

103^D CONGRESS
1ST SESSION

H. R. 2880

To permit the prevailing party in a civil action in Federal court to recover attorneys' fees from the losing party.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 1993

Mr. COX introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To permit the prevailing party in a civil action in Federal court to recover attorneys' fees from the losing party.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Loser Pays Act".

5 **SEC. 2. FINDINGS.**

6 The Congress makes the following findings:

7 (1) Reforming the civil justice system in the
8 United States is imperative if that system is to re-
9 main truly open and accessible to all Americans. De-
10 spite the fact that the United States is home to 70

1 percent of the world's lawyers, Americans do not
2 have access to simple justice as do citizens of other
3 countries. Delays, over-crowded court dockets,
4 harassing suits designed to extort "settlements",
5 and increasingly costly proceedings have made it
6 nearly impossible for honest litigants to survive until
7 trial.

8 (2) Despite this enormous expenditure of time
9 and money, almost none of these cases will come to
10 trial. In over 96 percent of the cases that came to
11 an end in Federal court during 1992, the parties did
12 not get a single day of trial before a judge or jury.
13 The image of an honest judge or jury applying the
14 law to particular facts in order to determine who is
15 right is only that—imaginary.

16 (3) Cutting the costs and the length of civil
17 lawsuits is vitally necessary for consumers and busi-
18 nesses alike. They cannot afford the years of ex-
19 pense now necessary to maintain an honest case in
20 the current system. Until this problem is addressed,
21 America's free enterprise system will continue to be
22 at risk.

23 (4) Awarding the prevailing party his or her at-
24 torneys' fees in civil lawsuits will do much to end the
25 improper incentives for lawsuits that are inflating

1 litigation costs dramatically. It will give meritorious
2 plaintiffs the full measure of the damages they de-
3 serve, without deduction for the lawyers' costs of
4 suit. And it will give defendants whose rights are
5 vindicated, often after years of wasted time and
6 money, a chance to be made whole.

7 **SEC. 3. PAYMENT OF ATTORNEYS' FEES.**

8 (a) AWARD OF FEES.—The prevailing party in any
9 civil action brought in or removed to a court of the United
10 States shall be entitled to attorneys' fees to the extent that
11 such party prevails on any position or claim advanced dur-
12 ing the action. Attorneys' fees under this subsection shall
13 be paid by the nonprevailing party.

14 (b) RECORDS.—Attorneys' fees may not be awarded
15 under subsection (a) unless counsel of record in the action
16 involved maintained accurate, complete records of hours
17 worked on the matters involved in the action, regardless
18 of the fee arrangement with his or her client.

19 (c) LIMITATION ON FEES.—The fee award under this
20 section shall not exceed the attorneys' fees of the
21 nonprevailing party with respect to the particular position
22 or claim. If the nonprevailing party received services under
23 a contingent fee agreement, then the fee award to the pre-
24 vailing party shall not exceed the reasonable value of those
25 services, as determined by the court at the time the final

1 judgment is entered. In addition, the court may, in its dis-
2 cretion, limit the fees awarded under subsection (a) to the
3 extent that the court finds exceptional, unusual, and spe-
4 cial circumstances that make payment of such fees unjust.

5 (d) DEFINITION.—As used in this section, the term
6 “prevailing party” means a party to an action who obtains
7 a favorable final judgment (other than by settlement), ex-
8 clusive of interest, on all or a portion of the claims as-
9 serted in the action.

10 **SEC. 4. EFFECTIVE DATE.**

11 This Act and the amendments made by this Act shall
12 take effect 90 days after the date of the enactment of this
13 Act, and shall not apply to any action or proceeding com-
14 menced before such effective date.

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