Bill clears Senate committee by 13-5 vote

Immigration overhaul legislation to reach Senate floor in June for vote

An immigration overhaul bill is expected to reach the Senate floor in June following bipartisan approval May 21 by the Senate Judiciary Committee.

The 13-5 vote on the bill, S. 744, wrapped up a five-day markup during which the committee considered more than 150 amendments but left intact provisions supported by the ABA that seek to improve immigration adjudication and detention systems.

The bill also includes provisions providing a path to citizenship for the 11 million undocumented immigrants currently in the United States. Legalization requirements under the 13-year process would include learning English, passing a background check, and paying back taxes. Other provisions would provide a faster five-year track for those who have been in the country since before Dec. 31, 2011, were under 16 when they arrived, and graduated from a U.S. high school or obtained a General Educational Development (GED) certification.

In a May 16 letter to the committee, ABA Governmental Affairs Director Thomas M. Susman emphasized the importance of provisions in the bill that provide access to counsel for unaccompanied minors, people with serious mental disabilities and other vulnerable groups.

“Without counsel, vulnerable individuals often languish in immigration detention at taxpayer expense while their cases move through the immigration courts,” Susman wrote. He said that appointed counsel decreases the length of immigration detention by reducing the number of appeals, claims without legal basis and continuances, and by assisting judges in parsing complex fact situations and testimony. Also important, he noted, is a section codifying the Office of Legal Access Programs and expanding Legal Orientation Programs (LOPs), which provide group rights presentations and other services, including pro bono referrals, to individuals held in detention facilities around the country.

Susman also stressed the urgency of providing additional resources to the immigration court system, which reports a backlog of 330,533 cases, with average waits of a year and a half. The ABA also supports provisions in the bill that direct the Department of Homeland Security to create secure alternatives to detention programs, he said.

During committee markup, the way was cleared for approval of S. 744 when committee Chairman Patrick J. Leahy (D-Vt.) withdrew a proposed amendment supported by the ABA that would have recognized same-sex marriage for immigration law purposes.

Meanwhile, a group of eight House members is continuing to meet in an effort to craft a House version of immigration reform.
### LEGISLATIVE BOXSCORE

<table>
<thead>
<tr>
<th>ABA LEGISLATIVE PRIORITY</th>
<th>HOUSE</th>
<th>SENATE</th>
<th>FINAL</th>
<th>ABA POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gun Violence.</strong> S. 150 and H.R. 437 would limit the future sale and transfer of assault weapons and ammunition devices that hold more than 10 bullets. S. 54 and H.R. 452 seek to combat the practice of straw purchasing and illegal trafficking of firearms. S. 374 would strengthen background checks. S. 649, a comprehensive bill, includes numerous gun violence prevention provisions.</td>
<td>H.R. 437 was referred to the Judiciary Committee on 1/29/13; H.R. 452, on 2/4/13.</td>
<td>Judiciary Committee held hearings and approved S. 54 on 3/7/13; S. 53, on 3/11/13; and S. 374, on 3/12/13. Judiciary subc. held a hearing on 2/12/13. Senate began consideration of S. 649 on 4/8/13 but did not complete action.</td>
<td>Supports steps to prevent gun violence by strengthening the nation’s gun laws.</td>
<td></td>
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<tr>
<td><strong>Violence Against Women Act.</strong> P.L. 113-4 (S. 47) consolidates and reauthorizes VAWA programs and includes, among other things, new provisions to strengthen tribal criminal jurisdiction and ensure that victims cannot be denied services based on gender identity or sexual orientation.</td>
<td>House passed S. 47 on 2/28/13.</td>
<td>Senate passed S. 47 on 2/12/13.</td>
<td>Supports VAWA reauthorization.</td>
<td></td>
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More than 350 bar leaders attend 2013 ABA Day

Visits to members of Congress focused on legal services and judicial resources

This year’s ABA Day in Washington, the association’s annual lobbying event, drew more than 350 bar leaders from all 50 states, the District of Columbia and the Virgin Islands to the nation’s capital April 16-18 to advocate on issues of importance to the legal profession.

The three-day event, now in its 17th year, is coordinated by the association’s Governmental Affairs Office and cosponsored by the National Conference of Bar Presidents, the National Association of Bar Executives, the ABA Section Officers Conference and the ABA Young Lawyers Division.

Participants focused their efforts on the following core issues during visits with their representatives and senators.

Legal Services Corporation. The need for legal services for low-income individuals is outstripping the federal funding that LSC grantees currently receive to maintain 134 legal aid programs that support 900 offices across the country. More than 61 million Americans are eligible for civil legal assistance, but limited resources prevent LSC grantees from responding to more than half the eligible individuals who seek assistance. Current LSC funding is $358 million, and the ABA is asking Congress to appropriate $430 million in fiscal year 2014 – the amount requested in the president’s proposed budget.

Judicial Vacancies. The persistently high number of judicial vacancies on the Article III courts is of great concern to the ABA. There have been 75-100 vacancies (an average of 10 percent) in the federal courts most of the past four years. The high vacancy rate affects the ability of the courts to assure timely justice, and the ABA Day participants urged the Senate to work with the administration to shorten the time between vacancy and nomination, especially for vacancies classified as “judicial emergencies.”

Federal Court Funding. Sequestration has reduced the federal judiciary’s fiscal year 2013 budget by almost $350 million, resulting in a reduction in services and the layoff or furlough of thousands of court staff. Courthouses are being forced to cut back their hours and defer consideration of cases. The ABA is urging Congress to protect the federal judiciary from future deficit reduction and restore funding for fiscal year 2014 to no less than the courts’ pre-sequestration fiscal year 2013 level.

Immigration. Another issue addressed by some of the ABA Day participants is the loss of many basic due process protections in the immigration detention and adjudication system. They urged members of Congress to enact legislation that would provide appointed counsel, if necessary, to children and the mentally disabled and to expand the Legal Orientation Program providing detainees with basic legal information.

Other Highlights

In addition to face-to-face meetings with their senators and representatives, attendees honored the following members of Congress with Justice Awards for their support for issues of critical importance to the ABA and the administration of justice: Sens. Mike Crapo (R-Idaho), Richard Durbin (D-Ill.), Tim Johnson (D-S.D.) and Lisa Murkowski (R-Alaska) and Reps. Rodney Frelinghuysen (R-N.J.) and Nita Lowey (D-N.Y.).


Weisenberg, a relentless advocate for Ohio lawyers through his work at the Ohio State Bar Association, serves on the ABA Standing Committee on Governmental Affairs and the ABA Day Planning Committee.

Shepherd, a partner at Venable LLP, was recognized for his work to protect lawyers and clients from unnecessary government regulation and to promote best practices to fight money laundering. He chairs the ABA Task Force on Gatekeeper Regulation and the Profession.

Law Day 2013

“Realizing the Dream: Equality for All” was the theme of this year’s Law Day, marking the 150th anniversary of the Emancipation Proclamation and the 50th anniversary of Dr. Martin Luther King Jr.’s “I Have a Dream” speech.

Proclaiming May 1 as Law Day 2013, President Obama said, “As a nation, we are bound together not by the colors of our skin, the tenets of our faith, or the origins of our names. What unites us as Americans is our allegiance to an idea articulated more than two centuries ago: that ‘all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness.’ ”

He emphasized, however, that opportunity remains painfully unequal for many and that justice too often goes undone. “Law Day,” he said, “is a chance to reaffirm the critical role our courts have always played in addressing those wrongs and aligning our nation with its first principles.”

President Eisenhower first proclaimed Law Day in 1958 after the special day was envisioned by then ABA President Charles S. Rhyne.
ABA Day — April 16-18, 2013

Justice Award recipient Sen. Tim Johnson (D-S.D.) (center) with (from left) ABA President Laurel Bellows; Robert Frieberg, past president, State Bar of South Dakota; Thomas Bennett, executive director, State Bar of South Dakota; and Linda Klein, chair, ABA Day Planning Committee.

Attendees gathered at the Justice Awards dinner. Seated from left: William Carpenter, chair, National Conference of State Trial Judges; William Johnston, past president, Delaware State Bar Association; Theresa Brown-Edwards, president, Delaware State Bar Association; and Ruth Catolico Ashley, past vice president, State Bar of California. Standing from left: Phil Rosenthal, Fastcase; Marvin Dang, Hawaii State Bar Association; Rep Colleen Hanabusa (D-Hawaii); Margaret Masunaga, member, ABA House of Delegates; and Juanita Hernandez, ABA Commission on Ethnic and Racial Diversity in the Profession.

Rep. Raul Grijalva (D-Ariz.) (left) meets representatives from the State Bar of Arizona: Richard DeBruhl; President Amelia Cramer; Margarita Bernal; and Past President Jimmie Smith.

Bob Carlson (left), chair, ABA House of Delegates; and Tracy Giles, Virginia State Bar, meet at breakfast.

From left: William “Bill” Bay, chair, ABA Section of Litigation; Gene Vance, president-elect, Fayette County Bar Association, Kentucky; William Weisenberg, assistant executive director, Ohio State Bar Association; Patricia Lee Rebo, Arizona state delegate, ABA House of Delegates; and ABA Immediate Past President Wm. T. (Bill) Robinson III, Kentucky.
Those visiting Sen. Richard Durbin (D-Ill.) (third from right) included (from left): Sodiqa Williams, ABA Office of the President; Tim Evans, chief judge, Circuit Court of Cook County, Illinois; Natalie Spears, president, Chicago Bar Association; Paula Holderman, president-elect, Illinois State Bar Association (ISBA); ABA President Laurel Bellows; Bob Carlson, chair, ABA House of Delegates; and John Thies, president, ISBA.

From left: Michael Unger, secretary, Minnesota State Bar Association (MSBA); Brent Routman, former MSBA president; Rep. Keith Ellison (D-Minn.); ABA Secretary Carole Lee Neville; and Robert Enger, MSBA president.

Rep. Tim Huelskamp (R-Kan.) (left) meets with Lee Smithyman, president, Kansas Bar Association (KBA); Rom Hamill, member, ABA Board of Governors; and KBA Executive Director Jordan Yochim.

Participants from New Jersey visited Rep. Rodney Frelinghuysen (R-N.J.). From left: Tom Curtin, New Jersey State Bar Association (NJSBA); Paulette Brown, NJSBA; Frelinghuysen; Karol Corbin-Walker, president, National Conference of Bar Presidents; Dorcas Adekunle, Monmouth Bar Association; and Lynn Newsome, NJSBA.

Sen. Bernard Sanders (I-Vt.) (third from left) discussed the issues with (from left): Rich Cassidy, Vermont Bar Association (VBA) and member, ABA House of Delegates; VBA President Amber Barber; Frank Langrock, VBA and member, ABA House of Delegates; Robert Paolini, executive director, VBA; and David Fenster, president-elect, VBA.

House Judiciary Committee Chairman Bob Goodlatte (R-Va.) was the keynote speaker at the April 18 breakfast briefing.
House Judiciary task force to examine federal criminal code

The House Judiciary Committee approved the creation this month of a bipartisan task force on over-criminalization to assess federal criminal statutes and make recommendations for improvements.

The task force, established by voice vote May 5, is headed by Rep. F. James Sensenbrenner (R-Wis.), chairman of the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security, and the subcommittee’s ranking member, Rep. Bobby Scott (D-Va.).

Members are Reps. Spencer Bachus (R-Ala.), Louis Gohmert (R-Tex.), Raul Labrador (R-Idaho), George Holding (R-N.C.), Jerrold Nadler (D-N.Y.), Steve Cohen (D-Tenn.), Karen Bass (D-Calif.) and Hakeem Jeffries (D-N.Y.).

Ex-officio members are House Judiciary Committee Chairman Bob Goodlatte (R-Va.) and Ranking Member John Conyers (D-Mich.).

The creation of the task force is in response to the proliferation of new federal crimes, which has driven up incarceration rates.

According to a recent Federalist Society study, the number of federal criminal offenses increased by 30 percent between 1980 and 2004 and there were 452 new federal criminal offenses created between 2000 and 2007. Over the past three decades, Congress has been averaging 500 new crimes per decade, according to the study.

“Although crime is primarily a matter for states and localities to handle, over the last 40 or so years Congress has increasingly sought to address societal problems by adding criminal provisions to the federal code,” according to Scott, who pointed out that there are now over 4,000 federal criminal provisions, plus hundreds of thousands of federal regulations that impose criminal penalties, often without requiring that criminal intent be shown to establish guilt.

As the federal prison population has grown, states have been reducing their prison population through various reforms.

The ABA has longstanding policy opposing the federalization of state, local and territorial crime and has urged Congress to consider certain principles before creating new federal crimes. The association’s House of Delegates is expected to consider additional policy in this area at the August Annual Meeting.

The association also has urged the federal government to follow the states’ lead in making changes to reduce both federal prison costs and overcrowding.

Sensenbrenner indicated that he will reintroduce legislation to reduce the criminal code by one-third, consolidate criminal offenses, and streamline the code.

“Congress must ensure that the federal role in criminal prosecutions is properly limited to offenses within federal jurisdiction and within the scope of constitutionally delegated federal powers,” he said.

Judicial Vacancies/Confirmations — 113th Congress*  
(as of 5/30/13)

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
</tr>
</thead>
<tbody>
<tr>
<td>US Supreme Court (9 judgeships)</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>US Courts of Appeals (179 judgeships)</td>
<td>15</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>US District Courts (678 judgeships)</td>
<td>64</td>
<td>21</td>
<td>14</td>
</tr>
<tr>
<td>Court of International Trade (9 judgeships)</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>79</strong></td>
<td><strong>26</strong></td>
<td><strong>22</strong></td>
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</table>

*Includes territorial judgeships
FINANCIAL ACTION TASK FORCE (FATF): The ABA provided the FATF with its preliminary reaction May 6 to the task force’s Draft Report on Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals (Typologies Draft). The FATF is an international inter-governmental body established to develop ways to combat money laundering and terrorist financing. In a letter to the FATF, Kevin Shepherd, chair of the ABA Task Force on Gatekeeper Regulation and the Profession, offered specific suggestions for improving the FATF’s “typologies,” hypothetical situations highlighting unintentional involvement of lawyers in these harmful activities. According to Shepherd, it is “critically important that the typologies be practical, meaningful and helpful in assisting legal professionals to detect money laundering and terrorist financing in their client intake and, later, in their representation of clients on an ongoing basis.” However, he expressed the ABA’s concerns that the Typologies Draft falls short of this goal by including some typologies that invariably involve implicit criminal activity by legal professionals and that address factual patterns that are not typical. He recommended that the Typologies Draft be trimmed down and focused more directly on the types of typologies that legal professionals may encounter. He added that the ABA would like to learn more about the FATF’s favorable conclusions concerning the contributions that suspicious transaction reports have made to law enforcement and called for a greater dialogue on the role of attorney-client confidentiality, which varies among countries. Shepherd also recommended that the FATF include information in the Typologies Draft about the ABA-issued “Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing,” a comprehensive resource available to all attorneys to help avoid money laundering and terrorist financing risks. After the FATF announced at a May 14 meeting in London that it would accept final comments from the private sector only until May 17, Shepherd urged the task force to reconsider its unusually swift timetable. He emphasized that the ABA has not had sufficient time to produce final recommendations and expressed the association’s concerns that if adoption of the report is rushed, it will do little to educate the vast majority of lawyers who could benefit from a practical paper.

U.S. PATENT AND TRADEMARK OFFICE (USPTO): The ABA expressed serious concerns this month regarding sequestration of almost nine percent of all fees collected by the USPTO after March 1 of this year. According to a letter sent to the Office of Management and Budget May 20 by ABA Governmental Affairs Director Thomas M. Susman, the announced sequestration “is likely to seriously impair the delivery of ongoing USPTO services and to substantially slow if not shut down implementation of improvements provided for in the America Invents Act (AIA).” That act, signed into law in 2011, was the most far-reaching modernization of U.S. patent laws and practice in more than half a century, and Congress had provided additional funding to implement those improvements. Susman pointed out that the USPTO is funded entirely by user fees paid by its customers, with no taxpayer funds involved, but in the past the office was crippled by the withholding of substantial portion of the collected user fees. In recent years, including the current fiscal year, Congress has appropriated the full amount of user fees collected. Susman also pointed out that it appears that there is no specific provision to enable the USPTO to recapture the user fees that are sequestered. Under the AIA and annual appropriations acts, fees in excess of the amount appropriated for a fiscal year are directed to a reserve fund that is later made available through reprogramming. The sequestered funds, however, are not in excess of the current appropriation but are taken from the appropriation, and thus the recapture provisions do not apply. Susman explained that, based on past experience with user fee diversion and USPTO’s evaluation of the requirements for complying with sequestration, the reduction in funding will necessitate suspension of hiring of personnel, including patent examiners and administrative law judges needed to implement new programs and improvements mandated by Congress in the AIA as well as drastic reductions in funding for training, travel and improvements in information technology. These curtailments, he said, will result in system-wide reductions in the timeliness and quality of USPTO services, which are “essential to the ability of the office to serve our creative community effectively and to support the United States in the increasingly competitive world economy, where intellectual property is our leading asset.”
ABA Washington office moves to new location

The ABA Governmental Affairs Office moved to a new home this month when the association relocated its 250-member Washington staff to new offices.

The association now occupies 61,200 square feet on the fourth and fifth floors of Washington Square, located on Connecticut Avenue in the central business district of the city.

The relocation process began two years ago when the ABA Board of Governors decided to sell the association’s building at 740 15th Street NW. The association had purchased that building in 1995.

This relocation is the most recent step in the history of the association’s presence in Washington, which was first established in 1940 as a one-person office to support the ABA Special Committee on National Defense. Donald E. Channell, the first director of the Washington office, assumed that position in 1957 and launched the ABA Washington Letter in 1958.

Over the years, the Washington office has grown to staff numerous sections, divisions, commissions, committees and the Rule of Law Initiative.

A dedication of the new space is planned for June 26. Supreme Court Justice Ruth Bader Ginsburg will be attending as special guest.

The new address is:

American Bar Association
Suite 400
1050 Connecticut Avenue NW
Washington, DC 20036
202-662-1000