

108TH CONGRESS
1ST SESSION

H. R. 2731

To amend the Occupational Safety and Health Act of 1970 to provide for the award of attorney's fees and costs to very small employers when they prevail in litigation prompted by the issuance of citations by the Occupational Safety and Health Administration.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 2003

Mr. NORWOOD introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Occupational Safety and Health Act of 1970 to provide for the award of attorney's fees and costs to very small employers when they prevail in litigation prompted by the issuance of citations 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 "Occupational Safety
5 and Health Small Employer Access to Justice Act of
6 2003".

1 **SEC. 2. AWARD OF ATTORNEY'S FEES AND COSTS.**

2 The Occupational Safety and Health Act of 1970 (29
3 U.S.C. 651 and following) is amended by redesignating
4 section 32 through 34 as 33 through 35 and inserting the
5 following new section after section 31:

6 **“SEC. 32. AWARD OF ATTORNEYS’ FEES AND COSTS.**

7 “(a) ADMINISTRATIVE PROCEEDINGS.—An employer
8 who—

9 “(1) is the prevailing party in any adversary
10 adjudication instituted under this Act, and

11 “(2) had not more than 100 employees and a
12 net worth of not more than \$1,500,000 at the time
13 of the adversary adjudication was initiated,

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

22 “(b) PROCEEDINGS.—An employer who—

23 “(1) is the prevailing party in any proceeding
24 for judicial review of any action instituted under this
25 Act, and

1 “(2) had not more than 100 employees and a
2 net worth of not more than \$1,500,000 at the time
3 the action addressed under subsection (1) 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. Any appeal of a determination of
10 fees pursuant to subsection (a) of this subsection shall be
11 determined without regard to whether the position of the
12 United States was substantially justified or special cir-
13 cumstances make an award unjust.

14 “(c) APPLICABILITY.—

15 “(1) COMMISSION PROCEEDINGS.—Subsection
16 (a) of this section applies to proceedings commenced
17 on or after the date of enactment of this Act.

18 “(2) COURT PROCEEDINGS.—Subsection (b) of
19 this section applies to proceedings for judicial review
20 commenced on or after the date of enactment of this
21 Act.”.

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