



LAWSUIT ABUSE REDUCTION ACT

Issue: The threat of long, costly court battles resulting from often-frivolous lawsuits has made insurance premiums and other business operating costs, skyrocket. Systematic reform of general liability (tort) laws has been debated in Congress for decades, but efforts to enact reform have been stymied by the use of the filibuster in the Senate. Thus, proponents of reform have undertaken a new strategy – one that threatens the plaintiff attorneys who bring frivolous lawsuits in Federal court.

Background: It costs generally a small filing fee and few hours of an attorney’s time to file a lawsuit. However, that little investment by the plaintiff can cause a defendant major hardship – particularly if the filing is a frivolous lawsuit.

In 1993, the Federal Rule of Civil Procedure 11 (Rule 11), which provides for sanctions on those who “file claims for an improper purpose, to harass, or which are not warranted by existing law or lack a factual or evidentiary basis,” was changed in a way that tilted the balance to heavily support plaintiffs’ attorneys. In essence, the 1993 changes to Rule 11 left it toothless by allowing judges to sanction a violating lawyer and by providing for a 21-day “safe harbor” that gives the plaintiff a free pass to withdraw frivolous filings without penalty. They also gave rise to “forum shopping” – where plaintiffs’ attorneys file cases in more lenient jurisdictions.

Status: In October 2005, the House of Representatives passed by a vote of 228-184, H.R. 420, the “Lawsuit Abuse Reduction Act.” Sponsored by Rep. Lamar Smith (R-TX), would:

- Restore mandatory sanctions on attorneys, law firms, and parties who file frivolous lawsuits;
- Abolish the 21-day “safe harbor” provision of Rule 11; and
- Permit monetary sanctions, such as the reimbursement of all reasonable attorneys fees and litigation costs incurred by the defendant in defending against the frivolous suit.

H.R. 420 has been referred to the Senate Judiciary Committee where action is pending.

IHA Position: If enacted into law, this legislation would provide small businesses protection from frivolous lawsuits and exorbitant legal fees. As a member of the Lawsuit Abuse Reduction Coalition, IHA supports the passage of H.R. 420.