

ACCA

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[HB 1004](#)



[Morgan](#)
[Coates](#)

Modifies the definition of refrigeration system pursuant to the Mechanical Licensing Act.

General Remarks:

The Oklahoma Construction Industries Board on Wednesday discussed at length a piece of mechanical legislation filed for the upcoming session.

According to CIB Administrator Nathan Powell, Rep. Danny Morgan, D-Prague, appeared at the September meeting of the mechanical examiners on behalf of Arctic Temp Inc., a manufacturer of walk-in refrigeration units. Arctic Temp sometimes uses its own employees to erect the wall components of these units, leaving other installation tasks for licensed mechanical contractors to complete. Arctic Temp has been informed that erecting these units requires a mechanical license and that position has been upheld by the Mechanical Examiners Committee.

Powell said that Morgan indicated in the meeting that the limits placed on this particular manufacturer was a significant economic development issue for his district and asked Powell to provide information about potential ways to accomplish a change with the least consequences for the CIB.

Powell said that the initial strategy was to do something that extended the existing exemption for permanent employees of manufacturing facilities from the factory site to the field. Ultimately it was recommended by Powell that an appropriate way to accomplish Morgan's goal was to strike the word "erection" from the statutory definition of "Refrigeration System."

Following discussion with Powell, Morgan filed HB 1004, which modifies language related to the Mechanical Licensing Act.

Last Action:

3-25-09 S Reported from committee - As Amended Senate Business & Labor

[HB 1031](#)



[Murphey](#)
[Coates](#)

Modifies the list of codes that municipalities and subdivisions may adopt to include "International Code Council" for building standards.

Last Action:

3-25-09 S Reported from committee - Do Pass Senate Business & Labor

[HB 1089](#)



[Trebilcock](#)

Creates the Construction Industries Board Act.

Last Action:




2-27-09 H Dormant pursuant to the rules

[HB 1570](#)



[Schwartz](#)
[Paddack](#)

For negligible claims regarding professional responsibility, plaintiffs must meet certain criteria in affidavit attesting to certain facts of the case prior to proceeding.

HB 1600 	Sullivan Coffee	<p>Last Action: 4- 6-09 S Reported from committee - As Amended Senate Judiciary</p> <p>Clarifies workers compensation; covers surgery for a soft tissue injury caused by a physicians initial treatment; clarifies language.</p>
HB 1602 	Sullivan Coffee	<p>Last Action: 4- 6-09 S Reported from committee - As Amended Senate Judiciary</p> <p>Limits the fee an attorney can collect for services.</p>
HB 1603 	Sullivan Coffee	<p>Last Action: 3-16-09 S Direct to calendar</p> <p>Modifies provisions related to civil lawsuits; relates to stays of enforcement, the Oklahoma Pleading Code, frivolous claims or defenses, class actions and expert testimony.</p>
<p>General Remarks:</p>		<p>HB 1603, by Sullivan, requires a court to appoint an independent attorney in class actions, if a request for award of attorney fees is made, and directs that the independent attorney be awarded reasonable fees on an hourly basis out of the proceeds awarded to the class. The measure requires that, when using an expert to prove liability, an affidavit regarding consultation with an expert must be filed within 60 days of filing a civil action petition. It requires Oklahoma Uniform Jury Instructions applicable in civil cases to include an instruction notifying the jury that no part of an award for damages for personal injury or wrongful death is subject to federal or state income tax and that compensation for personal injury or wrongful death should not be increased in consideration of taxes. The bill requires juries to render general verdicts, unless the parties requested particular findings of fact. It modifies language related to dismissals. It allows actions to be dismissed by the plaintiff without court order by filing a notice of dismissal at any time before service by the adverse party of an answer or motion for summary judgment, whichever is first, or filing a stipulation for dismissal signed by all parties appearing in the action. It states that if a plaintiff files a notice of dismissal after discovery has commenced, the action will not be dismissed without prejudice without the consent of the defendant. The bill states that no prejudgment interest can begin to accrue until 36 months after the suit resulting in the judgment was commenced. It allows parties to obtain a stay of enforcement of a judgment, decree or final order during the time in which an appeal may be commenced or while an appeal is pending in any court inside or outside of the state. It also prohibits bonds filed when seeking a stay of enforcement from exceeding \$25 million or \$1 million if the party posting the bond is an individual or business with 250 or fewer employees on the date of judgment. The measure exempts appeals of punitive damages from an appeal bond requirement. It also decreases from 180 to 120 days the time limit for service of process to defendants before the action may be dismissed. The bill modifies the definition of "frivolous" for purposes of a court's determination of whether a claim is frivolous. It states that if a certain order goes for appellate review that the reviewing court shall apply a de novo standard. It requires a court to include a potential member in the class only if the potential member so requests by a specific date.</p> <p>The bill sets exemptions from the Oklahoma Consumer Protection Act and it states that actual damages shall be measured by the out-of-pocket loss of the consumer. It adds that in order to recover damages</p>

for a violation of the OCPA, a person must prove that he or she reasonably relied to the detriment of him or her upon the practice alleged to be a violation of the OCPA and that damages were proximately caused by the practice alleged to be a violation. The bill allows a party seeking to recover upon a claim, counterclaim, cross-claim or declaratory judgment to move for summary judgment 20 days after the action commenced or after service of a motion for summary judgment by the adverse party. It allows a defending party to move for summary judgment at any time. The bill also modifies language related to opinion testimony by lay witnesses and allows expert witnesses to offer expert testimony only with respect to the field in which he/she is qualified. It requires the court to hold a mandatory pretrial hearing, if requested by a party, to determine whether a witness qualifies as an expert. In cases of professional liability, the bill allows a jury to award punitive damages, in addition to actual damages, only if the jury finds clear and convincing evidence that the defendant was guilty of intentional or gross negligence. The bill also modifies requirements for the calculation and payment of future damages. The measure removes a requirement that a defendant be jointly and severally liable for damages recoverable by the plaintiff if the percentage of responsibility attributed to the defendant is greater than 50 percent. If a plaintiff receives compensation for harm or injuries from an independent source, the bill requires that information be admitted as evidence and the amount of compensation deducted from the amount of damages the plaintiff recovers.

The bill establishes a \$300,000 noneconomic damages cap for any action not arising out of contract, regardless of the number of parties against whom the action is brought or the number of actions brought with respect to personal injury. It directs the cap be adjusted annually based on positive increases in the Consumer Price Index. The cap could be lifted if a jury finds by clear and convincing evidence that the acts of the party causing damage were grossly negligent or committed intentionally and with malice. The cap would not apply to actions involving wrongful death. It requires plaintiffs seeking recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value or loss of inheritance to provide evidence of the loss after reduction for income tax payments or unpaid tax liability. The measure removes language that allows evidence of violations of child passenger restraint system requirements to be admitted as evidence in a civil action or proceeding for damages. It prohibits peer review information discovered pursuant to a claim of independent negligence against a health care facility from being used as evidence unless a judge or jury first find the professional to have been negligent in providing health care to the patient in the facility. The bill creates the Volunteer Health Practitioners Act to exempt registered volunteer health practitioners from liability during a declared emergency under certain conditions. The measure requires skilled nursing facilities participating in Medicaid to establish and maintain quality assessment and assurance committees and makes records of such committees confidential and privileged and not subject to discovery or subpoenas and persons associated with quality assessment and assurance committee records could not be required to testify. It prohibits statements of deficiencies or Minimum Data Set related documentation issued to a nursing facility from being admitted into evidence unless the determination is final. It also prohibits such data

from being used to establish a standard of care or negligence.

The measure creates a School Protection Act to allow teachers, principals and other school employees to take reasonable actions to maintain order and discipline. The bill states that anyone age 18 or older who acts with intent to falsely accuse an education employee of criminal activity would be guilty of a misdemeanor punishable by a fine of not more than \$2,000. It states that anyone between age 7 and 17 who makes such an accusation would be subject to community service or other court sanctions, at the discretion of the court. The measure states that the limitation for bringing an action for damages based in tort would be eight years from the date of the act or omission. The bill also makes peer review information private, confidential and privileged but allows a peer review body to provide relevant information to a state agency or board that licensed the professional under review.

The measure creates a Common Sense Consumption Act, the intent of which is to prevent frivolous lawsuits against manufacturers, packers, distributors, carriers, holders, sellers, marketers or advertisers of food products that comply with statutory and regulatory requirements. It states a legislative finding that the unlawful use of firearms, rather than their lawful manufacture, distribution or sale, is the proximate cause of any injury arising from their unlawful use. The bill exempts from liability firearm manufacturers, distributors and sellers who lawfully manufacture, distribute or sell firearms in cases involving any injury suffered, including wrongful death and property damage, because of the use of a firearm by another. The measure repeals a section of the Oklahoma Mandatory Seat Belt Use Act relating to inadmissibility of evidence in civil actions of failure to use seatbelt and sections relating to limits on noneconomic damages in medical liability actions. The bill also repeals current law limiting class-action contingency fees to 50 percent.

The committee substitute adds the Asbestos and Silica Claims Priorities Act and the Product Liability Act to the bill.

Rep. Richard Morrisette, D-Oklahoma City, went back and forth with Sullivan on several questions and challenged the bill's germaneness because he said vastly different titles of law were all included. He asked Sullivan why he offered a 233-page committee substitute.

"Did you like the first version?" Sullivan asked in response.

Morrisette said, "Apparently you didn't like it," and then asked what the differences were.

"We did intend this to be comprehensive, and there were some last-minute discussions about some things that we thought made sense in light of the intent of this bill," Sullivan said. "Most of the sections in this bill you have seen before."

Morrisette then questioned the germaneness, but committee Chairman Rex Duncan, R-Sand Springs, ruled against him. Morrisette asked how he could protest the ruling so that germaneness could be discussed on the House floor. This question

resulted from House floor rulings last year in which a bill or amendment was ruled germane because it had been ruled such in committee.

"I object to your ruling," Morrissette said.

"Your objection is noted," Duncan replied.

"Folks, this is a political document," Morrissette said in his debate against the bill. "We all know how this bill is going to go. You've got your orders. I would presume that no one on this committee has read this bill. Raise your hand if you have."

Sullivan and Vice Chairman Fred Jordan, R-Jenks, raised their hands.

"You didn't even know how many sections it was when I asked you," Morrissette said to Sullivan. "Where this belongs is right where it's going."

Morrissette dropped a printed copy of the 233-page bill on the floor loudly, and Sullivan went on to debate in favor of his bill, saying "good policy is good politics."

"Several of us have campaigned on the issue of lawsuit reform, and those of us who agree with that philosophy have increased in number while those who don't have not," he said, adding that the bill is intended to promote fairness. "But, every effort that we have tried in this regard has been ruled on by 'Justice Morrissette' as unconstitutional."

The bill passed on an 8-to-3 vote, with Rep. Lucky Lamons, D-Tulsa, being the only member not to vote party line.

Last Action: 4- 6-09 S Reported from committee - As Amended Senate Judiciary

[HB 1672](#)

[Dorman](#)

Changes Section of bill to 1000.0 to through 1000.9 of the "Construction Industries Board Act".

Last Action: 3- 2-09 H Dormant pursuant to the rules

[HB 1682](#)

[Scott](#)
[Newberry](#)

Creates the Green Jobs Act for the purpose of establishing and implementing an energy efficiency and renewable energy worker training program; EMERGENCY.

Last Action: 4- 3-09 S Dormant pursuant to the rules

[HB 1753](#)

[Martin, Scott](#)
[Barrington](#)

Clarifies language how construction change orders for public construction contracts are handled.

Last Action: 3-24-09 S Reported from committee - As Amended Senate General Government

[HB 1845](#)

[Sears](#)
[Sykes](#)

Updates the Oklahoma Corrupt Organizations Prevention Act, modifies definition of racketeering to include violating the Public Competitive Bidding Act.

Last Action: 4- 3-09 S Dormant pursuant to the rules

Strikes and amends language relating to civil procedure in relation to dismissing an action in court.

General Remarks:

Rep. Daniel Sullivan, R-Tulsa, offered a floor substitute to HB 1958, by House Speaker Chris Benge, R-Tulsa. The bill requires a court to appoint an independent attorney in class actions, if a request for award of attorney fees is made, and directs that the independent attorney be awarded reasonable fees on an hourly basis out of the proceeds awarded to the class. The measure requires that, when using an expert to prove liability, an affidavit regarding consultation with an expert must be filed within 60 days of filing a civil action petition. It requires Oklahoma Uniform Jury Instructions applicable in civil cases to include an instruction notifying the jury that no part of an award for damages for personal injury or wrongful death is subject to federal or state income tax and that compensation for personal injury or wrongful death should not be increased in consideration of taxes. The bill requires juries to render general verdicts, unless the parties requested particular findings of fact. It modifies language related to dismissals. It allows actions to be dismissed by the plaintiff without court order by filing a notice of dismissal at any time before service by the adverse party of an answer or motion for summary judgment, whichever is first, or filing a stipulation for dismissal signed by all parties appearing in the action. It states that if a plaintiff files a notice of dismissal after discovery has commenced, the action will not be dismissed without prejudice without the consent of the defendant.

The bill states that no prejudgment interest can begin to accrue until 36 months after the suit resulting in the judgment was commenced. It allows parties to obtain a stay of enforcement of a judgment, decree or final order during the time in which an appeal may be commenced or while an appeal is pending in any court inside or outside of the state. It also prohibits bonds filed when seeking a stay of enforcement from exceeding \$25 million or \$1 million if the party posting the bond is an individual or business with 250 or fewer employees on the date of judgment. The measure exempts appeals of punitive damages from an appeal bond requirement. It also decreases from 180 to 120 days the time limit for service of process to defendants before the action may be dismissed. The bill modifies the definition of "frivolous" for purposes of a court's determination of whether a claim is frivolous. It requires a court to include a potential member in the class only if the potential member so requests by a specific date. The bill allows a party seeking to recover upon a claim, counterclaim, cross-claim or declaratory judgment to move for summary judgment 20 days after the action commenced or after service of a motion for summary judgment by the adverse party. It allows a defending party to move for summary judgment at any time. The bill also modifies language related to opinion testimony by lay witnesses and allows expert witnesses to offer expert testimony only with respect to the field in which he/she is qualified. It requires the court to hold a mandatory pretrial hearing, if requested by a party, to determine whether a witness qualifies as an expert.

The measure also directs courts, in interpreting the Oklahoma Consumer Protection Act, to be guided by policies of the Federal Trade Commission. It prescribes guidelines for calculation of actual damages and the burden of proof. The measure also states that in actions in which the present value of future awards is \$100,000 or more, the court must order that medical, health care or custodial

services awarded in an action be paid in whole or in part in periodic payments, rather than by a lump-sum payment. The measure removes a requirement that a defendant be jointly and severally liable for damages recoverable by the plaintiff if the percentage of responsibility attributed to the defendant is greater than 50 percent. If a plaintiff receives compensation for harm or injuries from an independent source, the bill requires that information be admitted as evidence and the amount of compensation deducted from the amount of damages the plaintiff recovers. The bill establishes a \$300,000 noneconomic damages cap for any action not arising out of contract, regardless of the number of parties against whom the action is brought or the number of actions brought with respect to personal injury. It directs the cap be adjusted annually based on positive increases in the Consumer Price Index. The cap could be lifted if a jury finds by clear and convincing evidence that the acts of the party causing damage were grossly negligent or committed intentionally and with malice. The cap would not apply to actions involving wrongful death. It requires plaintiffs seeking recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value or loss of inheritance to provide evidence of the loss after reduction for income tax payments or unpaid tax liability. The measure removes language that allows evidence of violations of child passenger restraint system requirements to be admitted as evidence in a civil action or proceeding for damages. It also extends immunity from liability to the use of necessary and reasonable force by a school district employee to control and discipline a student and actions taken in good faith by an employee for the out-of-school suspension of a student. The bill also modifies the calculation of prejudgment interest.

The bill also creates the Uniform Emergency Volunteer Health Practitioners Act, allowing the Department of Health to develop regulations for registered volunteer health practitioners who provide health or veterinary services for a host entity while an emergency declaration is in effect. The measure requires skilled nursing facilities participating in Medicaid to establish and maintain quality assessment and assurance committees and makes records of such committees confidential and privileged and not subject to discovery or subpoenas and persons associated with quality assessment and assurance committee records could not be required to testify. It prohibits statements of deficiencies or Minimum Data Set related documentation issued to a nursing facility from being admitted into evidence unless the determination is final. It also prohibits such data from being used to establish a standard of care or negligence. The measure creates a School Protection Act to allow teachers, principals and other school employees to take reasonable actions to maintain order and discipline. The bill states that anyone age 18 or older who acts with intent to falsely accuse an education employee of criminal activity would be guilty of a misdemeanor punishable by a fine of not more than \$2,000. It states that anyone between age 7 and 17 who makes such an accusation would be subject to community service or other court sanctions, at the discretion of the court. The measure states that the limitation for bringing an action for damages based in tort would be eight years from the date of the act or omission. The bill also makes peer review information private, confidential and privileged but allows a peer review body to provide relevant information to a state agency or board that licensed the professional under review. The bill modifies language related to immunity from civil

liability for volunteers, stating that being legally entitled to receive compensation for the service or undertaking performed shall not preclude a person from being considered a volunteer.

The measure creates a Common Sense Consumption Act, the intent of which is to prevent frivolous lawsuits against manufacturers, packers, distributors, carriers, holders, sellers, marketers or advertisers of food products that comply with statutory and regulatory requirements. It states a legislative finding that the unlawful use of firearms, rather than their lawful manufacture, distribution or sale, is the proximate cause of any injury arising from their unlawful use. The bill exempts from liability firearm manufacturers, distributors and sellers who lawfully manufacture, distribute or sell firearms in cases involving any injury suffered, including wrongful death and property damage, because of the use of a firearm by another. The measure repeals a section of law related to attorneys' fees in class action suits, Oklahoma Mandatory Seat Belt Use Act relating to inadmissibility of evidence in civil actions of failure to use seatbelt, sections relating to limits on noneconomic damages in medical liability actions and language related to catastrophic health emergencies.

The bill was brought to the calendar without a committee hearing. It was assigned to the House Judiciary Committee before session, but it was withdrawn and assigned direct to the House calendar on Feb. 24.

Last Action: 4- 3-09 S Dormant pursuant to the rules

[HB 1959](#)

[Benge](#)
[Anderson](#)

Creates a ballot title limiting amount that an attorney shall charge, demand, receive, or collect for services rendered.

General Remarks: HB 1959, by Benge, orders a legislative referendum prohibiting attorneys from charging, pursuant to a contingency fee arrangement, fees in excess of 33 percent of the first \$1 million recovered and 20 percent of any amount exceeding \$1 million of any civil judgment or any settlement. It also repeals language related to contingency fees for attorneys.

Like HB 1958, HB 1959 was assigned to committee before session - the House Rules Committee - and was withdrawn from committee and referred direct to calendar on Feb. 24.

The floor substitute by Benge replaces the substantive language with a shell bill that modifies language related to the 50 percent cap on contingency fees.

The floor substitute was adopted in a slim vote of 49 to 43. The bill passed 53 to 43.

Last Action: 4- 3-09 S Dormant pursuant to the rules

[HB 2079](#)

[Wesselhoft](#)
[Coates](#)

Act that shall be known as the "Crane Operators License and Safety Act" designed to promote job safety and to protect the life, limb and property of the crane operators.

Last Action: 3-13-09 H Dormant pursuant to the rules

[HB 2156](#)

[Jones](#)

Oklahoma shall recognize and enforce through the

		commissioner of labor, National Fire Protection standard on Fire Dept Occupational Safety and Health Program
		<i>Last Action:</i> 3-13-09 H Dormant pursuant to the rules
HB 2166	McCullough	Creates the Workers' Compensation Law; purposes are to pay timely temporary and permanent disability to all legitimately injured workers, improve workplace safety and encourage the return to work of injured workers
		<i>Last Action:</i> 2-27-09 H Dormant pursuant to the rules
SB 306	Leftwich Jordan	Requires municipalities to verify contractors' general liability insurance and workers' compensation insurance prior to issuing a residential building permit.
		<i>Last Action:</i> 4- 8-09 H Passed/Adopted (Vote: Y: 89/N: 11)
SB 402	Crain Enns	Lists requirements for testing and what qualifies as needing to be tested when alcohol is present or any other concentrated substance that may be intoxicating.
		<i>Last Action:</i> 4-10-09 H Dormant pursuant to the rules
SB 449	Corn Armes	Requires the Commissioner of the Oklahoma State Department of Labor to enforce certain provisions in the National Fire Protection standards.
		<i>Last Action:</i> 4-13-09 H Set on the House Floor Agenda
SB 481	Lamb Nelson	Extends tax credits to contractors building energy-efficient residential buildings to Jan. 1, 2010.
		<i>Last Action:</i> 4- 9-09 H Voted from committee - Do Pass as amended House Appropriations and Budget
SB 536	Coates Liebmann	Designates act as "The Fair Pay for Construction Act".
		<i>Last Action:</i> 3-30-09 H Voted from committee - Do Pass as amended House A&B Gen. Government & Transportation
SB 573	Coates Sullivan	Allows release of retainage bonds related to the Fair Pay for Construction Act.
		<i>Last Action:</i> 4-10-09 H Dormant pursuant to the rules
SB 576	Coates Thompson	Modifies the Construction Industries Board Act to require the regulation of plumbing, electrical and mechanical trades and of building and construction inspectors.
		<i>Last Action:</i> 3-25-09 H Reported from committee - As Amended House Economic Development and Financial Srv
SB 665	Coates Jordan	Creates the Oklahoma Online Construction Registry Act by creating and maintaining an online registry for full disclosure to property owners, contractors and other interested parties.
		<i>Last Action:</i> 4-13-09 H Set on the House Floor Agenda
SB 817	Brogdon Faught	Clarifies language relating to statutes and reports; requires legislative approval.
		<i>General Remarks:</i> Forces Legislature to approve rules before they take effect
		<i>Last Action:</i> 4- 1-09 H Reported from committee - As Substituted House Administrative Rules & Agency Oversight
SB 879	Brogdon Wesselhoft	Sets income tax rate of 3.423 percent after 2009.

General Remarks: Flat tax

Last Action: 3-13-09 S Dormant pursuant to the rules

[SB 1012](#)

[Coates](#)
[Sullivan](#)

Creates the Private Construction Progress Payment Act by requiring owner to make progress payments on all private construction contracts of a duration of more than 60 days.

Last Action: 3-18-09 H Referred to House Committee on House Economic Development and Financial Srv

[SB 1182](#)

[Brogdon](#)
[Jordan](#)

Creates the Oklahoma Uniform Building Code Commission within the Oklahoma Department of Commerce to build communication between various adoption authorities and between those authorities and the industry.

General Remarks: Construction Code Alliance request bill to set up a statewide code process

Last Action: 4- 1-09 H Reported from committee - As Amended House Economic Development and Financial Srv

[SB 1237](#)

[Coffee](#)

Relates to workers' compensation by updating statutory reference on penalties.

Last Action: 2-20-09 S Dormant pursuant to the rules