, or 3) has Georgia as its principal place of research and development. It failed in committee on Tuesday, 2/24, by a 7-4 vote. [SB 108](#), which originally would require plaintiffs who have their claim dismissed at the earliest possible stage to pay attorney fees and costs to the defendant, was substituted with Rep. Ramsey's stay of discovery bill (HB 414, on the next page) in the Senate Special Judiciary committee. It passed the Senate on Tuesday, 3/10; it was amended by House Judiciary to include "special master" legislation (HB 73, on page 4 of this update), and passed on Tuesday, 3/24. The House Rules committee did not put it on the House calendar. The State Bar opposes SB 101 but has no objection to the committee substitute to SB 108.

[SB 138](#) – Transparency in Lawsuits: This bill, authored by Sen. John Wiles, prohibits a right to private action unless specific language says you can. It was heard in committee on Tuesday, 2/17, but no action was taken. The State Bar opposes this bill.

Rep. Bobby Franklin introduced three resolutions on January 15: [HR 72](#) urges the Supreme Court to disbar or disallow admission to attorney(s) who alter or backdate legal documents; [HR 73](#) is a constitutional amendment that would remove the Court of Appeals' and Supreme Court's individual decisions from binding other courts as precedents, and; [HR 74](#) is a constitutional amendment that would give the General Assembly the power to remove and discipline judges.

These resolutions have been assigned to the House Judiciary committee. The State Bar opposes HR 73 and HR 74, but has not taken a position on HR 72.

Other Items of Interest

[Judicial Election Reform](#): The House Study Committee on Judicial Election Reform addressed the following in its final recommendations: recusal under certain circumstances regarding campaign contributions by parties or law firms with a case pending before the judge; a date change for qualifying in nonpartisan elections to be the same date as qualifying for partisan elections; greater sanctions for candidates who fail to timely file campaign disclosure reports; and dissemination of information about candidates in statewide races.

[SB 23](#) and [HB 200](#) – Seatbelt Use/Negligence: These bills allow that failure to use a seatbelt may be considered in tort cases. The Senate Judiciary Committee passed SB 23 after amending it to include a requirement to wear seatbelts in pick-up trucks, but the bill was amended on the Senate floor back to its original version and passed the Senate on Wed., 2/25, and assigned to House Judiciary. HB 200 lost in the House on Tuesday, 3/3, by a floor vote of 15-148.

[SB 213](#) and [HB 663](#) – Manufacturer Liability: SB 213, authored by Sen. John Wiles, passed the Senate on Monday, 3/9, passed the House on Thursday, 3/26, and awaits the Governor's signature. It disallows liability against manufacturers for claims based upon market share theories. The House version of this bill, HB 663, authored by Rep. David Ralston, was introduced on Thursday, 3/5, and assigned to the House Judiciary committee.

[HB 623](#) – State Liability: This bill, by Rep. Carl Rogers, would lower the state's liability under the State Tort Claims Act to about 1/3 of current amounts in the law. It was assigned to the House Judiciary committee.

[HB 545](#) – Service of Process: This bill authored by House Judiciary Chairman Wendell Willard creates a certification process for process servers. It passed the House on Thursday, 3/12, and passed the Senate Public Safety committee on Wed., 3/25.

[HB 451](#) – Uniform Commercial Code: This bill, by Rep. Mike Jacobs, revises Article 7. It passed the House on Thursday, 3/12, and passed Senate Special Judiciary on Wed., 3/25. It now awaits action by the Senate Rules committee.

[HB 414](#) – Stay of Discovery: This bill, authored by Rep. Matt Ramsey, was passed by substitute by the House Judiciary committee on Thursday, 3/5, and is on the House general calendar awaiting action by House Rules committee. In a lawsuit, it stays discovery when a motion to dismiss is filed. (This is also the text of the committee sub. to SB 108; and was added to HB 29, service of process, during conference committee and passed--see HB 29 on the next page.)

[HB 331](#) – Filing Fees: This bill, authored by Rep. Chuck Martin, increases filing fees for the Court of Appeals and Supreme Court. It passed the House on Tuesday, 2/24, and passed the Senate Judiciary committee on Wed., 3/25. (This was added to HB 283, which passed.)

[HB 195](#) – EMC’s: This bill modifies the ability of EMC members to sit on cases where the EMC is involved. A compromise version approved by GTLA and the EMC’s passed the House on Monday, 3/9, and the Senate on Thursday, 3/26; it now awaits the Governor’s signature.

[HB 184](#) – Marriage Ceremonies: This bill, originally dealing with blood tests for sickle cell disease, was amended by Speaker Richardson on the House floor to include authorization for all current or former constitutional officers to perform marriage ceremonies. It passed the House on Thursday, 3/5. The Senate Rules committee deleted the marriage ceremony language and it passed the Senate on Wed., 4/1. It now awaits the Governor’s signature.

[HB 173](#) – Restrictive Covenants: This bill, authored by Rep. Kevin Levitas, would allow the blue-penciling of restrictive covenants. It passed the House on Thursday, 3/12, and passed the Senate on Wed., 4/1. It now awaits the Governor’s signature.

[HB 96](#) – “Georgia Free Enterprise and Antitrust Act of 2009”: This legislation by Rep. Austin Scott was introduced on 1/16 and assigned to the House Judiciary committee.

[HB 73](#) – Special Masters: This bill allows courts to appoint special masters. It passed the House Judiciary committee on Thursday, 2/19, and is now on the House general calendar awaiting action by the House Rules committee. This language was included in SB 108 by the House Judiciary committee on Tuesday, 3/24.

[HB 32](#) – Death Penalty without Unanimous Juries: This legislation, authored by Rep. Tim Bearden, was introduced on 1/13 and assigned to the House Non-Civil Judiciary committee.

[HB 29](#) – Electronic Service of Pleadings: HB 29, by Rep. Mike Jacobs, which would allow some service via e-mail, was amended and passed by the House Judiciary committee on 2/ 5. It passed the House on Tuesday, 2/17, and the Senate on Monday 3/30. A conference committee version, which included HB 414, stay of discovery, was adopted and it now goes to the Governor for signature.

[HB 26](#) – Recorded Deeds: This bill would require recorded deeds to disclose the inclusion or exclusion of mineral rights. It was assigned to the House Judiciary committee. The Real Property Section has expressed opposition to this bill. It was tabled in subcommittee on Wed., 2/18.