

105TH CONGRESS
2D SESSION

S. 1684

To allow the recovery of attorneys' fees and costs by certain employers and labor organizations who are prevailing parties in proceedings brought against them by the National Labor Relations Board.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 1998

Mr. HUTCHINSON introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To allow the recovery of attorneys' fees and costs by certain employers and labor organizations who are prevailing parties in proceedings brought against them by the National Labor Relations Board.

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".

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds as follows:

1 (1) Certain small businesses and labor organi-
2 zations are at a great disadvantage in terms of ex-
3 pertise and resources when facing actions brought by
4 the National Labor Relations Board.

5 (2) The attempt to “level the playing field” for
6 small businesses and labor organizations by means
7 of the Equal Access to Justice Act has proven inef-
8 fective and has been underutilized by these small en-
9 tities in their actions before the National Labor Re-
10 lations Board.

11 (3) The greater expertise and resources of the
12 National Labor Relations Board as compared with
13 those of small businesses and labor organizations ne-
14 cessitate a standard that awards fees and costs to
15 certain small entities when they prevail against the
16 National Labor Relations Board.

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

18 (1) to ensure that certain small businesses and
19 labor organizations will not be deterred from seeking
20 review of, or defending against, actions brought
21 against them by the National Labor Relations Board
22 because of the expense involved in securing vindica-
23 tion of their rights;

24 (2) to reduce the disparity in resources and ex-
25 pertise between certain small businesses and labor

1 organizations and the National Labor Relations
2 Board; and

3 (3) to make the National Labor Relations
4 Board more accountable for its enforcement actions
5 against certain small businesses and labor organiza-
6 tions by awarding fees and costs to these entities
7 when they prevail against the National Labor Rela-
8 tions Board.

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

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

12 “AWARDS OF ATTORNEYS’ FEES AND COSTS

13 “SEC. 20. (a) ADMINISTRATIVE PROCEEDINGS.—An
14 employer who, or a labor organization that—

15 “(1) is the prevailing party in an adversary ad-
16 judication conducted by the Board under this or any
17 other Act, and

18 “(2) had not more than 100 employees and a
19 net worth of not more than \$1,400,000 at the time
20 the 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,
23 in accordance with the provisions of that section, but with-
24 out regard to whether the position of the Board was sub-
25 stantially justified or special circumstances make an
26 award unjust. For purposes of this subsection, the term

1 ‘adversary adjudication’ has the meaning given that term
2 in section 504(b)(1)(C) of title 5, United States Code.

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

5 “(1) is the prevailing party in a civil action, in-
6 cluding proceedings for judicial review of agency ac-
7 tion by the Board, brought by or against the Board,
8 and

9 “(2) had not more than 100 employees and a
10 net worth of not more than \$1,400,000 at the time
11 the civil action was filed,

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

22 **SEC. 4. APPLICABILITY.**

23 (a) AGENCY PROCEEDINGS.—Subsection (a) of sec-
24 tion 20 of the National Labor Relations Act, as added by

1 section 3 of this Act, applies to agency proceedings com-
2 menced on or after the date of the enactment of this Act.

3 (b) COURT PROCEEDINGS.—Subsection (b) of section
4 20 of the National Labor Relations Act, as added by sec-
5 tion 3 of this Act, applies to civil actions commenced on
6 or after the date of the enactment of this Act.

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