



2014 STATE LEGISLATIVE AGENDA

New York City Bar Association

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NEW YORK
CITY BAR



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INTRODUCTION

The New York City Bar Association (the “City Bar”), which was founded in 1870, is an independent organization and professional home for over 24,000 members dedicated to facilitating and improving the administration of justice and to promoting reform of the law. The City Bar accomplishes this mission by harnessing the expertise of the legal profession to identify and address legal and public policy issues. Our 150 committees focus on specific areas of law, the courts and the legal profession; they regularly issue reports and policy statements, submit amicus curiae briefs, draft public policy proposals, provide comments on pending legislation and testify at hearings on issues of public concern at the city, state and federal levels. The City Bar has earned its reputation as a public-spirited bar association by speaking up strongly for integrity in the political process and a fair and effective judicial system.

The City Bar’s committees generate dozens of reports over the course of each legislative session. Our **2014 State Legislative Agenda** represents only a portion of those positions. It focuses on issues that are relevant to the current legislative debate or of particular importance to the City Bar, as well as legislative proposals drafted by our committees.¹

SUMMARY

- Support legislation to bring public campaign financing to New York and institute stronger ethics, disclosure and transparency laws.
- Support legislation to establish the fourth Tuesday in June as New York's Primary Day for both federal and state offices and party positions.
- Support legislation to allow properly certified patients to gain easy access to medical marijuana that meets standards for growth and sale under the law.
- Support the Women’s Equality Act.

¹ To view a complete listing of our legislative policy positions, visit <http://www.nycbar.org/legislative-affairs/overview>.

- Support the proposed 2014-2015 Judiciary Budget request and efforts to increase the number of Family Court judges.
- Support access to justice initiatives, including proposals to consolidate the state's major trial courts and requiring commission-based judicial appointments.
- Support the Gender Expression Nondiscrimination Act so that gender identity and gender expression are included as protected classes under the New York Human Rights Law.
- Support efforts to require the New York State Board of Examiners of Sex Offenders to consult a validated risk instrument when it makes a recommendation to the court regarding the appropriate risk level of a sex offender.
- Continue to speak out against legislation that would lessen consumer protections vis-à-vis questionable debt collectors, payday lenders and so-called budget planners.
- Support legislation to protect the inheritance rights of posthumously conceived children.
- Advance City Bar-drafted bill to clarify and expand the category of claimants under the Unjust Conviction and Imprisonment Act so that individuals are not unreasonably or arbitrarily barred from bringing claims.
- Advance City Bar-drafted Home Mortgage Bridge Loan Act to create a statewide program to provide mortgage bridge loans to low- and middle-income homeowners.
- Advance City Bar-drafted bill to amend the Arts and Cultural Affairs Law to better protect art authenticators against frivolous lawsuits.

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Support legislation to bring public campaign financing to New York and institute stronger ethics, disclosure and transparency laws

The City Bar is concerned that the public overwhelmingly perceives that a person's access to and influence in state government and its policymakers is directly proportional to the amount of money that person can contribute to an elected official's campaign coffers. The ever-present spectre of "money in politics" erodes public trust and disincentivizes the public from participating in the democratic and electoral processes. We applaud Governor Cuomo for raising this important issue in his 2014 State of the State Address and look forward to supporting positive changes in this area of the law.

As guiding principles, the City Bar believes that campaign finance reform can be best achieved through: 1) the voluntary public financing of political campaigns at levels designed to attract candidates into the public financing program; 2) stricter limits on political contributions; 3) enhanced disclosure of campaign contributions and expenditures; 4) more effective enforcement of campaign financing laws; 5) curbs on transfers by legislative party committees; and 6) effective regulation of "independent" expenditures on campaigns that are coordinated with a candidate.

In the area of rules reform, we encourage both houses to hold public discussions of their operating rules and ways they can be improved, in a manner that takes into account the public's interest in having a Legislature that is transparent, deliberative and accountable to the citizens of the state. We [urge](#) the adoption of new rules that will: 1) limit legislators to serving on a maximum of three committees in any given time period; 2) require committee members to be physically present to have their votes counted; 3) require that all bills must be accompanied with the appropriate fiscal and issue analysis before receiving a vote and that all bills voted out of committee be accompanied by committee reports showing the work of the committee on the bill; 4) mandate a 'mark-up' process for all bills before they are voted out of committee; 5) explicitly provide each committee with control over its own budget; and 6) institutionalize conference committees, so that when bills addressing the same subject have been passed by both chambers, a conference committee will be convened at the request of the prime sponsor from each chamber or the Speaker and Majority Leader. These reforms, which are modeled on best practices from other states, will make for a more open and democratic Legislature, which is crucial to address the challenges we face in these difficult times.

Concerning disclosure of client information by attorney-legislators, the City Bar believes there is no basis for excluding lawyers from the same level of public scrutiny to which other legislators are held. Current disclosure laws can be made even stronger. Indeed, robust financial-disclosure requirements have applied to legislators, including those who are attorneys, for decades in other states. As New York works to strengthen its disclosure laws, we continue to be guided by the following general principles: First, the

type of information we believe should be disclosed is not, in the ordinary situation, entitled to protection under either a claim of privilege or confidence, and in any event a system can be designed to address particular situations where the public's interest in disclosure is outweighed by a client's interest in secrecy. So, for example, when family, criminal, or certain transactional matters (e.g., a planned hostile take-over) that have not been revealed in the public records are involved, such matters could be shielded from disclosure. Second, exceptions could be made in the exceptional circumstance where disclosure of the fact of representation itself is privileged, or where disclosure is likely to be embarrassing or detrimental to the client. Third, an independent commission should be established to determine whether an exception is warranted in particular cases or whether certain information should be kept confidential in a case of extreme hardship that would not violate the public interest. Fourth, following current law, any expanded disclosure requirement should apply prospectively, i.e. only to new clients and new matters for existing clients as of the law's effective date, and direct that attorney-legislators inform clients in writing of their disclosure obligations under Section 73-A.

Finally, the City Bar [supports](#) legislation requiring that the proceedings and voting records of committee and session activities conducted by both houses be posted online (**A.2097-B/S.3046-B**). New Yorkers should be able to easily navigate the legislative websites and find information. In this digital age, travel to Albany should no longer be a prerequisite to information-gathering about the legislative process and a particular bill's activity.

Support legislation to establish the fourth Tuesday in June as New York's Primary Day for both federal and state offices and party positions

The City Bar [supports](#) establishing the fourth Tuesday in June as New York's Primary Day for both federal and state offices and party positions (**A.8198/S.6204**). Currently, New York holds its primaries for public office in state and local municipalities and for party positions (other than President and National Convention delegates and alternates) in September, while primaries for public offices at the federal level are held in June. This creates the possibility of as many as three primaries in a given calendar year, as was the case in the 2012 election cycle. Holding a single primary is estimated to save our state and local governments approximately \$50 million.

Under the reformed calendar proposed, candidates can organize and consolidate their support at a time when people are more available and accessible, allowing for greater ease and efficiency in obtaining petition signatures. An earlier primary day would allow litigation involving ballot access issues to occur during the normal litigation season instead of during special sessions set up in the month of August, relieving the present burden on candidates, their counsels and the courts, and the additional expenses associated with the rush from filing of the action, to decision, to appeal. The present schedule provides as little as three weeks for this process, while the proposed reformed calendar would allow ballot

access issues to be resolved sufficiently in advance of the general election in November, providing the Board of Elections time to address absentee and military ballots in compliance with state and federal law in advance of the 45 day deadline prior to the general election. Finally, adoption of a single primary day would improve voter turnout for the primary (which has been decidedly – and dangerously – low in recent election cycles) and cut the costs of running additional separate primary elections.

Support legislation to allow properly certified patients to gain easy access to medical marijuana that meets standards for growth and sale under the law

By allowing marijuana use for critically ill medical patients as recommended by their physicians, thousands of New Yorkers with serious medical conditions could be spared the nausea, diminished appetite, anxiety and pain brought on by critical illness. The reality of our current legal and enforcement environment permits recreational users of marijuana to enjoy its broad availability on the black market, and yet criminalizes its use by the sick and desperate. This disparity in treatment is against public interest and results in the needless denial of likely beneficial treatment and palliative relief for those who legitimately seek it. New York State has an obligation to allow people with severe debilitating and life-threatening conditions to access marijuana legally as a means of alleviating their suffering – and this legislation permits it to do so under both medical and governmental oversight.

The most recent iteration of medical marijuana legislation in New York introduces one of the most restrictive regulatory schemes in the country (**A.6357-A/S.4406-A**). The City Bar supports the bill's multi-tiered approach for certification, oversight and reporting, all of which would be substantially regulated by the Department of Health. The bill licenses and oversees both the cultivators and dispensers of medical marijuana, and requires registration of patients and their caregivers for the tracking of use. It permits only certain organizations to be registered as suppliers. It does not allow individual patients to cultivate marijuana for their own use. The City Bar [supports](#) this legislation because it provides relief to suffering patients while reflecting the public concern regarding regulating a controlled substance. As negotiations over this issue continue, we caution legislators against ultimately passing a law that is so restrictive as to be rendered meaningless. Patients who would benefit from and are approved to use medical marijuana should be able to easily gain access to it; they should be able to receive approved amounts of a quality of medical marijuana that meets standards for growth and sale under the law.

Support the Women's Equality Act

The City Bar supports the [Women's Equality Act](#), with recommendations as noted below. The Act lays out a 10-point plan for advancing women's rights in a wide variety of areas. Such measures include:

- Strengthening sex trafficking laws by increasing penalties for trafficking, removing the requirement that prosecutors establish coercion when the victims are minors, creating an affirmative defense in prostitution prosecutions where the defendant's participation was a result of having been a victim of sex trafficking, creating a private right of action for trafficking victims, and improving the delivery of services to trafficking victims. We note one concern, however: this part of the Act expands the application of sex offender registration to certain new crimes. While expansion of sex offender registration can be an effective tool to target a small and dangerous class of violent sex offenders, the expansion as contemplated by this part raises overbreadth and due process concerns. In addition, we have concerns regarding the current Risk Assessment Instrument being used by the NYS Board of Examiners of Sex Offenders and believe it is badly outdated and invalid, as discussed below. On balance, we recommend that the provisions expanding the pool of sex offender registrants be tabled until further study can be undertaken.
- Moving abortion from the Penal Law to the Public Health Law and codifying the the holding of *Roe v. Wade*.
- A requirement that employers provide equal pay to similarly positioned employees doing work that requires equal skill, effort and responsibility. This portion of the Act is aimed at closing the pay gap and ending wage variations based on sex by providing workers with the right to transparency, so that a victim of pay discrimination will have the necessary information needed to bring a successful claim for meaningful damages.
- An amendment to expand the New York State Human Rights Law so that all employers will be subject to the Human Rights Law prohibitions against sexual harassment, regardless of the number of employees.
- Three measures aimed at combating employment discrimination against women. The first would provide reasonable attorney's fees to the prevailing party in employment discrimination cases where sex was the basis of the discrimination (although we feel strongly that this provision should be extended to *all* cases of employment discrimination, not just those based on sex). The second measure would prohibit employment discrimination based on familial status. The final measure would require employers to provide reasonable accommodations to the known "pregnancy-related conditions" of an employee.
- Provisions to better protect victims of domestic violence. The first would prohibit housing discrimination against domestic violence victims, and permit a private right of action where such discrimination has occurred. Another provision is related to strengthening order of protection laws for victims of domestic violence and making the process less onerous. Specifically, the proposed legislation amends the Family Court Act and Judiciary Law to establish a pilot program for filing of petitions for

temporary orders of protection electronically and allowing victims the option to provide testimony via audio-visual means.

- Providing better economic protections to women. The Act would allow for reasonable attorney's fees to the prevailing party in credit or housing-related credit discrimination cases where sex was a basis of the discrimination. These amendments will expand the protections of the law which currently allow an award of attorney's fees only in cases of housing discrimination, and compensatory damages and other relief (but not attorney's fees) in cases of credit discrimination. This will help level the playing field between women and discriminatory creditors by making it feasible for women to obtain competent counsel. The Act also includes a provision to establish a task force to study the impact of source of income on access to housing.

Support the proposed 2014-2015 Judiciary Budget request and efforts to increase the number of Family Court judges

The City Bar [recommends](#) that the Legislature adopt the Judiciary's 2014-2015 Budget Request (the "Judiciary Budget") in its entirety. After sustaining a \$170 million dollar budget cut in 2011, and zero growth budgets in 2012 and 2013, it is essential that the Legislature fund the Court's modest 2.5% proposed increase in its 2014-2015 budget request. As stated by Chief Administrative Judge A. Gail Prudenti, "the courts are the emergency room for the people of the State of New York in the most difficult time of their lives. We need to keep the courthouses open for them." Moreover, as explained by First Deputy Chief Administrative Judge Lawrence Marks, "there is a point beyond which the Judiciary cannot be pushed if we are to continue to meet our constitutional responsibilities. We have reached that point." The proposed 2.5% increase in the Judiciary Budget amounts to \$44.2 million dollars. This increase includes a \$42.9 million increase in nondiscretionary expenditures: \$17 million for the final phase of statutorily mandated criminal defense standards, \$17.5 million for required raises for non-judicial personnel, and \$8.4 million for the third phase of the previously mandated increase in judicial salaries.

Despite this small proposed budgetary increase, the Office of Court Administration (OCA) reports that it is able to maintain, restore and enhance essential court functions by continuing to streamline administration and reorganize and consolidate offices and programs, a process it began in 2011 when the courts sustained a \$170 million cut in funding. Thus, the Judiciary "Road to Recovery" Budget proposed by OCA would add \$15 million in funding for vitally-needed Civil Legal Services (which studies show save the state money), permit the Judiciary to fill some critical positions, and allow the courts to remain open until 5:00 PM instead of shutting down at 4:30 PM to avoid overtime expenditures.

In addition, OCA has proposed adding 20 new Family Court judgeships throughout the state, a proposal which would need to be separately enacted and funded by the Legislature. The City Bar supports the inclusion of this supplemental appropriation and will support the

necessary legislative changes. Family Court is stretched to the breaking point, if not beyond. As a result of the hiring freeze in effect since January 2011, the non-judicial Family Court staff has been reduced by 147 employees statewide, 100 of whom are located in New York City. The number of Family Court Judicial Hearing Officers in New York City has been reduced from 16 to 7. Because courtrooms must close at 4:30 PM, there are times courts have been unavailable when the Administration for Children's Services (ACS) has sought to remove a child from his or her parents. In some of these cases, ACS conducted removals under its emergency powers, and the following day, courts determined that removal was unnecessary. Such removals can cause trauma to children and parents that can never be rectified.

Families are routinely subjected to non-continuous trials, extreme delays in custody cases, protracted guardianship proceedings and rushed abuse and neglect hearings. Adjournments of cases are typically 8-10 weeks for new filings and 3 months or longer for pending cases. It is estimated that with an average caseload of 1,533 cases per year, a Family Court judge can only spend 52 minutes per case per year. Notably, New York ranks 50th out of 52 jurisdictions in the length of foster care. Over the past 30 years, as filings increased by 90%, the number of Family Court judgeships has increased by only 8.8%, with no new judgeships created in New York City since 1991.

Cutbacks in the Judiciary Budget over the last three years have had a devastating impact on the courts and the people they serve, with the judicial workforce being reduced by more than 1,900 positions, including long lines to get into courthouses, lengthy trial delays impacting everything from commercial cases to guardianship and child custody cases, inability to retrieve necessary court files and certificates, and longer incarceration time for criminal defendants. These cuts to staff and limited resources hinder access to justice - the Judiciary Budget should be approved without reduction.

Support access to justice initiatives, including proposals to consolidate the state's major trial courts and requiring commission-based judicial appointments

Core to the City Bar's mission is encouraging appropriate standards of professional and judicial ethics, competence, civility and integrity and ensuring the fair and effective administration of justice. Court simplification and requiring commission-based judicial appointments of judges are two ways to achieve those goals.

The City Bar has long [supported](#) proposals to consolidate the state's major trial courts, in the firm belief that a truly unified court system will be more efficient and will result in justice that is better, swifter and less expensive than the current patchwork of courts. We see consolidation as an absolutely essential reform for the benefit of both the court system and the public. We urge the Legislature to pass legislation to this effect proposed by the [Special Commission on the Future of the New York State Courts](#).

We believe that the state's major trial courts should be consolidated into either one tier comprising all of the state's courts of record or a two-tier structure consisting of 1) Supreme Court with specialized divisions, and 2) a District Court with jurisdiction over misdemeanor cases, housing cases, and civil cases involving less than \$50,000. This consolidation would eliminate confusion and waste and would create a much more nimble, efficient and user-friendly system.

To make court consolidation truly effective, we believe it should be bolstered by changes to our state's judicial selection system to provide for a commission-based appointment system. A commission-based appointment system would reduce the role of politics and lead to a more qualified judiciary. Under this approach, broad-based, diverse, and independent judicial qualifications commissions, composed of lawyers and nonlawyers, would recommend a limited number of candidates per vacancy to the appointing authority, and that person could only appoint from among those candidates. The candidates for appointment would be evaluated on intellectual capacity, integrity, independence, experience, temperament, fairness. The limit on the number of candidates who can be released from the commissions will ensure that only the most meritorious are released instead of all who are adequate.

Proponents of the current elective system argue that although candidates are chosen through party conventions instead of primaries, the voice of the people is still paramount because the public has the final say in the general election. However, the truth is that few citizens know anything about sitting jurists and even less about the candidates who aspire to sit on the bench. Unlike legislators or other public officials, judicial candidates have no platform on which to run and, because of the rules of judicial ethics, cannot address how they would decide issues that might come before them. In short, the lack of an intelligent dialogue on issues leaves a befuddled electorate with little, if any, information to choose between the aspiring candidates. With scant information available on judicial candidates, voters usually select judges simply on party affiliation. That gives the party bosses ultimate control over the makeup of much of our state judiciary. While many Supreme Court Justices are truly fine jurists, the system is in no way designed to guarantee that, or to assure the voters that quality, rather than party loyalty, is the major selection criteria.

Support the Gender Expression Nondiscrimination Act so that gender identity and gender expression are included as protected classes under the New York Human Rights Law

Although New York State's Human Rights Law currently prohibits discrimination based on sex and sexual orientation, these categories do not explicitly and adequately protect individuals who are discriminated against because of their actual or perceived gender identity or expression, such as transgendered persons. The City Bar [supports](#) the passage of the Gender Expression Nondiscrimination Act (GENDA) which adds "gender identity and expression" to the list of categories protected under various statutes prohibiting

discrimination by the state and/or in employment, education, housing, and public accommodations (**A.4226-B/S.195-B**). The bill extends nondiscrimination protections to transgender and gender variant people, and further adds “gender identity and expression” to the list of categories in the hate-crimes statute, making crimes motivated by animus toward a person’s gender identity or expression eligible for a penalty enhancement.

New York courts have held that existing laws banning discrimination based on sex or sexual orientation do not protect transgender people. Thus, the numerous lawsuits alleging discrimination based on gender identity and expression have been almost uniformly unsuccessful. A number of localities in New York have already recognized the pressing need for the protections GENDA provides, passing laws prohibiting discrimination based on gender identity and expression. Those localities include Suffolk, Tompkins and Westchester counties, and the cities of Albany, Binghamton, Buffalo, Ithaca, New York, Rochester and Syracuse. This bill would greatly help in affording protections to transgender and gender variant people from discrimination, harassment, and assault to the same extent such protections are now provided to other groups under New York law, e.g. racial minorities, as well as those individuals who identify as gay and lesbian.

Support efforts to require the New York State Board of Examiners of Sex Offenders to consult a validated risk instrument when it makes a recommendation to the court regarding the appropriate risk level of a sex offender

Individuals convicted of sex offenses in New York State are currently assigned their risk level as a sex offender using an outdated and unscientific Risk Assessment Instrument (RAI). These classifications are extremely important as they affect individuals’ registration requirements as well as the extent to which the community is provided information about them, such as the nature of their offense, their physical appearance, their home address, and their place of employment.

Although it has been used to classify tens of thousands of individuals, the current RAI employed by the Board of Examiners of Sex Offenders is not a valid method to predict sex offenders’ likelihood to reoffend. The RAI was based on outdated research when it was created in 1996, and has never been updated, even though most advances in the field of predicting sex offenders’ recidivism rates have occurred during those years. Furthermore, studies show that many factors used by the RAI to predict an individual’s risk of reoffense do not correlate with risk and that there are more predictive factors that are not included in the instrument. Several validated risk assessment instruments exist and are used by other states.

The Board’s reliance on an inferior instrument harms not only registered offenders, but also the public. Risk assessments are only effective if individuals are properly classified so that the public and law enforcement can invest their limited energy on monitoring the most

high-risk individuals. Currently, the Board's use of the RAI dilutes the effectiveness of the law by overestimating individuals' risk.

The City Bar therefore [supports](#) legislation which would amend the Sex Offender Registration Act to require that the Board consult a "validated risk instrument" when it makes its recommendation to courts regarding the appropriate risk level of a sex offender and that the instrument be revalidated through "a periodic retroactive study at least every five years to determine the predictive value of the risk assessment instrument" (A.4591/S.3138).

Continue to speak out against legislation that would lessen consumer protections vis-à-vis questionable debt collectors, payday lenders and so-called budget planners

An ever-growing number of Americans are finding themselves in debt and are struggling to pay their bills. While debt collectors have the right to seek outstanding balances from consumers, they must do so within the law. The New York Fair Debt Collection Practices Act is meant to protect consumers from unscrupulous debt collection practices, but because it lacks a private right of action it is severely hindered in achieving its goal.

In 2012, the City Bar issued a "[White Paper](#)" to provide an overview of the troubled history of the debt relief sector over time for both nonprofit and for-profit entities. It makes the following recommendations, all of which will guide the City Bar as it continues to review legislation in this area:

- New York State should prohibit debt settlement for a fee that is more than nominal. More particularly, state legislators and Governor Cuomo should oppose bills currently introduced to license debt settlement operators. Should a licensure regime be considered, at a minimum: 1) operators should not be permitted to enter into contracts with consumers with income exempt from collection; and 2) operators should be permitted to charge as a fee no more than 5% of savings calculated based on the amount of the debt initially enrolled less the settlement amount up to a modest fee cap.
- New York State's Rules of Professional Conduct should be enforced against attorneys involved in debt settlement operations who purport to be acting as attorneys. To the extent attorneys engaged in these enterprises are not acting as attorneys, their conduct would fall outside the scope of the Rules of Professional Conduct and should therefore be included in the statutory scheme.

- Whatever the statutory framework for governing debt settlement services, New York State should provide for a private right of action for violations of the law and attorney's fees.
- New York State consumer protection agencies should undertake statewide campaigns to educate consumers regarding the dangers of unscrupulous debt settlement providers and to inform them of other no-fee alternative options available to them, such as the "Protect Your Money" campaign and the Financial Empowerment Centers of the New York City Department of Consumers Affairs.
- New York City and New York State should expand free legal services, free financial education, and free financial and bankruptcy counseling to low-income and working-poor residents who are the target of unscrupulous debt settlement companies.
- Bar associations throughout the state should undertake education efforts related to debt settlement such as: 1) informing consumers how to file complaints against unscrupulous debt settlement providers with enforcement agencies and, when attorneys are involved, with disciplinary committees; and 2) educating attorneys regarding the ethical obligations that are implicated by some of the practices of the "purported attorney model" of debt settlement.
- The federal Consumer Financial Protection Bureau (CFPB) should make oversight of the debt settlement industry a priority and should require that debt settlement providers collect and report aggregate data. The CFPB should make that data public.

Support legislation to protect the inheritance rights of posthumously conceived children

The ability to store sperm and/or ova ("genetic material") for future use, combined with the ability to produce an embryo via in vitro fertilization, have made it possible for a child to be conceived after the death of one or both of the child's parents. What rights, if any, a child conceived after the death of a parent would have in that parent's estate, or in trusts created for the benefit of that parent and his or her "issue" is at best unclear. The City Bar therefore [supports](#) amendments to the Estates Powers and Trusts Law (EPTL) which would provide clarity in this area (**A.7461-A/S.4779-B**).

In summary, the bill would amend the EPTL to add a new section which would provide that, only if certain conditions are met, a child conceived after the death of a parent with the genetic material of such parent (a "genetic parent") would be considered 1) a distributee of the genetic parent, and 2) included in the class of the genetic parent's issue for any disposition made by the genetic parent at any time, and for any disposition made by anyone other than the genetic parent after September 1, 2014.

An important element of the bill is that it makes a genetic child an intestate distributee of his or her genetic parent, if the genetic child is born within the time frame imposed by, and in accordance with all of the conditions of, EPTL § 4-1.3. The well-crafted bill also provides clarity regarding how instruments are to be interpreted, how estates and trusts are to be administered, and how the rule against perpetuities is to be applied, in cases where a genetic child could be conceived.

Advance City Bar-drafted bill that would clarify and expand the category of claimants under the Unjust Conviction and Imprisonment Act so that individuals are not unreasonably or arbitrarily barred from bringing claims

When individuals are wrongfully convicted they should be entitled to compensation. In New York, Court of Claims Act § 8-b, known as the “Unjust Conviction and Imprisonment Act” (UCIA), provides a cause of action that permits people who have been wrongly convicted and imprisoned to seek compensation. But, as written, the statute excludes many deserving persons before they even get in the courthouse door. To correct this problem, the City Bar has [recommended](#) amending the UCIA in two ways. The first amendment would insure that, so long as all statutory requirements are met, including a showing of innocence, an individual whose conviction is reversed on any ground will be eligible to recover. Similarly, the second amendment would insure that anyone who made a false inculpatory statement despite his or her innocence is also eligible to recover, so long as all other statutory requirements are met. The UCIA arbitrarily bars legitimate claimants from obtaining relief and should be amended to provide a fairer application of the law.

Advance City Bar-drafted Home Mortgage Bridge Loan Act that would create a statewide program to provide mortgage bridge loans to low- and middle-income homeowners

Across the nation, loss of income is now a primary cause of mortgage defaults. Large numbers of New Yorkers have been driven into temporary involuntary unemployment or underemployment, and in consequence have either fallen into or come close to mortgage delinquency. The capacity of such otherwise credit-worthy homeowners to remain current on mortgage payments will be a continuing challenge. While the current economic crisis demands immediate action to avoid unnecessary foreclosures and to help stabilize and reinvigorate mortgage lending, it also bears noting that business cycles have historically been part of the economic fabric of the state and the nation.

A bridge loan mortgage payment assistance program to address the current economic crisis can accordingly be expected to prove helpful in connection with future, more conventional economic downturns as well. To that end, the City Bar [supports](#) the Home Mortgage Bridge Loan Assistance Act (HMBLAA) (**S.5035**). The purpose of the HMBLAA is

to institute a program that will provide temporary and repayable financial assistance through bridge loans to homeowners experiencing temporary difficulty in paying their mortgage loans through no fault of their own. In addition to loan repayments, we anticipate that part of the funding for this program can come from banks making grants to meet their federal and state Community Reinvestment Act obligations.

The proposal is modeled after Pennsylvania's Homeowners' Emergency Mortgage Assistance Program (HEMAP), a program instituted approximately 30 years ago. As an indication of how important and successful this program is in Pennsylvania, that state, by a unanimous vote of both houses of the legislature, recently allocated 90% of its bank settlement funds to HEMAP, establishing a trust fund to support the program.

Advance City Bar-drafted bill that would amend the Arts and Cultural Affairs Law to better protect art authenticators against frivolous lawsuits

The City Bar has proposed legislation to address certain deficiencies in provisions of the New York Arts and Cultural Affairs Law: namely, the absence of protections under the law for authenticators in rendering independent, good-faith opinions about the authenticity, attribution and authorship of works of fine art. The art market is peculiarly vulnerable in that the value of works of art is dependent upon their authenticity. Although authenticity is in large part the driver in art transactions, authenticity can be difficult to determine. Not surprisingly, in view of the necessary imperfections of the authentication process, authenticators must practice their profession at their own risk. They have been sued in the course of rendering opinions in good faith about the authenticity, attribution or authorship of artworks on a variety of theories, to wit: negligence, negligent misrepresentation, fraud, product disparagement, defamation, as well as on antitrust grounds. Usually, under the law, the expert prevails, after having spent thousands of hours and dollars on a legal defense rather than practicing his or her profession. But that does not prevent an expert from being harassed by frivolous lawsuits brought by unhappy plaintiffs displeased with an expert's opinion.

Acknowledging authenticity's unique role as a driver in the art market, the vulnerability of the market to fakes and forgeries flooding the stream of commerce and, consequently, the considerable legal exposure of authenticators who practice their profession in good faith, this proposal defines with clarity that segment of the art market that should be incentivized to so practice its profession, and provides a mechanism through which authenticators can do so and thereby promote legitimate commerce in New York's thriving art market.