

104TH CONGRESS
1ST SESSION

S. 243

To provide greater access to civil justice by reducing costs and delay, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 19 (legislative day, JANUARY 10), 1995

Mr. GRASSLEY introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To provide greater access to civil justice by reducing costs
and delay, and for other purposes.

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 “Civil Justice Reform
5 Act of 1995”.

6 **SEC. 2. DIVERSITY OF CITIZENSHIP JURISDICTION; AWARD**
7 **OF ATTORNEYS’ FEES TO PREVAILING PARTY.**

8 (a) AWARD OF FEES.—Section 1332 of title 28,
9 United States Code, is amended by inserting after sub-
10 section (e) the following new subsection:

1 “(f)(1) The prevailing party in an action under this
2 section shall be entitled to attorneys’ fees only to the ex-
3 tent that such party prevails on any position or claim ad-
4 vanced during the action. Attorneys’ fees under this para-
5 graph shall be paid by the nonprevailing party but shall
6 not exceed the amount of the attorneys’ fees of the
7 nonprevailing party with regard to such position or claim.
8 If the nonprevailing party receives services under a contin-
9 gent fee agreement, the amount of attorneys’ fees under
10 this paragraph shall not exceed the reasonable value of
11 those services.

12 “(2) In order to receive attorneys’ fees under para-
13 graph (1), counsel of record in any actions under this sec-
14 tion shall maintain accurate, complete records of hours
15 worked on the matter regardless of the fee arrangement
16 with his or her client.

17 “(3) The court may, in its discretion, limit the fees
18 recovered under paragraph (1) to the extent that the court
19 finds special circumstances that make payment of such
20 fees unjust.

21 “(4) This subsection shall not apply to any action re-
22 moved from a State court under section 1441 of this title,
23 or to any action in which the United States, any State,
24 or any agency, officer, or employee of the United States
25 or any State is a party.

1 “(5) As used in this subsection, the term ‘prevailing
2 party’ means a party to an action who obtains a favorable
3 final judgment (other than by settlement), exclusive of in-
4 terest, on all or a portion of the claims asserted in the
5 action.”.

6 (b) STUDY AND REPORT.—(1) The Director of the
7 Administrative Office of the United States Courts shall
8 conduct a study regarding the effect of the requirements
9 of subsection (f) of section 1332 of title 28, United States
10 Code, as added by subsection (a) of this section, on the
11 caseload of actions brought under such section, which
12 study shall include—

13 (A) data on the number of actions, within each
14 judicial district, in which the nonprevailing party
15 was required to pay the attorneys’ fees of the
16 prevailing party; and

17 (B) an assessment of the deterrent effect of the
18 requirements on frivolous or meritless actions.

19 (2) No later than 4 years after the date of enactment
20 of this Act, the Director of the Administrative Office of
21 the United States Courts shall submit a report to the
22 appropriate committees of Congress containing—

23 (A) the results of the study described in para-
24 graph (1); and

1 (B) recommendations regarding whether the re-
 2 quirements should be continued or applied with re-
 3 spect to additional actions.

4 (c) REPEAL.—No later than 5 years after the date
 5 of enactment of this Act, this section and the amendment
 6 made by this section shall be repealed.

7 **SEC. 3. OFFER OF JUDGMENT.**

8 (a) IN GENERAL.—Part V of title 28, United States
 9 Code, is amended by inserting after chapter 113 the
 10 following new chapter:

11 **“CHAPTER 114—PRETRIAL PROVISIONS**

“Sec.

“1721. Offer of judgment.

12 **“§ 1721. Offer of judgment**

13 “(a)(1) In any civil action filed in a district court,
 14 any party may serve upon any adverse party a written
 15 offer to allow judgment to be entered for the money or
 16 property specified in the offer.

17 “(2) If within 14 days after service of the offer, the
 18 adverse party serves written notice that the offer is accept-
 19 ed, either party may file the offer and notice of acceptance
 20 and the clerk shall enter judgment.

21 “(3) An offer not accepted within such 14-day period
 22 shall be deemed withdrawn and evidence thereof is not ad-
 23 missible, except in a proceeding to determine reasonable
 24 attorney fees.

1 “(4) If the final judgment obtained by the offeree is
2 not more favorable than the offer made under paragraph
3 (1) which was not accepted by the offeree, the offeree shall
4 pay the offeror’s reasonable attorney fees incurred after
5 the expiration of the time for accepting the offer, to the
6 extent necessary to make the offeror whole.

7 “(5) In no case shall an award of attorney fees under
8 this section exceed the amount of the judgment obtained.
9 The court may reduce the award of costs and attorney
10 fees to avoid the imposition of undue hardship on a party.

11 “(6) The fact that an offer is made under this section
12 shall not preclude a subsequent offer.

13 “(7)(A) Subject to the provisions of subparagraph
14 (B), when the liability of 1 party has been determined by
15 verdict, order, or judgment, but the amount or extent of
16 the liability remains to be determined by further proceed-
17 ings, any party may make an offer of judgment, which
18 shall have the same effect as an offer made before trial.

19 “(B) The court may shorten the period of time an
20 offeree may have to accept an offer under subparagraph
21 (A), but in no case shall such period be less than 7 days.

22 “(b) A party making an offer shall not be deprived
23 of the benefits of an offer it makes by an adverse party’s
24 subsequent offer, unless the subsequent offer is more
25 favorable than the judgment obtained.

1 “(c) If the judgment obtained includes nonmonetary
 2 relief, a determination that it is more favorable to the
 3 offeree than was the offer shall be made only when the
 4 terms of the offer included all such nonmonetary relief.

5 “(d) This section shall not apply to class or derivative
 6 actions under rules 23, 23.1 and 23.2 of the Federal Rules
 7 of Civil Procedure.

8 “(e)(1) Except as provided under paragraph (2), the
 9 provisions of this section shall not be construed to prohibit
 10 an award or reduce the amount of an award a party may
 11 receive under a statute which provides for the payment
 12 of attorney’s fees by another party.

13 “(2) The amount a party may receive under this sec-
 14 tion may be set off against the amount of an award made
 15 under a statute described in paragraph (1).”.

16 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 17 The table of chapters for part IV of title 28, United States
 18 Code, is amended by inserting after the item relating to
 19 chapter 113 the following:

“114. Pretrial provisions 1721”.

20 **SEC. 4. PRIOR NOTICE AS A PREREQUISITE OF FILING A**
 21 **CIVIL ACTION IN THE UNITED STATES DIS-**
 22 **TRICT COURT.**

23 (a) IN GENERAL.—Chapter 23 of title 28, United
 24 States Code, is amended by adding at the end the
 25 following:

1 **“§ 483. Prior notice of civil action**

2 “(a)(1) No less than 30 days before filing a civil ac-
3 tion in a court of the United States the claimant intending
4 to file such action shall transmit written notice to any in-
5 tended defendant of the specific claims involved, including
6 the amount of actual damages and expenses incurred and
7 expected to be incurred. The claimant shall transmit such
8 notice to any intended defendant at an address reasonably
9 expected to provide actual notice.

10 “(2) For purposes of this section, the term ‘transmit’
11 means to mail by first class-mail, postage prepaid, or con-
12 tract for delivery by any company which physically delivers
13 correspondence as a commercial service to the public in
14 its regular course of business.

15 “(3) The claimant shall at the time of filing a civil
16 action, file in the court a certificate of service evidencing
17 compliance with this subsection.

18 “(b) If the applicable statute of limitations for such
19 action would expire during the period of notice required
20 by subsection (a), the statute of limitations shall expire
21 on the thirtieth day after the date on which written notice
22 is transmitted to the intended defendant or defendants
23 under subsection (a). The parties may by written agree-
24 ment extend that 30-day period for an additional period
25 of not to exceed 90 days.

1 “(c) The requirements of this section shall not
2 apply—

3 “(1) in any action to seize or forfeit assets sub-
4 ject to forfeiture or in any bankruptcy, insolvency,
5 receivership, conservatorship, or liquidation proceed-
6 ing;

7 “(2) if the assets that are the subject of the ac-
8 tion or would satisfy a judgment are subject to
9 flight, dissipation, or destruction, or if the defendant
10 is subject to flight;

11 “(3) if a written notice prior to filing an action
12 is otherwise required by law, or the claimant has
13 made a prior attempt in writing to settle the claim
14 with the defendant;

15 “(4) in proceedings to enforce a civil investiga-
16 tive demand or an administrative summons;

17 “(5) in any action to foreclose a lien; or

18 “(6) in any action pertaining to a temporary re-
19 straining order, preliminary injunctive relief, or the
20 fraudulent conveyance of property, or in any other
21 type of action involving exigent circumstances that
22 compel immediate resort to the courts.

23 “(d) If the district court finds that the requirements
24 of subsection (a) have not been met by the claimant, and
25 such defect is asserted by the defendant within 60 days

1 after service of the summons or complaint upon such de-
 2 fendant, the claim shall be dismissed without prejudice
 3 and the costs of such action, including attorneys' fees,
 4 shall be imposed upon the claimant. Whenever an action
 5 is dismissed under this subsection, the claimant may refile
 6 such claim within 60 days after dismissal regardless of
 7 any statutory limitations period if—

8 “(1) during the 60 days after dismissal, notice
 9 is transmitted under subsection (a); and

10 “(2) the original action was timely filed in
 11 accordance with subsection (b).”.

12 (b) CONFORMING AMENDMENT.—The table of sec-
 13 tions at the beginning of chapter 23 of title 28, United
 14 States Code, is amended by adding at the end the
 15 following:

“483. Prior notice of civil action.”.

16 **SEC. 5. CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS**
 17 **ACT.**

18 (a) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—
 19 Section 7 of the Civil Rights of Institutionalized Persons
 20 Act (42 U.S.C. 1997e) is amended—

21 (1) by amending subsection (a) to read as
 22 follows:

23 “(a) In any action brought pursuant to section 1979
 24 of the Revised Statutes of the United States, by any adult
 25 convicted of a crime confined in any jail, prison, or other

1 correctional facility, the court shall continue such case for
2 a period not to exceed 180 days in order to require exhaus-
3 tion of such plain, speedy, and effective administrative
4 remedies as are available.”; and

5 (2) in subsection (b)—

6 (A) by redesignating paragraphs (1) and
7 (2) as paragraphs (2) and (3), respectively; and

8 (B) by inserting immediately after “(b)”
9 the following:

10 “(1) Upon the request of a State or local corrections
11 agency, the Attorney General of the United States shall
12 provide the agency with technical advice and assistance
13 in establishing plain, speedy, and effective administrative
14 remedies for inmate grievances.”.

15 (b) PROCEEDINGS IN FORMA PAUPERIS.—Section
16 1915(d) of title 28, United States Code, is amended to
17 read as follows:

18 “(d) The court may request an attorney to represent
19 any such person unable to employ counsel and may dis-
20 miss the case if the allegation of poverty is untrue, or if
21 satisfied that the action fails to state a claim upon which
22 relief can be granted or is frivolous or malicious.”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 subsections (a) and (b) shall take effect on the date of
25 the enactment of this Act.

1 **SEC. 6. EXPERT WITNESSES.**

2 (a) IN GENERAL.—Chapter 119 of title 28, United
3 States Code, is amended by inserting after section 1828
4 the following new section:

5 **“§ 1829. Multiple expert witnesses**

6 “In any civil action filed in a district court, the court
7 shall not permit opinion evidence on the same issue from
8 more than 1 expert witness for each party, except upon
9 a showing of good cause.”.

10 (b) TECHNICAL AND CONFORMING AMENDMENT.—
11 The table of sections for chapter 119 of title 28, United
12 States Code, is amended by inserting after the item relat-
13 ing to section 1828 the following new section:

“1829. Multiple expert witnesses.”.

14 **SEC. 7. SEVERABILITY.**

15 If any provision of this Act or the amendments made
16 by this Act or the application of any provision or amend-
17 ment to any person or circumstance is held invalid, the
18 remainder of this Act and such amendments and the appli-
19 cation of such provision and amendments to any other per-
20 son or circumstance shall not be affected by that invalida-
21 tion.

22 **SEC. 8. EFFECTIVE DATE.**

23 Except as expressly provided otherwise, this Act and
24 the amendments made by this Act shall become effective
25 90 days after the date of the enactment of this Act. This

- 1 Act shall not apply to any action or proceeding commenced
- 2 before such effective date.

