

106TH CONGRESS
1ST SESSION

S. 1158

To allow the recovery of attorney's fees and costs by certain employers and labor organizations who are prevailing parties in proceedings brought against them by the National Labor Relations Board or by the Occupational Safety and Health Administration.

IN THE SENATE OF THE UNITED STATES

MAY 27, 1999

Mr. HUTCHINSON introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To allow the recovery of attorney's fees and costs by certain employers and labor organizations who are prevailing parties in proceedings brought against them by the National Labor Relations Board or by the Occupational Safety and Health Administration.

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 "Fair Access to Indem-
5 nity and Reimbursement Act".

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) Certain small businesses and labor organi-
5 zations are at a great disadvantage in terms of ex-
6 pertise and resources when facing actions brought by
7 the National Labor Relations Board or by the Occu-
8 pational Safety and Health Administration.

9 (2) The attempt to “level the playing field” for
10 small businesses and labor organizations by means
11 of the Equal Access to Justice Act has proven ineff-
12 ective and has been underutilized by these small en-
13 tities in their actions before the National Labor Re-
14 lations Board and before the Occupational Safety
15 and Health Review Commission.

16 (3) The greater expertise and resources of the
17 National Labor Relations Board and the Occupa-
18 tional Safety and Health Administration as com-
19 pared with those of small businesses and labor orga-
20 nizations necessitate a standard that awards fees
21 and costs to certain small entities when they prevail
22 against the National Labor Relations Board or
23 against the Occupational Safety and Health Admin-
24 istration.

25 (b) PURPOSE.—It is the purpose of this Act—

1 (1) to ensure that certain small businesses and
2 labor organizations will not be deterred from seeking
3 review of, or defending against, actions brought
4 against them by the National Labor Relations Board
5 or by the Occupational Safety and Health Adminis-
6 tration because of the expense involved in securing
7 vindication of their rights;

8 (2) to reduce the disparity in resources and ex-
9 pertise between certain small businesses and labor
10 organizations and the National Labor Relations
11 Board and the Occupational Safety and Health Ad-
12 ministration; and

13 (3) to make the National Labor Relations
14 Board and the Occupational Safety and Health Ad-
15 ministration more accountable for their enforcement
16 actions against certain small businesses and labor
17 organizations by awarding fees and costs to these
18 entities when they prevail against the National
19 Labor Relations Board or in proceedings before the
20 Occupational Safety and Health Review Commission.

21 **SEC. 3. AMENDMENT TO NATIONAL LABOR RELATIONS ACT.**

22 The National Labor Relations Act (29 U.S.C. 151
23 et seq.) is amended by adding at the end the following:

1 **“SEC. 20. AWARDS OF ATTORNEYS’ FEES AND COSTS.**

2 “(a) ADMINISTRATIVE PROCEEDINGS.—An employer
3 who, or labor organization that—

4 “(1) is the prevailing party in an adversary ad-
5 judication conducted by the Board under this or any
6 other Act; and

7 “(2) had not more than 100 employees and a
8 net worth of not more than \$7,000,000 at the time
9 the adversary adjudication was initiated,

10 shall be awarded fees and other expenses as a prevailing
11 party under section 504 of title 5, United States Code,
12 in accordance with the provisions of that section, but with-
13 out regard to whether the position of the Board was sub-
14 stantially justified or special circumstances make an
15 award unjust. For purposes of this subsection, the term
16 ‘adversary adjudication’ has the meaning given that term
17 in section 504(b)(1)(C) of title 5, United States Code.

18 “(b) COURT PROCEEDINGS.—An employer who, or a
19 labor organization that—

20 “(1) is the prevailing party in a civil action, in-
21 cluding proceedings for judicial review of agency ac-
22 tion by the Board, brought by or against the Board,
23 and

24 “(2) had not more than 100 employees and a
25 net worth of not more than \$7,000,000 at the time
26 the civil action was filed,

1 shall be awarded fees and other expenses as a prevailing
2 party under section 2412(d) of title 28, United States
3 Code, in accordance with the provisions of that section,
4 but without regard to whether the position of the United
5 States was substantially justified or special circumstances
6 make an award unjust.

7 “(c) APPEALS.—Any appeal of a determination of
8 fees pursuant to subsection (a) or (b) shall be determined
9 without regard to whether the position of the United
10 States was substantially justified or special circumstances
11 make an award unjust.”.

12 **SEC. 4. APPLICABILITY OF NLRA AMENDMENT.**

13 (a) AGENCY PROCEEDINGS.—Subsection (a) of sec-
14 tion 20 of the National Labor Relations Act, as added by
15 section 3 of this Act, applies to agency proceedings com-
16 menced on or after the date of the enactment of this Act.

17 (b) COURT PROCEEDINGS.—Subsection (b) of section
18 20 of the National Labor Relations Act, as added by sec-
19 tion 3 of this Act, applies to civil actions commenced on
20 or after the date of the enactment of this Act.

21 **SEC. 5. AMENDMENT TO OCCUPATIONAL SAFETY AND**
22 **HEALTH ACT.**

23 The Occupational Safety and Health Act (29 U.S.C.
24 651 et seq.) is amended by inserting after section 12 the
25 following:

1 **“SEC. 12A. AWARDS OF ATTORNEYS’ FEES AND COSTS.**

2 “(a) ADMINISTRATIVE PROCEEDINGS.—An employer
3 who—

4 “(1) is the prevailing party in an adversary ad-
5 judication before the Occupational Safety and
6 Health Review Commission under this or any other
7 Act, and

8 “(2) had not more than 100 employees and a
9 net worth of not more than \$7,000,000 at the time
10 the adversary adjudication was initiated,

11 shall be awarded fees and other expenses as a prevailing
12 party under section 504 of title 5, United States Code,
13 in accordance with the provisions of that section, but with-
14 out regard to whether the position of the Secretary of
15 Labor was substantially justified or special circumstances
16 make an award unjust. For purposes of this subsection,
17 the term ‘adversary adjudication’ has the meaning given
18 that term in section 504(b)(1)(C) of title 5, United States
19 Code.

20 “(b) COURT PROCEEDINGS.—An employer who—

21 “(1) is the prevailing party in a civil action, in-
22 cluding proceedings for judicial review of an action
23 by the Occupational Safety and Health Review Com-
24 mission, brought by or against the Secretary or the
25 Commission, and

1 “(2) had not more than 100 employees and a
2 net worth of not more than \$7,000,000 at the time
3 the civil action was filed,
4 shall be awarded fees and other expenses as a prevailing
5 party under section 2412(d) of title 28, United States
6 Code, in accordance with the provisions of that section,
7 but without regard to whether the position of the United
8 States was substantially justified or special circumstances
9 make an award unjust.

10 “(c) APPEALS.—Any appeal of a determination of
11 fees pursuant to subsection (a) or (b) shall be determined
12 without regard to whether the position of the United
13 States was substantially justified or special circumstances
14 make an award unjust.”.

15 **SEC. 6. APPLICABILITY OF OSHA AMENDMENT.**

16 (a) AGENCY PROCEEDINGS.—Subsection (a) of sec-
17 tion 12A of the Occupational Safety and Health Act, as
18 added by section 5 of this Act, applies to agency pro-
19 ceedings commenced on or after the date of enactment of
20 this Act.

21 (b) COURT PROCEEDINGS.—Subsection (b) of section
22 12A of the Occupational Safety and Health Act, as added
23 by section 5 of this Act, applies to civil actions commenced
24 on or after the date of enactment of this Act.

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