

PROVIDING FOR CONSIDERATION OF H.R. 4571, LAWSUIT
ABUSE REDUCTION ACT OF 2004

SEPTEMBER 13, 2004.—Referred to the House Calendar and ordered to be printed

Mr. SESSIONS, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 766]

The Committee on Rules, having had under consideration House Resolution 766, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 4571, the Lawsuit Abuse Reduction Act of 2004, under a modified closed rule. The rule provides one hour of debate in the House equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

The rule waives all points of order against consideration of the bill. The rule provides that the bill shall be considered as read for amendment. The rule further provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill shall be considered as adopted.

The rule makes in order the amendment printed in this report, if offered by Representative Turner of Texas or his designee, which shall be considered as read, and which shall be debatable for 40 minutes equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment printed in this report.

Finally, the rule provides one motion to recommit with or without instructions.

SUMMARY OF AMENDMENT MADE IN ORDER

(Summary derived from information provided by the amendment sponsor.)

1. Turner (TX): Amendment in the Nature of a Substitute. Section 1. Sanctions for Frivolous Pleading—Imposes mandatory sanctions on frivolous pleadings (first violation—required payment of costs and attorneys fees; second violation—adds that the attorney is held in contempt and monetary fine; third violation—adds referral to state bar for disciplinary proceedings).

Section 2. Sanctions for Frivolous Conduct During Discovery—Imposes mandatory sanctions on discovery violations (first violation—required payment of costs and attorneys fees; second violation—adds that the attorney is held in contempt and monetary fine; third violation—adds referral to state bar for disciplinary proceedings).

Section 3. Ban on Frivolous Concealment of Unlawful Conduct—Limits the ability of corporate wrongdoers to conceal any conduct harmful to public welfare by requiring that court records may not be sealed unless the court first finds that such sealing is justified.

Section 4. Enhanced Sanctions for Document Destruction—Provides that parties which destroy documents in connection with civil proceedings shall be punished with mandatory civil sanctions, held in contempt of court, and referred to state bar for disciplinary proceedings.

Section 5. Expelled Disposition of Frivolous and other Lawsuits in State Courts—Imposes the Civil Justice Reform Act, which has proved successful in federal courts, to the state courts in order to speed up the pretrial process and weed out junk lawsuits. (40 minutes).

TEXT OF AMENDMENT MADE IN ORDER

Strike all after the enacting clause and insert the following:

SECTION 1. “THREE STRIKES AND YOU’RE OUT” FOR FRIVOLOUS PLEADINGS.

(a) SIGNATURE REQUIRED.—Every pleading, written motion, and other paper in any action shall be signed by at least 1 attorney of record in the attorney’s individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer’s address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) CERTIFICATE OF MERIT.—By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person’s knowledge, information and belief, formed after an inquiry reasonable under the circumstances—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are reasonable based on a lack of information or belief.

(c) MANDATORY SANCTIONS.—

(1) FIRST VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated, the court shall find each attorney or party in violation in contempt of court and shall require the payment of costs and attorneys fees. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon the person in violation, or upon both such person and such person's attorney or client (as the case may be).

(2) SECOND VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made has committed one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court and shall require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(3) THIRD AND SUBSEQUENT VIOLATIONS.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made has committed more than one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court, refer each such attorney to one or more appropriate State bar associations for disciplinary proceedings, require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney, or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(4) APPEAL; STAY.—An attorney has the right to appeal a sanction under this subsection. While such an appeal is pending, the sanction shall be stayed.

(5) NOT APPLICABLE TO CIVIL RIGHTS CLAIMS.—Notwithstanding subsection (d), this subsection does not apply to an action or claim arising out of Federal, State, or local civil rights law or any other Federal, State, or local law providing protection from discrimination.

(d) APPLICABILITY.—Except as provided in subsection (c)(5), this section applies to any paper filed on or after the date of the enactment of this Act in—

- (1) any action in Federal court; and

(2) any action in State court, if the court, upon motion or upon its own initiative, determines that the action affects interstate commerce.

SEC. 2. "THREE STRIKES AND YOU'RE OUT" FOR FRIVOLOUS CONDUCT DURING DISCOVERY.

(a) **SIGNATURES REQUIRED ON DISCLOSURES.**—Every disclosure made pursuant to subdivision (a)(1) or subdivision (a)(3) of Rule 26 of the Federal Rules of Civil Procedure or any comparable State rule shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(b) **SIGNATURES REQUIRED ON DISCOVERY.**—

(1) **IN GENERAL.**—Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(A) consistent with the applicable rules of civil procedure and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(2) **STRICKEN.**—If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(c) **MANDATORY SANCTIONS.**—

(1) **FIRST VIOLATION.**—If without substantial justification a certification is made in violation of this section, the court, upon motion or upon its own initiative, shall find each attorney or party in contempt of court and shall require the payment of costs and attorneys fees. The court may also impose additional sanctions, such as imposing sanctions plus interest or imposing a fine upon the person in violation, or upon such person and such person's attorney or client (as the case may be).

(2) **SECOND VIOLATION.**—If without substantial justification a certification is made in violation of this section and that the attorney or party with respect to which the determination is made has committed one previous violation of this section before this or any other court, the court, upon motion or upon its own initiative, shall find each attorney or party in contempt of

court and shall require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional sanctions upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(3) **THIRD AND SUBSEQUENT VIOLATIONS.**—If without substantial justification a certification is made in violation of this section and that the attorney or party with respect to which the determination is made has committed more than one previous violation of this section before this or any other court, the court, upon motion or upon its own initiative, shall find each attorney or party in contempt of court, shall require the payment of costs and attorneys fees, require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine, and refer such attorney to one or more appropriate State bar associations for disciplinary proceedings. The court may also impose additional sanctions upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(4) **APPEAL; STAY.**—An attorney has the right to appeal a sanction under this subsection. While such an appeal is pending, the sanction shall be stayed.

(d) **APPLICABILITY.**—This section applies to any paper filed on or after the date of the enactment of this Act in—

(1) any action in Federal court; and

(2) any action in State court, if the court, upon motion or upon its own initiative, determines that the action affects interstate commerce.

SEC. 3. BAN ON CONCEALMENT OF UNLAWFUL CONDUCT.

(a) **IN GENERAL.**—A court may not order that a court record be sealed or subjected to a protective order, or that access to that record be otherwise restricted, unless the court makes a finding of fact in writing that identifies the interest that justifies the order and that determines that the order is no broader than necessary to protect that interest.

(b) **APPLICABILITY.**—This section applies to any court record, including a record obtained through discovery, whether or not formally filed with the court.

SEC. 4. ENHANCED SANCTIONS FOR DOCUMENT DESTRUCTION.

(a) **IN GENERAL.**—Whoever influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, a pending court proceeding through the intentional destruction of documents sought in, 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 37 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.

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

SEC. 5. EXPEDITED DISPOSITION OF FRIVOLOUS AND OTHER LAWSUITS.

(a) **IN GENERAL.**—For each State, each judicial district in the State shall, within 2 years of the date of the enactment of this Act, develop and implement a civil justice expense and delay reduction plan and submit it to the appropriate governing body of the State. The governing body shall make the plan available to the public.

(b) **PRINCIPLES.**—Each plan required by subsection (a) shall apply to actions in State court that affect interstate commerce and any other actions that the governing body considers appropriate. The plan shall be developed and implemented with regard to the following principles:

(1) Systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case.

(2) Early and ongoing control of the pretrial process through involvement of a judicial officer in—

(A) assessing and planning the progress of a case;

(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition.

(3) For all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

(ii) phase discovery into two or more stages; and

- (D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition.
- (4) Encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices.
- (5) Conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion.
- (6) Authorization to refer appropriate cases to alternative dispute resolution programs that—
- (A) have been designated for use in a district court; or
 - (B) the court may make available, including mediation, minitrial, and summary jury trial.
- (c) TECHNIQUES.—In developing the plan required by subsection (a), a judicial district shall consider and may include the following techniques:
- (1) A requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so.
 - (2) A requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters.
 - (3) A requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request.
 - (4) A neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation.
 - (5) A requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference.
 - (6) Such other features as the judicial district considers appropriate.