

109TH CONGRESS
1ST SESSION

H. R. 742

To amend the Occupational Safety and Health Act of 1970 to provide for the award of attorneys' fees and costs to small employers when such employers prevail in litigation prompted by the issuance of a citation by the Occupational Safety and Health Administration.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2005

Mr. NORWOOD (for himself, Mr. BOEHNER, Mr. SAM JOHNSON of Texas, Mr. MCKEON, Mr. EHLERS, Mrs. BIGGERT, Mr. KELLER, Mr. WILSON of South Carolina, Mr. KLINE, Mr. PAUL, and Mr. NEUGEBAUER) 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 attorneys' fees and costs to small employers when such employers prevail in litigation prompted by the issuance of a citation 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 2005".

1 **SEC. 2. AWARD OF ATTORNEYS' FEES AND COSTS.**

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

6 “AWARD OF ATTORNEYS’ FEES AND COSTS

7 “SEC. 32.

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

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

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

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

23 “(b) PROCEEDINGS.—An employer who—

24 “(1) is the prevailing party in any proceeding
25 for judicial review of any action instituted under this
26 Act, 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 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) shall apply to proceedings commenced on or after
17 the date of enactment of this section.

18 “(2) COURT PROCEEDINGS.—Subsection (b)
19 shall apply to proceedings for judicial review com-
20 menced on or after the date of enactment of this
21 section.”.

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