

**LEGISLATION AFFECTING THE FEDERAL
RULES OF PRACTICE AND PROCEDURE¹
111th Congress**

SENATE BILLS

- S. 61 - *Helping Families Save Their Homes in Bankruptcy Act of 2009*
 - Introduced by: Durbin
 - Date Introduced: 1/6/09
 - Status: Referred to the Senate Committee on the Judiciary (1/6/09).
 - Related Bills: H.R. 200, H.R. 225
 - Key Provisions:
 - The legislation would authorize bankruptcy courts to modify both the interest and principal amount due on a mortgage on a debtor’s principal residence. It would also require the mortgage lender to give notice to the debtor and the court of certain fees and charges incurred during the pendency of a Chapter 13 bankruptcy proceeding, and eliminate the pre-petition credit counseling requirement for chapter 13 filers facing foreclosure. (Under current law, a mortgage on a debtor’s principal residence cannot be modified by a bankruptcy court.) The proposal to prohibit the addition of fees without notice to the court addresses situations in which lenders have added to the balances of mortgages fees that were imposed during the Chapter 13 proceedings, but without notice to the debtor or bankruptcy trustee.

- S. 445- *Attorney-Client Privilege Protection Act of 2009*
 - Introduced by: Specter
 - Date Introduced: 2/13/09
 - Status: Read twice and referred to the Senate Committee on the Judiciary (2/13/09).
 - Related Bills: None
 - Key Provisions:
 - Section 3 amends **18 U.S.C. Chapter 201** by adding a new § 3014 that prohibits a federal agent or attorney in a federal investigation, civil enforcement matter, or criminal proceeding from demanding from an organization attorney-client privilege or work product protection materials. Section 3 also prohibits the government from basing its decision to file a charging document in a civil or criminal case on whether: (1) the attorney-client privilege or work product protection is asserted; (2) the organization provides counsel or pay attorney’s fees

¹The Congress has authorized the federal judiciary to prescribe the rules of practice, procedure, and evidence for the federal courts, subject to the ultimate legislative right of the Congress to reject, modify, or defer any of the rules. The authority and procedures for promulgating rules are set forth in the Rules Enabling Act. 28 U.S.C. §§ 2071-2077.

for counsel appointed to represent an employee of the organization; (3) the organization enters into a joint defense, information sharing, or common-interest agreement with an employee in an investigation or enforcement matter; (4) the sharing of information with an employee in relation to an investigation or enforcement matter involving that employee; and (5) the organization fails to terminate an employee because that employee invoked his or her fifth amendment right against self incrimination or other legal right in response to a government request. Section 3 also states that it does not prohibit an organization from voluntarily offering to share “internal investigation materials of such organization.”

- S. 446 - *To Permit the Televising of Supreme Court Proceedings*

- Introduced by: Specter
- Date Introduced: 2/13/09
- Status: Referred to the Senate Committee on the Judiciary (2/13/09). Reported favorably without amendment (4/29/10).
- Related Bills: H.R. 429
- Key Provisions:
 - Section 1 amends **28 U.S.C. Chapter 45** by inserting a new section 678 requiring the Supreme Court to permit television coverage of all open sessions of the Court unless the Court decides, by a majority vote of all justices, that allowing such coverage in a particular case would violate the due process rights of one or more of the parties.

- S. 448 - *Free Flow of Information Act of 2009*

- Introduced by: Specter
- Date Introduced: 2/13/09
- Status: Read twice and referred to the Senate Committee on the Judiciary (2/13/09). Committee on the Judiciary ordered to be reported favorably with amendments (12/10/2009). Senator Leahy reported with an amendment in the nature of a substitute, without written report (12/11/2009). Placed under General Orders on Senate Legislative Calendar [Calendar No. 225] (12/11/2009).
- Related Bills: H.R. 985
- Key Provisions:
 - Section 2 provides that a federal entity may not compel a “covered person” to testify or produce documents in any proceeding unless a court determines by a preponderance of the evidence that: (1) the party seeking the information has exhausted all reasonable alternative sources for the information; (2) in a criminal matter, there are reasonable grounds to believe that a crime has occurred, that the testimony or document sought is essential to the investigation, prosecution, or defense, and any unauthorized disclosure has caused significant, clear, and articulable harm to national security; (3) in a non-criminal matter, the testimony or document sought is essential to the successful completion of that matter; and (4) nondisclosure of the information be contrary to public interest. The content of

any testimony or document compelled under this section must be: (1) limited to the purpose of verifying published information or describing surrounding circumstances relevant to the accuracy of the published information, and (2) be narrowly tailored in subject matter and period of time so as to avoid compelling production of peripheral, nonessential, or speculative information.

— Section 2 does not apply to information obtained as a result of eyewitness observations of criminal conduct or commitment of criminal or tortious conduct by the covered person; information necessary to prevent or mitigate death, kidnaping, or substantial bodily harm; and information that a federal court has found by a preponderance of the evidence that would assist in preventing acts of terrorism in the United States or significant harm to national security.

- *S. 537 - Sunshine in Litigation Act of 2009*

- Introduced by: Kohl
- Date Introduced: 3/5/09
- Status: Read twice and referred to the Senate Committee on the Judiciary (3/5/09).
- Related Bills: H.R. 1508
- Key Provisions:
 - Section 2 amends **28 U.S.C. Chapter 111** by inserting a new section 1660. New section 1660 provides that a court shall not enter an order pursuant to Civil Rule 26(c) that (1) restricts the disclosure of information through discovery, (2) approves a settlement agreement that would limit the disclosure of such agreement, or (3) restricts access to court records in a civil case unless the court makes findings of fact that: (A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or (B)(i) the public interest in the disclosure of potential health or safety hazards is outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and (ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.
 - Section 2 also provides: (1) there is a rebuttable presumption that the interest in protecting a person's financial, health, or other similar information outweighs the public interest in disclosure, and (2) the bill must not be construed to permit, require, or authorize the disclosure of classified information.]
 - Section 3 states that the Act takes effect 30 days after enactment or applies only to orders entered in civil actions or agreements entered into on or after the effective date.

- *S. 603 - Frivolous Lawsuit Prevention Act of 2009*

- Introduced by: Grassley
- Date Introduced: 3/16/09
- Status: Read twice and referred to the Senate Committee on the Judiciary (3/16/09).
- Related Bills: None

- Key Provisions:

— Section 2 amends directly amends Civil Rule 11 by: (1) making the imposition of sanctions mandatory if the court determines subdivision (b) has been violated; (2) deleting current Rule 11(c)(4), which describes the nature of the sanction, and substituting the following, “[a] sanction imposed for violation of this rule may consist of reasonable attorneys’ fees and other expenses incurred as a result of the violation, directives of a nonmonetary nature, or an order to pay penalty into court or to a party”; and (3) amending Rule 11(c)(5) by making it explicit that monetary sanctions may be awarded against a party's attorney:

- S. 630 - *Statutory Time-Periods Technical Amendments Act of 2009*

- Introduced by: Leahy

- Date Introduced: 3/18/09

- Status: Read twice and referred to the Senate Committee on the Judiciary (3/18/09).

- Related Bills: H.R. 1626

- Key Provisions:

— The legislation makes changes to 28 separate statutory provisions to conform to the time computation rules amendments scheduled to take effect on December 1, 2009. The amendments made to the statutory deadlines take effect on December 1, 2009.

- S. 657 - *Sunshine in the Courtroom Act of 2009*

- Introduced by: Grassley

- Date Introduced: 3/19/09

- Status: Read twice and referred to the Senate Committee on the Judiciary (3/19/09).

Reported favorably without amendment (4/29/10).

- Related Bills: H.R. 3054

- Key Provisions:

— Section 2 authorizes the presiding judge of an appellate court to permit the photographing, electronic recording, broadcasting, or televising of any public proceeding over which the judge presides. The presiding judge, however, may not permit the above: (1) in a proceeding involving only the presiding judge if that judge determines that the action would violate the due process rights of any party, or (2) in a proceeding involving more than one judge, a majority of judges determines that the action would violate the due process rights of any party. Section 2 also authorizes the presiding judge of a district court to permit the photographing, electronic recording, broadcasting, or televising of any public proceeding over which the judge presides. Upon request of any witness in a trial proceeding, the court must order that the face and voice of the witness be disguised. The presiding judge in a trial must inform each witness who is not a party that he or she has the right to request that his or her image or voice may be disguised. The presiding judge must not permit the televising of any juror in a trial.

The Judicial Conference may issue advisory guidelines on the broadcast of court proceedings.

Section 2 contains a sunset provision that terminates the authority of a district court judge to allow the broadcast of district court proceedings three years after enactment of the Act.

[On March 6, 2008, the Senate Judiciary Committee approved S. 352 by a vote of 10-8 after adopting several amendments to the bill: (1) the presiding judge must October 7, 2008 not allow camera coverage if the judge determines that it would violate the due process rights of any party; (2) the Judicial Conference must promulgate mandatory guidelines on shielding certain witnesses from camera coverage, including crime victims, families of crime victims, cooperating witnesses, undercover law enforcement officers, witnesses relating to witness relocation and protection, or minors under the age of 18; and (3) nothing in the bill limits the inherent authority of a court to protect witnesses, preserve the decorum and integrity of the legal process, or protect the safety of an individual. An amendment to remove the district courts from the legislation was defeated by a tie vote of 9-9].

- S. 1504 - *Notice Pleading Restoration Act of 2009*

- Introduced by: Specter
- Date Introduced: 7/22/09
- Status: Read twice and referred to the Senate Committee on the Judiciary (7/22/09).
- Related Bills:
- Key Provisions:
 - Section 2 provides that “[e]xcept as otherwise expressly provided by an Act of Congress or by an amendment to the Federal Rules of Civil Procedure which takes effect after the date of enactment of this Act, a Federal court shall not dismiss a complaint under rule 12(b)(6) or (e) of the Federal Rules of Civil Procedure, except under the standards set forth by the Supreme Court of the United States in *Conley v. Gibson*, 355 U.S. 41 (1957).” (The legislation effectively overrules the Supreme Court’s recent decisions in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal* re the pleading standards under Federal Rule of Civil Procedure 8.)

HOUSE BILLS

- H.R. 200 - *Helping Families Save Their Homes in Bankruptcy Act of 2009*

- Introduced by: Conyers
- Date Introduced: 1/06/09
- Status: Referred to the House Committee on the Judiciary (1/6/09). Committee held hearings (1/22/09). Committee held mark-up session, adopted substitute, and reported

favorably by a vote of 21-15 (1/27/09). House passed H.R. 1106 by a vote of 234-191, a bill that included provisions of H.R. 200 (3/5/09).

- Related Bills: H.R. 225, S. 61

- Key Provisions:

—The legislation would authorize bankruptcy courts to modify both the interest and principal amount due on a mortgage on a debtor’s principal residence. It would also require the mortgage lender to give notice to the debtor and the court of certain fees and charges incurred during the pendency of a Chapter 13 bankruptcy proceeding, and eliminate the pre-petition credit counseling requirement for chapter 13 filers facing foreclosure. (Under current law, a mortgage on a debtor’s principal residence cannot be modified by a bankruptcy court.) The proposal to prohibit the addition of fees without notice to the court addresses situations in which lenders have added to the balances of mortgages fees that were imposed during the Chapter 13 proceedings, but without notice to the debtor or bankruptcy trustee.

- H.R. 429 - *To Permit the Televising of Supreme Court Proceedings*

- Introduced by: Poe

- Date Introduced: 1/9/09

- Status: Referred to the House Committee on the Judiciary (1/9/09).

- Related Bills: S. 446

- Key Provisions:

— Section 1 amends **28 U.S.C. Chapter 45** by inserting a new section 678 requiring the Supreme Court to permit television coverage of all open sessions of the Court unless the Court decides, by a majority vote of all justices, that allowing such coverage in a particular case would violate the due process rights of one or more of the parties.

- H.R. 985 - *Free Flow of Information Act of 2009*

- Introduced by: Boucher

- Date Introduced: 2/11/09

- Status: Read twice and referred to the House Committee on the Judiciary (2/11/09).

Mark up session held and House Judiciary Committee reported bill (3/25/09). H. Rept No. 111-61 filed (3/25/09). House passed by voice vote (3/31/09). Received in Senate and referred to Senate Committee on the Judiciary (4/1/09).

- Related Bills: S. 448

- Key Provisions:

— Section 2 provides that a federal entity may not compel a “covered person” to testify or produce documents in any proceeding unless a court determines by a preponderance of the evidence that: (1) the party seeking the information has exhausted all reasonable alternative sources for the information; (2) in a criminal matter, there are reasonable grounds to believe that a crime has occurred and that the testimony or document sought is essential to the investigation, prosecution, or defense; (3) in a non-criminal matter, the testimony or document sought is

essential to the successful completion of that matter; (4) in any matter in which the testimony or document sought could reveal the source's identity, disclosure is necessary to: (a) prevent imminent and substantial harm to national security, (b) prevent imminent death or significant bodily injury, or (c) determine who has disclosed a trade secret of significant value in violation of state or federal law, individually identifiable health information, or nonpublic personal information of any consumer in violation of federal law; and (5) nondisclosure of the information be contrary to public interest. Section 2 also requires that compelled disclosure of testimony or documents be limited and narrowly drawn.

- H.R. 1508- *Sunshine in Litigation Act of 2009*
 - Introduced by: Wexler
 - Date Introduced: 3/12/09
 - Status: Read twice and referred to the House Committee on the Judiciary (3/12/09). House Subcommittee on Commercial and Administrative Law held hearing (6/04/09).
 - Related Bills: S. 537
 - Key Provisions:
 - Section 2 amends **28 U.S.C. Chapter 111** by inserting a new section 1660. New section 1660 provides that a court shall not enter an order pursuant to Civil Rule 26(c) that (1) restricts the disclosure of information through discovery, (2) approves a settlement agreement that would limit the disclosure of such agreement, or (3) restricts access to court records in a civil case unless the court makes findings of fact that: (A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or (B)(i) the public interest in the disclosure of potential health or safety hazards is outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and (ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.
 - Section 2 also provides: (1) there is a rebuttable presumption that the interest in protecting a person's financial, health, or other similar information outweighs the public interest in disclosure, and (2) the bill must not be construed to permit, require, or authorize the disclosure of classified information.]
 - Section 3 states that the Act takes effect 30 days after enactment or applies only to orders entered in civil actions or agreements entered into on or after the effective date.

- H.R. 1626 - *Statutory Time-Periods Technical Amendments Act of 2009*
 - Introduced by: Johnson
 - Date Introduced: 3/19/09
 - Status: Read twice and referred to the House Committees on the Judiciary, and Energy and Commerce (3/19/09). Passed House by voice vote (4/22/09). Passed Senate (4/27/09). Presented to President (4/30/09). Signed into law (5/07/09).
 - Related Bills: S. 630

- Key Provisions:

— The legislation makes changes to 28 separate statutory provisions to conform to the time computation rules amendments scheduled to take effect on December 1, 2009. The amendments made to the statutory deadlines take effect on December 1, 2009.

- H.R. 3054 - *Sunshine in the Courtroom Act of 2009*

- Introduced by: Delahunt

- Date Introduced: 6/25/09

- Status: Read twice and referred to the House Committee on the Judiciary (6/25/09). Referred to the House Subcommittee on Courts and Competition Policy (7/23/09).

- Related Bills: S. 657

- Key Provisions:

— Section 2 authorizes the presiding judge of an appellate court to permit the photographing, electronic recording, broadcasting, or televising of any public proceeding over which the judge presides. The presiding judge, however, may October 7, 2008 not permit the above: (1) in a proceeding involving only the presiding judge if that judge determines that the action would violate the due process rights of any party, or (2) in a proceeding involving more than one judge, a majority of judges determines that the action would violate the due process rights of any party.

Section 2 also authorizes the presiding judge of a district court to permit the photographing, electronic recording, broadcasting, or televising of any public proceeding over which the judge presides. Upon request of any witness in a trial proceeding, the court must order that the face and voice of the witness be disguised. The presiding judge in a trial must inform each witness who is not a party that he or she has the right to request that his or her image or voice may be disguised. The presiding judge must not permit the televising of any juror in a trial. The Judicial Conference may issue advisory guidelines on the broadcast of court proceedings.

Section 2 contains a sunset provision that terminates the authority of a district court judge to allow the broadcast of district court proceedings three years after enactment of the Act.

- H.R. 4513 – *Job Creation Act of 2010*

- Introduced by: Buchanan

- Date introduced: 1/26/2010

- Status: Referred to House Judiciary Committee, Ways and Means Committee, and Financial Services Committee (1/26/2010).

- Related Bills: None.

- Key Provisions:

— Title II directly amends Rule 11 of the Federal Rules of Civil Procedure (Sanctions for Filing a Frivolous Lawsuit) by: (1) making mandatory a court's award of reasonable expenses, including attorney's fees, to prevailing parties under Rule 11 claims; (2) eliminating the 21-day period allowed for withdrawing or correcting frivolous claims; (3)

requiring state courts to apply Rule 11 sanctions to actions that substantially affect interstate commerce; (4) prohibiting courts from ordering nondisclosure of Rule 11 records unless there is a specific finding of fact made by the court to justify said order.

—Title II limits venue for personal injury claims in both state and federal court to the county or district: (1) in which either party resides; (2) in which the plaintiff resided at the time of the claimed injury; (3) in which the claimed injury or circumstances giving rise to the injury occurred; or (4) in which the defendant’s principal place of business is located

—Title II creates additional sanctions for: (1) repeatedly re-litigating the same issue, and creates a rebuttable presumption that presenting a pleading, written motion, or other paper is in violation of Rule 11; (2) willfully and intentionally destroying documents in a pending Federal proceeding; (3) attorneys who commit multiple Rule 11 violations, and subjecting the attorneys to a “3-strike” rule and granting the court suspension authority.

● **H.R. 5069 - *Fair Payment of Court Fees Act of 2010***

- **Introduced by:** Johnson
- **Date Introduced:** 4/20/10
- **Status:** Read twice and referred to the House Committee on the Judiciary (4/20/10).
- **Related Bills:** None
- **Key Provisions:**
 - Section 2 amends Civil Rule 68(d) by giving a court the authority to waive payment of costs incurred after the offer of judgment was made if the court determines that it would be in the interests of justice to do so.
 - Section 3 amends Appellate Rule 39 by adding a new subdivision (f) that provides: “Waiver of Costs for Certain Appeals- The court shall order a waiver of costs if the court determines that the interest of justice justifies such a waiver. For the purpose of making such a determination, the interest of justice includes the establishment of constitutional or other important precedent.”

SENATE RESOLUTIONS

● **S.J. Res. 339 - *A resolution expressing the sense of the Senate in support of permitting the televising of Supreme Court proceedings***

- **Introduced by:** Specter
- **Date Introduced:** 11/5/09
- **Status:** Referred to the Senate Committee on the Judiciary (11/5/09).
- **Related Bills:** S. 446
- **Key Provisions:**

HOUSE RESOLUTIONS

