

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

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Lawsuit Abuse Reduc-
3 tion Act of 2005”.

4 **SEC. 2. ATTORNEY ACCOUNTABILITY.**

5 Rule 11(c) of the Federal Rules of Civil Procedure
6 is amended—

7 (1) by amending the first sentence to read as
8 follows: “If a pleading, motion, or other paper is
9 signed in violation of this rule, the court, upon mo-
10 tion or upon its own initiative, shall impose upon the
11 attorney, law firm, or parties that have violated this
12 subdivision or are responsible for the violation, an
13 appropriate sanction, which may include an order to
14 pay the other party or parties for the reasonable ex-
15 penses incurred as a direct result of the filing of the
16 pleading, motion, or other paper, that is the subject
17 of the violation, including a reasonable attorney’s
18 fee.”;

19 (2) in paragraph (1)(A)—

20 (A) by striking “Rule 5” and all that fol-
21 lows through “corrected.” and inserting “Rule
22 5.”; and

23 (B) by striking “the court may award”
24 and inserting “the court shall award”; and

25 (3) in paragraph (2), by striking “shall be lim-
26 ited to what is sufficient” and all that follows

1 through the end of the paragraph (including sub-
2 paragraphs (A) and (B)) and inserting “shall be suf-
3 ficient to deter repetition of such conduct or com-
4 parable conduct by others similarly situated, and to
5 compensate the parties that were injured by such
6 conduct. The sanction may consist of an order to
7 pay to the party or parties the amount of the rea-
8 sonable expenses incurred as a direct result of the
9 filing of the pleading, motion, or other paper that is
10 the subject of the violation, including a reasonable
11 attorney’s fee.”.

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

14 In any civil action in State court, the court, upon mo-
15 tion, shall determine within 30 days after the filing of such
16 motion whether the action substantially affects interstate
17 commerce. Such court shall make such determination
18 based on an assessment of the costs to the interstate econ-
19 omy, including the loss of jobs, were the relief requested
20 granted. If the court determines such action substantially
21 affects interstate commerce, the provisions of Rule 11 of
22 the Federal Rules of Civil Procedure shall apply to such
23 action.

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

2 (a) IN GENERAL.—Subject to subsection (b), a per-
3 sonal injury claim filed in State or Federal court may be
4 filed only in the State and, within that State, in the county
5 (or if there is no State court in the county, the nearest
6 county where a court of general jurisdiction is located) or
7 Federal district in which—

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

11 (A) resides at the time of filing; or

12 (B) resided at the time of the alleged in-
13 jury;

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

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

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

20 (b) DETERMINATION OF MOST APPROPRIATE
21 FORUM.—If a person alleges that the injury or cir-
22 cumstances giving rise to the personal injury claim oc-
23 curred in more than one county (or Federal district), the
24 trial court shall determine which State and county (or
25 Federal district) is the most appropriate forum for the
26 claim. If the court determines that another forum would

1 be the most appropriate forum for a claim, the court shall
2 dismiss the claim. Any otherwise applicable statute of limi-
3 tations shall be tolled beginning on the date the claim was
4 filed and ending on the date the claim is dismissed under
5 this subsection.

6 (c) DEFINITIONS.—In this section:

7 (1) The term “personal injury claim”—

8 (A) means a civil action brought under
9 State law by any person to recover for a per-
10 son’s personal injury, illness, disease, death,
11 mental or emotional injury, risk of disease, or
12 other injury, or the costs of medical monitoring
13 or surveillance (to the extent such claims are
14 recognized under State law), including any de-
15 rivative action brought on behalf of any person
16 on whose injury or risk of injury the action is
17 based by any representative party, including a
18 spouse, parent, child, or other relative of such
19 person, a guardian, or an estate;

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

22 (C) does not include a claim against a
23 debtor in a case pending under title 11 of the
24 United States Code that is a personal injury
25 tort or wrongful death claim within the mean-

1 ing of section 157(b)(5) of title 28, United
2 States Code.

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

7 (3) The term “State” includes the District of
8 Columbia, the Commonwealth of Puerto Rico, the
9 United States Virgin Islands, Guam, and any other
10 territory or possession of the United States.

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

14 **SEC. 5. RULE OF CONSTRUCTION.**

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

19 **SEC. 6. THREE-STRIKES RULE FOR SUSPENDING ATTOR-**
20 **NEYS WHO COMMIT MULTIPLE RULE 11 VIO-**
21 **LATIONS.**

22 (a) MANDATORY SUSPENSION.—Whenever a Federal
23 district court determines that an attorney has violated
24 Rule 11 of the Federal Rules of Civil Procedure, the court
25 shall determine the number of times that the attorney has

1 violated that rule in that Federal district court during that
2 attorney's career. If the court determines that the number
3 is 3 or more, the Federal district court—

4 (1) shall suspend that attorney from the prac-
5 tice of law in that Federal district court for 1 year;
6 and

7 (2) may suspend that attorney from the prac-
8 tice of law in that Federal district court for any ad-
9 ditional period that the court considers appropriate.

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

13 (c) REINSTATEMENT.—To be reinstated to the prac-
14 tice of law in a Federal district court after completion of
15 a suspension under subsection (a), the attorney must first
16 petition the court for reinstatement under such procedures
17 and conditions as the court may prescribe.

18 **SEC. 7. PRESUMPTION OF RULE 11 VIOLATION FOR RE-**
19 **PEATEDLY RELITIGATING SAME ISSUE.**

20 Whenever a party presents to a Federal court a
21 pleading, written motion, or other paper, that includes a
22 claim or defense that the party has already litigated and
23 lost on the merits in any forum in final decisions not sub-
24 ject to appeal on 3 consecutive occasions, and the claim
25 or defense involves the same plaintiff and the same de-

1 fendant, there shall be a rebuttable presumption that the
2 presentation of such paper is in violation of Rule 11 of
3 the Federal Rules of Civil Procedure.

4 **SEC. 8. ENHANCED SANCTIONS FOR DOCUMENT DESTRUC-**
5 **TION IN PENDING FEDERAL COURT PRO-**
6 **CEEDINGS.**

7 Whoever willfully and intentionally influences, ob-
8 structs, or impedes, or attempts to influence, or obstruct,
9 or impede, a pending Federal court proceeding through
10 the willful and intentional destruction of documents
11 sought pursuant to the rules of such Federal court pro-
12 ceeding and highly relevant to that proceeding—

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

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

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

22 (a) IN GENERAL.—In any Rule 11 of the Federal
23 Rules of Civil Procedure proceeding, a court may not order
24 that a court record not be disclosed unless the court makes
25 a finding of fact that identifies the interest that justifies

1 the order and determines that that interest outweighs any
2 interest in the public health and safety that the court de-
3 termines would be served by disclosing the court record.

4 (b) APPLICABILITY.—This section applies to any
5 record formally filed with the court, but shall not include
6 any records subject to—

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

11 (2) applicable State or Federal laws that pro-
12 tect the confidentiality of crime victims, including
13 victims of sexual abuse.

Passed the House of Representatives October 27,
2005.

Attest:

JEFF TRANDAHL,

Clerk.