

Union Calendar No. 421

108TH CONGRESS
2^D SESSION

H. R. 4571

[Report No. 108-682]

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2004

Mr. SMITH of Texas (for himself, Mr. SENSENBRENNER, Mr. FORBES, Mr. GREEN of Wisconsin, Mr. GALLEGLY, Mr. CHABOT, Mr. GARRETT of New Jersey, Mr. KING of Iowa, Mr. DELAY, Mr. FRANKS of Arizona, Mr. CULBERSON, Mr. KELLER, Mr. CARTER, Mr. PEARCE, Mr. CALVERT, and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 13, 2004

Additional sponsors: Mr. NORWOOD, Mr. HERGER, Mr. FEENEY, Mr. CANNON, Mr. BRADY of Texas, Mr. PAUL, Mr. NEUGEBAUER, Mr. KLINE, Mr. MILLER of Florida, Mr. GARY G. MILLER of California, Mr. CHOCOLA, Mrs. BLACKBURN, Mr. HOSTETTLER, Mrs. MYRICK, Mr. SHAYS, and Mr. BROWN of South Carolina

SEPTEMBER 13, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 15, 2004]

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Lawsuit Abuse Reduc-*
5 *tion Act of 2004”.*

6 **SEC. 2. ATTORNEY ACCOUNTABILITY.**

7 *Rule 11 of the Federal Rules of Civil Procedure is*
8 *amended—*

9 *(1) in subdivision (c)—*

10 *(A) by amending the first sentence to read*
11 *as follows: “If a pleading, motion, or other paper*
12 *is signed in violation of this rule, the court,*
13 *upon motion or upon its own initiative, shall*
14 *impose upon the attorney, law firm, or parties*
15 *that have violated this subdivision or are respon-*
16 *sible for the violation, an appropriate sanction,*
17 *which may include an order to the other party*
18 *or parties to pay for the reasonable expenses in-*
19 *curred as a direct result of the filing of the*

1 *pleading, motion, or other paper, that is the sub-*
2 *ject of the violation, including a reasonable at-*
3 *torney's fee.”;*

4 *(B) in paragraph (1)(A)—*

5 *(i) by striking “Rule 5” and all that*
6 *follows through “corrected.” and inserting*
7 *“Rule 5.”; and*

8 *(ii) by striking “the court may award”*
9 *and inserting “the court shall award”; and*

10 *(C) in paragraph (2), by striking “shall be*
11 *limited to what is sufficient” and all that follows*
12 *through the end of the paragraph (including sub-*
13 *paragraphs (A) and (B)) and inserting “shall be*
14 *sufficient to deter repetition of such conduct or*
15 *comparable conduct by others similarly situated,*
16 *and to compensate the parties that were injured*
17 *by such conduct. The sanction may consist of an*
18 *order to pay to the party or parties the amount*
19 *of the reasonable expenses incurred as a direct*
20 *result of the filing of the pleading, motion, or*
21 *other paper that is the subject of the violation,*
22 *including a reasonable attorney's fee.”; and*
23 *(2) by striking subdivision (d).*

1 **SEC. 3. APPLICABILITY OF RULE 11 TO STATE CASES AF-**
2 **FFECTING INTERSTATE COMMERCE.**

3 *In any civil action in State court, the court, upon mo-*
4 *tion, shall determine within 30 days after the filing of such*
5 *motion whether the action affects interstate commerce. Such*
6 *court shall make such determination based on an assessment*
7 *of the costs to the interstate economy, including the loss of*
8 *jobs, were the relief requested granted. If the court deter-*
9 *mines such action affects interstate commerce, the provi-*
10 *sions of Rule 11 of the Federal Rules of Civil Procedure*
11 *shall apply to such action.*

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

13 *(a) IN GENERAL.—Subject to subsection (b), a personal*
14 *injury claim filed in State or Federal court may be filed*
15 *only in the State and, within that State, in the county (or*
16 *Federal district) in which—*

17 *(1) the person bringing the claim, including an*
18 *estate in the case of a decedent and a parent or*
19 *guardian in the case of a minor or incompetent—*

20 *(A) resides at the time of filing; or*

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

22 *or*

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

25 *or*

1 (3) *the defendant’s principal place of business is*
2 *located.*

3 (b) *DETERMINATION OF MOST APPROPRIATE*
4 *FORUM.—If a person alleges that the injury or cir-*
5 *cumstances giving rise to the personal injury claim oc-*
6 *curred in more than one county (or Federal district), the*
7 *trial court shall determine which State and county (or Fed-*
8 *eral district) is the most appropriate forum for the claim.*
9 *If the court determines that another forum would be the*
10 *most appropriate forum for a claim, the court shall dismiss*
11 *the claim. Any otherwise applicable statute of limitations*
12 *shall be tolled beginning on the date the claim was filed*
13 *and ending on the date the claim is dismissed under this*
14 *subsection.*

15 (c) *DEFINITIONS.—In this section:*

16 (1) *The term “personal injury claim”—*
17 (A) *means a civil action brought under*
18 *State law by any person to recover for a person’s*
19 *personal injury, illness, disease, death, mental or*
20 *emotional injury, risk of disease, or other injury,*
21 *or the costs of medical monitoring or surveillance*
22 *(to the extent such claims are recognized under*
23 *State law), including any derivative action*
24 *brought on behalf of any person on whose injury*
25 *or risk of injury the action is based by any rep-*

1 *representative party, including a spouse, parent,*
2 *child, or other relative of such person, a guard-*
3 *ian, or an estate; and*

4 *(B) does not include a claim brought as a*
5 *class action.*

6 *(2) The term “person” means any individual,*
7 *corporation, company, association, firm, partnership,*
8 *society, joint stock company, or any other entity, but*
9 *not any governmental entity.*

10 *(3) The term “State” includes the District of Co-*
11 *lumbia, the Commonwealth of Puerto Rico, the*
12 *United States Virgin Islands, Guam, and any other*
13 *territory or possession of the United States.*

14 *(d) APPLICABILITY.—This section applies to any per-*
15 *sonal injury claim filed in Federal or State court on or*
16 *after the date of the enactment of this Act.*

17 **SEC. 5. RULE OF CONSTRUCTION.**

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

1 **SEC. 6. THREE-STRIKES RULE FOR SUSPENDING ATTOR-**
2 **NEYS WHO COMMIT MULTIPLE RULE 11 VIO-**
3 **LATIONS.**

4 (a) *MANDATORY SUSPENSION.*—Whenever a Federal
5 district court determines that an attorney has violated Rule
6 11 of the Federal Rules of Civil Procedure, the court shall
7 determine the number of times that the attorney has vio-
8 lated that rule in that Federal district court during that
9 attorney’s career. If the court determines that the number
10 is 3 or more, the Federal district court—

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

13 (2) may suspend that attorney from the practice
14 of law in that Federal district court for any addi-
15 tional period that the court considers appropriate.

16 (b) *APPEAL; STAY.*—An attorney has the right to ap-
17 peal a suspension under subsection (a). While such an ap-
18 peal is pending, the suspension shall be stayed.

19 (c) *REINSTATEMENT.*—To be reinstated to the practice
20 of law in a Federal district court after completion of a sus-
21 pension under subsection (a), the attorney must first peti-
22 tion the court for reinstatement under such procedures and
23 conditions as the court may prescribe.

1 **SEC. 7. ENHANCED SANCTIONS FOR DOCUMENT DESTRUC-**
2 **TION.**

3 (a) *IN GENERAL.*—Whoever willfully and inten-
4 tionally influences, obstructs, or impedes, or attempts to in-
5 fluence, obstruct, or impede, a pending court proceeding
6 through the willful and intentional destruction of docu-
7 ments sought in, and highly relevant to, that proceeding
8 shall be punished with mandatory civil sanctions of a de-
9 gree commensurate with the civil sanctions available under
10 Rule 37 of the Federal Rules of Civil Procedure, in addition
11 to any other civil sanctions that otherwise apply.

12 (b) *APPLICABILITY.*—This section applies to any court
13 proceeding in any Federal or State court.

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