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[H.R. 758, Lawsuit Abuse Reduction Act of 2015](#)

FLOOR SITUATION

On Thursday, September 17, 2015, the House will begin consideration of [H.R. 758](#), the Lawsuit Abuse Reduction Act of 2015, under a [closed rule](#). H.R. 758 was introduced on February 5, 2015 by Rep. Lamar Smith (R-TX) and was referred to the Committee on the Judiciary, which ordered the bill reported by a vote of [19 to 13](#) on May 14, 2015.

SUMMARY

H.R. 758 amends Rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability by restoring mandatory sanctions for filing frivolous lawsuits, in an effort to protect individuals and businesses from unnecessary legal costs. Specifically, the bill:

- (1) restores mandatory sanctions for filing frivolous lawsuits in violation of Rule 11;
- (2) removes Rule 11's "safe harbor" provision that currently allows parties and their attorneys to avoid sanctions for making frivolous claims by withdrawing frivolous claims after a motion for sanctions has been filed, and,
- (3) requires monetary sanctions, including attorneys' fees and compensatory costs, against any party making a frivolous claim.

The bill also specifies that nothing contained within "shall be construed to bar or impede the assertion or development of new claims, defenses, or remedies under Federal, State, or local laws, including civil rights laws, or under the Constitution."¹

BACKGROUND

The Federal Rules of Civil Procedure governs civil proceedings in U.S. district courts. Generally, the purpose of these rules is to secure a just, speedy, and inexpensive determination of every legal

¹ H.R. 758, Sec. 2, Subsection (b)

action and proceeding.² Section 11(b) of Rule 11 of the Rules provides the standard a judge must use to determine whether a case is frivolous under the law.³

Rule 11 was originally designed to protect businesses and individuals from frivolous lawsuits and prevent unnecessary congestion in the judicial system; however, the Rule allows but does not require judges to impose sanctions against plaintiffs for filing frivolous lawsuits.⁴ Because sanctions are not guaranteed, defendants often decline to pursue the additional litigation needed to have a lawsuit declared frivolous under the law. Defendants in frivolous lawsuit cases routinely expend significant resources to defend themselves against these lawsuits.

Rule 11 contains a “safe harbor” that gives parties the ability to file frivolous claims and then avoid sanctions by withdrawing them within 21 days after a motion for sanctions is filed. The “safe harbor” provision not only requires the defendant to file a motion to impose sanctions, but to also provide a copy of that motion to the plaintiff 21 days in advance of filing the request. During that time, the plaintiff can generally withdraw the frivolous claim, avoiding potential penalties.

The current rule was approved by the Supreme Court in 1993. Prior to 1993, Rule 11 required mandatory sanctions for attorneys filing frivolous lawsuits and did not contain the 21-day safe harbor.⁵ In 1990, before the current rule was implemented, a survey of 751 Federal judges was conducted to review the effectiveness of the rule. The survey found that approximately 95 percent of Federal judges believed that Rule 11 did not impede development of the law; 72 percent said the benefits of the rule outweighed any additional requirement of judicial time; 81 percent said the 1983 version of Rule 11 had a positive effect on litigation in the Federal courts; and 81 percent found said the rule should be retained in its then-current form.⁶ H.R. 758 requires judges to impose sanctions for filing frivolous lawsuits in an attempt to protect individuals and businesses.

According to the bill sponsor, “Lawsuit abuse is common in America because the lawyers who bring these frivolous cases have everything to gain and nothing to lose. Lawyers can file meritless lawsuits, and defendants are faced with the choice of years of litigation, high court costs and attorneys’ fees or a settlement out of court. This is legalized extortion. *The Lawsuit Abuse Reduction Act* restores accountability to our legal system by imposing mandatory sanctions on attorneys who file worthless lawsuits.”⁷

H.R. 758 is similar to [H.R. 2655](#), which passed the House by a vote of [228 to 195](#) on November 14, 2013. The Senate did not act upon the House-passed bill in the 113th Congress.

COST

The Congressional Budget Office (CBO) [estimates](#) that implementing the bill would result in no significant effect on the federal budget. Enacting H.R. 758 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

² See US Courts, [Current Rules of Practice & Procedure](#)

³ [Rule 11, section 11\(b\)](#)

⁴ The rule allows the party against whom a filing is made to make a motion for sanctions to be imposed on the party filing the claim if it violates section 11(b). The court can also, on its own initiative, require a party to show why it should not be subject to sanctions.

⁵ See [House Report 114-246](#) at 3.

⁶ Federal Judicial Center Final Report on Rule 11 to the Advisory Committee on Civil Rules of the Judicial Conference of the United States (May 1991).

⁷ See Rep. Lamar Smith [Press Release](#), February 5, 2015.

STAFF CONTACT

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