

Calendar No. 535

108TH CONGRESS
2^D SESSION

H. R. 2728

IN THE SENATE OF THE UNITED STATES

MAY 19, 2004

Received and read the first time

MAY 20, 2004

Read the second time and placed on the calendar

AN ACT

To amend the Occupational Safety and Health Act of 1970 to provide for adjudicative flexibility with regard to an employer filing of a notice of contest following the issuance of a citation by the Occupational Safety and Health Administration; to provide for greater efficiency at the Occupational Safety and Health Review Commission; to provide for an independent review of citations issued by the Occupational Safety and Health Administration; 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; and to amend the Paperwork Reduction Act and titles 5 and 31, United States Code, to reform Federal paperwork and regulatory processes.

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. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

Sec. 1. Table of contents.

TITLE I—OCCUPATIONAL SAFETY AND HEALTH SMALL
BUSINESS DAY IN COURT ACT

Sec. 101. Short title.

Sec. 102. Contesting citations under the Occupational Safety and Health Act.

TITLE II—OCCUPATIONAL SAFETY AND HEALTH REVIEW
COMMISSION EFFICIENCY ACT

Sec. 201. Short title.

Sec. 202. Occupational Safety and Health Review Commission.

TITLE III—OCCUPATIONAL SAFETY AND HEALTH INDEPENDENT
REVIEW OF OSHA CITATIONS ACT

Sec. 301. Short title.

Sec. 302. Independent review.

TITLE IV—OCCUPATIONAL SAFETY AND HEALTH SMALL
EMPLOYER ACCESS TO JUSTICE ACT

Sec. 401. Short title.

Sec. 402. Award of attorney’s fees and costs.

TITLE V—PAPERWORK AND REGULATORY IMPROVEMENTS ACT

Sec. 501. Short title.

Sec. 502. Findings.

Sec. 503. Reduction of tax paperwork.

Sec. 504. Repeal of exemptions from Paperwork Reduction Act, etc.

Sec. 505. Amendment of Truth in Regulating Act to make permanent pilot
project for report on rules.

Sec. 506. Improved regulatory accounting.

5 **TITLE I—OCCUPATIONAL SAFE-**
 6 **TY AND HEALTH SMALL BUSI-**
 7 **NESS DAY IN COURT ACT**

8 **SEC. 101. SHORT TITLE.**

9 This title may be cited as the “Occupational Safety
 10 and Health Small Business Day in Court Act of 2004”.

1 **SEC. 102. CONTESTING CITATIONS UNDER THE OCCUPA-**
2 **TIONAL SAFETY AND HEALTH ACT.**

3 (a) CITATION.—The second sentence of section 10(a)
4 of the Occupational Safety and Health Act of 1970 (29
5 U.S.C. 659(a)) is amended by inserting “(unless such fail-
6 ure results from mistake, inadvertence, surprise, or excus-
7 able neglect)” after “assessment of penalty”.

8 (b) FAILURE TO CORRECT.—The second sentence of
9 section 10(b) of the Occupational Safety and Health Act
10 of 1970 (29 U.S.C. 659(b)) is amended by inserting “(un-
11 less such failure results from mistake, inadvertence, sur-
12 prise, or excusable neglect)” after “assessment of pen-
13 alty”.

14 **TITLE II—OCCUPATIONAL SAFE-**
15 **TY AND HEALTH REVIEW**
16 **COMMISSION EFFICIENCY**
17 **ACT**

18 **SEC. 201. SHORT TITLE.**

19 This title may be cited as the “Occupational Safety
20 and Health Review Commission Efficiency Act of 2004”.

21 **SEC. 202. OCCUPATIONAL SAFETY AND HEALTH REVIEW**
22 **COMMISSION.**

23 (a) AMENDMENTS.—Section 12 of the Occupational
24 Safety and Health Act of 1970 (29 U.S.C. 661) is amend-
25 ed as follows:

1 (1) In subsection (a), by striking the word
2 “three” and inserting in lieu thereof, the word
3 “five” and by inserting the word “legal” before the
4 word “training”.

5 (2) In subsection (b) by striking all after the
6 words “except that” and inserting in lieu thereof:
7 “the President may extend the term of a member for
8 no more than 365 consecutive days to allow a con-
9 tinuation in service at the pleasure of the President
10 after the expiration of that member’s term until a
11 successor nominated by the President has been con-
12 firmed to serve. Any vacancy caused by the death,
13 resignation, or removal of a member before the expi-
14 ration of a term, for which he or she was appointed
15 shall be filled only for the remainder of such expired
16 term. A member of the Commission may be removed
17 by the President for inefficiency, neglect of duty, or
18 malfeasance in office.”.

19 (3) In subsection (f), by striking “two” the first
20 place it appears and inserting “three”.

21 (b) NEW POSITIONS.—Of the three vacancies for
22 membership on the Commission created by this section,
23 one shall be filled by the President for a term expiring
24 on April 27, 2006, and the other shall be filled by the
25 President for a term expiring on April 27, 2008.

1 **TITLE III—OCCUPATIONAL SAFE-**
2 **TY AND HEALTH INDE-**
3 **PENDENT REVIEW OF OSHA**
4 **CITATIONS ACT**

5 **SEC. 301. SHORT TITLE.**

6 This title may be cited as the “Occupational Safety
7 and Health Independent Review of OSHA Citations Act
8 of 2004”.

9 **SEC. 302. INDEPENDENT REVIEW.**

10 Section 11(a) of the Occupational Safety and Health
11 Act of 1970 (29 U.S.C. 660) is amended by adding the
12 following at the end thereof: “The conclusions of the Com-
13 mission with respect to all questions of law that are sub-
14 ject to agency deference under governing court precedent
15 shall be given deference if reasonable.”.

16 **TITLE IV—OCCUPATIONAL SAFE-**
17 **TY AND HEALTH SMALL EM-**
18 **PLOYER ACCESS TO JUSTICE**
19 **ACT**

20 **SEC. 401. SHORT TITLE.**

21 This title may be cited as the “Occupational Safety
22 and Health Small Employer Access to Justice Act of
23 2004”.

1 **SEC. 402. AWARD OF ATTORNEYS' 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 sections 32 through 34 as sections 33 through 35 and in-
5 serting the 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 \$7,000,000 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 \$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) of this section applies to proceedings commenced
17 on or after the date of enactment of this section.

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 section.”.

1 **TITLE V—PAPERWORK AND REG-**
2 **ULATORY IMPROVEMENTS**
3 **ACT**

4 **SEC. 501. SHORT TITLE.**

5 This title may be cited as the “Paperwork and Regu-
6 latory Improvements Act of 2004”.

7 **SEC. 502. FINDINGS.**

8 Congress finds the following:

9 (1) In 1980, in the Paperwork Reduction Act,
10 Congress established the Office of Information and
11 Regulatory Affairs (OIRA) in the Office of Manage-
12 ment and Budget. OIRA’s principal responsibility is
13 to reduce the paperwork burden on the public that
14 results from the collection of information by or for
15 the Federal Government. In 2002, OIRA estimated
16 that the paperwork burden imposed on the public
17 was 7.7 billion hours, at a cost of \$230 billion. The
18 Internal Revenue Service accounted for 83 percent
19 of the paperwork burden.

20 (2) In 1995, Congress amended the Paperwork
21 Reduction Act and established annual government-
22 wide paperwork reduction goals of 10 percent for
23 each of fiscal years 1996 and 1997, and 5 percent
24 for each of fiscal years 1998 through 2001, but the
25 paperwork burden increased, rather than decreased,

1 in each of those fiscal years and fiscal year 2002.
2 Both the Office of Management and Budget and the
3 Internal Revenue Service need to devote additional
4 attention to paperwork reduction.

5 (3) In 2002, the House Report accompanying
6 the Treasury and General Government Appropria-
7 tions Act, 2003 (House Report 107–575) stated,
8 “The Office of Management and Budget has re-
9 ported that paperwork burdens on Americans have
10 increased in each of the last six years. Since the In-
11 ternal Revenue Service imposes over 80 percent of
12 these paperwork burdens, the Committee believes
13 that OMB should work to identify and review pro-
14 posed and existing IRS paperwork.”.

15 (4) One key to success in paperwork reduction
16 is the Office of Management and Budget’s system-
17 atic review of every new and revised agency paper-
18 work proposal. Recent statutory exemptions from
19 that office’s review responsibility, especially those
20 without any stated justification, should be removed.

21 (5) In 2000, researchers Mark Crain of George
22 Mason University and Thomas Hopkins of the Roch-
23 ester Institute of Technology, in their October 2001
24 publication titled “The Impact of Regulatory Costs
25 on Small Firms”, estimated that Americans spend

1 \$843 billion annually to comply with Federal regula-
2 tions. Congress has a responsibility to review major
3 rules (as defined by section 804 of title 5, United
4 States Code) proposed by agencies, especially regu-
5 latory alternatives and the costs and benefits associ-
6 ated with each of them. In 2000, in the Truth in
7 Regulating Act, Congress established new responsi-
8 bility within the General Accounting Office to assist
9 Congress with this responsibility.

10 (6) In 1996, because of the increasing costs and
11 incompletely estimated benefits of Federal rules and
12 paperwork, Congress required the Office of Manage-
13 ment and Budget for the first time to submit an an-
14 nual report to Congress on the total costs and bene-
15 fits to the public of Federal rules and paperwork re-
16 quirements, including an assessment of the effects of
17 Federal rules on the private sector and State and
18 local governments. In 1998, Congress changed the
19 annual report's due date to coincide with the due
20 date of the President's budget, so that Congress and
21 the public could be given an opportunity to simulta-
22 neously review both the on-budget and off-budget
23 costs associated with the regulatory and paperwork
24 requirements of each Federal agency. In 2000, Con-

1 gress made this a permanent annual reporting re-
2 quirement.

3 (7) The Office of Management and Budget re-
4 quires agencies to submit annual budget and paper-
5 work burden estimates in order to prepare certain
6 required reports for Congress, but it does not re-
7 quire agencies to submit estimates on costs and ben-
8 efits of agency rules and paperwork. The Office of
9 Management and Budget needs to require agencies
10 to submit such estimates on costs and benefits to
11 help prepare the annual accounting statement and
12 associated report required under section 624 of the
13 Treasury and General Government Appropriations
14 Act, 2001.

15 **SEC. 503. REDUCTION OF TAX PAPERWORK.**

16 Section 3504 of title 44, United States Code, is
17 amended by adding at the end the following new sub-
18 section:

19 “(i) In carrying out subsection (c)(3), the Director
20 shall (in consultation with the Internal Revenue Service
21 and the Office of Tax Policy of the Department of the
22 Treasury and the Office of Advocacy of the Small Busi-
23 ness Administration) conduct a review of the collections
24 of information conducted by the Internal Revenue Service
25 to identify actions that the Internal Revenue Service can

1 take to reduce the information collection burden imposed
2 on small business concerns, consistent with section
3 3520(e)(1) of this chapter. The Director shall include the
4 results of the review in the annual report that the Director
5 submits under section 3514 of this chapter for fiscal year
6 2006.”.

7 **SEC. 504. REPEAL OF EXEMPTIONS FROM PAPERWORK RE-**
8 **DUCTION ACT, ETC.**

9 (a) REPEALS.—The following provisions of the Farm
10 Security and Rural Investment Act of 2002 (Public Law
11 107–171) are repealed:

12 (1) Subparagraphs (A) and (C) of section
13 1601(e)(2).

14 (2) Section 1601(e)(3).

15 (3) Section 2702(b)(1)(A).

16 (4) Section 2702(b)(2)(A).

17 (5) Section 2702(e).

18 (6) Subparagraphs (A) and (C) of section
19 6103(b)(2).

20 (7) Section 6103(b)(3).

21 (8) Subparagraphs (A) and (C) of section
22 10105(d)(2).

23 (9) Section 10105(d)(3).

1 (b) EFFECTIVE DATE.—The repeals of the provisions
 2 listed in subsection (a) shall take effect 180 days after
 3 the date of the enactment of this title.

4 **SEC. 505. AMENDMENT OF TRUTH IN REGULATING ACT TO**
 5 **MAKE PERMANENT PILOT PROJECT FOR RE-**
 6 **PORT ON RULES.**

7 (a) PERMANENT AUTHORITY.—The purpose of this
 8 section is to make permanent the authority to request the
 9 performance of regulatory analysis to enhance Congres-
 10 sional responsibility for regulatory decisions developed
 11 under the laws enacted by Congress. The Truth in Regu-
 12 lating Act of 2000 (Public Law 106–312; 5 U.S.C. 801
 13 note) is amended—

14 (1) in the heading for section 4, by striking
 15 **“PILOT PROJECT FOR”**,

16 (2) in section 5, by striking “\$5,200,000 for
 17 each of fiscal years 2000 through 2002” and insert-
 18 ing “\$5,000,000 for each fiscal year beginning after
 19 September 30, 2004”; and

20 (3) in section 6—

21 (A) in the heading, by striking “AND DU-
 22 RATION OF PILOT PROJECT”;

23 (B) in subsection (a), by striking “(a) EF-
 24 FECTIVE DATE.—”; and

25 (C) by striking subsections (b) and (c).

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect 90 days after the date of the
3 enactment of this title.

4 **SEC. 506. IMPROVED REGULATORY ACCOUNTING.**

5 (a) REQUIREMENT FOR AGENCIES TO SUBMIT IN-
6 FORMATION ON REGULATIONS AND PAPERWORK TO
7 OMB.—Section 624 of the Treasury and General Govern-
8 ment Appropriations Act, 2001 (as enacted into law by
9 Public Law 106–554; 114 Stat. 2763A–161), is amend-
10 ed—

11 (1) by redesignating subsections (b), (c), and
12 (d) as subsection (c), (d), and (e), respectively; and

13 (2) by inserting after subsection (a) the fol-
14 lowing new subsection:

15 “(b) AGENCY SUBMISSIONS TO OMB.—To carry out
16 subsection (a), the Director of the Office of Management
17 and Budget shall require each agency annually to submit
18 to the Office of Management and Budget an estimate of
19 the total annual costs and benefits of Federal rules and
20 paperwork, to the extent feasible—

21 “(1) for the agency in the aggregate; and

22 “(2) for each agency program.”.

23 (b) REGULATORY BUDGETING.—(1) Chapter 11 of
24 title 31, United States Code, is amended by adding at the
25 end the following new section:

1 **“§ 1120. Regulatory budgeting**

2 “(a) The Director of the Office of Management and
3 Budget, after consultation with the head of each agency,
4 shall designate not less than three agencies (or offices
5 within an agency) to participate in a study on regulatory
6 budgeting for fiscal years 2006 and 2007. The designated
7 agencies shall include three regulatory agencies or offices
8 from among the following: the Department of Labor, the
9 Department of Transportation, the Department of Health
10 and Human Services, and the Environmental Protection
11 Agency.

12 “(b) The study shall address the preparation of regu-
13 latory budgets. Such budgets shall include the presen-
14 tation of the varying estimated levels of benefits that
15 would be associated with the different estimated levels of
16 costs with respect to the regulatory alternatives under con-
17 sideration by the agency (or office within the agency).

18 “(c) The Director of the Office of Management and
19 Budget shall include, in the accounting statement and as-
20 sociated report submitted to Congress for calendar year
21 2006 under section 624 of the Treasury and General Gov-
22 ernment Appropriations Act, 2001 (as enacted into law
23 by Public Law 106–554; 114 Stat. 2763A–161), a presen-
24 tation of the different levels of estimated regulatory bene-
25 fits and costs with respect to the regulatory alternatives
26 under consideration for one or more of the major regu-

1 latory programs of each of the agencies designated under
2 subsection (a).

3 “(d) In the accounting statement and associated re-
4 port submitted to Congress for calendar year 2009 under
5 section 624 of the Treasury and General Government Ap-
6 propriations Act, 2001 (as so enacted), the Director of the
7 Office of Management and Budget, after consultation with
8 the Committees on the Budget and on Government Re-
9 form of the House of Representatives and the Committees
10 on the Budget and on Governmental Affairs of the Senate,
11 shall include a report on the study on regulatory budg-
12 eting. The report shall—

13 “(1) assess the feasibility and advisability of in-
14 cluding a regulatory budget as part of the annual
15 budget submitted under section 1105;

16 “(2) describe any difficulties encountered by the
17 Office of Management and Budget and the partici-
18 pating agencies in conducting the study; and

19 “(3) recommend, to the extent the President
20 considers necessary or expedient, proposed legisla-
21 tion regarding regulatory budgets.

22 “(e) The report on the study on regulatory budgeting
23 required under subsection (d) shall also be submitted di-
24 rectly to the Committees on the Budget and on Govern-
25 ment Reform of the House of Representatives and the

1 Committees on the Budget and on Governmental Affairs
2 of the Senate.”.

3 (2) The table of sections at the beginning of such
4 chapter is amended by adding at the end the following
5 new item:

“1120. Regulatory budgeting.”.

Passed the House of Representatives May 18, 2004.

Attest:

JEFF TRANDAHL,

Clerk.

Calendar No. 535

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2^D SESSION
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AN ACT

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