



Legislative Bulletin.....September 14, 2004

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Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$0

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 4

Total New Private Sector Mandates: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 4

H.R. 3369 — To provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage or adoption of rules for athletic competitions and practices (*Souder*)

Order of Business: The bill is scheduled to be considered on Tuesday, September 14, 2004, under a motion to suspend the rules and pass the bill.

Summary: H.R. 3369 provides legal immunity to nonprofit athletic organizations, such as Little League, in certain civil suits alleging harm from an act or omission of such an organization in the adoption of rules for athletic competitions or practices. The bill preempts

state laws, unless the state laws provide additional liability protection relating to rule making. The liability immunity becomes effective on the date of enactment.

[According to the sponsor's office, an additional provision may be added to the bill before it is voted on clarifying that the liability protections are limited to physical harm, not civil rights cases. This language was not available as of press time.]

Additional Information: According to the bill sponsor, there has been a significant increase over the last decade in personal injury lawsuits targeted at the rule-making bodies of amateur and education based athletics. This is a questionable attempt to sue these associations for catastrophic injuries (which are rare) that occur during participation in athletic competition and practice. The legal attacks against rule-making bodies rely on the presumption that rules should eliminate ALL risk in athletic competition. The increasing frequency and cost of liability claims against rule-making bodies is causing the few insurance companies that offer rule-makers liability coverage to increase premiums substantially, raise deductibles to unaffordable levels, and deny coverage altogether.

The bill would protect rulemaking bodies from "frivolous lawsuits" by raising the standard for liability from *negligence* to *gross negligence*. The litigating party would have to demonstrate that an injury was caused by willful or reckless misconduct on the part of the rule-making organization. The bill would apply this liability standard to all amateur, non-profit rule-making organizations such as the National Federation of State High School Associations, the NCAA, Little League Baseball or Pop Warner Football.

According to the Committee Report, Gallup polls have shown that 1 in 6 potential volunteers reported that they withheld their services due to fear of exposure to liability lawsuits. One Little League organization chose to settle out of court rather than face possible excessive damage awards when it was sued by a woman who was hit by a ball her own daughter failed to catch. When a youth suffered a paralyzing injury in a volunteer supervised Boy Scout game of touch football, he filed a multimillion-dollar lawsuit against the adult supervisors and the Boy Scouts. In California, a volunteer Mountain Rescue member helped paramedics aid a climber who had fallen and sustained injuries to his spine; his reward was a \$12 million lawsuit for damages.

Committee Action: The bill was introduced on October 21, 2003, and referred to the House Committee on the Judiciary. The Committee considered the bill and reported it to the full House by a vote of 14-7 on September 9, 2004.

Cost to Taxpayers: CBO estimates that enacting H.R. 3369 would result in no costs to the federal government.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. H.R. 3369 contains an intergovernmental mandate by specifically exempting nonprofit athletic organizations from liability under state tort laws for certain

injuries that may occur during practice or competitions, yet CBO estimates that the costs, if any, would not be significant and would be well below the \$60 million threshold for FY04.

Constitutional Authority: The Judiciary Committee in Report No. 108-681 finds authority in Article I, Sec. 8 of the Constitution (Powers of Congress), but fails to cite a specific clause.

Outside Organizations: The U.S. Chamber of Commerce has urged support for this bill.

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H.R. 1787 — Good Samaritan Volunteer Firefighter Assistance Act of 2004 (Castle)

Order of Business: The bill is scheduled to be considered on Tuesday, September 14, 2004, under a motion to suspend the rules and pass the bill.

Summary: The bill H.R. 1787 would provide immunity from liability to a person who donates fire control or fire rescue equipment to a volunteer fire department (defined as at least 30% of members receiving little or no compensation) in certain civil suits alleging harm from the use of the donated equipment. The immunity from liability does not apply if the person's "act or omission proximately causing the injury, damage, loss, or death constitutes gross negligence or intentional misconduct; or the person is the manufacturer of the fire control or fire rescue equipment." The bill preempts state laws, unless the state laws provide additional liability protection for a person who donates fire control or fire rescue equipment to a volunteer fire company. The liability immunity becomes effective for donations made 30 days after the bill's enactment.

Additional Information: According to the Committee, H.R. 1787, is intended to encourage increased donation of surplus firefighting equipment to volunteer firefighting departments by removing civil liability barriers that keep corporations, individuals, and professional firefighting entities from donating surplus equipment rather than destroying or 'moth balling' it.

Committee Action: The bill was introduced on April 11, 2003, and referred to the House Committee on the Judiciary. The Committee considered the bill and reported it the full House by a voice vote on September 8, 2004.

Cost to Taxpayers: CBO estimates that enacting the legislation would result in no costs to the federal government.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. H.R. 1787 contains an intergovernmental mandate by specifically exempting certain individuals who donate fire control or rescue equipment from liability

under state tort laws for injuries and damages that equipment may cause. CBO estimates that the costs, if any, would not be significant and would be well below the \$60 million threshold established in UMRA.

Constitutional Authority: The Judiciary Committee in Report No. 108-680 finds authority in Article I, Sec. 8 of the Constitution (Powers of Congress), but fails to cite a specific clause.

Outside Organizations: The U.S. Chamber of Commerce has urged support for this bill.

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H.R. 1084—Volunteer Pilot Organization Protection Act (Schrock)

Order of Business: The bill is scheduled to be considered on Tuesday, September 14th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 1084 would amend the Volunteer Protection Act of 1997 (42 U.S.C. 14503) to exempt from liability a nonprofit volunteer pilot organization that flies for public benefit, its staff members, and its volunteers for harm caused by a volunteer while flying (on a mission related to the organization) an aircraft for which the volunteer was properly licensed and individually insured. The harm exempt from liability could not have been caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer. Volunteer pilots would still be subject to some civil liability (e.g. a volunteer organization could still sue a volunteer, in certain circumstances).

The Attorney General would have to study and report to Congress on the availability of insurance to the pilot organizations.

Committee Action: On March 5, 2003, the bill was referred to the Judiciary Committee, which held hearings on the bill on July 20, 2004. On September 8th, the Committee marked up and reported the amended bill to the Full House by voice vote.

Cost to Taxpayers: CBO reports that the bill would have no significant effect on federal spending.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. The bill would exempt volunteer pilots and volunteer pilot organizations from liability under state tort laws for injuries that may occur during the course of their volunteer activities.

Constitutional Authority: The Judiciary Committee, in House Report 108-679, cites constitutional authority in Article I, Section 8, but fails to cite a specific clause of authority.

Clause 3 of House Rule XIII, Section d(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

Outside Organizations: The U.S. Chamber of Commerce has urged support for this bill.

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H.R. 4571—Lawsuit Abuse Reduction Act of 2004 (Smith of Texas)

Order of Business: The bill is scheduled for consideration on Tuesday, September 14th, under a modified closed rule (H.Res. 766). The rule makes in order a substitute amendment, offered by Representative Turner of Texas or his designee, described below.

Summary: H.R. 4571 amends Rule 11 of the Federal Rules of Civil Procedure. Specifically, the bill:

- Establishes a mandatory sanction for attorneys, law firms, or parties that have been found to have filed a frivolous pleading, motion, or other paper. The sanction could include monetary sanctions, such as reimbursement for attorney’s fees. The bill stipulates that the sanction shall be “sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the parties that were injured by such conduct.”
- Eliminates the current-law provision that allows lawyers to avoid sanctions for making a frivolous claim by withdrawing the claim within 21 days after a motion for sanctions has been filed.
- Requires that in any action in state court, the court determine within 30 days after the filing of a motion whether the action affects interstate commerce. If the action were found to affect interstate commerce, Rule 11 would apply.
- Requires that personal injury cases be brought only where the plaintiff resides, where the plaintiff was allegedly injured, or where the defendant’s principal place of business is located.
- Disbars an attorney from a federal court for at least one year if the attorney has filed three frivolous suits in that court over the attorney’s career.
- Provides enhanced sanctions for destruction of documents.

The bill would not apply to civil rights cases.

Under Rule 11, a frivolous lawsuit would be a case that does not have evidentiary support, is intended to harass or cause unnecessary delay and expense, or is unwarranted under existing law.

Additional Background: According to a report by the AEI-Brookings Joint Center for Regulatory Studies, the tort liability price tag for small businesses in America is \$88 billion a year (<http://www.legalreformnow.com/pdfs/Small%20Business%20Study.pdf>). For

additional information on the effect of frivolous lawsuits on small businesses and others, please visit the following websites:

<http://www.legalreformnow.com/newsroom/factsfigures.cfm>

<http://www.atra.org/display/13> (examples of frivolous lawsuits)

Turner Amendment in the Nature of a Substitute: The amendment would make the following changes to Rule 11 of the Federal Rules of Civil Procedure:

- Requires an attorney to sign a “certificate of merit,” stating that the case is reasonable, in any filing, written motion, or pleading. If the case were found not to be reasonable, after the first offense, the attorney would be found in contempt of court and required to pay costs and attorney’s fees. After the second offense, the attorney would also be required to pay a monetary fine. After the third offense, the attorney would be referred to the state bar for disciplinary proceedings. For each offense, the attorney is required to have “reasonable opportunity to respond.”
- Provisions would not apply to civil rights cases.
- Imposes sanctions for frivolous filings during discovery. After the first offense, the attorney would be found in contempt of court and required to pay costs and attorney’s fees. After the second offense, the attorney would also be required to pay a monetary fine. After the third offense, the attorney would be referred to the state bar for disciplinary proceedings.
- Prohibits records from being sealed unless the court justifies the sealing in writing.
- Provides enhanced sanctions for destruction of documents.
- Requires each judicial district in a state to develop a civil justice “expense and delay reduction plan” to weed out frivolous lawsuits.

Committee Action: H.R. 4571 was introduced on June 15, 2004, and referred to the Committee on the Judiciary. The Committee considered the bill on September 8 and reported it to the House by a vote of 18-10.

Outside Organizations: Organizations that support H.R. 4571 include the U.S. Chamber of Commerce, the National Federation of Independent Business, and the American Medical Association.

Cost to Taxpayers: CBO estimates that enacting the legislation would result in no cost or savings to the federal government.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. The bill would require state judges to determine whether certain liability lawsuits affect interstate commerce and apply federal civil procedures for frivolous lawsuits to those cases.

Constitutional Authority: The Judiciary Committee, in House Report 108-682, cites constitutional authority in Article I, Section 8, but fails to cite a specific clause of authority. Clause 3 of House Rule XIII, Section d(1), requires that all committee reports contain “a

statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

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