AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

I

110TH CONGRESS
2D SESSION

H. R. 7080

To eliminate certain provisions of law providing benefits to trial lawyers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2008

Mr. BOEHNER (for himself, Mr. SMITH of Texas, and Mr. BLUNT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To eliminate certain provisions of law providing benefits to trial lawyers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Stop Trial Lawyer Pork Act''.

TITLE I—ELIMINATION OF BENEFITS FOR TRIAL LAWYERS

SEC. 101. FINDINGS.

The Congress finds the following:

(1) In the spring of 2008, former powerhouse trial lawyer William Lerach was sentenced to a two-year term in Federal prison for his role in a $250 million criminal scheme of illegal kickbacks to plaintiffs. Shortly before his sentencing, Mr. Lerach told the Wall Street Journal that illegal kickbacks to people recruited to file class action lawsuits is an ''industry practice'' in the American trial lawyer business. Mr. Lerach and fellow powerhouse trial lawyer Melvin Weiss, who collaborated on the scheme together as members of the law firm formerly known as Milberg Weiss, are now both serving time in Federal prison for their roles in this criminal scheme.

(2) In an unrelated but equally troubling instance of corruption in the trial lawyer industry, one of the wealthiest trial lawyers in America, Richard ''Dickie'' Scruggs of Mississippi, pled guilty in March 2008 to bribing a State judge in order to obtain higher legal fees. Mr. Scruggs is now serving time in Federal prison.

(3) In May 2008, in response to these troubling developments, the minority leader, Mr. Boehner of Ohio, and the ranking minority member of the Committee on the Judiciary, Mr. Lamar Smith of Texas, asked the Chairman of the Judiciary Committee, Mr. Conyers of Michigan, and the Speaker of the House, Ms. Pelosi of California, to schedule a bipartisan investigatory hearing to examine Mr. Lerach's assertion that illegal activity is an ''industry practice'' in the trial lawyer industry. In making the request, the minority leader and the ranking member cited growing evidence that illegitimate and predatory lawsuits are destroying jobs, harming the nation's economy, and endangering the prosperity of American families.

(4) The Washington Post has called for ''a sober discussion about how best to achieve a fairer, more balanced legal system through comprehensive tort reform''.

(5) As of September 2008, the minority's request for a bipartisan congressional response to reports of trial lawyer corruption has been ignored, and no hearings have been conducted on the Milberg Weiss scandal or the broader issues raised by the recent trial lawyer scandals.

(6) Instead of investigating the trial lawyer industry and examining the potential threat to American jobs posed by the illegal activity Mr. Lerach calls an ''industry practice'', the majority has provided a steady flow of special legislative favors to the trial lawyer industry since the start of the 110th Congress. Numerous provisions have been inserted into bills on behalf of the trial lawyer industry by the majority, often with little scrutiny or debate. One of the most egregious instances of this trial lawyer pork is the new tax benefit contained in H.R. 6049, which passed the House on March 21, 2008. It is estimated this provision will hand lawyers, and only lawyers, a $1.6 billion windfall over the next 10 years at the expense of U.S. taxpayers and American jobs.

(7) According to the Center for Responsive Politics, lawyers and law firms gave $85 million to Democratic candidates during the 2006 election cycle. And in return for the stream of special legislative favors it has received from the majority, the trial lawyer industry has further increased its political support for the majority during the current Congress. According to National Journal: ''In the first quarter of 2008, the AAJ [American Association for

Justice, formerly known as the Association of Trial Lawyers of America] spent $1.1 million on lobbying in Washington, according to disclosure reports it filed with Congress. Lawyers and law firms are also playing in the political arena—they are the No. 1 sector among donors to Federal candidates in this election cycle, with $83 million in contributions, according the Center for Responsive Politics. Of that amount, the American Association for Justice political action committee has contributed $1.9 million to candidates, 95 percent to Democrats'' (Swindell, Bill; ''Trial Lawyers Mount a Comeback'', National Journal, July 12, 2008).

(8) Instead of providing special favors to benefit the scandal-plagued American trial lawyer industry, the 110th Congress should be investigating the industry. The trial lawyer pork inserted into legislation by the majority during the 110th Congress should be shut down, and bipartisan investigatory hearings should be scheduled immediately to determine the extent to which the illegal activity William Lerach describes as an ''industry practice'' in the trial lawyer business is destroying American jobs and harming the prosperity of working families.

SEC. 102. ELIMINATION OF CERTAIN PROVISIONS OF LAW BENEFITTING TRIAL LAWYERS.

(a) IN GENERAL.—Provisions of law that benefit trial lawyers to the detriment of consumers in any of the following categories shall have no force or effect, whether enacted before, on, or after the date of the enactment of this Act:

(1) Anti-protective orders, such as the Sunshine in Litigation Act of 2008 (H.R. 5884).

(2) Broadening maritime lawsuits such as the Coast Guard Authorization Act of 2008 (section 405 of H.R. 2830).

(3) Prohibition of uniform Federal law and expansion of medical liability lawsuits such as the FDA preemption legislation in the Medical Device Safety Act of 2008 (H.R. 6381).

(4) Expansion of environmental lawsuits such as the Carbon-Neutral Government Act of 2007 (section 212(f) of H.R. 2635).

(5) Ending arbitration agreements such as the Arbitration Fairness Act of 2007 (H.R. 3010), the Fairness in Nursing Home Arbitration Act of 2008 (H.R. 6126), and the Automobile Arbitration Fairness Act of 2008 (H.R. 5312).

(6) Expansion of asbestos lawsuits such as the Ban Asbestos in America Act of 2007 (H.R. 3285)

and the Bruce Vento Ban Asbestos and Prevent Mesothelioma Act of 2007 (H.R. 3339).

(7) Expansion of products liability lawsuits such as the Protecting Americans from Unsafe Foreign Products Act (H.R. 5913).

(8) Providing tax breaks for lawsuits such as the Renewable Energy and Job Creation Act of 2008 (section 311 of H.R. 6049).

(b) RULE OF CONSTRUCTION.—A provision of an Act of Congress enacted after the date of the enactment of this Act that would not have effect by reason of subsection (a) may nonetheless take effect if the Act enacting that provision—

(1) by specific reference cites a report of the General Accountability Office that concludes that—

(A) such provision would not benefit trial lawyers to the detriment of consumers; and

(B) in the absence of such provision, there are no other means of remedy or enforcement including State and Federal oversight and State or Federal civil or criminal actions; and

(2) has been determined by the Congressional Budget Office not to have a negative fiscal impact.

TITLE II—CLARITY AND TRANSPARENCY IN THE CREATION OF PRIVATE RIGHTS OF ACTION UNDER FEDERAL LAW

SEC. 201. SHORT TITLE.

This title may be cited as the ''Clarity and Transparency in Lawsuits Act'' or ''CATLA''.

SEC. 202. FINDINGS.

The Congress finds the following:

(1) Private rights of action shift enforcement and public policy decisions from regulatory agencies to private lawyers representing individual plaintiffs.

(2) Courts are routinely asked to recognize implied rights of action under Federal law. Such implied rights of action add unpredictability to the civil justice system and may have unforeseen adverse consequences.

(3) The merits of creating a private right of action should be subject to open debate and close consideration in Congress. Such determinations should not be left to guesswork by courts seeking to uncover legislative intent.

(4) This legislation will fulfill the strong suggestion of the Supreme Court of the United States that ''[w]hen Congress intends private litigants to

have a cause of action to support their statutory rights, the far better course is for it to specify as much when it creates those rights.'' Cannon v. University of Chicago, 441 U.S. 677, 717 (1979).

(5) On numerous occasions, Congress has enacted statutes that explicitly provide a private right of action.

(6) Expressly stating any private right of action will eliminate uncertainty for both potential plaintiffs and defendants, will reduce unnecessary, protracted and costly litigation, and will avoid the confusion of inconsistent or conflicting court decisions.

SEC. 203. CLARITY AND TRANSPARENCY IN PRIVATE RIGHTS OF ACTION.

Any Federal law creating a private right of action shall include express language providing for such a right. No Federal or State court shall construe any Federal law to imply a private right of action in absence of such an express provision.

SEC. 204. EFFECTIVE DATE.

This Act shall take effect on the date of the enactment of this Act and shall apply prospectively and to those previously enacted laws that have not already been interpreted by the Supreme Court to create a private right of action.

TITLE III—PROSECUTING OR COUNSELING CLAIMS OR DEFENSES THAT ARE FALSE, FRIVOLOUS, OR WHOLLY INSUBSTANTIAL

SEC. 301. PROSECUTING OR COUNSELING CLAIMS OR DEFENSES THAT ARE FALSE, FRIVOLOUS, OR WHOLLY INSUBSTANTIAL.

(a) IN GENERAL.—No attorney at law shall in any litigation, in or affecting commerce among the States or with foreign nations, prosecute or counsel any action, or assert any claim or defense, which is false, frivolous, or wholly insubstantial.

(b) SANCTION.—The sanction for a violation of this section shall consist of an order to pay to the party or parties the amount of the reasonable expenses incurred as a direct result of the violation, including reasonable attorneys' fees and costs. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, or other directives of a nonmonetary nature, or, if warranted for effective deterrence, an order directing payment of a penalty into the court.

TITLE IV—LAWSUIT ABUSE REDUCTION

SEC. 401. SHORT TITLE.

This title may be cited as the ''Lawsuit Abuse Reduction Act''.

SEC. 402. ATTORNEY ACCOUNTABILITY.

(a) SANCTIONS UNDER RULE 11.—Rule 11(c) of the Federal Rules of Civil Procedure is amended—

(1) in paragraph (1), by striking ''may'' and inserting ''shall'';

(2) in paragraph (2), by striking ''Rule 5'' and all that follows through ''motion.'' and inserting ''Rule 5.''; and

(3) in paragraph (4), by striking ''situated'' and all that follows through the end of the paragraph and inserting ''situated, and to compensate the parties that were injured by such conduct. Subject to the limitations in paragraph (5), the sanction shall consist of an order to pay to the party or parties the amount of the reasonable expenses incurred as a direct result of the violation, including reasonable attorneys' fees and costs. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, or other directives of a nonmonetary nature, or, if warranted

for effective deterrence, an order directing payment of a penalty into the court'' ; and

(4) by adding at the end the following:

''(7) APPEAL.—An attorney has the right to appeal a sanction under this subdivision. While such an appeal is pending, the sanction shall be stayed.''.

(b) RULE OF CONSTRUCTION FOR CIVIL RIGHTS CLAIMS.—Rule 11 of the Federal Rules of Civil Procedure is amended by adding at the end the following:

''(e) RULE OF CONSTRUCTION FOR CIVIL RIGHTS CLAIMS.—Nothing in subdivisions (a) through (c) of this rule shall be construed to bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law.''.

SEC. 403. PREVENTION OF INTERSTATE FORUM-SHOPPING.

(a) GENERALLY.—A person may not bring a personal injury claim in the court of a State if the person is not a resident of that State unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in that State.

(b) ALTERNATE VENUE.—Notwithstanding subsection (a) and subject to subsection (g), if a person cannot obtain jurisdiction in either Federal or State court against the defendant in the State where all or a substantial part of the acts or omissions giving rise to the claim

asserted occurred, then the claim may be filed in a court of another State, unless barred by the statute of limitations or otherwise time barred in the State where the action arose, if—

(1) the defendant's principal place of business is located in that State, if the defendant is a corporation, or

(2) the defendant resides in that State, if the defendant is an individual.

A person bringing such an action shall be required to establish, by filing an affidavit with the complaint for consideration by the court, that such action cannot be maintained in the State where the action arose due to lack of any legal basis to obtain personal jurisdiction over the defendant.

(c) JOINDER AND INTERVENTION.—In a civil action where more than one plaintiff is joined, each plaintiff must independently satisfy the requirements of this section. A person may not intervene or join in a pending civil action as a plaintiff unless the person independently satisfies the requirements of this section. If the requirements of this section are not satisfied by any such nonresident plaintiff, the court shall dismiss the claims of the plaintiff without prejudice to refiling in a court in any other State or jurisdiction.

(d) MOST APPROPRIATE FORUM.—If a person alleges that a substantial part of the acts or omissions giving rise to the personal injury claim occurred in more than State, the trial court shall determine which State is the most appropriate forum for the claim based on whether the private interests of the litigants and the public interest weigh in favor of the alternate forum.

(1) Factors to be weighed in considering the private interests include:

(A) the relative ease of access to sources of proof;

(B) the availability of compulsory process for attendance of unwilling and the cost of obtaining attendance of willing witnesses;

(C) the distance from the site of the accident or incident which gave rise to the litigation, including the possibility of viewing of the premises, if appropriate;

(D) the possibility of harassment of either party in litigating in an inconvenient forum;

(E) the enforceability of any judgment obtained; and

(F) any other practical problems which contribute to the ease, expense, and expedition of the trial.

(2) Factors affecting the public interest include:

(A) the administrative difficulties for the forum courts;

(B) the desirability of having controversies decided in the locale where people are most affected by it;

(C) the burden of jury duty on citizens of a State that has little relation to the litigation; and

(D) consideration of the State law which must govern the case.

(e) DISMISSAL AND TOLLING.—If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subsection.

(f) DEFINITIONS.—In this section:

(1) The term ''personal injury claim''—

(A) means a civil action brought under State law by any person to recover for a person's personal injury, illness, disease, death, mental or emotional injury, risk of disease, or other injury, or the costs of medical monitoring or surveillance (to the extent such claims are

recognized under State law), including any derivative action brought on behalf of any person on whose injury or risk of injury the action is based by any representative party, including a spouse, parent, child, or other relative of such person, a guardian, or an estate; and

(B) does not include a claim brought as a class action.

(2) The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, but not any governmental entity.

(3) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and any other territory or possession of the United States.

(g) NO IMPACT ON SUITS AGAINST FOREIGN DEFENDANTS.—Nothing in this section shall be construed to limit Federal or State court jurisdiction over any defendant that is a foreign state or a citizen or subject of a foreign state.

(h) STATE VENUE REQUIREMENTS.—Nothing in this section shall preempt or supersede any State law relating to venue requirements that otherwise would not permit a

1 person to bring, join, or intervene in personal injury claims
2 in that State.
3 (i) APPLICABILITY.—This section applies to any per-
4 sonal injury claim filed in State court on or after the date
5 of the enactment of this Act.

○