

104TH CONGRESS
1ST SESSION

S. 712

To amend title 28, United States Code, to authorize the award of fees and expenses to prevailing parties in frivolous civil litigation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, APRIL 5), 1995

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

A BILL

To amend title 28, United States Code, to authorize the award of fees and expenses to prevailing parties in frivolous civil litigation, 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 “Frivolous Lawsuit Pre-
5 vention Act of 1995”.

6 **SEC. 2. AWARD OF FEES AND EXPENSES.**

7 (a) IN GENERAL.—Chapter 123 of title 28, United
8 States Code, is amended by adding at the end the follow-
9 ing new section:

1 **“§ 1932. Award of fees and expenses to prevailing**
2 **party in frivolous civil litigation**

3 “(a) AUTHORITY TO AWARD FEES AND EX-
4 PENSES.—If the court in any civil action enters a final
5 judgment against a party litigant on the basis of a default,
6 a motion to dismiss, a motion for summary judgment, or
7 a trial on the merits, the court shall, upon motion by the
8 prevailing party, determine whether—

9 “(1) the complaint or motion is being presented
10 for any improper purpose, such as to harass or to
11 cause unnecessary delay or needless increase in the
12 cost of litigation;

13 “(2) the claims, defenses, and other legal con-
14 tentions in the complaint or motion, taken as a
15 whole, are unwarranted by existing law or by a good
16 faith argument for the extension, modification, or re-
17 versal of existing law or the establishment of new
18 law;

19 “(3) the allegations and other factual conten-
20 tions in the complaint or motion, taken as a whole,
21 lack any factual support or would be likely to lack
22 any factual support after a reasonable opportunity
23 for further investigation or discovery; or

24 “(4) the denials of factual contentions are un-
25 warranted in light of the evidence or are not reason-
26 ably based on a lack of information or belief.

1 “(b) AWARD TO PREVAILING PARTY.—

2 “(1) IN GENERAL.—If the court determines
3 that the losing party has violated any provision of
4 subsection (a), the court shall impose an appropriate
5 sanction against the attorney for the losing party,
6 which may include an order to pay the prevailing
7 party reasonable fees and other expenses incurred by
8 that party. The determination of whether the losing
9 party violated any such provision shall be made on
10 the basis of the record in the civil action for which
11 fees and other expenses are sought, but the burden
12 of persuasion shall be on the prevailing party.

13 “(2) SANCTIONS.—Notwithstanding paragraph
14 (1), the court—

15 “(A) shall impose an appropriate sanction
16 against the losing party, which may include an
17 order to pay fees and expenses if the court de-
18 termines that the losing party was principally
19 responsible for the actions described in sub-
20 section (a); and

21 “(B) may, in its discretion, reduce the
22 amount to be awarded pursuant to this section,
23 or deny an award, to the extent that the pre-
24 vailing party during the course of the proceed-
25 ings engaged in conduct that unduly and unrea-

1 sonably protracted the final resolution of the
2 matter in controversy.

3 “(c) APPLICATION FOR FEES.—A party seeking an
4 award of fees and other expenses shall, within 30 days
5 of a final, nonappealable judgment in the action, submit
6 to the court an application for fees and other expenses
7 that verifies that the party is entitled to such an award
8 under subsection (a) and the amount sought, including an
9 itemized statement from any attorney or expert witness
10 representing or appearing on behalf of the party, stating
11 the actual time expended and the rate at which fees and
12 other expenses are computed.

13 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
14 tion shall be construed to limit or impair the discretion
15 of the court to award costs pursuant to other provisions
16 of law.

17 “(e) DEFINITIONS.—For purposes of this section, the
18 term ‘fees and other expenses’ includes the reasonable ex-
19 penses of expert witnesses, the reasonable cost of any
20 study, analysis, report, test, or project that is found by
21 the court to be necessary for the preparation of the party’s
22 case, and reasonable attorneys’ fees and expenses. The
23 amount of fees awarded under this section shall be based
24 upon prevailing market rates for the kind and quality of
25 services furnished.”.

1 (b) TECHNICAL AMENDMENT.—The analysis for
2 chapter 123 of title 28, United States Code, is amended
3 by adding at the end the following new item:

“1932. Award of fees and expenses to prevailing party in frivolous civil litigation.”.

