



MAJOR LEGISLATION OF INTEREST TO LAWYERS †

**111th Congress, First Session
(Jan. 4, 2009 - Dec. 24, 2009)**

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- * ABA testified or submitted statement or letter to Congress or federal agency.
- ◆ ABA legislative and governmental priority during the First Session of the 111th Congress, including issues encompassed in broad priorities.
- † This chart includes issues on which the ABA House of Delegates or Board of Governors has approved association policy, unless otherwise noted.



Subject	Description and Status	ABA Position
<h2>Administrative Law</h2>		
<p>*Administrative Conference of the United States (ACUS)</p>	<p>P.L. 111-8, omnibus fiscal year 2009 appropriations legislation enacted 3/11/09, and P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, both included \$1.5 million for the agency. ACUS advised federal agencies on administrative procedural reform for 25 years before being terminated in 1995 for budget reasons. Under P.L. 111-8, ACUS is expected to use 50 percent of fiscal year 2009 carryover balances to fund fiscal year 2010 operating expenses, and funds will remain available until 9/30/11. The House Judiciary Committee hosted a roundtable discussion in April 2009 to discuss the future of ACUS. The Senate confirmed the nomination of Paul R. Verkuil to be ACUS chairman on 12/10/09.</p>	<p><i>Supports reauthorization and funding for ACUS.</i></p>
<h2>Alternative Dispute Resolution</h2>		
<p>*Ombudsman – Patents Pilot Program</p>	<p>On 10/27/09, the U.S. Patent and Trademark Office (USPTO) announced and solicited comments on establishing a Patents Ombudsman Pilot Program to provide patent applicants, attorneys and agents with assistance with application-specific issues.</p>	<p><i>Supports USPTO's effort to create an ombudsman pilot program and maintains that ombuds offices should comply with the ABA Standards for the Establishment and Operation of Ombuds Offices, which emphasize independence, impartiality and confidentiality.</i></p>
<h2>Antitrust Law</h2>		
<p>*Leegin Decision/Resale Price Maintenance</p>	<p>S. 148 and H.R. 3190 would effectively overturn the 2007 Supreme Court decision in <i>Leegin Creative Leather Products Inc. v. PSKS Inc.</i>, 551 U.S. 877 (2007), which overruled a 96-year-old precedent that vertical agreements between a supplier and its distributor or retailer on the minimum resale prices for the supplier's products are per se violations of Section 1 of the Sherman Act. A Senate Judiciary subcommittee held a hearing on S. 148. The House Judiciary Committee approved H.R. 3190.</p>	<p><i>Supports the Leegin decision and opposes legislation that would effectively overturn the decision.</i></p>



Subject	Description and Status	ABA Position
◆*McCarran-Ferguson Act	<p>S. 1681 and H.R. 3596 would partially repeal the insurance industry's antitrust exemption under the McCarran-Ferguson Act for health insurers and medical insurance issuers. The House Judiciary Committee amended H.R. 3596 to include a limited number of "safe harbor" exceptions for certain pro-competitive conduct and approved the bill. H.R. 3952, the House-passed version of comprehensive health care reform, included the provisions as approved by the House Judiciary Committee. The Senate Judiciary Committee held a hearing on S. 1681, but McCarran-Ferguson provisions were not included in H.R. 3590, the Senate-passed version of comprehensive health care reform. Negotiations began in an effort to resolve differences between the two health care reform bills.</p>	<p><i>Supports repeal of the McCarran-Ferguson exemption and replacing it with a series of safe harbors to make clear that certain types of conduct by insurers are pro-competitive and beneficial to the American economy. Supports H.R. 3596, as approved by the House Judiciary Committee and incorporated into H.R. 3952, the House-passed health care reform bill.</i></p>

Business Law

◆* Attorney-Client Privilege/Employee Legal Rights – Government Waiver Policies

S. 445 and H.R. 4326 would prohibit any federal agency from pressuring companies to waive their attorney-client privilege, work product or employee legal protections, or to consider any voluntary waiver by companies when assessing whether companies are cooperating during investigations of corporate wrongdoing. S. 445 was referred to the Senate Judiciary Committee. H.R. 4326 was referred to the House Judiciary Committee.

Supports legislation and the adoption of a presidential executive order applying the basic reforms instituted in 2008 by the Justice Department to all federal agencies to preserve attorney-client privilege, work product and employee legal protections.

◆*Attorney Regulation/Consumer Financial Protection Agency (CFPA)

H.R. 3126, as introduced and approved by the House Judiciary Committee, would have created a new CFPA with expanded powers to regulate lawyers who perform any "financial activity" as defined in the bill. The provisions of H.R. 3126 were amended to exempt lawyers engaged in the practice of law from these new regulatory powers of the agency before being passed by the House as part of H.R. 4173, a comprehensive financial regulatory reform package. The Senate Banking, Housing and Urban Affairs Committee began marking up a draft version of its financial regulatory reform package, which would subject all persons engaged in a "financial activity" to CFPA oversight, including lawyers.

Supports language exempting lawyers engaged in the practice of law from the expanded regulatory powers of the CFPA.



Subject	Description and Status	ABA Position
◆*Bankruptcy – Attorney Liability	P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), includes debtor attorney liability provisions requiring the attorneys to: certify the accuracy of the debtor’s schedule of assets and liabilities under penalty of harsh court sanctions; certify the ability of the debtor to make future payments under reaffirmation agreements; and identify and advertise themselves as “debt relief agencies” subject to a host of intrusive regulations that interfere with the confidential attorney-client relationship. No legislation was introduced to address these issues.	<i>Opposes the attorney liability provisions in BAPCPA and has developed draft legislation to repeal the provisions.</i>
*Federal Acquisition Regulations (FAR)	Early versions of H.R. 1, an economic stimulus package, included a provision that would have required state and local projects supported by funds authorized by the stimulus legislation to comply with federal contracting requirements under FAR, which generally governs federal agency contract awards to private sector contractors. Conferees considering H.R. 1 dropped the provision when alerted by the ABA that state and local governments have little or no experience conducting procurements consistent with the FAR requirements, and the provision was not included in the final version of the legislation, P.L. 111-5, enacted 2/17/09.	<i>Opposed inclusion of the FAR provisions in the economic stimulus package.</i>
*Financial Reform	H.R. 4173 would provide financial regulatory reform, protect consumers and investors, consolidate banking regulatory agencies, protect against systemic risk, and regulate the over-the-counter derivatives market. The House passed H.R. 4173. The Senate Banking, Housing and Urban Affairs Committee began marking up a draft financial regulatory reform package. (See related Attorney Regulation/CFPA entry on page 3.)	<i>Supports eight reform principles as a proposed framework for improving the regulation of U.S. financial institutions and markets.</i>
◆*Incorporation Transparency	S. 569, seeking to ensure that persons who form corporations disclose the beneficial owners of those corporations, would federalize state incorporation practices; create a new class of financial institutions know as formation agents, likely to include lawyers, that would be subject to enhanced anti-money-laundering requirements; and potentially impose suspicious activity reporting (SAR) requirements on the legal profession. The Senate Homeland Security and Governmental Affairs Committee held hearings on S. 569. There is no comparable House legislation.	<i>Opposes.</i>



Subject	Description and Status	ABA Position
♦*Red Flags Rule	The Federal Trade Commission (FTC) established a “Red Flags Rule” under the Fair and Accurate Credit Transactions Act of 2003 (FACTA) that requires creditors to develop programs identifying, detecting and responding to the warning signs of identity theft. The FTC interpreted a broad definition of “creditor” to include attorneys. At the ABA’s request, the enforcement date was postponed twice for three months, until 8/1/09 and 11/1/09. The ABA filed suit against the FTC on 8/27/09, and the judge granted the ABA’s motion for summary judgment on 10/29/09 against the FTC’s applying the rule to lawyers. On 10/30/09, the FTC delayed enforcement of the rule for all financial institutions and creditors until 6/1/10.	<i>Opposes application of the FTC “Red Flags Rule” to lawyers.</i>
Children/Families		
Adoption Assistance Appropriations	P.L. 111- 117 (H.R. 3288), fiscal year 2010 consolidated appropriations legislation enacted 12/16/09, includes \$39.5 million for adoption incentives, \$12.953 million for adoption awareness, \$26.3 million for adoption opportunities, and \$20 million for innovative approaches for foster care.	<i>Supports efforts to encourage adoption.</i>
*Child Abuse Prevention and Treatment Act (CAPTA)	P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$26.535 million for child abuse state grants, \$29 million for child abuse discretionary activities, and \$41.779 million for community-based child abuse prevention.	<i>Supports.</i>
*Domestic Violence – Legal Assistance Program	P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$41 million for the Legal Assistance for Victims Grant Program, which awards grants for funding and training attorneys to represent survivors of domestic violence, dating violence, sexual assault and stalking in a wide range of increasingly complex legal matters, and \$3 million for court training and improvement.	<i>Supports increased funding and establishment of a National Domestic Violence Volunteer Attorney Network.</i>
*Every Child Deserves a Family Act	H.R. 3827 would promote permanency for children waiting in foster care by removing sexual orientation, gender identification and marital status as bars to child placement decisions when the placement is in the best interest of the child. H.R. 3827 was referred to the House Ways and Means Committee. There is no comparable Senate legislation.	<i>Supports.</i>
*Fostering Connections to Success and Increasing Adoptions Act	A House Ways and Means subcommittee held a series of oversight hearings on implementation of P.L. 110-351, the Fostering Connections to Success and Increasing Adoptions Act, the first major overhaul of the foster care system since 1997.	<i>Supports the act and recommends attention be focused on provisions ensuring continuity in the education of children in the foster care system.</i>



Subject	Description and Status	ABA Position
Promoting Safe and Stable Families (PSSF)	P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$408 million for PSSF.	<i>Supports.</i>
*Residential Treatment of Youth	H.R. 911 would require residential programs for teens to uphold certain standards and would allocate resources for enforcement to prevent child abuse and neglect in facilities for teens. The House passed H.R. 911. There is no comparable Senate legislation.	<i>Supports.</i>
Civil Rights/Constitutional Law		
◆*Civil Rights Tax Relief	S. 1360 and H.R. 3035 would amend the Internal Revenue Code of 1986 to exclude from gross income non-economic damages received as judgments on settlements of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims. S. 1360 was referred to the Senate Finance Committee. H.R. 3035 was referred to the House Ways and Means Committee.	<i>Supports.</i>
*Discrimination – Sexual Orientation/ Gender Identity	S. 1584 and H.R. 3017 would make employment discrimination based on sexual orientation or gender identity illegal in federal, state and local governments as well as in private companies with more than 15 employees. The Senate Health, Education, Labor and Pensions Committee held a hearing on S. 1584. The House Education and Labor Committee held a hearing on H.R. 3017.	<i>Supports.</i>
◆*Fair Pay Restoration – Ledbetter Decision	P.L. 111-2 (S. 181), enacted 1/20/09, overruled the Supreme Court decision in <i>Ledbetter v. Goodyear Tire and Rubber Co.</i> , 550 U.S. 618 (2007), by clarifying that the statute of limitations for claims of pay discrimination runs from each paycheck reflecting the improper disparity, no matter how long ago the original act of alleged discrimination occurred.	<i>Supports.</i>
Native Hawaiian Self-Determination	S. 1011 and H.R. 2314 would allow Native Hawaiians to choose a political framework that could be recognized by the federal government and would support an indigenous governing entity for Native Hawaiians within the state of Hawaii. The Senate Indian Affairs Committee held hearings and approved S. 1011. The House Natural Resources Committee held hearings and approved H.R. 2314.	<i>Supports.</i>



Subject	Description and Status	ABA Position
*Reporters' Shield	S. 448 and H.R. 985 would codify a federal shield law for journalists to protect them from federally compelled disclosure of confidential sources of information under specified conditions. The House passed H.R. 985. The Senate Judiciary Committee approved S. 448 after amending the bill to reflect a bipartisan compromise reached by key senators and the White House.	<i>Supports the compromise proposal.</i>
*Tribal Justice	S. 797 and H.R. 1924 would reauthorize the Indian Tribal Justice Technical and Legal Assistance Act of 2000 and the Indian Tribal Justice Act of 1993, which provide funding through the Justice Department and the Interior Department for criminal and legal assistance and the development and continuing operation of tribal justice systems. The Senate Indian Affairs Committee approved S. 797. A House Judiciary subcommittee held a hearing on H.R. 1924.	<i>Supports.</i>
Courts/Judiciary		
*Administrative Law Judges (ALJs)	On 12/24/09, the president issued an executive order providing a 1.5 percent pay increase and locality pay adjustments for ALJs for 2010. H.R. 2850 would provide enhanced retirement benefits for ALJs. H.R. 2850 was referred to the House Oversight and Government Reform Committee. There is no comparable Senate legislation	<i>Supports fair and adequate compensation, including the same increase in basic pay as provided to the General Schedule in 2010, locality payments, and enhanced retirement benefits for ALJs.</i>
Cameras in the Courtroom	S. 657 and H.R. 3054 would authorize presiding judges to permit media coverage of federal appellate and district court proceedings and would direct the U.S. Judicial Conference to promulgate advisory and mandatory guidelines with regard to media coverage. S. 446 would permit the televising of Supreme Court proceedings. S. 446 and S. 657 were referred to the Senate Judiciary Committee. H.R. 3054 was referred to the House Judiciary Committee.	<i>Supports continuation of the debate on televising federal court proceedings and urges the U.S. Judicial Conference to authorize further experimentation with electronic media coverage.</i>
◆* Equal Access to Justice for the Military	S. 357 and H.R. 569 would eliminate an inequity in current law by permitting court-martialed servicemembers who face dismissal, discharge or lengthy confinement to petition for review by U.S. Supreme Court even if denied review by the Court of Appeals for the Armed Forces. S. 357 was referred to the Senate Judiciary Committee. A House Judiciary subcommittee held hearings and approved H.R. 569.	<i>Supports.</i>



Subject	Description and Status	ABA Position
Federal Rules – Statutory Deadlines	P.L. 111-16 (H.R. 1626), enacted 5/7/09, simplifies provisions to provide predictability and uniformity to the current process of calculating court deadlines.	<i>No position on specific legislation, but supports courts improvement efforts.</i>
◆Inspector General – Judiciary	S. 220 and H.R. 486 would establish a statutory Office of Inspector General for the judiciary for the purpose of conducting investigations of matters pertaining to the judicial branch, including possible judicial misconduct. S. 220 also would provide for investigations by the inspector general of alleged judicial misconduct by justices of the U.S. Supreme Court. S. 220 was referred to the Senate Judiciary Committee. H.R. 486 was referred to the House Judiciary Committee.	<i>Opposes any congressional proposal that would create an Office of Inspector General for the judiciary with broad investigative powers and close ties to Congress.</i>
◆*Judgeships	S. 1653 and H.R. 3662 would authorize a total of 69 new permanent and temporary federal judgeships (12 for appellate courts and 57 for district courts). S. 1653 was referred to the Senate Judiciary Committee. H.R. 3662 was referred to the House Judiciary Committee.	<i>Supports additional judgeships to meet the growing caseloads in the federal courts.</i>
◆*Judicial Compensation	P.L. 111-8 (H.R. 1105), omnibus fiscal year 2009 appropriations legislation enacted 3/11/09, allowed federal judges to receive a 2.8 percent cost-of-living adjustment (COLA) for 2009, retroactive to 1/1/09, by waiving Section 140 of P.L. 97-92, which stipulates that no judicial COLA can take effect without specific authorization by Congress. Neither judges nor congressional members will receive a COLA in 2010. S. 2725 would repeal Section 140, link judicial COLAs to General Schedule (GS) COLAs, and authorize judges to receive the national average locality adjustment for GS employees as part of their yearly COLA. S. 2725 was referred to the Senate Judiciary Committee. There is no comparable House legislation.	<i>Supports legislation to substantially increase the compensation of federal judges, to repeal Section 140, to ensure regular COLAs, and to provide for periodic review of judicial salary levels.</i>
◆*Judicial Selection/ Vacancies	President Obama invited the ABA Standing Committee on the Federal Judiciary back into the pre-nomination vetting process for all federal judicial nominees to the lower courts. During the Bush administration, the ABA committee conducted evaluations of nominees on a post-nomination basis. During the First Session of the 111 th Congress, the Senate confirmed Circuit Judge Sonia Sotomayor to be Associate Justice of the Supreme Court. There were 12 nominations and three confirmations to the courts of appeals and 21 nominations and nine confirmations to the district courts. Two district court nominations were returned to the president at the end of the session. As of 1/20/10, there were 21 court of appeals vacancies and 81 district court vacancies, for a total of 102 vacancies.	<i>Supports prompt filling of judicial vacancies and urges selection of individuals of racial and ethnic diversity at all levels of the federal bench. Supports pre-nomination consultation between the president and the Senate and the use of bipartisan advisory nominating commissions.</i>



Subject	Description and Status	ABA Position
Pleadings Standard	S. 1504 and H.R. 4115 seek to nullify the effect of the Supreme Court decisions in <i>Bell Atlantic v. Twombly</i> , 550 U.S. 544 (2007) and <i>Ashcroft v. Iqbal</i> , (No. 07-1015, May 2009), which some claim establish a tough, new standard for assessing the adequacy of a complaint filed to initiate a federal civil action. The bills would direct federal courts to assess the sufficiency of a complaint under Rule 12(b)(6), (c) or (e) of the Federal Rules of Civil Procedure using the standard in existence prior to 2007. S. 1504 was referred to the Senate Judiciary Committee, which held a hearing on the issue. A House Judiciary subcommittee held hearings on the issue and on H.R. 4115.	<i>No position on whether the decisions establish a new standard rather than interpret the old one. Supports adherence to the process established by Congress under the Rules Enabling Act to alter the federal rules of procedure. ABA president is appointing a task force to study the issue.</i>
◆*Sunshine in Litigation Act	S. 537 and H.R. 1508 would circumvent the Rules Enabling Act to restrict the authority of the federal courts regarding protective orders under Rule 26(c) of the Federal Rules of Civil Procedure. A House Judiciary subcommittee held a hearing on H.R. 1508. S. 537 was referred to the Senate Judiciary Committee.	<i>Opposes S. 537 and H.R. 1508 because they would circumvent the Rules Enabling Act and unnecessarily and unwisely restrict the courts' authority under Rule 26(c).</i>
Criminal Law		
*Alternatives to Incarceration	The U.S. Sentencing Commission approved the issue of alternatives to incarceration as one of its priorities for 2009. The Justice Department initiated a broad review of federal sentencing and correction policy in April 2009 and is expected to issue comprehensive policy recommendations in 2010.	<i>Supports broad expansion of alternatives to incarceration to address the exploding U.S. prison population and the fact that current policies result in lengthy prison sentences for a large range of non-violent offenses.</i>



Subject	Description and Status	ABA Position
*Death Penalty Representation	H.R. 3986 would broaden federal habeas corpus review of death penalty appeals. A House Judiciary subcommittee held a hearing on the impact of federal habeas corpus limitations on death penalty appeals and on attorney representation in death penalty appeals. H.R. 3986 was referred to the House Judiciary Committee. There is no comparable Senate legislation. The Department of Justice issued a request for comments on a final rule issued in December 2008 to implement certification procedures for states seeking to qualify for expedited federal habeas corpus review procedures in capital cases provided under Section 507 of the USA PATRIOT Improvement and Reauthorization Act of 2005.	<i>Opposes efforts to restrict access to the federal courts through habeas corpus by persons convicted of state criminal offenses. Has developed the ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases. Submitted comments to the DOJ expressing concerns about the final rule on certification procedures.</i>
*Felony Voting Disenfranchisement	S. 1516, H.R. 59, H.R. 3335 and H.R. 3576 would secure the federal voting rights of persons who have been released from incarceration. S. 1516 was referred to the Senate Judiciary Committee. The House bills were referred to the House Judiciary Committee.	<i>Supports.</i>
*Gang Violence Prevention/Youth Promise Act	S. 435 and H.R. 1064 would support community-based efforts to prevent youth from entering the justice system through implementation of evidence-based strategies proven to reduce youth violence and delinquency. The House Judiciary Committee approved H.R. 1064. S. 435 was referred to the Senate Judiciary Committee.	<i>Supports.</i>
*Gun Violence—D.C. Gun Laws	S. 160, a bill to provide the District of Columbia with full voting representation in the House, was amended by the Senate to include language to repeal the District's ban on semi-automatic weapons, eliminate the city's registration for most guns, and drop criminal penalties for possessing an unregistered firearm in the District. The Senate passed the amended version of S. 160. The Senate's actions stalled H.R. 157, the House version of the D.C. voting rights bill approved by the House Judiciary Committee that does not include the gun-related provisions.	<i>Supports stronger efforts to implement and enforce existing gun control laws at all levels of government. Opposes repeal of the ban on semi-automatic weapons.</i>
*Hate Crimes	P.L. 111-84 (H.R. 2647), defense authorization legislation enacted 10/28/09, includes provisions broadening federal hate crimes laws to cover crimes based on the victim's gender, sexual orientation or disability. The new law includes a six-month mandatory minimum sentencing provision in the case of assault resulting in bodily injury against members of the Armed Forces on account of their status as servicemembers.	<i>Supports hate crimes legislation, but opposes the mandatory minimum sentence provision in the new law.</i>



Subject	Description and Status	ABA Position
◆*Indigent Defense Funding	<p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$977.7 million for the federal judiciary's defender services program. This amount will increase the hourly compensation level for panel attorneys in non-capital cases from \$110 to \$125 and the capital panel attorney hourly rate from \$175 to \$178. A House Judiciary subcommittee held a hearing on the crisis that states are facing in providing legal representation to indigent defendants in criminal cases. The Justice Department will sponsor a national conference in February 2010 on indigent defense issues.</p>	<p><i>Supports increased federal funding for indigent defense at the federal and state levels.</i></p>
◆* Juvenile Justice	<p>S. 678 would reauthorize and improve the Juvenile Justice and Delinquency Prevention Act by focusing on strengthening the four core requirements of the act, improving conditions of confinement for juveniles, and expanding the role of the Office of Juvenile Justice and Delinquency Prevention in providing technical assistance and training to states. The Senate Judiciary Committee approved S. 678. There is no comparable House legislation.</p>	<p><i>Supports.</i></p>
◆*Mandatory Minimum Sentencing	<p>A House Judiciary subcommittee held a hearing on over-criminalization of conduct and over-federalization of criminal law, including the topic of mandatory minimum sentencing. P.L. 111-84 (H.R. 2647), defense authorization legislation enacted 10/28/09, includes a six-month mandatory minimum sentencing provision in the case of assault resulting in bodily injury against members of the Armed Forces on account of their status as a servicemembers.</p>	<p><i>Opposes mandatory minimum sentences.</i></p>
◆National Criminal Justice Commission	<p>S. 714 would establish a National Criminal Justice Commission to conduct a comprehensive review for the first time in 40 years of federal, state and local criminal justice systems in the United States and propose recommendations for legislative reform. A Senate Judiciary subcommittee held a hearing on S. 714. There is no comparable House legislation.</p>	<p><i>Supports.</i></p>
*Prison Phone System Contracting Reform	<p>H.R. 1133 would amend the Federal Communications Act of 1934 to require the Federal Communications Commission (FCC) to prescribe rules regulating inmate telephone service rates that would assure that there is a reasonable opportunity for prison and jail inmates to maintain telephonic communication with the free community and that telephone services in the correctional setting are offered with an appropriate range of options at the lowest possible rates. A House Energy and Commerce subcommittee held a hearing on the bill. The FCC issued a request for comments on issues related to prisoner telephone services. There is no comparable Senate legislation.</p>	<p><i>Supports the legislation and encourages the FCC to establish a comprehensive fair and final resolution of issues related to prisoner telephone services.</i></p>



Subject	Description and Status	ABA Position
*Racial Disparities in the Justice System	S. 495 and H.R. 1412 would establish a five-year pilot program in 10 federal districts, under the supervision of the U.S. attorney general, to establish advisory groups to study and determine the extent of racial and ethnic disparity in the various stages of the criminal justice system, make reports on the results of their findings, and make specific recommendations to help eliminate racial and ethnic discrimination and unjustified racial and ethnic disparities. S. 495 was referred to the Senate Judiciary Committee. H.R. 1412 was referred to the House Judiciary Committee.	<i>Supports.</i>
*Racial Profiling	S. 1498 and H.R. 3617, federal highway funding legislation, include provisions to extend authorization of appropriations for numerous programs, including a grant program established in 2005 for states that have enacted and are enforcing laws prohibiting the use of racial profiling in the enforcement of state laws regulating the use of federal-aid highways and are maintaining public records in this area. The Senate Environment and Public Works Committee approved S. 1498. The House passed H.R. 3617.	<i>Supports.</i>
*Recidivism Reduction	H.R. 2829 would ensure prompt access to supplemental security income, Social Security disability and Medicaid benefits for persons released from prison. The bill was referred to the House Ways and Means Committee and the House Energy and Commerce Committee. There is no comparable Senate legislation.	<i>Supports.</i>
◆*Second Chance Act	P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$100 million for programs authorized by the Second Chance Act (P.L. 110-199), which provides grants to states and localities so they can provide coordinated assistance to help prepare inmates and ex-offenders to successfully return to their communities.	<i>Supports.</i>
◆*Sentencing Disparities – Cocaine	S. 1789 and H.R. 3245 would eliminate the 100-1 disparity between federal sentences for crack versus powder cocaine offenses. S. 1798 was referred to the Senate Judiciary Committee. A Senate Judiciary subcommittee held a hearing on the cocaine sentencing disparity. A House Judiciary subcommittee held hearings on the sentencing disparity, and the House Judiciary Committee approved H.R. 3245.	<i>Supports eliminating the disparity in cocaine sentencing.</i>



Subject	Description and Status	ABA Position
<h2>Elder Law</h2>		
*Elder Justice	<p>S. 795 and H.R. 2006, known as the Elder Justice Act, would amend the Social Security Act to create an infrastructure and provide federal resources needed to develop and implement a nationally coordinated public health and law enforcement strategy in collaboration with the states to address elder abuse, neglect and exploitation. S. 1821 and H.R. 448 would establish specialized elder abuse prosecution and research programs and activities to aid victims of elder abuse, provide training to prosecutors and other law enforcement officials related to elder abuse and protection and to establish programs that provide for emergency crisis response teams to combat elder abuse. The House passed H.R. 448. H.R. 3590, comprehensive health care reform passed by the Senate, includes the provisions of S. 795. The House-passed version of health care reform, H.R. 3962, does not include elder justice provisions. Negotiations began in an effort to resolve differences between the two health care reform bills.</p>	<p><i>Supports enactment of comprehensive legislation to improve the response of federal, state and local governments and of the criminal justice systems to address elder abuse, neglect and exploitation. Supports inclusion of elder justice and elder abuse victims provisions in the comprehensive health care reform legislation.</i></p>
*Nursing Home Arbitration	<p>S. 512 and H.R. 1237 would amend Chapter 1 of the Federal Arbitration Act (FAA) to provide that a pre-dispute arbitration agreement between a long-term care facility and a resident (or anyone acting on the resident's behalf) shall not be valid or specifically enforceable. S. 512 was referred to the Senate Judiciary Committee. H.R. 1237 was referred to the House Judiciary Committee.</p>	<p><i>Supports the goals of the legislation, but recommends that the provisions be enacted as a new Chapter 4 of the FAA or as a separate statute outside the FAA.</i></p>
◆*Social Security Administration (SSA) – Disability Determination Process	<p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$11.4 billion for Limitation on Administrative Expenses for the SSA and also designates that from this amount not less than \$273 million may be used for conducting continuing disability reviews and redeterminations of eligibility under SSA's disability programs. An additional \$485 million is provided for these continuing disability reviews and redeterminations of eligibility through a discretionary cap adjustment.</p>	<p><i>Supports intensive efforts of the SSA commissioner to reduce the backlog in SSA disability claims. Supports the increased SSA administrative funding to reduce the backlog.</i></p>



Subject	Description and Status	ABA Position
<h2>Election Law</h2>		
◆*D.C. Voting Rights	S. 160 and H.R. 157 would establish the District of Columbia as a congressional district for representation in the House and also would provide a new House seat for Utah, the state that would be next in line, according to the last Census, to receive an additional seat. The Senate passed S. 160 after attaching an amendment to repeal the District's ban on semiautomatic weapons, eliminate the city's registration for most guns, and drop criminal penalties for possessing an unregistered firearm in the District. The House Judiciary Committee approved H.R. 157, but further action was stalled in light of the Senate gun amendment.	<i>Supports securing voting representation in Congress for citizens of the District of Columbia.</i>
<h2>Environmental Law</h2>		
Global Climate Change	Numerous bills were introduced to address the means and mechanisms for a federal response to climate change issues, including H.R. 2454, S. 1462 and S. 1733, which seek to create clean energy jobs, promote clean energy technology, and reduce greenhouse emissions. The House passed H.R. 2454. The Senate Energy and Natural Resources Committee approved S. 1462. The Senate Environment and Public Works Committee approved S. 1733.	<i>Supports enactment of appropriate climate change legislation, and urges the U.S. government to take a leadership role in addressing the issue of climate change through legal, policy, financial and educational mechanisms and to engage in active international discussions to address climate change.</i>
Oceans and Fisheries Reform	H.R. 21, broad ocean governance legislation, would establish a formal national oceans policy, reorganize the National Oceanic and Atmospheric Administration (NOAA) to formally establish it as part of the Department of Commerce and define its mission, and establish a National Oceans Advisor, a Committee on Ocean Policy, a Council of Advisors on Oceans Policy, and a coordinated management regime for activities in federal waters. H.R. 21 was referred to the House Science and Technology Committee and the House Natural Resources Committee, where a subcommittee held a hearing on the bill. There is no comparable Senate legislation.	<i>Urges the federal government to improve federal regulation of the nation's oceans, coastal resources and fisheries, and to enhance the U.S. role in international initiatives to protect the world's marine ecosystems and resources.</i>



Subject	Description and Status	ABA Position
<h2>Health Law</h2>		
*Advance Directives/ End-of-life Counseling	<p>S. 1150 and H.R. 2911 seek to improve end-of-life care by offering strategies to improve consumer and provider education, establishing advance care planning as a basic element of patient care, ensuring electronic access to advance directives, strengthening hospice care, and translating patients' wishes into viable and portable medical orders as exemplified by Physicians' Orders for Life-Sustaining Treatment (POLSTs). S. 1150 was referred to the Senate Finance Committee. H.R. 2911 was referred to the House Judiciary Committee. H.R. 3962, comprehensive health care legislation passed by the House, includes a provision to provide Medicare coverage for a voluntary consultation between enrollees and practitioners to discuss advance care planning issues every five years or more frequently if there are changes in a patient's health. The Senate version of health care reform does not include the provisions. Negotiations began in an effort to resolve the differences between the two health care reform bills.</p>	<p><i>Supports the proposed legislation and the provision in H.R. 3962.</i></p>
*AIDS Funding	<p>P.L. 111-87 (S. 1793), enacted 10/30/09, reauthorizes the Ryan White Comprehensive AIDS Resources Emergency Act through fiscal year 2013. P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$2.29 billion for the Ryan White program and 5.8 billion for international programs to fight HIV/AIDS and related diseases.</p>	<p><i>Supports funding for HIV/AIDS prevention efforts and the global strategy of the World Health Organization for the worldwide prevention and control of AIDS.</i></p>
Biomedical Research/ Stem Cell Research	<p>In March 2009, the president issued an executive order revoking previous executive orders that had limited federal funding of research involving human embryonic stem cells. He also instructed the director of the National Institutes of Health (NIH) to issue guidelines for the support and conduct of responsible, scientifically worthy human stem cell research, including human embryonic stem cell research, to the extent permitted by law. NIH issued the guidelines in July, and announced the first 13 human embryonic stem cell lines for use in NIH-funded research under the new guidelines in December.</p>	<p><i>Supports continuation of biomedical research involving embryonic stem cells that is undertaken with accepted scientific research safeguards against misuse.</i></p>
*Children's Health Insurance	<p>P.L. 111-3 (H.R. 2), enacted 2/4/09, extends and improves the State Children's Health Insurance Program (SCHIP), a program jointly financed by the federal and state governments to provide health insurance to uninsured low-income children.</p>	<p><i>Supports.</i></p>



Subject	Description and Status	ABA Position
◆*Comprehensive Health Care Reform	House passage of a comprehensive health care reform package, H.R. 3962, was followed by Senate passage of its version, H.R. 3590. Both packages seek to increase access to health care for all Americans regardless of income. Negotiations began in an effort to resolve differences between the two bills, which both contain numerous provisions of interest to the ABA (see related entries).	<i>Supports legislation that would provide access to quality health care for every American regardless of the person's income.</i>
*Domestic Violence – Health Insurance Discrimination	The Senate Health, Education, Labor and Pensions Committee held hearing on women's health care coverage issues. Both H.R. 3590, Senate-passed comprehensive health care reform legislation, and H.R. 2962, the House-passed version of health care reform, include provisions prohibiting discrimination on insurability for conditions arising out of acts of domestic violence. Negotiations began in an effort to resolve differences between the two health care reform bills.	<i>Supports enactment of legislation to provide that no person or entity can deny insurance benefits solely on the basis of the applicant's status as a victim of domestic violence.</i>
*HIV/AIDS Preventative Syringe Exchange Programs	P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, removes a federal funding ban to allow federal funds to be used on syringe-exchange programs designed to stop the spread of diseases among intravenous drug users, except in locations "that local public health or law enforcement agencies determine to be inappropriate."	<i>Supports removal of the federal funding ban for preventative syringe exchange programs.</i>
Indian Health Care Improvement	S. 1790 and H.R. 2708 would extend and amend the Indian Health Care Improvement Act to revise requirements for health care program and services for Indians, Indian tribes, tribal organizations, and urban Indian organizations. The Senate Indian Affairs Committee held a hearing on S. 1790 and approved the bill. The House Natural Resources Committee and a House Energy and Commerce Committee held hearings on H.R. 2708.	<i>Supports.</i>
*International Family Planning	On 1/23/09, the president rescinded the "Mexico City policy," which banned the receipt of U.S. family planning assistance funds by foreign nongovernmental organizations that use their own funds to provide abortion-related services, including counseling and referrals, or to advocate or conduct public education campaigns relating to abortion. The Senate Appropriations Committee attached an amendment to statutorily repeal the policy to S. 1434, fiscal year 2010 State Department appropriations legislation. The repeal provision was not included in the final consolidated fiscal year 2010 appropriations legislation, P.L. 111-117 (H.R. 3288), enacted 12/16/09.	<i>Supports repeal of the "Mexico City policy."</i>



Subject	Description and Status	ABA Position
<p>◆*Mental Health Parity and Addiction Equity Act</p>	<p>Both Senate-passed and House-passed versions of comprehensive health care reform (H.R. 3590 and H.R. 3962) include provisions requiring qualified health plans to provide the same level of treatment benefits to mental health and substance-abuse related disorders as they do to other medically necessary care. The provisions are similar to those of P.L. 110-343, the Mental Health Parity and Addiction Equity Act of 2008. Negotiations began in an effort to resolve differences between the two health care reform bills.</p>	<p><i>Supports provisions for parity of substance abuse disorder benefits in all health plans. Submitted comments to the Department of Labor regarding implementation of P.L. 110-343.</i></p>
<p>*U.N. Population Fund (UNFPA)</p>	<p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$55 million for the UNFPA to be used for specific activities relating to women’s health and clarifies that the UNFPA does not fund, provide or support abortion services. The new law specifically prohibits the use of UNFPA funds for a country program in the People’s Republic of China.</p>	<p><i>Supports UNFPA funding as critical to fighting the HIV/AIDS crisis.</i></p>
<h2>Housing/Homelessness</h2>		
<p>Homeless Assistance</p>	<p>P.L. 111-22 (S. 896), mortgage relief legislation enacted 5/20/09, includes provisions amending and reauthorizing the McKinney-Vento Homeless Assistance Act. The new law expands the Department of Housing and Urban Development’s definition of homelessness to include those who will lose their housing in 14 days and those fleeing domestic violence. The new definition does not encompass homeless families sharing living in shared housing for more than a two-week duration and single adults and childless couples living in shared housing due to loss of housing and economic hardship.</p>	<p><i>Supports efforts to address homelessness, including inclusion in the definition of “homeless persons” individuals who lack a fixed regular adequate nighttime residence, including those who due to loss of housing, economic hardship, or similar reasons are sharing the housing of others or living in motels, hotels or camping grounds.</i></p>
<p>Housing Choice Voucher Program</p>	<p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$18.184 billion for all tenant-based Section 8 activities under the Tenant-based Rental Assistance Account, including various voucher programs. H.R. 3045 would, among other things, authorize a funding formula for annual renewal of Section 8 housing vouchers, create homeownership opportunities for families in Section 8 and public housing programs, and expand voucher assistance. The House Financial Services Committee approved H.R. 3045. There is no comparable Senate legislation.</p>	<p><i>Supports full and adequate funding for public housing programs that provide rental assistance for low-income families.</i></p>



Subject	Description and Status	ABA Position
National Housing Trust Fund	The president recommended \$1 billion in his fiscal year 2010 budget proposal to launch the National Housing Trust Fund, established last year as part of P.L. 110-289, housing and economic recovery legislation. The funding was not included in P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09. H.R. 2847, jobs legislation, and H.R. 3068 would direct \$1 billion in Troubled Asset Relief Program (TARP) dividends to the trust fund. The House passed H.R. 2847. The House Financial Services Committee held a hearing on H.R. 3068. There was no comparable Senate legislation.	<i>Supported creation of the trust fund, provided that at least half of the units made available through the fund are available to the very poor and remain affordable for a prolonged period of time; and that trust fund funding is not in lieu of other major federal housing programs.</i>
Immigration Law		
◆*Comprehensive Immigration Reform	H.R. 4321 would, among other things, establish a new legalization process, create a streamlined employment verification system, and strengthen border security. The bill was referred to the House Judiciary Committee, the House Homeland Security Committee and several other committees. Senate and House Judiciary and Homeland Security Committees held hearings on a variety of immigration issues, including employer verification programs, detention, and state and local law enforcement.	<i>Supports comprehensive legislation that provides for new legal channels for future workers, a path to legal status for much of the undocumented population currently residing in the United States, family- and employment-based visa backlog reduction, and enhanced border security.</i>
◆*Detention Standards	S. 1550, S. 1594 and H.R. 1215 would set forth provisions regarding procedures and standards applicable to aliens detained in Department of Homeland Security custody and the conditions of their detention. Provisions include new detention standards, fair and humane treatment, access to telephones and legal assistance, procedures governing detainee transfers, access to medical care, alternatives to detention, and reporting of detainee deaths. S. 1550 and S 1594 were referred to the Senate Judiciary Committee. H.R. 1215 was referred to the House Judiciary Committee. A House Homeland Security subcommittee held a hearing on immigration detention issues.	<i>Assisted in the development of detention standards that went into effect in 2001 and supports regulations for the standards to ensure consistent implementation. Opposes mandatory detention and supports increasing programs to provide alternatives to detention for those in the civil immigration system.</i>



Subject	Description and Status	ABA Position
◆*DREAM Act	S. 729 and H.R. 1751, the Development, Relief and Education for Alien Minors Act (DREAM Act), would authorize the cancellation of removal and adjustment of status of certain immigrant students who are long-term U.S. residents and who entered the United States as children. S. 729 was referred to the Senate Judiciary Committee. H.R. 1751 was referred to the House Judiciary Committee and the House Education and Labor Committee.	<i>Supports providing noncitizens who reside in the United States and who demonstrate significant ties to this country with an opportunity to acquire lawful permanent residence.</i>
◆*HIV Visa Ban	The Department of Health and Human Services and Centers for Disease Control and Prevention issued a final rule 11/2/09 removing HIV infection from the list of “communicable disease[s] of public health significance” that prevent individuals who are not U.S. citizens from entering the United States.	<i>Supports the removal of HIV status as a bar for immigration visitors, asylees and refugees.</i>
◆*Legal Representation and Due Process	H.R. 1651 would establish a right for an alien to file a motion to reopen a case in removal proceedings if the alien can demonstrate that counsel or a certified representative provided deficient performance. S. 577 would make it a federal offense for any individual to knowingly and falsely represent that they are an attorney or an accredited representative in any matter arising under federal immigration law; require immigration judges to warn immigrants about the unauthorized practice of immigration law during removal proceedings, and provide outreach to the immigrant community to help prevent fraud. H.R. 1651 was referred to the House Judiciary Committee. S. 577 was referred to the Senate Judiciary Committee.	<i>Supports legal immigration that includes due process safeguards in immigration and asylum adjudications and judicial review of such decisions.</i>
◆*Unaccompanied Immigrant Children	H.R. 1215 would, among other things, require the Secretary of Homeland Security to provide protections for unaccompanied alien children and other vulnerable populations, including live training for all personnel who come into contact with unaccompanied alien children. H.R. 1215 was referred to the House Judiciary Committee. There is no comparable Senate legislation.	<i>Supports appointment of counsel at government expense to unaccompanied children in immigration proceedings.</i>
*Uniting Families	S. 424 and H.R. 1024 would amend the Immigration and Nationality Act to eliminate discrimination in the immigration laws by permitting permanent same-sex partners of U.S. citizens and lawful permanent residents to obtain lawful permanent resident status in the same manner as spouses of U.S. citizens and lawful permanent residents. The Senate Judiciary Committee held a hearing on S. 424. The House bill was referred to the House Judiciary Committee.	<i>Supports.</i>



Subject	Description and Status	ABA Position
<h2>Intellectual Property Law</h2>		
Patent and Trademark Office (USPTO) Funding	P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$1.887 billion for the USPTO to be derived from patent user fees. During Senate Judiciary Committee markup of S. 515, patent reform legislation, the committee tabled an amendment that would have prevented diversion of USPTO fees by ensuring that all fee revenue collected by the USPTO would be made available to the office for its use in providing services for which the fees were paid.	<i>Opposes diversion of patent user fees to fund other programs.</i>
*First-Inventor-To-File Rule	S. 515 and H.R. 1260, patent reform legislation, include provisions to institute the “first-inventor-to-file” rule to replace the current “proof-of-invention” system. The Senate Judiciary Committee approved S. 515. The House Judiciary Committee held a hearing on H.R. 1260.	<i>Supports the proposed “first-inventor-to-file” rule.</i>
<h2>International Law</h2>		
Darfur	P.L. 111-117 (H.R. 3288), fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$414 million to support the United Nations (U.N.) peacekeeping mission in Sudan and \$101.6 million to Sudan and East Chad for humanitarian aid.	<i>Urges the U.S. government to take all necessary and proper actions to end the ongoing atrocities (including genocide, crimes against humanity, and war crimes) in Darfur.</i>
*Human Rights Council	The United States was elected in May 2009 to a seat on the U.N. Human Rights Council after the Obama administration reversed the Bush administration’s stand against creation of the council in 2006 as a replacement for the Human Rights Commission.	<i>Supports U.S. membership on the Human Rights Council, which despite its shortcomings is an important international institution for monitoring and addressing human rights abuses throughout the world.</i>
◆*International Criminal Court (ICC)	In November 2009, the United States attended as an observer to the Assembly of States Parties for the first time since the ICC was set up in 2002. H. Con. Res. 97 would call on the president to support U.N. Security Council referrals of situations involving genocide, war crimes, and crime against humanity to the ICC, to cooperate with investigations and prosecutions conducted by the ICC, and to participate as an observer at meetings of the Assembly of States Parties. H. Con. Res 97 was referred to the House Foreign Affairs Committee. There is no comparable Senate legislation.	<i>Urges that the United States accede to the Rome Statute, which established the ICC. Urges the United States to expand and broaden interaction with the ICC.</i>



Subject	Description and Status	ABA Position
◆*International Affairs Budget – Rule of Law	P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes a total of \$48.8 billion for funding the international affairs account, including: \$1.7 billion for membership in international organizations, including the United Nations; \$1.38 billion for the U.S. Agency for International Development; \$2.1 billion for international peacekeeping activities, and \$120 million for the Democracy Fund. During debate on S. Con. Res. 13, the Senate’s fiscal year 2010 budget resolution, the Senate adopted an amendment to restore \$4 billion in proposed cuts to the international affairs budget before passing the resolution. H.R. 2410, State Department reauthorization legislation as passed by the House, would authorize appropriations as may be necessary to pay all U.S. arrearages to the United Nations, lift the statutory cap on U.S. payment of assessed dues for peacekeeping expenses for three years, and require the president to submit a plan to implement previous legislation calling for the United States to resume paying its assessments to the United Nations at the beginning of each calendar year.	<i>Supports funding for organizations and programs that assist in the establishment of the rule of law abroad. Supports congressional appropriation of funds for the full and prompt payment of arrears owed by the United States to the United Nations for general and peacekeeping assessments.</i>
*International Violence Against Women Act	The Senate Foreign Relations Committee and a House Foreign Affairs subcommittee held hearings on international violence against women, but no legislation was introduced.	<i>Support enactment of an international violence against women act.</i>
◆*Treaties	There was no action on several treaties supported by the ABA, including the Convention on the Law of the Sea, the Convention on All Forms of Discrimination Against Women (CEDAW), the American Convention on Human Rights, and the Convention on the Rights of the Child. H. Res. 22 would express the sense of the House that the Senate should ratify CEDAW. H. Res. 22 was referred to the House Foreign Affairs Committee.	<i>Supports ratification of the treaties.</i>
International Trade		
*Free Trade Agreements (FTAs)	During the 110 th Congress, a vote was indefinitely postponed on the pending FTAs that the United States has negotiated with Colombia and South Korea. The U.S. Trade Representative requested comments in July 2009 on various issues concerning the pending agreements.	<i>No position on the economic merits of the pending FTAs, but the ABA submitted comments supporting the Rule of Law contributions made by FTAs such as those negotiated with Colombia and South Korea.</i>



Subject	Description and Status	ABA Position
<p>*Trade Officials – Conflict of Interest</p>	<p>Several members of the House of Representatives sent a letter to the Government Accountability Office (GAO) requesting a report on former government officials who advise foreign interests, suggesting that it may be inappropriate, or even unethical, for former trade officials to represent foreign interests, or even domestic interests involved in the import trade or the distribution of imported products. The GAO report, released in July 2009, recommended that Congress enhance efforts for implementation of the Foreign Agents Registration Act.</p>	<p><i>Recommends that Congress not impose on trade officials post-employment proscriptions that are more severe than those imposed on other government officials.</i></p>
<h2>Legal Education</h2>		
<p>◆*Council on Legal Education Opportunity (CLEO)/Thurgood Marshall Program</p>	<p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$3 million for the Thurgood Marshall Legal Educational Opportunity Program, which is administered by CLEO and provides practical and financial assistance to low-income minority or disadvantaged students to help them gain access to and complete their legal studies.</p>	<p><i>Supports the Thurgood Marshall program.</i></p>
<p>◆*Loan Forgiveness and Repayment Assistance</p>	<p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes funding for two student loan repayment programs enacted last year part of P.L. 110-315, Higher Education Act reauthorization. The new law provides \$5 million for the Legal Assistance Repayment Program for student loan repayment assistance for civil legal assistance lawyers and \$10 million for the John R. Justice Prosecutors and Defenders Incentive Act for student loan repayment assistance for lawyers employed as federal and state prosecutors and public defenders.</p>	<p><i>Supports loan repayment assistance programs for law school graduates accepting low-paying, public interest law employment.</i></p>
<h2>Legal Research</h2>		
<p>*Law Library of Congress</p>	<p>H.R. 2728 would designate the Law Library of Congress as the National Law Library, provide additional funding, and would establish the William Orton Law Library Support Program to provide enhanced or special services and programs and allow the Librarian of Congress to carry out the programs through agreements with other government and private entities, including the ABA. The House passed H.R. 2728. There is no comparable Senate legislation. P.L. 111-68 (H.R. 2918), the final fiscal year 2010 appropriations statute for the legislative branch enacted 10/1/09, includes \$439.8 million for the Library of Congress, which encompasses funding for the Law Library and language specifically allocating \$700,000 for Global Legal Information Network (GLIN).</p>	<p><i>Supports full funding for the Law Library of Congress to allow for enhancement of services, including electronic development, reclassification and cataloguing.</i></p>



Subject	Description and Status	ABA Position
<h2>Legal Services</h2>		
◆*Group Legal Services	S. 825 and H.R. 1423 would restore, permanently authorize and eliminate the dollar limitation for Section 120 of the Internal Revenue Code of 1986, which before expiring on 6/30/92 allowed employers to offer on a pre-tax basis group legal services benefits to their employees. S. 825 was referred to the Senate Finance Committee. H.R. 1423 was referred to the House Ways and Means Committee.	<i>Supports group legal services benefit plans as a way to increase access to the justice system for low- and middle-income Americans by allowing individuals and families to address legal issues before they become significant problems. Supports permanent authorization of Section 120.</i>
◆* Legal Services Corporation (LSC)	P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$420 million (a \$30 million increase) for the LSC and eliminates the restriction on collection of statutorily authorized attorneys' fees. The new law also includes \$5 million for a new loan repayment assistance program for legal assistance attorneys. S. 718 and H.R. 3764 would reauthorize the LSC, lift several of the restrictions on LSC-funded programs, and provide additional resources for special needs of eligible clients, technology grants and improved governance practices. S. 718 was referred to the Senate Health, Education, Labor and Pensions (HELP) Committee. H.R. 3764 was referred the House Judiciary Committee, and a House Judiciary subcommittee held a hearing on LSC. The Senate confirmed Laurie Mikva as a member of the LSC Board of Directors. The Senate HELP Committee approved five other nominations to the board, and the president nominated three more individuals to serve on the board.	<i>Supports the reauthorization and adequate funding of the LSC to increase the effectiveness and efficiency of the delivery of legal services to the poor.</i>
◆* Medical-Legal Partnerships	H.R. 3962, the House-passed version of comprehensive health care reform, contains a provision that would require the Secretary of Health and Human Services to establish a nationwide demonstration project for medical-legal partnerships to assist patients navigating health-related programs and activities. S. 3590, the Senate-passed version of health care reform, does not include this provision. Negotiations began in an effort to resolve differences between the two health care reform bills.	<i>Supports medical-legal partnerships to integrate lawyers in a health care setting to help patients navigate the complex legal system.</i>



Subject	Description and Status	ABA Position
<h2>Military Law</h2>		
Homeless Veterans	<p>S. 1547 would amend Title 38, United States Code, and the United States Housing Act of 1937 to enhance and expand the assistance provided by the Department of Veterans Affairs and the Department of Housing and Urban Development to homeless veterans and veterans at risk of homelessness. S. 1547 was referred to the Senate Veterans' Affairs Committee and the Senate Banking, Housing and Urban Affairs Committee, which both held hearings on the issue. H.R. 1171 would amend Title 38, United States Code, to reauthorize the Homeless Veterans Reintegration Program for fiscal years 2010 through 2014. The House passed H.R. 1171.</p>	<p><i>No position on pending legislation, but has been working with the Veterans Affairs Department on ways to address the issue of homeless veterans.</i></p>
◆ Legal Services for the Military	<p>No legislation was introduced regarding the provisions of legal services to members of the Armed Forces, but draft legislation has been prepared for introduction during the Second Session of the 111th Congress.</p>	<p><i>Supports legislation that promotes the provision of legal services to veterans and members of the Armed Forces to assist them in obtaining the full range of health care, benefits and services to which they are lawfully entitled, and to make the provision of legal assistance mandatory for low-income military families.</i></p>
Military Child Custody	<p>P.L. 111-84 (H.R. 2647) , fiscal year 2010 defense authorization legislation enacted 10/28/09, includes provisions requiring the Secretary of Defense to report on child custody cases in which deployment of a servicemember was an issue and on measures taken to assist servicemembers in avoiding child custody disputes. A problem provision concerning child custody determination for military spouses was removed during the conference committee on H.R. 2647.</p>	<p><i>Opposes federal legislation that would create a federal-question jurisdiction in child custody cases, including cases involving servicemember parents, and urges states to enact legislation prohibiting denial of child custody to a servicemember based solely on absence due to military deployment.</i></p>



Subject	Description and Status	ABA Position
Servicemembers Civil Relief Act (SCRA) Enforceability	H.R. 2696 would amend the SCRA to clarify and enhance the ability of servicemembers and the U.S. attorney general to enforce its provisions. The House passed a related, but more limited, provision as part of its version of H.R. 2647, fiscal year 2010 defense authorization legislation. S. 1033, defense authorization legislation supported by the administration, included provisions identical to those in H.R. 2696. None of these provisions was included in P.L. 111-84 (H.R. 2647), the final fiscal year 2010 defense authorization legislation enacted 10/28/09. H.R. 3949, omnibus veterans legislation, incorporates the language of H.R. 2696 with improvements and modifications. The House passed H.R. 3949. There is no comparable Senate veterans' legislation.	<i>Urges Congress to amend the federal SCRA to clarify that a private right of action exists under the SCRA and to provide that a prevailing plaintiff in such an action may recover reasonable attorney's fees.</i>
National Security		
◆*Guantanamo Closing	The president issued an executive order 1/22/09 directing the closure of the U.S. detainee facility in Guantanamo Bay, Cuba, as soon as practicable, and a review of each detainee's case. Numerous bills were introduced to block any attempts to bring detainees from Guantanamo into the United States for any reason, including prosecution. Provisions generally barring the use of federal funds to release prisoners into the United States or any U.S. territories were included in P.L. 111-32 (H.R. 2346), fiscal year 2009 supplemental funding legislation enacted 6/24/09, and in three fiscal year 2010 appropriations measures: P.L. 111-88 (H.R. 2996), Interior-Environment, enacted 10/30/09; P.L. 111-83 (H.R. 2892), Homeland Security, enacted 10/28/09; and the Commerce-Justice-Science portion of P.L. 111-117 (H.R. 3288), the consolidated appropriations legislation enacted 12/16/09. In November 2009, the Obama administration announced that it would pursue prosecution in federal court of five Guantanamo detainees accused of conspiring to commit the 9/11 terrorist attacks.	<i>No position on the closing of Guantanamo. Supports the prosecution in Article III federal courts of detainees charged with criminal law violations, unless the attorney general certifies that prosecution cannot take place before such courts. Supports release and resettlement of all detainees at Guantanamo who are not considered "enemy combatants."</i>
◆*State Secrets Privilege	S. 417 and H.R. 984 would establish standards for resolving claims involving the state secrets privilege, which is asserted to shield sensitive national security information from disclosure in civil litigation. S. 417 was referred to the Senate Judiciary Committee. A House Judiciary subcommittee held hearings and amended and approved H.R. 984. The House Judiciary Committee approved the bill. In September 2009, the Department of Justice (DOJ) announced its standards for future invocation of the privilege. The new policy establishes a standard for invocation similar to the judicial standard of review in pending bills and provides for a more stringent internal review process and greater accountability.	<i>Supports DOJ guidance as important first step, but maintains that enactment of legislation is still necessary to affirm the role of federal courts in reviewing claims of privilege in camera and to establish a uniform, rigorous standard of judicial review.</i>



Subject	Description and Status	ABA Position
◆*Anti-torture	<p>The president issued an executive order 1/22/09 prohibiting torture by ensuring that any individual in the custody of or under the effective control of any officer, employee or other agency of the U.S. government is not subjected to any interrogation technique or approach that is not authorized by the <i>Army Field Manual</i>. He also ordered the closure of detention facilities operated by the Central Intelligence Agency and prohibited rendition to other countries where individuals may be subjected to torture. A Cabinet-level Special Interagency Task Force on Interrogation and Transfer Policies was established to review interrogation guidelines and examine U.S. policies regarding the practice of rendition.</p>	<p><i>Condemns any use of torture or other cruel, inhuman or degrading treatment upon persons within the custody or under the physical control of the U.S. government (including its contractors), and supports establishment of uniform standards for interrogation that adhere to the Army Field Manual and abide by the Geneva Conventions. Opposes the practice of extraordinary rendition.</i></p>
◆*Military Commissions	<p>The president issued an executive order 1/22/09 imposing a moratorium on military commission trials for those detained at Guantanamo Bay and designated as “enemy combatants.” P.L. 111-84 (H.R. 2647), defense authorization legislation enacted 10/28/09, includes provisions making ABA-supported changes in the military commission system, including the exclusion of statements obtained by coercion, torture or cruel, inhuman or degrading treatment. The new law also requires the Secretary of Defense to prescribe regulations for the appointment and performance of defense counsel in capital cases, and conferees indicated that they expect appropriate consideration to be given to the <i>ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases</i>. The new law does not meet the ABA policy standards because it does not require that trials be conducted in accordance with the Uniform Code of Military Justice (UCMJ) and allows for the use of hearsay evidence in certain situations.</p>	<p><i>Urges that military commissions comply with the UCMJ to provide detainees the rights afforded in courts-martial and to comply fully with international treaty obligations.</i></p>
◆*USA PATRIOT Act/ Foreign Intelligence Surveillance Act (FISA)	<p>P.L. 111-118 (H.R. 3326), fiscal year 2010 Defense Department appropriations legislation enacted 12/19/09, includes a 60-day extension for the “library,” “roving wiretaps” and “lone wolf” provisions of the USA PATRIOT Act that were scheduled to expire at the end of 2009. S. 1692 and H.R. 3845 would extend these expiring provisions for four years. The Senate Judiciary Committee amended and approved S. 1692. The House Judiciary Committee approved H.R. 3845, but further consideration of the legislation was postponed until the Second Session.</p>	<p><i>Urges Congress to conduct a thorough review of executive branch powers under the USA PATRIOT Act and to conduct regular oversight of the government’s use of FISA.</i></p>



Subject	Description and Status	ABA Position
<h2>Tax Law</h2>		
Internal Revenue Service (IRS) Funding	P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$12.1 billion for the IRS.	<i>Supports adequate IRS funding for enforcement and compliance functions.</i>
◆ Tax Simplification	There was no action on the numerous broad tax simplification bills introduced last session. P.L. 111-5 (H.R. 1), an economic stimulus package enacted 2/17/09, includes a one-year patch designed to prevent an additional 26 million taxpayers from paying the Alternative Minimum Tax (AMT). H.R. 240 would repeal the personal AMT. S. 722, a broad tax reform measure, would establish a permanent AMT exemption at 2009 levels and index that exemption level for inflation in future years. H.R. 240 was referred to the House Ways and Means Committee. S. 722 was referred to the Senate Finance Committee. A new Task Force on Tax reform was established by the president, and the deadline for release of the group's recommendations, originally set for 12/4/09, has been extended indefinitely.	<i>Supports simplification of the tax laws, including repeal of the individual AMT or modification to ensure that the AMT applies only to high-income individuals.</i>
<h2>Tort and Insurance Practice</h2>		
◆* Alternatives to Medical Malpractice Litigation	H.R. 3962, the House-passed comprehensive health care reform legislation, includes a provision that would provide federal incentive payments to states that pass legislation with either a "certificate of merit" or a "sorry works/early offer program," provided the state legislation does not cap damages or limit attorneys' fees. The Senate-passed version of health care reform, H.R. 3590, expresses the sense of the Senate that Congress should consider establishing state demonstration programs to evaluate alternatives to the current civil litigation system. Additional provisions would make states eligible for grants to test alternatives that emphasize patient safety, disclosure of health care errors, and early resolution of disputes. The provisions also would allow patients to opt out of these alternatives at any time. Negotiations began in an effort to resolve differences between the two health care reform bills. As directed by the president, the Secretary of Health and Human Services (HHS) has launched a new demonstration initiative through its Agency for Health Care Research and Quality (AHRQ) to award grants to states and health care systems to allow them to test programs aimed toward patient safety and medical liability reform.	<i>Opposes caps on damages. Endorses use of voluntary alternative dispute mechanisms that are entered into after a dispute has arisen. Supports pilot programs on "near misses" reporting of medical errors and state apology legislation. Participated in AHRQ National Advisory Council meetings to develop new grant program.</i>



Subject	Description and Status	ABA Position
Contingency Attorneys' Fees	During debate on H.R. 3590, Senate comprehensive health care reform legislation, the Senate rejected a proposed amendment that would have limited the amount of fees that attorneys representing a plaintiff in a medical malpractice liability action could receive.	<i>Opposes caps on attorneys' fees.</i>
Federal Office of Insurance	H.R. 4173, financial regulatory reform legislation, and a draft Senate financial regulatory reform bill include provisions to establish a Federal Insurance Office in the Treasury Department to monitor the insurance industry and to report to Congress on the global reinsurance market and how to modernize and improve the system of insurance regulation in the United States. The House passed H.R. 4173.	<i>Supports enactment of legislation establishing a non-regulatory insurance information office within the Treasury Department.</i>
*Feres Doctrine	S. 1347 and H.R. 1478 would repeal the <i>Feres</i> Doctrine to allow members of the armed forces and their families to sue the military for negligent medical care during their service. A House Judiciary subcommittee held a hearing on H.R. 1478 and amended and approved the bill. The House Judiciary Committee amended and approved the bill. S. 1347 was referred to the Senate Judiciary Committee.	<i>Supports.</i>
*Interstate Health Insurance Compacts	Both Senate-passed and House-passed versions of comprehensive health care reform (H.R. 3590 and H.R. 3962) include provisions approving the formation of interstate health insurance compacts by the Secretary of Health and Human Services, in consultation with the National Association of Insurance Commissioners, to assist in the structuring of interstate relationships, regulating private activity that transcends state lines, and furnishing government services on a regional basis. Negotiations began in an effort to resolve differences between the two health care reform bills.	<i>Urges Congress to ensure that provisions concerning administrative procedures and judicial review for compact agencies are consistent with certain fundamental administrative law norms.</i>
◆*Medical Professional Liability	S. 45 would preempt the state medical liability laws and impose federal standards, including a cap on non-economic damages. The bill was referred to the Senate Health, Education, Labor and Pensions Committee. During consideration of H.R. 3200, a comprehensive health care reform proposal, the House Energy and Commerce Committee rejected a proposed amendment to cap pain and suffering awards and preempt state medical malpractice laws.	<i>Opposes caps on pain and suffering awards and federal preemption of state medical malpractice law, but supports certain changes at the state level.</i>
◆*Medicare Secondary Payer Act	H.R. 2641 would amend Section 1862 of the Social Security Act to provide certainty and efficiency in the Medicare set-aside process for workers' compensation settlements. H.R. 2641 was referred to the House Ways and Means Committee and the House Energy and Commerce Committee. There is no comparable Senate legislation.	<i>Supports.</i>



2010 Congressional Schedule 111th Congress - Second Session

Senate		House	
Convenes	Jan. 5	Convenes	Jan. 6
State of the Union Message	Jan. 27	State of the Union Message	Jan. 27
Presidents' Day State Work Period	Feb. 15-19	Presidents' Day District Work Period	Feb. 15-18
Spring State Work Period	March 29-April 9	Spring District Work Period	March 29-April 9
Memorial Day State Work Period	May 31-June 4	Memorial Day District Work Period	May 31-June 4
Independence Day State Work Period	July 5-9	Independence Day District Work Period	July 5-9
Summer State Work Period Recess	Aug. 9-Sept. 10	Summer District Work Period	Aug. 9-Sept. 10
Target Adjournment	TBA	Target Adjournment	Oct. 8
Election Day	Nov. 2	Election Day	Nov. 2



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