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## [H.R. 2655, Lawsuit Abuse Reduction Act of 2013](#)

### FLOOR SITUATION

On Thursday, November 14, the House will begin consideration of [H.R. 2655](#), the *Lawsuit Abuse Reduction Act of 2013*, under a rule. H.R. 2655 was introduced on July 11, 2013 by Rep. Lamar Smith (R-TX) and has seven cosponsors. H.R. 2655 was marked up on September 11, 2013 by the House Committee on the Judiciary and was ordered to be reported, as amended, by a vote of 17-10.<sup>1</sup>

### SUMMARY

H.R. 2655 restores “teeth” to Rule 11 of the Federal Rules of Civil Procedure by making sanctions mandatory when the rule is violated, thereby deterring frivolous lawsuits. H.R. 2655 makes three changes to Rule 11: it 1) requires courts to impose sanctions against parties that file frivolous lawsuits in violation of Rule 11; 2) eliminates a “safe harbor” provision that allows parties to file frivolous lawsuits and then avoid sanctions by withdrawing the lawsuits within 21 days after a motion for sanctions is filed; and 3) requires monetary compensation for victims of frivolous lawsuits by those filing the lawsuits.

H.R. 2655 applies to cases brought by individuals and businesses, “including business claims filed to harass competitors and illicitly gain market share.”<sup>2</sup> The bill also applies to both plaintiffs and defendants. H.R. 2655 does not change the standard for determining whether a lawsuit is frivolous under Rule 11; it simply mandates sanctions against the attorney filing the claim and compensation for the victim of the frivolous lawsuit.

H.R. 2655 explicitly states that nothing in the bill “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 of the United States.”<sup>3</sup>

### BACKGROUND

The Federal Rules of Civil Procedure govern civil proceedings in U.S. district courts. “Their purpose is ‘to secure the just, speedy, and inexpensive determination of every action and proceeding.’”<sup>4</sup> Rule 11 governs representations made to the court; sanctions; and signatures on submissions to the court.

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<sup>1</sup> [House Committee Report 113-255](#).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.*

<sup>4</sup> U.S. Courts: [Current Rules of Practice and Procedure](#).

Specifically, section 11(b) provides the standard a judge must use to determine whether a case is frivolous under the law.<sup>5</sup>

Rule 11 currently *allows* but does not *require* sanctions for frivolous lawsuits.<sup>6</sup> Since sanctions are not guaranteed, parties often decline to pursue the additional litigation needed to have a lawsuit declared frivolous under the law. Rule 11 also contains a “safe harbor” that gives parties a free pass to file frivolous claims and then avoid sanctions by withdrawing them within 21 days after a motion for sanctions is filed. “Rule 11’s ‘safe harbor’ requires a person who is hit with a frivolous claim to hire an attorney to draft a motion for sanctions, but provide a copy of the motion to the offender 21 days before filing the request. During that time, the offender can withdraw the frivolous claim with no penalty whatsoever.”<sup>7</sup>

The lack of mandatory sanctions and the 21-day safe harbor allow businesses to file claims aimed at “harass[ing] competitors and illicitly gain[ing] market share.”<sup>8</sup> According to the National Federation of Independent Business, “Small businesses are the target of many frivolous lawsuits because trial lawyers understand that a small business owner is more likely than a large corporation to settle a case rather than litigate. Often small business settlements are less than \$5,000, but even \$1,000 settlements are significant for businesses. Settling cases results in higher business insurance premiums for small business owners.”<sup>9</sup>

Prior to 1993, Rule 11 required mandatory sanctions for attorneys filing frivolous lawsuits and did not contain the 21-day safe harbor.<sup>10</sup> The rule “was widely popular among federal judges and served to significantly limit lawsuit abuse.”<sup>11</sup> A 1990 survey of more than 700 federal judges found that an overwhelming majority believed the rule “had an overall positive on litigation in the federal courts (80.9%)” and “should be retained in its then-current form (80.4%).”<sup>12</sup>

Yet in 1993, the rule was amended by the federal judiciary to make sanctions discretionary and to add the safe harbor period for withdrawing frivolous claims. After reviewing the proposal, the Supreme Court approved the changes. Yet “Justices Scalia and Thomas properly dissented from the transmittal of the amendments to Rule 11 to Congress, arguing that ‘[t]he proposed revision would render the Rule toothless, by allowing judges to dispense with sanction, by disfavoring compensation for litigation expenses, and by providing a 21-day ‘safe harbor’ within which, if the party accused of a frivolous filing withdraws the filing, he is entitled to escape with no sanction at all.’”<sup>13</sup>

Victims of frivolous lawsuits are routinely forced to spend thousands of dollars and countless hours responding to frivolous pleadings. Although the law prohibits frivolous claims, it does not ensure that these victims are compensated for the damage they sustain. According to one poll “73% of

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<sup>5</sup> An attorney making a representation to the court certifies that 1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; 2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; 3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and 4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information. Fed. R. Civ. P. 11(b).

<sup>6</sup> 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.

<sup>7</sup> House Committee Report 113-255 at 9.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> National Federation of Independent Business: [Frivolous Lawsuits](#).

<sup>10</sup> House Committee Report 113-255 at 4 (citing a dissent by Justices Scalia and Thomas to the 1993 amendments to Rule 11).

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 4.

Americans support *requiring* sanctions against attorneys who file frivolous lawsuits.”<sup>14</sup> H.R. 2655 addresses this issue by 1) ensuring lawyers who file frivolous claims are held accountable; and 2) making sure victims of frivolous lawsuits are compensated.

### **COST**

According to [CBO estimates](#), “Under the legislation, any monetary sanction imposed under Rule 11 would be paid by the parties to the suit. Thus . . . implementing the bill would result in no significant impact on the federal budget. Enacting H.R. 2655 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.”

### **STAFF CONTACT**

For questions or further information contact the GOP Conference at 5-5107.

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<sup>14</sup> *Id.* at 32.