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The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the American Bar Association, I am writing to you today regarding S. 1681, legislation to partially repeal the McCarran-Ferguson exemption from the federal antitrust laws currently enjoyed by the insurance industry. The House companion to S. 1681, H.R. 3596 was amended by the House Judiciary Committee in a markup session held on October 21, 2009. The ABA is pleased that H.R. 3962, the House version of health reform legislation introduced on October 29, incorporates the language of H.R. 3596, as amended (consistent with ABA recommendations), to provide safe harbors for the insurance industry for certain procompetitive conduct.

The ABA believes that the current McCarran-Ferguson exemption to the antitrust laws should be repealed and replaced with legislation that permits certain cooperative activity between insurers to continue, but in general makes insurers subject to the same antitrust laws applicable to all other industries. We also recommend that states retain the authority to regulate the business of insurance. Finally, while we believe that the same concerns and considerations that are addressed by the amended version of H.R. 3596 apply with equal force to areas of the insurance industry outside of the health care and medical malpractice context, the ABA believes that H.R. 3596, as amended, constitutes an important--and welcome-- first step in this direction.

When it is considered on the floor of the Senate, we would encourage you to offer, as an amendment to the Senate version of the health reform legislation, an amended version of S. 1681 that specifically provides for safe harbors for cooperative behavior that clearly has legitimate procompetitive consequences.

Please let us know if you have any questions. Thank you.

Sincerely,



Carolyn B. Lamm
cc. Members, Senate Committee on the Judiciary