

# Union Calendar No. 429

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

# H. R. 1996

[Report No. 112-594]

To amend titles 5 and 28, United States Code, with respect to the award of fees and other expenses in cases brought against agencies of the United States, to require the Administrative Conference of the United States to compile, and make publically available, certain data relating to the Equal Access to Justice Act, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2011

Mrs. LUMMIS (for herself, Mr. BISHOP of Utah, Mr. THOMPSON of Pennsylvania, Mr. SIMPSON, Mr. CHAFFETZ, Mr. YOUNG of Alaska, Mr. TIPTON, Mr. DENHAM, Mr. CONAWAY, Mr. REHBERG, Mr. COFFMAN of Colorado, Mr. FRANKS of Arizona, Mr. NUNES, Mrs. NOEM, Mr. LAMBORN, Mr. DUNCAN of Tennessee, Mr. PEARCE, Mr. HERGER, and Mr. FLAKE) introduced the following bill; which was referred to the Committee on the Judiciary

JULY 11, 2012

Additional sponsors: Mr. WALDEN, Mr. RIBBLE, Mr. STUTZMAN, Mr. MARCHANT, Mr. PETERSON, Mr. COSTA, Mr. CARDOZA, Mr. ROSS of Florida, Mr. SAM JOHNSON of Texas, Mr. SMITH of Nebraska, Mr. LABRADOR, Mrs. HARTZLER, Ms. FOXX, Mr. ROHRABACHER, Mr. GOSAR, Mr. LATTA, Mr. LUETKEMEYER, Mr. McKEON, Mr. PAUL, Mr. JONES, Mr. BENISHEK, Mrs. ADAMS, Mr. DUFFY, Mr. THORNBERRY, Mr. CALVERT, Mr. GIBBS, Mr. MILLER of Florida, Mr. HASTINGS of Washington, Mr. COBLE, Mr. QUAYLE, Mr. HULTGREN, Mr. BRADY of Texas, Mr. FLORES, Mr. GOHMERT, Mr. FLEMING, Mr. CANSECO, Mr. GRAVES of Georgia, Mr. NEUGEBAUER, Mr. NUNNELEE, Mr. CRAWFORD, Mr. McCLINTOCK, Mr. CRAVAACK, Mrs. MYRICK, Mr. DUNCAN of South Carolina, Mrs. CAPITO, Mr. BERG, Mr. GARDNER, and Mr. WESTMORELAND

JULY 11, 2012

Reported with an amendment, committed to the Committee of the Whole  
House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on May 25, 2011]

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## **A BILL**

To amend titles 5 and 28, United States Code, with respect to the award of fees and other expenses in cases brought against agencies of the United States, to require the Administrative Conference of the United States to compile, and make publically available, certain data relating to the Equal Access to Justice Act, and for other purposes.

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 “Government Litigation*  
5 *Savings Act”.*

6 **SEC. 2. MODIFICATION OF EQUAL ACCESS TO JUSTICE PRO-**  
7 **VISIONS.**

8        (a) *AGENCY PROCEEDINGS.*—*Section 504 of title 5,*  
9 *United States Code, is amended—*

10            (1) *in subsection (a)—*

11                    (A) *in paragraph (1)—*

12                            (i) *by inserting after the first sentence*  
13 *the following: “Fees and other expenses may*  
14 *be awarded under this subsection only to a*  
15 *prevailing party who has a direct and per-*  
16 *sonal interest in the adversary adjudication*  
17 *because of medical costs, property damage,*  
18 *denial of benefits, unpaid disbursement, fees*  
19 *and other expenses incurred in defense of*  
20 *the adjudication, interest in a policy con-*  
21 *cerning such medical costs, property dam-*  
22 *age, denial of benefits, unpaid disbursement,*  
23 *or fees and other expenses, or otherwise.”;*  
24 *and*

1           (ii) by adding at the end the following:

2           “The agency conducting the adversary adju-  
3           dication shall make any party against  
4           whom the adjudication is brought, at the  
5           time the adjudication is commenced, aware  
6           of the provisions of this section.”; and

7           (B) in paragraph (3), in the first sen-  
8           tence—

9           (i) by striking “may reduce” and in-  
10          serting “shall reduce”; and

11          (ii) by striking “unduly and unreason-  
12          ably” and inserting “unduly or unreason-  
13          ably”;

14          (2) in subsection (b)(1)—

15          (A) in subparagraph (A)(ii), by striking  
16          “\$125 per hour” and all that follows through the  
17          end and inserting “\$200 per hour.);”; and

18          (B) in subparagraph (B)(ii), by striking “;  
19          except that” and all that follows through “section  
20          601;” and inserting “except that—

21          “(I) the net worth of a party (other than an  
22          individual or a unit of local government) shall  
23          include the net worth of any parent entity or  
24          subsidiary of that party; and

25          “(II) for purposes of subclause (I)—

1                   “(aa) a ‘parent entity’ of a party is an  
2                   entity that owns or controls the equity or  
3                   other evidences of ownership in that party;  
4                   and

5                   “(bb) a ‘subsidiary’ of a party is an  
6                   entity the equity or other evidences of own-  
7                   ership in which are owned or controlled by  
8                   that party;”;

9                   (3) in subsection (c)(1), by striking “, United  
10                  States Code”; and

11                  (4) by striking subsections (e) and (f) and insert-  
12                  ing the following:

13                  “(e)(1) The Chairman of the Administrative Con-  
14                  ference of the United States, after consultation with the  
15                  Chief Counsel for Advocacy of the Small Business Adminis-  
16                  tration, shall report annually to the Congress on the  
17                  amount of fees and other expenses awarded during the pre-  
18                  ceding fiscal year pursuant to this section. The report shall  
19                  describe the number, nature, and amount of the awards,  
20                  the claims involved in the controversy, and any other rel-  
21                  evant information that may aid the Congress in evaluating  
22                  the scope and impact of such awards. Each agency shall  
23                  provide the Chairman in a timely manner all information  
24                  necessary for the Chairman to comply with the require-

1 *ments of this subsection. The report shall be made available*  
2 *to the public online.*

3       “(2)(A) *The report required by paragraph (1) shall ac-*  
4 *count for all payments of fees and other expenses awarded*  
5 *under this section that are made pursuant to a settlement*  
6 *agreement, regardless of whether the settlement agreement*  
7 *is sealed or otherwise subject to nondisclosure provisions,*  
8 *except that any version of the report made available to the*  
9 *public may not reveal any information the disclosure of*  
10 *which is contrary to the national security of the United*  
11 *States.*

12       “(B) *The disclosure of fees and other expenses required*  
13 *under subparagraph (A) does not affect any other informa-*  
14 *tion that is subject to nondisclosure provisions in the settle-*  
15 *ment agreement.*

16       “(f) *The Chairman of the Administrative Conference*  
17 *shall create and maintain online a searchable database con-*  
18 *taining the following information with respect to each*  
19 *award of fees and other expenses under this section:*

20               “(1) *The name of each party to whom the award*  
21 *was made.*

22               “(2) *The name of each counsel of record rep-*  
23 *resenting each party to whom the award was made.*

24               “(3) *The agency to which the application for the*  
25 *award was made.*

1           “(4) *The name of each counsel of record rep-*  
2           *resenting the agency to which the application for the*  
3           *award was made.*

4           “(5) *The name of each administrative law judge,*  
5           *and the name of any other agency employee serving*  
6           *in an adjudicative role, in the adversary adjudication*  
7           *that is the subject of the application for the award.*

8           “(6) *The amount of the award.*

9           “(7) *The names and hourly rates of each expert*  
10          *witness for whose services the award was made under*  
11          *the application.*

12          “(8) *The basis for the finding that the position*  
13          *of the agency concerned was not substantially justi-*  
14          *fied.*

15          “(g) *The online searchable database described in sub-*  
16          *section (f) may not reveal any information the disclosure*  
17          *of which is prohibited by law or court order, or the disclo-*  
18          *sure of which is contrary to the national security of the*  
19          *United States.*

20          “(h) *The Director of the Office of Management and*  
21          *Budget shall adjust the maximum hourly fee set forth in*  
22          *subsection (b)(1)(A)(ii) for the fiscal year beginning October*  
23          *1, 2012, and for each fiscal year thereafter, to reflect*  
24          *changes in the Consumer Price Index, as determined by the*  
25          *Secretary of Labor.”.*

1       (b) *COURT CASES.*—Section 2412(d) of title 28, United  
2 *States Code*, is amended—

3           (1) by amending paragraph (1)(A) to read as  
4 follows: “(A) Except as otherwise specifically provided  
5 by statute, a court, in any civil action (other than  
6 cases sounding in tort), including proceedings for ju-  
7 dicial review of agency action, brought by or against  
8 the United States in any court having jurisdiction of  
9 that action, shall award to a prevailing party (other  
10 than the United States) fees and other expenses, in  
11 addition to any costs awarded pursuant to subsection  
12 (a), incurred by that party in the civil action, unless  
13 the court finds that the position of the United States  
14 was substantially justified or that special cir-  
15 cumstances make an award unjust. Fees and other ex-  
16 penses may be awarded under this paragraph only to  
17 a prevailing party who has a direct and personal in-  
18 terest in the civil action because of medical costs,  
19 property damage, denial of benefits, unpaid disburse-  
20 ment, fees and other expenses incurred in defense of  
21 the civil action, interest in a policy concerning such  
22 medical costs, property damage, denial of benefits,  
23 unpaid disbursement, or fees and other expenses, or  
24 otherwise.”;

25           (2) in paragraph (1)(C)—



1           (A) by striking “court, in its discretion,  
2           may” and inserting “court shall”; and

3           (B) by striking “unduly and unreasonably”  
4           and inserting “unduly or unreasonably”;

5           (3) in paragraph (2)—

6           (A) in subparagraph (A)(ii), by striking  
7           “\$125” and all that follows through the end and  
8           inserting “\$200 per hour.);”;

9           (B) in subparagraph (B)(ii), by striking “;  
10           except that” and all that follows through “section  
11           601 of title 5;” and inserting “except that—

12           “(I) the net worth of a party (other than an  
13           individual or a unit of local government) shall  
14           include the net worth of any parent entity or  
15           subsidiary of that party; and

16           “(II) for purposes of subclause (I)—

17           “(aa) a ‘parent entity’ of a party is an  
18           entity that owns or controls the equity or  
19           other evidences of ownership in that party;  
20           and

21           “(bb) a ‘subsidiary’ of a party is an  
22           entity the equity or other evidences of own-  
23           ership in which are owned or controlled by  
24           that party;”); and

25           (4) by adding at the end the following:

1       “(5) *The Director of the Office of Management and*  
2 *Budget shall adjust the maximum hourly fee set forth in*  
3 *paragraph (2)(A)(ii) for the fiscal year beginning October*  
4 *1, 2012, and for each fiscal year thereafter, to reflect*  
5 *changes in the Consumer Price Index, as determined by the*  
6 *Secretary of Labor.*

7       “(6)(A) *The Chairman of the Administrative Con-*  
8 *ference of the United States shall report annually to the*  
9 *Congress on the amount of fees and other expenses awarded*  
10 *during the preceding fiscal year pursuant to this subsection.*  
11 *The report shall describe the number, nature, and amount*  
12 *of the awards, the claims involved in each controversy, and*  
13 *any other relevant information which may aid the Congress*  
14 *in evaluating the scope and impact of such awards. Each*  
15 *agency shall provide the Chairman with such information*  
16 *as is necessary for the Chairman to comply with the re-*  
17 *quirements of this paragraph. The report shall be made*  
18 *available to the public online.*

19       “(B)(i) *The report required by subparagraph (A) shall*  
20 *account for all payments of fees and other expenses awarded*  
21 *under this subsection that are made pursuant to a settle-*  
22 *ment agreement, regardless of whether the settlement agree-*  
23 *ment is sealed or otherwise subject to nondisclosure provi-*  
24 *sions, except that any version of the report made available*  
25 *to the public may not reveal any information the disclosure*

1 *of which is contrary to the national security of the United*  
2 *States.*

3       “(ii) *The disclosure of fees and other expenses required*  
4 *under clause (i) does not affect any other information that*  
5 *is subject to nondisclosure provisions in the settlement*  
6 *agreement.*

7       “(C) *The Chairman of the Administrative Conference*  
8 *shall include and clearly identify in the annual report*  
9 *under subparagraph (A), for each case in which an award*  
10 *of fees and other expenses is included in the report—*

11               “(i) *any amounts paid from section 1304 of title*  
12       31 *for a judgment in the case;*

13               “(ii) *the amount of the award of fees and other*  
14       *expenses; and*

15               “(iii) *the statute under which the plaintiff filed*  
16       *suit.*

17       “(7) *The Chairman of the Administrative Conference*  
18 *shall create and maintain online a searchable database con-*  
19 *taining the following information with respect to each*  
20 *award of fees and other expenses under this subsection:*

21               “(A) *The name of each party to whom the award*  
22       *was made.*

23               “(B) *The name of each counsel of record rep-*  
24       *resenting each party to whom the award was made.*

25               “(C) *The agency involved in the case.*

1           “(D) *The name of each counsel of record rep-*  
2           *resenting the agency involved in the case.*

3           “(E) *The name of each judge in the case, and the*  
4           *court in which the case was heard.*

5           “(F) *The amount of the award.*

6           “(G) *The names and hourly rates of each expert*  
7           *witness for whose services the award was made.*

8           “(H) *The basis for the finding that the position*  
9           *of the agency concerned was not substantially justi-*  
10          *fied.*

11          “(8) *The online searchable database described in para-*  
12          *graph (7) may not reveal any information the disclosure*  
13          *of which is prohibited by law or court order, or the disclo-*  
14          *sure of which is contrary to the national security of the*  
15          *United States.*

16          “(9) *The Attorney General of the United States shall*  
17          *provide to the Chairman of the Administrative Conference*  
18          *of the United States in a timely manner all information*  
19          *necessary for the Chairman to carry out the Chairman’s*  
20          *responsibilities under this subsection.”.*

21          (c) *CLERICAL AMENDMENT.—Section 2412(e) of title*  
22          *28, United States Code, is amended by striking “of section*  
23          *2412 of title 28, United States Code,” and inserting “of this*  
24          *section”.*

1 **SEC. 3. GAO STUDY.**

2       *Not later than 30 days after the date of the enactment*  
3 *of this Act, the Comptroller General shall commence an*  
4 *audit of the implementation of the Equal Access to Justice*  
5 *Act for the years 1995 through the end of the calendar year*  
6 *in which this Act is enacted. The Comptroller General shall,*  
7 *to the extent practical, not later than 1 year after the end*  
8 *of the calendar year in which this Act is enacted, complete*  
9 *such audit and submit to the Congress a report on the re-*  
10 *sults of the audit.*

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

**H. R. 1996**

[Report No. 112-594]

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**A BILL**

To amend titles 5 and 28, United States Code, with respect to the award of fees and other expenses in cases brought against agencies of the United States, to require the Administrative Conference of the United States to compile, and make publicly available, certain data relating to the Equal Access to Justice Act, and for other purposes.

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