

# MAJOR LEGISLATION OF INTEREST TO LAWYERS †

**110th Congress**  
**(Jan. 4, 2007 - Jan. 3, 2009)**

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*\*\*The 110th Congress did not finish the appropriations process for fiscal year 2009. Instead, P.L. 110-329 (H.R. 2638) was enacted 9/30/08 to maintain most of the federal government at fiscal year 2008 funding levels through 3/6/09. The 111th Congress, convening 1/6/09, will determine final fiscal year 2009 appropriations.\*\**

- \* ABA testified or submitted statement or letter to Congress or federal agency.
- ◆ ABA legislative and governmental priority during the 110th 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>                                   |  |   |
| <b>*Administrative Conference of the United States (ACUS)</b> | P.L. 110-290 (H.R. 3564), enacted 7/30/08, reauthorizes ACUS through fiscal year 2011 at a funding level of \$3.2 million per year. No funding has been provided for ACUS since 1995, when the program was terminated after 25 years of advising the government on administrative procedural reform.   | <i>Supports reauthorization and funding for ACUS.</i> |
| <h2>Alternative Dispute Resolution</h2>                       |  |   |
| <b>Federal Consent Decrees</b>                                | S. 2289 and H.R. 4041 would have permitted state and local government officials to reopen and relitigate, for any reason, existing federal consent decrees to which they are a party. S. 2289 was referred to the Senate Judiciary Committee. H.R. 4041 was referred to the House Judiciary Committee.   | <i>Opposes.</i>                                       |
| <h2>Antitrust Law</h2>  |  |   |
| <b>*Leegin Decision/Resale Price Maintenance</b>              | A Senate Judiciary subcommittee held a hearing on the impact of the Supreme Court's 7/28/07 decision in <i>Leegin Creative Leather Products Inc. v. PSKS Inc.</i> , 551 U.S. ____ (2007). The 5-4 decision overruled a 98-year-old precedent that vertical agreements between a supplier and its distributors or retailers on the minimum resale prices for the supplier's product are per se violations of Section 1 of the Sherman Act. S. 2261, which was referred to the Senate Judiciary Committee, would have restored the precedent. There was no comparable House legislation. | <i>Supports the Leegin decision.</i>                  |



Subject

Description and Status

ABA Position

## Business Law

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

S. 186, S. 3217 and H.R. 3013 would have prohibited any federal official 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. The House passed H.R. 3013. S. 186 and S. 3217 were referred to the Senate Judiciary Committee, where there was no action on the bills. In August 2008, the Justice Department issued new corporate charging guidelines that protect attorney-client privilege, work product and employee rights. The Securities and Exchange Commission (SEC) issued a new enforcement manual in October 2008 that places some limits on the ability of SEC staff to request waiver. The General Services Administration, the Department of Defense and the National Aeronautics and Space Administration issued a final rule 11/12/08 clarifying that federal contractors will not be required to waive their attorney-client privilege or work product protections in order to receive cooperation credit.

*Supports the legislation and government policies that preserve attorney-client privilege, work product and employee legal protections.*

◆\*Attorney-Client  
Privilege – Federal  
Rule of  
Evidence 502

P.L. 110-332 (S. 2450), enacted 9/19/08, adopts new Federal Rule of Evidence 502, as proposed by the U.S. Judicial Conference, to set clear guidelines regarding the inadvertent disclosure of privileged material during discovery. The new rule provides protection against accidental waiver of the attorney-client privilege and work product immunity and encompasses disclosures made during federal court litigation and in dealings with federal agencies. The rule required congressional approval because it modifies an evidentiary privilege.

*Supports.*

◆\*Bankruptcy –  
Attorney Liability

A House Judiciary subcommittee held an oversight hearing on P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), which includes debtor attorney liability provisions requiring the attorney to: certify the accuracy of the debtor's schedules 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 relationships. Although possible BAPCPA amendments were discussed at the hearing, including repeal of the attorney liability provisions, no legislation was introduced.

*Opposes the attorney liability provisions in BAPCPA and has developed draft legislation to repeal the provisions.*



| Subject  | Description and Status  | ABA Position   |
|--|---|--|
| <b>*Domestic Violence in the Workplace</b>                             | S. 1136 and H.R. 2395 would have promoted the economic security and safety of victims of domestic violence, dating violence, sexual assault, or stalking by requiring employers with 15 or more employees to provide 30 days of job-protected, unpaid leave to employees to address issues relating to domestic violence and by prohibiting discrimination or denial of insurance coverage to victims of domestic violence. H.R. 4014 would have prohibited discrimination in insurance coverage of victims of domestic violence, dating violence, sexual assault or stalking. H.R. 4015 would have provided job protection for victims and H.R. 4016 would have provided unemployment insurance to those separated from their employment as a result of domestic violence. A Senate Health, Education, Pensions and Labor subcommittee held a hearing addressing domestic violence in the workplace.   | <i>No position on specific pending legislation. Supports congressional efforts to increase awareness about the impact of domestic violence in the workplace and the need for employers to develop policies to assist and protect employees who are victims of such violence.</i> |
| <b>*Domestic Violence – Volunteer Attorney Network</b>                 | P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$36 million for increased legal access for victims of domestic violence. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including domestic violence programs, at fiscal year 2008 funding levels through 3/6/09. S. 1515 would have permitted the U.S. attorney general to award grants to the ABA Commission on Domestic Violence to work in collaboration with the ABA Committee on Pro Bono and Public Service and other organizations to create, recruit lawyers, and provide training, mentoring, and technical assistance for a National Domestic Violence Volunteer Attorney Network. Allocated funding would have been used by the ABA to create and maintain a network to field and manage inquiries from volunteer lawyers seeking to represent and assist victims of domestic violence. The Senate Judiciary Committee approved S. 1515. There was no comparable House legislation. | <i>Supports.</i>   |
| <b>◆*Fostering Connections to Success and Increasing Adoptions Act</b> | P.L. 110-351 (H.R. 6893), enacted 10/7/08 as the Fostering Connections to Success and Increasing Adoptions Act, is the first major overhaul of the foster care system since 1997. The new law, which extends foster care and adoption assistance benefits to Indian children in tribal areas, does the following: provides grants for assistance payments to encourage the placement of foster children in the homes of relatives; expands federal financial resources to states to permit foster youth older than 18 to remain in foster care until they turn 21 as they transition into adulthood while attending school or working; expands programs that provide transportation to and from school for foster children; and provides financial incentives to states to increase the adoption of children older than nine and of children with special needs. P.L. 110-351 also makes funding available for additional training for attorneys and judges, as well as for the staff of abuse and neglect courts and other court-appointed special advocates.                            | <i>Supports efforts to encourage adoption, support American Indian children in foster care, and train attorneys and judges.</i>  |



| Subject  | Description and Status  | ABA Position   |
|--|---|--|
| Civil Rights Tax Relief                                      | S. 1689 and H.R. 1540 would have amended 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. 1689 was referred to the Senate Finance Committee. H.R. 1540 was referred to the House Ways and Means Committee.  | <i>Supports.</i>   |
| <b>*Discrimination – Sexual Orientation/ Gender Identity</b> | H.R. 2015 would have prohibited workplace discrimination based on actual or perceived sexual orientation and “gender identity,” defined as gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual’s designated sex at birth. H.R. 3685, a narrower bill, would have protected only against workplace discrimination based on actual or perceived sexual orientation, defining sexual orientation as “homosexuality, heterosexuality or bisexuality,” and would have enhanced protections for sexual orientation by clarifying the nature of the protected class and the basis of the prohibited actions. The House passed H.R. 3685. There was no comparable Senate legislation. | <i>Supports legislation to prohibit discrimination on the basis of sexual orientation and actual or perceived gender identity or expression in employment, housing and public accommodations.</i>                      |
| <b>*Fair Pay Restoration – Ledbetter Decision</b>            | S. 1843 and H.R. 2831 would have overturned the Supreme Court’s wage discrimination decision in <i>Ledbetter v. Goodyear Tire and Rubber Co.</i> , 550 U.S. ____ (2007), by clarifying that employers could be sued for pay discrimination every time they issue a paycheck, no matter how long ago the original act of alleged discrimination occurred. The House passed H.R. 2831. The Senate Health, Education, Labor and Pensions Committee and the Senate Judiciary Committee held hearings on S. 1843 but did not vote on the measure. The Senate failed to garner the 60 votes necessary to bring H.R. 2831 to a floor vote.   | <i>Urges Congress to amend federal anti-discrimination employment laws to ensure that in claims involving pay discrimination the statute of limitations runs from each paycheck reflecting the improper disparity.</i> |
| <b>Flag Desecration</b>                                      | S.J. Res. 40 and H.J. Res. 9 proposed to amend the U.S. Constitution to authorize Congress and the states to prohibit the physical desecration of the flag of the United States and to set criminal penalties for that act. H.J. Res. 12 proposed to amend the U.S. Constitution to authorize Congress to prohibit the physical desecration of the flag of the United States. H.R. 4128, a criminal code and modernization bill, included provisions that anyone who knowingly desecrates the U.S. flag shall be imprisoned for not more than one year. S.J. Res. 40 was referred to the Senate Judiciary Committee. H.J. Res. 9, H.J. Res. 12 and H.R. 4128 were referred to the House Judiciary Committee.  | <i>Opposes a constitutional amendment prohibiting flag desecration, or enactment of federal legislation that would criminalize flag desecration.</i>   |



| Subject                   | Description and Status  | ABA Position  |
|---------------------------|---|---|
| <b>*Reporters' Shield</b> | S. 1267, S. 2035 and H.R. 2102 would have codified 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. 2102. The Senate Judiciary Committee approved S. 2035, but the Senate failed to garner the 60 votes necessary to bring the bill to a floor vote.   | <i>Supports a federal shield law that would require any party seeking to subpoena a journalist to disclose his or her source of information to demonstrate that the information sought is essential to a critical issue in the matter, all reasonable alternative sources for acquiring the information have been exhausted, and the need for the information clearly outweighs the public interest in protecting the free flow of information.</i> |
| <b>Same-Sex Marriage</b>  | S.J. Res. 43, H.J. Res. 22, H.J. Res. 74 and H.J. Res. 89 proposed to amend the U.S. Constitution to prohibit same-sex marriage. H.R. 107 would have defined marriage for all legal purposes in the District of Columbia to consist of the union of one man and one woman. S.J. Res 43 was referred to the Senate Judiciary Committee. H.J. Res. 22, H.J. Res. 74 and H.J. Res. 89 were referred to the House Judiciary Committee. H.R. 107 was referred to the House Oversight and Government Reform Committee.  | <i>Opposes any federal enactment that would usurp the traditional authority of a state to determine its own rules governing marriage.</i>   |
| <b>*Slavery</b>           | H.R. 40 would have acknowledged the fundamental injustice, cruelty, brutality and inhumanity of slavery of the United States and the 13 American colonies between 1619 and 1865 and established a commission to examine the institution of slavery and its impact on African-Americans and to make recommendations to Congress on appropriate remedies. H.R. 40 was referred to the House Judiciary Committee, which held a hearing on the issue. There was no comparable Senate legislation. P.L. 110-183 (H.R. 3432), enacted 2/5/08, establishes the Commission on the Abolition of the Transatlantic Slave Trade to ensure a suitable national observance of the bicentennial of the abolition of the transatlantic slave trade and to study the impact of the slave trade on the United States and the Americas. | <i>Supports H.R. 40 in principle.</i>   |



| Subject                         | Description and Status  | ABA Position   |
|---------------------------------|---|--|
| ◆Court Stripping                | H.R. 699 would have stripped jurisdiction from all federal courts to hear constitutional challenges to the interpretation of, or the validity of, the Pledge of Allegiance. H.R. 300 would have prohibited federal courts from adjudicating cases relating to religious liberties or privacy, including cases involving sexual practices, sexual orientation or reproduction. H.R. 1094 would have removed Supreme Court and district court jurisdiction to review cases relating to protecting the rights of human persons between conception and birth or prohibiting, limiting or regulating the performance of abortions or the use of public funds for abortions. H.R. 724 would have limited federal court jurisdiction over questions under the Defense of Marriage Act. The bills were referred to the House Judiciary Committee. There were no comparable Senate measures.         | <i>Opposes legislation that seeks to curtail the jurisdiction of federal courts or the remedies available to federal courts in cases involving constitutional rights.</i>                              |
| ◆Foreign Judgments              | H. Res. 372 would have affirmed the sense of the House that judicial determinations regarding the meaning of the Constitution of the United States should not be based on judgments, laws, or pronouncements of foreign institutions unless such foreign judgments, laws, or pronouncements inform an understanding of the original meaning of the Constitution. H. Res. 372 was referred to the House Judiciary Committee. There was no comparable Senate legislation.   | <i>Opposes.</i>  |
| ◆*Inspector General - Judiciary | S. 461 and H.R. 785 would have established 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. Under both bills, the inspector general would have been appointed by the chief justice only after consultation with congressional leaders and would have been required to make prompt reports to Congress on any matters requiring attention. S. 461, but not H.R. 785, would have included investigation of alleged judicial misconduct by justices of the U.S. Supreme Court in the inspector general's jurisdiction. S. 461 was referred to the Senate Judiciary Committee. H.R. 785 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>                               |
| ◆*Judicial Compensation         | In order for federal judges to receive cost-of-living adjustments (COLAs), two conditions must be met. First, Congress must not reject a COLA for its members (and therefore also for judges since their COLAs are linked). Second, Congress also must specifically authorize a COLA for judges by waiving Section 140 of P.L. 97-92. Judges received no salary increase for 2008 after members of Congress voted to forgo their COLA. Even though Congress is scheduled to receive a COLA for 2009, judges are not scheduled to receive a COLA because the 110th Congress did not enact legislation to waive Section 140. S. 1638 and H.R. 3753, as approved by their respective Judiciary Committees, would have provided for approximately a 30 percent increase in current judicial salaries. Both bills also contained additional provisions on judicial retirement and other matters. | <i>Supports legislation to increase the compensation of federal judges, to ensure regular COLAs, provide periodic review of judicial salary levels, and to de-link congressional and judicial pay.</i> |



| Subject                       | Description and Status   | ABA Position   |
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| ◆*Sunshine in Litigation Act  | H.R. 5884 would have circumvented the Rules Enabling Act to restrict the authority of the federal courts regarding protective orders under Federal Rule of Procedure 26(c). A House Judiciary subcommittee held a hearing on H.R. 5884. There was no comparable Senate legislation.  | <i>Opposes any legislation that circumvents the Rules of Enabling Act process of amending federal court rules.</i>   |
| <b>Criminal Law</b>           |  |  |
| *Death Penalty Representation | The Department of Justice (DOJ) published a final rule 12/11/08 implementing Section 507 of the USA PATRIOT Improvement and Reauthorization Act of 2005, which shifts authority from the federal courts to the U.S. attorney general to certify adequacy of state post-conviction defense processes in death penalty cases. Once granted, the certification would have permitted states to drastically streamline habeas corpus review. The Senate Judiciary Committee held a hearing on the inadequacy of death penalty representation.   | <i>No position on whether Section 507 is good policy, but expressed in comments to DOJ that the proposed rule would allow states to obtain streamlined review without ensuring that capital defendants receive competent counsel or that such counsel is appropriately compensated in post conviction proceedings.</i> |
| *Employment Background Checks | H.R. 7033 would have provided critical safeguards when the Federal Bureau of Investigation (FBI) conducts criminal background checks for employment purposes by ensuring the accuracy and reliability of the FBI's criminal background record system. H.R. 7033 was referred to the House Judiciary Committee. There was no comparable Senate legislation.   | <i>Supports.</i>   |
| *Gang Violence Prevention     | S. 456, H.R. 3922 and H.R. 3547 would have increased and enhanced law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent crime, to protect communities from violent criminals, to revise and enhance criminal penalties for violent crimes, and to expand and improve gang prevention programs. H.R. 3846 would have provided grants for planning and assessing evidence-based and promising practices related to juvenile delinquency and criminal street gang activity prevention and intervention. The Senate passed S. 456 following an agreement dropping provisions to authorize enhanced penalties for firearms-related offenses. A House Judiciary subcommittee held a hearing on gang crime prevention and innovative solutions at the federal level. H.R. 3922, H.R. 3547 and H.R. 3846 were referred to the House Committees on Judiciary, and Education and Labor. | <i>Supports efforts to deter gang violence, taking into consideration the psychological, neurological and physical differences between adults and youth.</i>   |





| Subject   | Description and Status  | ABA Position   |
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| ◆*Indigent Defense Funding                            | <p>P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$835 million for federal defender services, and, beginning 1/1/08, the hourly panel attorney compensation rate for non-death penalty cases rose from \$94 to \$100, and the maximum hourly rate for death penalty cases rose from \$166 to \$170. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including indigent defense services, at fiscal year 2008 funding levels through 3/6/09. The federal judiciary proposed \$911 million for indigent defense services for fiscal year 2009, and H.R. 2829, a fiscal year 2009 appropriations bill, included \$854 million for Defender Services and would have increased the hourly rate for panel attorney in non-capital cases from \$100 to \$102. The hourly rate for capital cases would have increased from \$170 to \$174. The House passed H.R. 2829, and the bill was approved by the Senate Appropriations Committee.</p> | <p><i>Supports sufficient funding for appropriate indigent defense services.</i></p>   |
| *Internet Access to Plea Agreements in Criminal Cases | <p>The U.S. Judicial Conference's Committee on Court Administration and Case Management issued a request for comments in September 2007 on a Justice Department (DOJ) proposal to restrict public Internet access to plea agreements in criminal cases that may contain information identifying defendants who are cooperating with law enforcement investigations. The request specifically sought comments regarding the privacy and security implications of Internet access to such files and potential policy alternatives. The committee declined to endorse the DOJ proposal, decided against recommending a national policy, and urged each federal trial court to adopt its own protocol for deciding Internet access on a case-by-case basis.</p>   | <p><i>Generally opposes restrictions on the public's right to access to court proceedings and pleadings. Supports procedures that provide the public and parties with access to the records while providing a measure of protection to cooperating defendants consistent with the relevant ABA Criminal Justice Standards.</i></p> |
| *Justice Integrity Act                                | <p>S. 3245 and H.R. 6518 would have established a five-year pilot program in 10 districts, under the supervision of the U.S. attorney general, to investigate and address unwarranted racial and ethnic disparities in the federal criminal justice system. S. 3245 was referred to the Senate Judiciary Committee. H.R. 6518 was referred to the House Judiciary Committee.</p>  | <p><i>Supports.</i></p>  |



| Subject   | Description and Status  | ABA Position   |
|---|---|--|
| <b>*National Institute of Corrections (NIC)</b> | P.L. 110-161 (H.R. 2964), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, provides \$22 million for the NIC as part of the Bureau of Prisons (BOP) budget, but extensive cuts proposed in the BOP budget may prevent the bureau from continuing to fund the program in the future. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including the BOP, at fiscal year 2008 funding levels through 3/6/09.  | <i>Supports continued funding for the NIC.</i>   |
| <b>*Prison Litigation Reform Act (PLRA)</b>     | H.R. 4109 would have amended the PLRA to repeal the requirement that prisoners suffer a physical injury in order to recover a civil award, modified current requirements for exhaustion of administrative remedies, allowed prisoners who prevail on civil rights claims to be awarded attorneys' fees on the same basis as the general public, and repealed the provisions extending the PLRA to juveniles confined at secured detention and correctional facilities. H.R. 4109 was referred to the House Judiciary Committee, where a subcommittee held two hearings on the bill. There was no comparable Senate legislation. | <i>Supports.</i>   |
| <b>*Prison Phone System Contracting Reform</b>  | H.R. 555 would have required the Federal Communications Commission to prescribe rules regulating inmate telephone service rates that would have assured that there was a reasonable opportunity for prison and jail inmates to maintain telephonic communication with the free community and that telephone services in the correctional setting were offered with an appropriate range of options at the lowest possible rates. H.R. 555 was referred to the House Energy and Commerce Committee. There was no comparable Senate legislation.  | <i>Supports.</i>   |
| <b>◆*Second Chance Act</b>                      | P.L. 110-199 (H.R. 1593), enacted 4/9/08, amends the Omnibus Crime Control and Safe Streets Act of 1968 to help prepare inmates and ex-offenders to successfully return to their communities by providing grants to states and localities so that they can provide coordinated assistance to those being released from prison.  | <i>Supports prisoner reentry programs, including substance abuse treatment, educational and job training, and mental health counseling and services.</i> |



| Subject  | Description and Status   | ABA Position   |
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| <h2>Elder Law</h2>   |  |  |
| *Elder Justice Act   | <p>S. 1070 and H.R. 1783 would have amended 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. H.R. 5352 would have established specialized elder abuse prosecution and research programs and activities to aid victims of elder abuse, to 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. S. 1577 would have provided funding for the expansion of a nationwide pilot program for conducting criminal background checks of employees at long-term care centers. A House Judiciary subcommittee held a hearing on H.R. 1783 and H.R. 5352, among other issues. The Senate Finance Committee approved S. 1070 and S. 1577. The House Judiciary Committee approved H.R. 1783. The House passed H.R. 5352.</p> | <p><i>Supports 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. Urges federal, state, local, tribal and territorial governments and their prosecutors to vigorously prosecute cases of elder abuse, neglect, and financial exploitation.</i></p>  |
| *Guardianship  | <p>Following hearings in 2006 held by the Senate Special Committee on Aging, the committee released a report in December 2007 on the condition of federal oversight in the guardianship system in conjunction with the release of a report by AARP and the ABA on state needs related to the guardianship community.</p>   | <p><i>Maintains that federal guardianship legislation is unnecessary, but recognizes the growing need for a federal role in offering resources and incentives for quality improvement and reform.</i></p>  |
| *Social Security Administration (SSA) Disability Appeals Process | <p>The SSA has worked intensively to address an enormous backlog of SSA disability claims. The SSA issued proposed rules 10/19/07 to make significant changes at the Administrative Law Judge, Appeals Council and Decision Review Board appeals levels for both disability and non-disability claims. Portions of the regulations with which the ABA was concerned were rescinded by SSA before the regulations were finalized. The president proposed a 6 percent increase in SSA administrative funding for fiscal year 2009 in part to help address the disability case backlog. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including the SSA, at fiscal year 2008 funding levels through 3/6/09.</p>  | <p><i>Supports the intensive efforts of the SSA commissioner to reduce the backlog. Supports the intent of the 10/19/07 proposed rules to improve the process, but expressed concerns in comments submitted to the SSA that some of the rules would have significant potential to adversely impact claimants' receipt of benefits to which they are legitimately entitled. Supports increased funding for SSA administrative funding to help reduce the backlog.</i></p> |



| Subject   | Description and Status  | ABA Position  |
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| <h2>Environmental Law</h2>                      |   |   |
| <b>Global Climate Change</b>                    | <p>Numerous bills were introduced to address the means and mechanisms for a federal response to climate change issues. S. 3036, a leading proposal, would have set a comprehensive national policy to address global warming, including a cap on greenhouse gas emissions. Other leading bills – such as S. 280, S. 2191, H.R. 620 and H.R. 4226 – would have provided for a program to decrease greenhouse gas emissions. The Senate failed to garner the necessary votes to bring S. 3036 to a floor vote. The Senate Environment and Public Works Committee approved S. 2191, but there was no further action. H.R. 620 and H.R. 4226 were referred to the House Energy and Commerce Committee.</p>  | <p><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</i></p> |
| <b>*Oceans and Fisheries Reform</b>             | <p>H.R. 21, broad ocean governance legislation, would have established a formal national oceans policy, reorganized the National Oceanic and Atmospheric Administration (NOAA) to formally establish it as a part of the Department of Commerce and define its mission, and established 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. 250, a narrower bill, would have reorganized NOAA and formally established it as a part of the Department of Commerce, defined the mission of NOAA, restructured the agency, and elevated various senior NOAA officials to high-level positions within the Department of Commerce. S. 3314 would have specified a national oceans policy and reestablished NOAA as a civilian agency. A House Natural Resources subcommittee held a hearing on H.R. 21 and approved the bill. H.R. 250 was referred to the House Committees on Science and Technology, and Natural Resources. S. 3314 was referred to the Senate Commerce, Science and Transportation Committee.</p> | <p><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></p>               |
| <h2>Health Law</h2>                             |   |   |
| <b>◆*Mental Health and Addiction Equity Act</b> | <p>P.L. 110-343 (H.R. 1424), emergency economic stabilization legislation enacted 10/3/08, includes parity provisions, effective 1/1/10, to require group health plans covering 50 or more employees to apply the same level of treatment benefits to mental health and substance-related disorders as they do to other medically necessary care.</p>   | <p><i>Supports.</i></p>   |



| Subject   | Description and Status   | ABA Position   |
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| <b>*Health Care – “Right of Conscience” Regulations</b> | <p>The Department of Health and Human Services issued final regulations 12/18/08 that seek to protect the right of health-care workers to refuse to participate in the provision of medical services that violate their beliefs on moral or religious grounds. The new regulations expand the definitions of what it means to assist in the performance of a health care service, potentially leaving room for any worker in the health care continuum to refuse to provide patients with the health information they need. S. 20 and H.R. 7130 would have prohibited implementation of the regulations. S. 20 was referred to the Senate Health, Education, Labor and Pensions Committee. H.R. 7130 was referred to the House Energy and Commerce Committee.</p>  | <p><i>Opposes the regulations.<br/>Supports S. 20 and H.R. 7130.</i></p> |
| <b>*Indian Health Care Improvement</b>                  | <p>S. 1200 and H.R. 1328 would have amended the Indian Health Care Improvement Act to revise and extend the act, including creation of a National Bipartisan Commission on Indian Health Care. S. 2532 would have amended the Social Security Act to improve health care for American Indians under Medicare, Medicaid and the State Children’s Health Insurance Program. The Senate passed S. 1200. The House Natural Resources Committee and a House Energy and Commerce subcommittee approved H.R. 1328. The Senate Finance Committee approved S. 2532. There was no comparable House legislation.</p>  | <p><i>Supports.</i></p>  |
| <b>*International Family Planning</b>                   | <p>The Senate-passed version of H.R. 2764, State-Foreign Operations fiscal year 2008 appropriations legislation, would have repealed the “Mexico City” policy, which bans 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 House-passed version of the bill would have allowed condoms, but not funds, to be provided to the organizations. The ban was retained in the final version of the appropriations legislation, P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government at fiscal year 2008 funding levels and extends restrictive language through 3/6/09.</p> | <p><i>Supports repeal of the “Mexico City” policy.</i></p>               |



Subject

Description and Status

ABA Position

## Housing/ Homelessness

### **\*Homeless Assistance**

P.L. 110-378 (S. 2982), enacted 10/8/08, amends the Runaway and Homeless Youth Act to revise the requirements for transitional living programs, expands the definition of a "homeless youth," and authorizes appropriations for fiscal years 2009-2013. S. 1518, H.R. 840 and H.R. 7221 would have reauthorized the McKinney-Vento Homeless Assistance Act through fiscal year 2012 and would have amended the act to expand the definition of homelessness to include people who are staying for a short time in the housing of others or a hotel and have moved frequently. The Senate Banking, Housing and Urban Affairs Committee approved S. 1518. The House Financial Services Committee approved H.R. 840, and further negotiations produced H.R. 7221, which would have expanded the Department of Housing and Urban Development's definition of homelessness and included provisions to include children and their families who are defined as homeless under other federal statutes. The House passed H.R. 7221.

*Supports efforts to address homelessness, including access to public education for homeless children and youth, and the inclusion in the definition of "homeless persons" individuals who lack a fixed regular and 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.*

### **Housing Choice Voucher Program**

P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$14.7 billion for the Section 8 Housing Choice Voucher Program, a Department of Housing and Urban Development program that allows very low-income families to choose and lease or purchase safe, decent, and affordable privately owned rental housing. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including the Housing Choice Voucher Program, at fiscal year 2008 funding levels through 3/6/09. H.R. 3018 would have revised the requirements for the administrative fee to public housing agencies to cover the cost associated with administering family self-sufficiency programs in connection with the Housing Choice Voucher Program. The House passed H.R. 3018. H.R. 1851 and S. 2684 would have reformed the program. The House passed H.R. 1851. A Senate Banking, Housing and Urban Affairs subcommittee held hearings on the issue.

*Supports full and adequate funding for public housing programs that provide rental assistance for low-income families.*



| Subject               | Description and Status  | ABA Position   |
|-----------------------|---|--|
| ◆* Detainee Transfers | <p>Over the past couple of years, Immigration and Customs Enforcement (ICE) has been transferring hundreds of immigration detainees from East Coast facilities to rural areas such as South Texas without taking into account whether the detainees are already being represented by counsel – a violation of the ICE National Detainee Transfer Standard. Such transfers have resulted in detainees' inability to maintain legal representation.</p>   | <p><i>Opposes the involuntary transfer of detained immigrants and asylum seekers when the transfer impedes an existing attorney-client relationship and makes it difficult to obtain new representation.</i></p> |
| ◆*Detention Standards | <p>A House Homeland Security subcommittee held hearings on issues surrounding the detention of immigrants and detention standards. Several organizations submitted a petition to the Department of Homeland Security (DHS) calling for promulgation of regulations for the detention standards to help ensure that detained immigrants are treated humanely and have meaningful access to the legal process. S. 3005 and H.R. 5950 would have directed the secretary of DHS to establish procedures for the delivery of comprehensive medical and mental health care for immigration detainees. H.R. 5950 was referred to the House Judiciary Committee, where a subcommittee held hearings on the issue. S. 3005 was referred to the Senate Judiciary Committee.</p> | <p><i>Assisted in the development of detention standards that went into effect in 2001 and supports regulations for the standards to ensure consistent implementation. Supports S. 3005 and H.R. 5950.</i></p>   |
| ◆*DREAM Act           | <p>S. 2205 and H.R. 1275, the Development, Relief and Education for Alien Minors Act (DREAM Act), would have authorized 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. The Senate fell short of the votes to end debate and vote on S. 2205. H.R. 1275 was referred to the House Committees on Education and Labor, and Judiciary.</p>  | <p><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></p>                     |
| ◆*Fee Increases       | <p>U.S. Immigration and Customs Enforcement issued a proposed rule in April 2008 that would double the fee for the I-901 Student Exchange Visitor Program (SEVP) from \$100 to \$200 for F and M visa students and nearly double the fee for J-1 Exchange Visitors from \$100 to \$180. The increased fees would be used for additional enforcement activities related to the programs.</p>   | <p><i>Opposes the fee increases as a financial burden that would deter individuals from traveling to the United States for legitimate scientific or scholarly purposes.</i></p>                                  |
| ◆*HIV Visa Ban        | <p>P.L.110-293 (H.R. 5501), global HIV/AIDS prevention legislation enacted 7/30/08, includes provisions repealing the ban on HIV-positive visitors to the United States.</p>  | <p><i>Supports repeal of the ban.</i></p>  |



| Subject                                | Description and Status   | ABA Position   |
|--|--|--|
| ◆International Affairs<br>Budget       | P.L. 110-161 (H.R. 2674), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$1.3 billion for international organizations and \$1.7 billion for international peacekeeping activities. P.L. 110-329 (H.R. 2638), a continuing appropriations resolution enacted 9/30/08, extends funding for the programs at their fiscal year 2008 levels through 3/6/09. S. 3288, approved by the Senate Appropriations Committee, and a draft bill approved by a House Appropriations subcommittee included \$36.6 billion for the international affairs budget for fiscal year 2009.   | <i>Supports funding for various international assistance programs.</i>         |
| ◆International Criminal<br>Court (ICC) | P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, continues to prohibit Economic Support Fund assistance to the government of any country that is part of the ICC and has not signed a bilateral immunity agreement with the United States that would protect U.S. military and other personnel from prosecution by the ICC. The law allows the president to waive the restrictions, however, in certain circumstances affecting national security.   | <i>Urges that the United States accede to the treaty establishing the ICC.</i> |
| ◆*Rule of Law<br>Programs              | P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$164 million for the promotion of democracy globally. P.L. 110-329 (H.R. 2638), a continuing appropriations resolution enacted 9/30/08, extends funding for the programs at fiscal year 2008 levels through 3/6/09.   | <i>Supports.</i>   |
| *Trafficking Victims<br>Protection     | P.L. 110-457 (H.R. 7311), enacted 12/23/08, reauthorizes and strengthens the Trafficking Victims Protection Act of 2000 through fiscal year 2011. The new law includes provisions to provide more protection to trafficking victims, particularly child victims, and gives prosecutors new tools to gain cooperation from witnesses and informants who can provide vital testimony in human trafficking prosecutions. Also included are provisions to ensure that unaccompanied alien children receive humane and appropriate treatment while in the custody of the U.S. government.   | <i>Supports.</i>   |
| ◆*Treaties                             | The Senate approved the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and an Amendment and Three Protocols to the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects. The Senate Foreign Relations Committee held hearings on and approved the Law of the Sea Treaty, which provides a legal framework governing the use of the oceans and their resources. H. Res. 101 would have expressed the sense of the House that the Senate should ratify the Convention on the Elimination of All Forms of Discrimination Against Women. H. Res. 101 was referred to the House Foreign Affairs Committee. There was no action on several other treaties, including the Convention on the Rights of the Child. | <i>Supports.</i>   |





| Subject  | Description and Status   | ABA Position  |
|--|--|---|
| <b>*Higher Education Act (HEA) Reauthorization</b> | P.L. 110-315 (H.R. 4137), enacted 8/14/08, reauthorizes programs under the Higher Education Act of 1965 through fiscal year 2014 and includes provisions authorizing increases in federal financial aid programs, seeking ways to keep college costs down, and providing for loan repayment and forgiveness. See <b>related entries</b> .  | <i>Supports programs under the HEA that encourage greater access to higher education, including the Thurgood Marshall Legal Educational Opportunity Program and loan forgiveness and repayment provisions for public service lawyers.</i> |
| <b>◆*Loan Forgiveness and Repayment Assistance</b> | P.L. 110-315 (H.R. 4137), Higher Education Act (HEA) reauthorization legislation enacted 8/14/08, includes four new loan forgiveness and repayment programs that benefit public interest lawyers: John R. Justice Prosecutors and Defenders Incentive Act; Legal Assistance Loan Repayment Program; Loan Forgiveness for Service in Areas of National Need; and Perkins Loan Cancellation for Public Service. P.L. 110-84 (H.R. 2669), enacted 9/27/07, provides for cancellation of loans under the William Ford Direct Loan program for certain borrowers employed in qualifying public service positions; allows those in public interest positions to consolidate other qualifying federal student loans into the direct loan program for the purposes of pursuing loan forgiveness; and allows borrowers to further opt for the Ford program's income-contingent repayment option (ICR) and, by July 2009, for a new more generous income-based repayment option. The Department of Education issued final regulations for P.L. 110-84 on 10/3/08. P.L. 110-153 (S. 2371), HEA technical corrections legislation enacted 12/21/07, allows a borrower to wholly exclude a spouse's income when calculating income-based loan repayment terms by filing separate tax returns. | <i>Supports loan repayment assistance programs for law school graduates accepting low-paying, public interest law employment.</i>   |
| <b>Legal Research</b>                              |  |   |
| <b>*Law Library of Congress</b>                    | The House Administration Committee held a hearing on Library of Congress management issues, including concerns about the security of the library's inventory, cataloging, and the status of the Law Library of Congress. H.R. 6589, approved by the House Administration Committee, would have provided additional funding for the Law Library, established a separate budget line-item, and created a foundation to enhance the Law Library's services. P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$395.7 million for the Library of Congress, which encompasses funding for the Law Library of Congress and the Global Legal Information Network (GLIN). P.L. 110-329 (H.R. 2683), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including the Library of Congress, at fiscal year 2008 funding levels through 3/6/09.  | <i>Supports a separate budget line-item and increased funding for the Law Library of Congress to allow for enhancement of services, including electronic development, reclassification and cataloging. Supports funding for GLIN.</i>     |



| Subject                         | Description and Status   | ABA Position   |
|---------------------------------|--|--|
| <b>*Predatory Lending</b>       | The Department of Defense issued final regulations in October 2007 to implement the Military Lending Act of 2006, which include protections for military servicemembers from predatory lending practices.  | <i>Supports protection for military service-members and their dependents from predatory lending. Expressed concern over uncertainty of certain terms in the implementing regulation and encouraged revisiting the issue periodically to monitor for developments.</i>                                      |
| <b>*Veterans Representation</b> | The Department of Veterans Affairs issued final regulations to implement the Veterans Benefits, Health Care and Information Technology Act of 2006, which included provisions lifting a 150-year-old prohibition on veterans being able to hire lawyers to pursue appeals of claims for benefits, including certification requirements for lawyer and non-lawyer representatives, and establishing rules of conduct for lawyers appearing before the VA to closely trace the language and requirements of the <i>ABA Model Rules of Professional Conduct</i> .   | <i>Supports final regulations that defer to a lawyer's good standing in a state bar for certification purposes, require ongoing education, and remove certain proposed regulations that may have discouraged pro bono representation efforts.</i>  |
| <b>National Security</b>        |  |  |
| <b>◆*Anti-Torture</b>           | The Department of Defense adopted a new <i>Army Field Manual on Human Intelligence Collector Operations</i> in 2006 that bars torture and requires military interrogations to be conducted in compliance with the Detainee Treatment Act and Common Article 3 of the Geneva Conventions. In July 2007, the president issued an executive order permitting the use of "enhanced interrogation tactics" by civilian agencies such as the Central Intelligence Agency. H.R. 4114 would have extended to all U.S. personnel the current prohibitions against torture included in the <i>Army Field Manual</i> . The House passed the provisions of H.R. 4114 as part of H.R. 4156, emergency war supplemental appropriations legislation, and the conference report on H.R. 2082, fiscal year 2008 intelligence reauthorization legislation. The Senate fell short of the votes necessary to bring H.R. 4156 to a vote. Congress passed the conference report on H.R. 2082, but the president vetoed the legislation. The House failed to override the veto. | <i>Condemns any use of torture or other cruel, inhuman or degrading treatment or punishment upon persons within the custody or under the physical control of the U.S. government or its contractors and any enforcement or authorization of such measures by government lawyers, officials and agents.</i> |



| Subject              | Description and Status   | ABA Position   |
|----------------------|--|--|
| ◆*Tax Simplification | <p>H.R. 3970 would have overhauled the tax system by amending the Internal Revenue Code of 1986 to provide additional tax relief to low- and moderate-income individuals, to repeal the Alternative Minimum Tax (AMT), and to reform the corporate income tax. The House passed H.R. 3996, a narrower version of the legislation that was further narrowed in the Senate to include only a one-year patch for the AMT. The House passed another narrow bill, H.R. 4351, but the Senate fell short of the votes required to take up the measure. The House and Senate then passed the stripped-down H.R. 3996, which became P.L. 110-166 after being signed by the president 12/26/07. P.L. 110-343 (H.R. 1424), emergency economic stabilization legislation enacted 10/3/08, provides a one-year patch designed to prevent an additional 21 million taxpayers from paying the AMT on 2008 income.</p> | <p><i>Supports simplification of the tax laws, including a permanent fix or repeal of the AMT.</i></p> |

## Tort and Insurance Practice

◆\*Alternatives to Medical Malpractice Litigation

S. 1481 and H.R. 2497 would have provided demonstration grants to states to develop alternatives to medical malpractice litigation. Unlike similar legislation in the 109th Congress, the legislation did not specifically list health courts as an alternative. S. 1481 was referred to the Senate Health, Education, Labor and Pensions Committee. H.R. 2497 was referred to the House Energy and Commerce Committee.

*Supports the use of voluntary alternative dispute mechanisms that are entered into after a dispute has arisen, but opposes establishment of health courts that take away the right of a trial by jury.*

◆\*McCarran-Ferguson Act

S. 618 and H.R. 1081 would have repealed the McCarran-Ferguson Act, which largely exempts the insurance industry from the federal antitrust laws. S. 618 and H.R. 1081 would not have preempted or otherwise affected the ability of states to regulate or tax the business of insurance, and the Justice Department and the Federal Trade Commission would have issued joint statements of their antitrust policies regarding joint activities relating to the business of insurance. The Senate Judiciary Committee held a hearing on S. 618. H.R. 1081 was referred to the House Committees on Energy and Commerce, Financial Services, and Judiciary.

*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.*

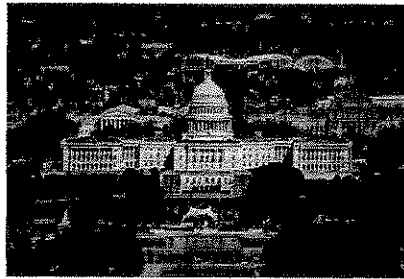


## 2009 Congressional Schedule 111th Congress - First Session

### Senate

### House

|                           |                |                           |                |
|---------------------------|----------------|---------------------------|----------------|
| Convenes                  | Jan. 6         | Convenes                  | Jan. 6         |
| Presidential Inauguration | Jan. 20        | Presidential Inauguration | Jan. 20        |
| Presidents' Day Recess    | Feb. 14-22     | Presidents' Day Recess    | Feb. 14-22     |
| Spring Recess             | April 4-19     | Spring Recess             | April 4-19     |
| Memorial Day Recess       | May 23-31      | Memorial Day Recess       | May 23-31      |
| Independence Day Recess   | June 27-July 5 | Independence Day Recess   | June 27-July 5 |
| Summer Recess             | Aug. 8-Sept. 7 | Summer Recess             | Aug. 1-Sept. 7 |
| Target Adjournment        | TBA            | Target Adjournment        | Oct. 30        |



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