

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 2731

[Report No. 108–489, Part I]

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.

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## 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

MAY 13, 2004

Additional sponsors: Mr. BOEHNER, Mrs. BIGGERT, Mr. BALLENGER, Mr. HOEKSTRA, Mr. KELLER, Mr. KLINE, Mrs. BLACKBURN, Mr. ISAKSON, Mr. SCHROCK, Mr. AKIN, Mr. CHOCOLA, Mrs. MUSGRAVE, Mr. TOOMEY, Mr. BEAUPREZ, Mr. DEMINT, Mr. SULLIVAN, Mr. FRANKS of Arizona, Mr. SAM JOHNSON of Texas, Mr. WILSON of South Carolina, Mr. McKEON, Mr. PAUL, Mr. OTTER, and Mr. BARRETT of South Carolina

MAY 13, 2004

Reported with an amendment and referred to the Committee on the Judiciary for a period ending not later than May 17, 2004, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## 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”.

7 **SEC. 2. AWARD OF ATTORNEYS’ FEES AND COSTS.**

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

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

13       “(a) ADMINISTRATIVE PROCEEDINGS.—An employer  
14 who—

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

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

20 shall be awarded fees and other expenses as a prevailing  
21 party under section 504 of title 5, United States Code,  
22 in accordance with the provisions of that section, but with-  
23 out regard to whether the position of the Secretary was  
24 substantially justified or special circumstances make an

1 award unjust. For purposes of this section the term ‘ad-  
2 versary adjudication’ has the meaning given that term in  
3 section 504(b)(1)(C) of title 5, United States Code.

4 “(b) PROCEEDINGS.—An employer who—

5 “(1) is the prevailing party in any proceeding  
6 for judicial review of any action instituted under this  
7 Act, and

8 “(2) had not more than 100 employees and a  
9 net worth of not more than \$1,500,000 at the time  
10 the action addressed under subsection (1) was filed;  
11 shall be awarded fees and other expenses as a prevailing  
12 party under section 2412(d) of title 28, United States  
13 Code, in accordance with the provisions of that section,  
14 but without regard to whether the position of the United  
15 States was substantially justified or special circumstances  
16 make an award unjust. Any appeal of a determination of  
17 fees pursuant to subsection (a) of this subsection shall be  
18 determined without regard to whether the position of the  
19 United States was substantially justified or special cir-  
20 cumstances make an award unjust.

21 “(c) APPLICABILITY.—

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

1           ~~“(2) COURT PROCEEDINGS.—~~Subsection (b) of  
 2           this section applies to proceedings for judicial review  
 3           commenced on or after the date of enactment of this  
 4           Act.”.

5   **SEC. 1. SHORT TITLE.**

6           *This Act may be cited as the “Occupational Safety and*  
 7           *Health Small Business Day in Court Act of 2004”.*

8   **SEC. 2. AWARD OF ATTORNEY’S FEES AND COSTS.**

9           *The Occupational Safety and Health Act of 1970 (29*  
 10          *U.S.C. 651 and following) is amended by redesignating sec-*  
 11          *tions 32 through 34 as sections 33 through 35 and inserting*  
 12          *the following new section after section 31:*

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

14          “(a) *ADMINISTRATIVE PROCEEDINGS.—An employer*  
 15          *who—*

16                 “(1) *is the prevailing party in any adversary*  
 17                 *adjudication instituted under this Act, and*

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

21                 *shall be awarded fees and other expenses as a prevailing*  
 22                 *party under section 504 of title 5, United States Code, in*  
 23                 *accordance with the provisions of that section, but without*  
 24                 *regard to whether the position of the Secretary was substan-*  
 25                 *tially justified or special circumstances make an award un-*

1 *just. For purposes of this section the term ‘adversary adju-*  
2 *dication’ has the meaning given that term in section*  
3 *504(b)(1)(C) of title 5, United States Code.*

4 “(b) *PROCEEDINGS.—An employer who—*

5 “(1) *is the prevailing party in any proceeding*  
6 *for judicial review of any action instituted under this*  
7 *Act, and*

8 “(2) *had not more than 100 employees and a net*  
9 *worth of not more than \$7,000,000 at the time the ac-*  
10 *tion addressed under subsection (1) was filed,*

11 *shall be awarded fees and other expenses as a prevailing*  
12 *party under section 2412(d) of title 28, United States Code,*  
13 *in accordance with the provisions of that section, but with-*  
14 *out regard to whether the position of the United States was*  
15 *substantially justified or special circumstances make an*  
16 *award unjust. Any appeal of a determination of fees pursu-*  
17 *ant to subsection (a) of this subsection shall be determined*  
18 *without regard to whether the position of the United States*  
19 *was substantially justified or special circumstances make*  
20 *an award unjust.*

21 “(c) *APPLICABILITY.—*

22 “(1) *COMMISSION PROCEEDINGS.—Subsection (a)*  
23 *of this section applies to proceedings commenced on or*  
24 *after the date of enactment of this section.*

1           “(2) *COURT PROCEEDINGS.*—*Subsection (b) of*  
2           *this section applies to proceedings for judicial review*  
3           *commenced on or after the date of enactment of this*  
4           *section.*”.

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