

108TH CONGRESS
1ST SESSION

S. 1836

To amend chapter 85 of title 28, United States Code, to provide for greater fairness in legal fees payable in civil diversity litigation after an offer of settlement.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 6, 2003

Mr. GRAHAM of South Carolina (for himself, Mr. CORNYN, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 85 of title 28, United States Code, to provide for greater fairness in legal fees payable in civil diversity litigation after an offer of settlement.

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 “Legal Expense Equity
5 Act of 2003”.

1 **SEC. 2. AWARD OF COSTS AND ATTORNEY'S FEES IN FED-**
2 **ERAL CIVIL DIVERSITY LITIGATION AFTER**
3 **AN OFFER OF SETTLEMENT.**

4 Section 1332 of title 28, United States Code, is
5 amended by adding at the end the following:

6 “(e)(1) In any action over which the court has juris-
7 diction under this section, any party may, at any time not
8 less than 10 days before trial, serve upon any adverse
9 party a written offer to settle a claim or claims for money
10 or property or to the effect specified in the offer, including
11 a motion to dismiss all claims, and to enter into a stipula-
12 tion dismissing the claim or claims or allowing judgment
13 to be entered according to the terms of the offer. Any such
14 offer, together with proof of service thereof, shall be filed
15 with the clerk of the court.

16 “(2) If the party receiving an offer under paragraph
17 (1) serves written notice on the offeror that the offer is
18 accepted, either party may then file with the clerk of the
19 court the notice of acceptance, together with proof of serv-
20 ice thereof.

21 “(3) The fact that an offer under paragraph (1) is
22 made but not accepted does not preclude a subsequent
23 offer under paragraph (1). Evidence of an offer is not ad-
24 missible for any purpose except in proceedings to enforce
25 a settlement, or to determine costs and expenses under
26 this subsection.

1 “(4) At any time before judgment is entered, the
2 court, upon its own motion or upon the motion of any
3 party, may exempt from this subsection any claim that
4 the court finds presents a question of law or fact that is
5 novel and important and that substantially affects non-
6 parties. If a claim is exempted from this subsection, all
7 offers made by any party under paragraph (1) with re-
8 spect to that claim shall be void and have no effect.

9 “(5) If all offers made by a party under paragraph
10 (1) with respect to a claim or claims, including any motion
11 to dismiss all claims, are not accepted and the judgment
12 or order finally issued (exclusive of costs, expenses, and
13 attorneys’ fees incurred after judgment or trial) in the ac-
14 tion under this section is not more favorable to the offeree
15 with respect to the claim or claims than the last such offer,
16 the offeror may file with the court, within 10 days after
17 the final judgment or order is issued, a petition for pay-
18 ment of costs and expenses, including attorneys’ fees, in-
19 curred with respect to the claim or claims from the date
20 the last such offer was made or, if the offeree made an
21 offer under this subsection, from the date the last such
22 offer by the offeree was made.

23 “(6) If the court finds, under a petition filed under
24 paragraph (5) with respect to a claim or claims, that the
25 judgment or order finally obtained is not more favorable

1 to the offeree with respect to the claim or claims than the
 2 last offer, the court shall order the offeree to pay the
 3 offeror's costs and expenses, including attorneys' fees, in-
 4 curred with respect to the claim or claims from the date
 5 the last offer was made or, if the offeree made an offer
 6 under this subsection, from the date the last such offer
 7 by the offeree was made, unless the court finds that re-
 8 quiring the payment of such costs and expenses would be
 9 manifestly unjust.

10 “(7) Attorney's fees under paragraph (6) shall be a
 11 reasonable attorney's fee attributable to the claim or
 12 claims involved, calculated on the basis of an hourly rate
 13 which may not exceed that which the court considers ac-
 14 ceptable in the community in which the attorney practices
 15 law, taking into account the attorney's qualifications and
 16 experience and the complexity of the case, except that the
 17 attorney's fees under paragraph (6) may not exceed—

18 “(A) the actual cost incurred by the offeree for
 19 an attorney's fee payable to an attorney for services
 20 in connection with the claim or claims; or

21 “(B) if no such cost was incurred by the offeree
 22 due to a contingency fee agreement, a reasonable
 23 cost that would have been incurred by the offeree for
 24 an attorney's noncontingent fee payable to an attor-

1 ney for services in connection with the claim or
2 claims.

3 “(8) This subsection does not apply to any claim
4 seeking an equitable remedy.”.

5 **SEC. 3. EFFECTIVE DATE AND APPLICATION.**

6 (a) EFFECTIVE DATE.—Subject to subsection (b),
7 the amendment made by this Act shall take effect on the
8 first day of the first month beginning more than 180 days
9 after the date of the enactment of this Act.

10 (b) APPLICATION OF AMENDMENT.—The amendment
11 made by section 2 shall apply only with respect to civil
12 actions filed on or after the effective date of this Act.

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