

HR 420 RFS

109th CONGRESS  
1st Session  
**H. R. 420**  
**IN THE SENATE OF THE UNITED STATES**

**October 31, 2005**

Received; read twice and referred to the Committee on the Judiciary

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**AN ACT**

To amend Rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the `Lawsuit Abuse Reduction Act of 2005'.

**SEC. 2. ATTORNEY ACCOUNTABILITY.**

Rule 11(c) of the Federal Rules of Civil Procedure is amended--

(1) by amending the first sentence to read as follows: `If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the attorney, law firm, or parties that have violated this subdivision or are responsible for the violation, an appropriate sanction, which may include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper, that is the subject of the violation, including a reasonable attorney's fee.';

(2) in paragraph (1)(A)--

(A) by striking `Rule 5' and all that follows through `corrected.' and inserting `Rule 5.'; and

(B) by striking `the court may award' and inserting `the court shall award'; and

(3) in paragraph (2), by striking `shall be limited to what is sufficient' and all that follows through the end of the paragraph (including subparagraphs (A) and (B)) and inserting `shall be

sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the parties that were injured by such conduct. The sanction may consist of an order to pay to the party or parties the amount of the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorney's fee.'.

### **SEC. 3. APPLICABILITY OF RULE 11 TO STATE CASES AFFECTING INTERSTATE COMMERCE.**

In any civil action in State court, the court, upon motion, shall determine within 30 days after the filing of such motion whether the action substantially affects interstate commerce. Such court shall make such determination based on an assessment of the costs to the interstate economy, including the loss of jobs, were the relief requested granted. If the court determines such action substantially affects interstate commerce, the provisions of Rule 11 of the Federal Rules of Civil Procedure shall apply to such action.

### **SEC. 4. PREVENTION OF FORUM-SHOPPING.**

(a) In General- Subject to subsection (b), a personal injury claim filed in State or Federal court may be filed only in the State and, within that State, in the county (or if there is no State court in the county, the nearest county where a court of general jurisdiction is located) or Federal district in which--

(1) the person bringing the claim, including an estate in the case of a decedent and a parent or guardian in the case of a minor or incompetent--

(A) resides at the time of filing; or

(B) resided at the time of the alleged injury;

(2) the alleged injury or circumstances giving rise to the personal injury claim allegedly occurred;

(3) the defendant's principal place of business is located, if the defendant is a corporation; or

(4) the defendant resides, if the defendant is an individual.

(b) Determination of Most Appropriate Forum- If a person alleges that the injury or circumstances giving rise to the personal injury claim occurred in more than one county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of

limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subsection.

(c) Definitions- In this section:

(1) The term `personal injury claim'--

(A) means a civil action brought under State law by any person to recover for a person's personal injury, illness, disease, death, mental or emotional injury, risk of disease, or other injury, or the costs of medical monitoring or surveillance (to the extent such claims are recognized under State law), including any derivative action brought on behalf of any person on whose injury or risk of injury the action is based by any representative party, including a spouse, parent, child, or other relative of such person, a guardian, or an estate;

(B) does not include a claim brought as a class action; and

(C) does not include a claim against a debtor in a case pending under title 11 of the United States Code that is a personal injury tort or wrongful death claim within the meaning of section 157(b)(5) of title 28, United States Code.

(2) The term `person' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, but not any governmental entity.

(3) The term `State' includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and any other territory or possession of the United States.

(d) Applicability- This section applies to any personal injury claim filed in Federal or State court on or after the date of the enactment of this Act.

## **SEC. 5. RULE OF CONSTRUCTION.**

Nothing in section 3 or in the amendments made by section 2 shall be construed to bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law.

## **SEC. 6. THREE-STRIKES RULE FOR SUSPENDING ATTORNEYS WHO COMMIT MULTIPLE RULE 11 VIOLATIONS.**

(a) Mandatory Suspension- Whenever a Federal district court determines that an attorney has violated Rule 11 of the Federal Rules of Civil Procedure, the court shall determine the number of times that the attorney has violated that rule in that Federal district court during

that attorney's career. If the court determines that the number is 3 or more, the Federal district court--

(1) shall suspend that attorney from the practice of law in that Federal district court for 1 year; and

(2) may suspend that attorney from the practice of law in that Federal district court for any additional period that the court considers appropriate.

(b) Appeal; Stay- An attorney has the right to appeal a suspension under subsection (a). While such an appeal is pending, the suspension shall be stayed.

(c) Reinstatement- To be reinstated to the practice of law in a Federal district court after completion of a suspension under subsection (a), the attorney must first petition the court for reinstatement under such procedures and conditions as the court may prescribe.

## **SEC. 7. PRESUMPTION OF RULE 11 VIOLATION FOR REPEATEDLY RELITIGATING SAME ISSUE.**

Whenever a party presents to a Federal court a pleading, written motion, or other paper, that includes a claim or defense that the party has already litigated and lost on the merits in any forum in final decisions not subject to appeal on 3 consecutive occasions, and the claim or defense involves the same plaintiff and the same defendant, there shall be a rebuttable presumption that the presentation of such paper is in violation of Rule 11 of the Federal Rules of Civil Procedure.

## **SEC. 8. ENHANCED SANCTIONS FOR DOCUMENT DESTRUCTION IN PENDING FEDERAL COURT PROCEEDINGS.**

Whoever willfully and intentionally influences, obstructs, or impedes, or attempts to influence, or obstruct, or impede, a pending Federal court proceeding through the willful and intentional destruction of documents sought pursuant to the rules of such Federal court proceeding and highly relevant to that proceeding--

(1) shall be punished with mandatory civil sanctions of a degree commensurate with the civil sanctions available under Rule 11 of the Federal Rules of Civil Procedure, in addition to any other civil sanctions that otherwise apply; and

(2) shall be held in contempt of court and, if an attorney, referred to one or more appropriate State bar associations for disciplinary proceedings.

## **SEC. 9. BAN ON CONCEALMENT OF UNLAWFUL CONDUCT.**

(a) In General- In any Rule 11 of the Federal Rules of Civil Procedure proceeding, a court may not order that a court record not be disclosed unless the court makes a finding of fact that identifies the interest that justifies the order and determines that that interest outweighs any interest in the public health and safety that the court determines would be served by disclosing the court record.

(b) Applicability- This section applies to any record formally filed with the court, but shall not include any records subject to--

(1) the attorney-client privilege or any other privilege recognized under Federal or State law that grants the right to prevent disclosure of certain information unless the privilege has been waived; or

(2) applicable State or Federal laws that protect the confidentiality of crime victims, including victims of sexual abuse.

Passed the House of Representatives October 27, 2005.

Attest:

JEFF TRANDAHL,

Clerk.

*END*