

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1987
OFFERED BY MR. GOODLING OF PENNSYLVANIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Fair Access to Indem-
3 nity and Reimbursement Act”.

4 SEC. 2. FINDINGS AND PURPOSE.

5 (a) FINDINGS.—The Congress makes the following
6 findings:

7 (1) Certain small businesses and labor organi-
8 zations are at a great disadvantage in terms of ex-
9 pertise and resources when facing actions brought by
10 the National Labor Relations Board or by the Occu-
11 pational Safety and Health Administration.

12 (2) The attempt to “level the playing field” for
13 small businesses and labor organizations by means
14 of the Equal Access to Justice Act has proven inef-
15 fective and has been underutilized by these small en-
16 tities in their actions before the National Labor Re-
17 lations Board and before the Occupational Safety
18 and Health Review Commission.

19 (3) The greater expertise and resources of the
20 National Labor Relations Board and the Occupa-

1 tional Safety and Health Administration as com-
2 pared with those of small businesses and labor orga-
3 nizations necessitate a standard that awards fees
4 and costs to certain small entities when they prevail
5 against the National Labor Relations Board or
6 against the Occupational Safety and Health Admin-
7 istration.

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

9 (1) to ensure that certain small businesses and
10 labor organizations will not be deterred from seeking
11 review of, or defending against, actions brought
12 against them by the National Labor Relations Board
13 or by the Occupational Safety and Health Adminis-
14 tration because of the expense involved in securing
15 vindication of their rights;

16 (2) to reduce the disparity in resources and ex-
17 pertise between certain small businesses and labor
18 organizations and the National Labor Relations
19 Board and the Occupational Safety and Health Ad-
20 ministration; and

21 (3) to make the National Labor Relations
22 Board and the Occupational Safety and Health Ad-
23 ministration more accountable for their enforcement
24 actions against certain small businesses and labor
25 organizations by awarding fees and costs to these

1 entities when they prevail against the National
2 Labor Relations Board or in proceedings before the
3 Occupational Safety and Health Review Commission.

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

5 The National Labor Relations Act (29 U.S.C. 151
6 and following) is amended by adding at the end the follow-
7 ing new section:

8 “AWARDS OF ATTORNEYS’ FEES AND COSTS

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

11 “(1) is the prevailing party in an adversary ad-
12 judication conducted by the Board under this or any
13 other Act; and

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

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

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

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

5 “(2) had not more than 100 employees and a
6 net worth of not more than \$7,000,000 at the time
7 the civil action was filed,
8 shall be awarded fees and other expenses as a prevailing
9 party under section 2412(d) of title 28, United States
10 Code, in accordance with the provisions of that section,
11 but without regard to whether the position of the United
12 States was substantially justified or special circumstances
13 make an award unjust. Any appeal of a determination of
14 fees pursuant to subsection (a) or this subsection shall be
15 determined without regard to whether the position of the
16 United States was substantially justified or special cir-
17 cumstances make an award unjust.”.

18 **SEC. 4. APPLICABILITY OF NLRA AMENDMENT.**

19 (a) AGENCY PROCEEDINGS.—Subsection (a) of sec-
20 tion 20 of the National Labor Relations Act, as added by
21 section 3 of this Act, applies to agency proceedings com-
22 menced on or after the date of the enactment of this Act.

23 (b) COURT PROCEEDINGS.—Subsection (b) of section
24 20 of the National Labor Relations Act, as added by sec-

1 tion 3 of this Act, applies to civil actions commenced on
2 or after the date of the enactment of this Act.

3 **SEC. 5. AMENDMENT TO OCCUPATIONAL SAFETY AND**
4 **HEALTH ACT.**

5 The Occupational Safety and Health Act (29 U.S.C.
6 651 and following) is amended by inserting after section
7 12 at the end the following new section:

8 “AWARDS OF ATTORNEYS’ FEES AND COSTS

9 “SEC. 12A. (a) ADMINISTRATIVE PROCEEDINGS.—

10 An employer who—

11 “(1) is the prevailing party in an adversary ad-
12 judication before the Occupational Safety and
13 Health Review Commission under this or any other
14 Act, and

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

18 shall be awarded from the Secretary of Labor fees and
19 other expenses as a prevailing party under section 504 of
20 title 5, United States Code, in accordance with the provi-
21 sions of that section, but without regard to whether the
22 position of the Secretary of Labor was substantially justi-
23 fied or special circumstances make an award unjust. For
24 purposes of this subsection, the term ‘adversary adjudica-
25 tion’ has the meaning given that term in section
26 504(b)(1)(C) of title 5, United States Code.

1 “(b) COURT PROCEEDINGS.—An employer who—

2 “(1) is the prevailing party in a civil action, in-
3 cluding proceedings for judicial review of an action
4 by the Occupational Safety and Health Review Com-
5 mission, brought by or against the Secretary or the
6 Commission, and

7 “(2) had not more than 100 employees and a
8 net worth of not more than \$7,000,000 at the time
9 the civil action was filed,

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

21 **SEC. 6. APPLICABILITY OF OSHA AMENDMENT.**

22 (a) AGENCY PROCEEDINGS.—Subsection (a) of sec-
23 tion 12A of the Occupational Safety and Health Act, as
24 added by section 5 of this Act, applies to agency proceed-

1 ings commenced on or after the date of the enactment of
2 this Act.

3 (b) COURT PROCEEDINGS.—Subsection (b) of section
4 12A of the Occupational Safety and Health Act, as added
5 by section 5 of this Act, applies to civil actions commenced
6 on or after the date of the enactment of this Act.