

# Union Calendar No. 46

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 742

**[Report No. 109–61, Parts I and II]**

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.

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## 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

APRIL 27, 2005

Reported without amendment and referred sequentially to the Committee on the Judiciary, for a period ending not later than May 6, 2005 for consideration of such provisions of the bill as fall within the jurisdiction of that committee pursuant to clause 1(l), rule X

MAY 6, 2005

Referral to the Committee on the Judiciary extended for a period ending not later than May 20, 2005

MAY 20, 2005

Additional sponsors: Mr. FORTUÑO, Mrs. DRAKE, Mr. PITTS, Mr. HALL, Mr. MARCHANT, Mr. SULLIVAN, Mrs. MUSGRAVE, Mr. BOUSTANY, Mr. PRICE of Georgia, Mr. BARRETT of South Carolina, Mr. SOUDER, Ms. FOXX, and Mr. KUHL of New York

Deleted sponsor: Mr. PRICE of North Carolina (added March 10, 2005; deleted April 6, 2005)

MAY 20, 2005

Reported from the Committee on the Judiciary, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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## 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”.

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

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

12           “AWARD OF ATTORNEYS' FEES AND COSTS

13           “SEC. 32. (a) ADMINISTRATIVE PROCEEDINGS.—An  
14 employer who—

15           “(1) is the prevailing party in any adversary  
16           adjudication instituted under this 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 adversary adjudication was initiated,  
4 shall be awarded fees and other expenses as a prevailing  
5 party under section 504 of title 5, United States Code,  
6 in accordance with the provisions of that section, but with-  
7 out regard to whether the position of the Secretary was  
8 substantially justified or special circumstances make an  
9 award unjust. For purposes of this section the term ‘ad-  
10 versary adjudication’ has the meaning given that term in  
11 section 504(b)(1)(C) of title 5, United States Code.

12           “(b) PROCEEDINGS.—An employer who—

13           “(1) is the prevailing party in any proceeding  
14           for judicial review of any action instituted under this  
15           Act, and

16           “(2) had not more than 100 employees and a  
17           net worth of not more than \$7,000,000 at the time  
18           the action addressed under subsection (1) was filed,  
19 shall be awarded fees and other expenses as a prevailing  
20 party under section 2412(d) of title 28, United States  
21 Code, in accordance with the provisions of that section,  
22 but without regard to whether the position of the United  
23 States was substantially justified or special circumstances  
24 make an award unjust. Any appeal of a determination of  
25 fees pursuant to subsection (a) of this subsection shall be

1 determined without regard to whether the position of the  
2 United States was substantially justified or special cir-  
3 cumstances make an award unjust.

4 “(c) APPLICABILITY.—

5 “(1) COMMISSION PROCEEDINGS.—Subsection  
6 (a) shall apply to proceedings commenced on or after  
7 the date of enactment of this section.

8 “(2) COURT PROCEEDINGS.—Subsection (b)  
9 shall apply to proceedings for judicial review com-  
10 menced on or after the date of enactment of this  
11 section.”.



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