

PROVIDING FOR CONSIDERATION OF H.R. 420, LAWSUIT
ABUSE REDUCTION ACT OF 2005

OCTOBER 25, 2005.—Referred to the House Calendar and ordered to be printed

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

R E P O R T

[To accompany H. Res. 508]

The Committee on Rules, having had under consideration House Resolution 508, by a non-record vote, reports the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 420, the Law-suit Abuse Reduction Act of 2005, under a structured rule. The rule provides one hour of general debate 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 amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read.

The rule makes in order only those amendments printed in this report. The rule provides that the amendments printed in this report may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The rule waives all points of order against the amendments printed in this report.

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

EXPLANATION OF WAIVERS

The Committee is not aware of any points of order against consideration of the bill. The waiver of all points of order against consideration of the bill is prophylactic in nature.

SUMMARY OF AMENDMENTS MADE IN ORDER

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

1. Sensenbrenner: Manager's Amendment. Includes provisions imposing sanctions for the destruction of relevant documents in a pending Federal court proceeding; provisions for setting standards for a court's determination that certain court records should be sealed; and provisions providing for a presumption of a Rule 11 violation when the same issue is repeatedly relitigated. It also includes a clarification that makes clear that, in the antiform shopping provisions, if there is no State court in the county in which the injury occurred, the case can be brought in the nearest county where a court of general jurisdiction is located. The manager's amendment also makes clear that it does not affect personal injury claims that Federal bankruptcy law requires be heard in a Federal bankruptcy court. (10 minutes).

2. Schiff/Kind: Amendment in the nature of a substitute. Provides strong "three strikes and you're out" mandatory sanctions for attorneys who file frivolous lawsuits or engage in frivolous conduct during discovery. Enhances sanctions for document destruction, ensures that corporations can be sued in the U.S., cracks down on parties attempting to relitigate the same issue on consecutive occasions, bans the concealment of unlawful conduct, and protects civil rights claims. (40 minutes).

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SENSENBRENNER OF WISCONSIN, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 4, strike lines 8 through 11 and insert the following:

(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—

Page 5, line 23, strike "and".

Page 5, line 25, strike the period at the end and insert "; and".

Page 5, after line 25, insert the following:

(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.

Page, 7, strike line 16 and all that follows through the end of the bill and insert the following new sections:

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.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCHIFF OF CALIFORNIA, OR HIS DESIGNEE, DEBATABLE FOR 40 MINUTES

Strike all after the enacting clause and insert the following:

SECTION 1. “THREE STRIKES AND YOU’RE OUT” FOR ATTORNEYS WHO FILE FRIVOLOUS LAWSUITS.

(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 (including suspension of that attorney from the practice of law for one year or disbarment), 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 ATTORNEYS WHO ENGAGE IN 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 (including the suspension of that attorney from the practice of law for one year or disbarment). 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.—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 the 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.

SEC. 4. ENHANCED SANCTIONS FOR DOCUMENT DESTRUCTION.

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. 5. ABILITY TO SUE CORPORATE FINANCIAL TRAITORS AND FOREIGN CORPORATIONS.

(a) **GENERAL RULE.**—In any civil action for injury that was sustained in the United States and that relates to the acts of a foreign business, the Federal court or State court in which such action is brought shall have jurisdiction over the foreign business if—

(1) the business purposefully availed itself of the privilege of doing business in the United States or that State;

(2) the cause of action arises from the business's activities in the United States or that State; and

(3) the exercise of jurisdiction would be fair and reasonable.

(b) **ADMISSION.**—If in any civil action a foreign business involved in such action fails to furnish any testimony, document, or other thing upon a duly issued discovery order by the court in such action, such failure shall be deemed an admission of any fact with respect to which the discovery order relates.

(c) **PROCESS.**—Process in an action described in subsection (a) may be served wherever the foreign business is located, has an agent, or transacts business.

(d) **DEFINITION.**—In this section, the term “foreign business” means a business that has its principal place of business, and substantial business operations, outside the United States and its Territories.

SEC. 6. PRESUMPTION OF RULE 11 VIOLATION FOR REPEATEDLY RELITIGATING SAME ISSUE.

(a) **IN GENERAL.**—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.

(b) EXCEPTION.—Subsection (a) does not apply to a claim arising under the Constitution of the United States.

