

109TH CONGRESS
1ST SESSION

H. R. 739

IN THE SENATE OF THE UNITED STATES

JULY 13, 2005

Received; read twice and referred to the Committee on Health, Education,
Labor, and Pensions

AN ACT

To amend the Occupational Safety and Health Act of 1970 to provide for adjudicative flexibility with regard to the filing of a notice of contest by an employer following the issuance of a citation or proposed assessment of a penalty by the Occupational Safety and Health Administration; to provide for greater efficiency at the Occupational Safety and Health Review Commission; to provide for judicial deference to conclusions of law determined by the Occupational Safety and Health Review Commission with respect to an order issued by the Commission; and to provide for the award of attorneys' fees and costs to small employers when such employers prevail in litigation prompted by the issuance of a citation by the Occupational Safety and Health Administration.

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 OF 2005**

See. 101. Short title.

See. 102. Contesting citations under the Occupational Safety and Health Act
 of 1970.

See. 103. Effective date.

**TITLE II—OCCUPATIONAL SAFETY AND HEALTH REVIEW
 COMMISSION EFFICIENCY ACT OF 2005**

See. 201. Short title.

See. 202. Occupational Safety and Health Review Commission.

**TITLE III—OCCUPATIONAL SAFETY AND HEALTH INDEPENDENT
 REVIEW OF OSHA CITATIONS ACT OF 2005**

See. 301. Short title.

See. 302. Independent review.

**TITLE IV—OCCUPATIONAL SAFETY AND HEALTH SMALL
 EMPLOYER ACCESS TO JUSTICE ACT OF 2005**

See. 401. Short title.

See. 402. Award of attorneys' fees and costs.

5 **TITLE I—OCCUPATIONAL SAFE-**
6 **TY AND HEALTH SMALL BUSI-**
7 **NESS DAY IN COURT ACT OF**
8 **2005**

9 **SEC. 101. SHORT TITLE.**

10 This title may be cited as the “Occupational Safety
11 and Health Small Business Day in Court Act of 2005”.

1 **SEC. 102. CONTESTING CITATIONS UNDER THE OCCUPA-**
2 **TIONAL SAFETY AND HEALTH ACT OF 1970.**

3 Section 10 of the Occupational Safety and Health Act
4 of 1970 (29 U.S.C. 659) is amended—

5 (1) in the second sentence of subsection (a), by
6 inserting after “assessment of penalty” the fol-
7 lowing: “(unless such failure results from mistake,
8 inadvertence, surprise, or excusable neglect)”; and

9 (2) in the second sentence of subsection (b), by
10 inserting after “assessment of penalty” the fol-
11 lowing: “(unless such failure results from mistake,
12 inadvertence, surprise, or excusable neglect)”.
13 **SEC. 103. EFFECTIVE DATE.**

14 The amendments made by this title shall apply to a
15 citation or proposed assessment of penalty issued by the
16 Occupational Safety and Health Administration that is
17 issued on or after the date of the enactment of this title.

18 **TITLE II—OCCUPATIONAL SAFE-**
19 **TY AND HEALTH REVIEW**
20 **COMMISSION EFFICIENCY**
21 **ACT OF 2005**

22 **SEC. 201. SHORT TITLE.**

23 This title may be cited as the “Occupational Safety
24 and Health Review Commission Efficiency Act of 2005”.

1 **SEC. 202. OCCUPATIONAL SAFETY AND HEALTH REVIEW**2 **COMMISSION.**

3 (a) INCREASE IN NUMBER OF MEMBERS AND CRI-
4 TERIA FOR MEMBERSHIP.—Section 12 of the Occupa-
5 tional Safety and Health Act of 1970 (29 U.S.C. 661)
6 is amended—

7 (1) in the second sentence of subsection (a)—
8 (A) by striking “three members” and in-
9 serting “five members”; and

10 (B) by inserting “legal” before “training”;
11 (2) in the first sentence of subsection (b), by
12 striking “except that” and all that follows through
13 the period and inserting the following: “except that
14 the President may extend the term of a member for
15 no more than 365 consecutive days to allow a con-
16 tinuation in service at the pleasure of the President
17 after the expiration of the term of that member until
18 a successor nominated by the President has been
19 confirmed to serve. Any vacancy caused by the
20 death, resignation, or removal of a member before
21 the expiration of a term for which a member was ap-
22 pointed shall be filled only for the remainder of such
23 term.”; and

24 (3) in subsection (f), by striking “two mem-
25 bers” the first place it appears and inserting “three
26 members”.

1 (b) NEW POSITIONS.—Of the two vacancies for mem-
2 bership on the Occupational Safety and Health Review
3 Commission created by subsection (a)(1)(A), one shall be
4 appointed by the President for a term expiring on April
5 27, 2008, and the other shall be appointed by the Presi-
6 dent for a term expiring on April 27, 2010.

7 (c) EFFECTIVE DATE.—The amendment made by
8 subsection (a)(1)(B) shall apply beginning with the 2 va-
9 cancies referred to in subsection (b) and all subsequent
10 appointments to the Commission.

11 **TITLE III—OCCUPATIONAL SAFE-**
12 **TY AND HEALTH INDE-**
13 **PENDENT REVIEW OF OSHA**
14 **CITATIONS ACT OF 2005**

15 **SEC. 301. SHORT TITLE.**

16 This title may be cited as the “Occupational Safety
17 and Health Independent Review of OSHA Citations Act
18 of 2005”.

19 **SEC. 302. INDEPENDENT REVIEW.**

20 Section 11(a) of the Occupational Safety and Health
21 Act of 1970 (29 U.S.C. 660) is amended by adding at
22 the end the following: “The conclusions of the Commission
23 with respect to all questions of law that are subject to
24 agency deference under governing court precedent shall be
25 given deference if reasonable.”.

1 **TITLE IV—OCCUPATIONAL SAFE-**
2 **TY AND HEALTH SMALL EM-**
3 **PLOYER ACCESS TO JUSTICE**
4 **ACT OF 2005**

5 **SEC. 401. SHORT TITLE.**

6 This title may be cited as the “Occupational Safety
7 and Health Small Employer Access to Justice Act of
8 2005”.

9 **SEC. 402. AWARD OF ATTORNEYS’ FEES AND COSTS.**

10 The Occupational Safety and Health Act of 1970 (29
11 U.S.C. 651 et seq.) is amended by redesignating sections
12 32, 33, and 34 as sections 33, 34, and 35, respectively,
13 and by inserting after section 31 the following new section:

14 **“AWARD OF ATTORNEYS’ FEES AND COSTS**

15 **“SEC. 32. (a) ADMINISTRATIVE PROCEEDINGS.—An**
16 **employer who—**

17 **“(1) is the prevailing party in any adversary**
18 **adjudication instituted under this Act, and**

19 **“(2) had not more than 100 employees and a**
20 **net worth of not more than \$7,000,000 at the time**
21 **the adversary adjudication was initiated,**

22 shall be awarded fees and other expenses as a prevailing
23 party under section 504 of title 5, United States Code,
24 in accordance with the provisions of that section, but with-
25 out regard to whether the position of the Secretary was

1 substantially justified or special circumstances make an
2 award unjust. For purposes of this section the term ‘ad-
3 versary adjudication’ has the meaning given that term in
4 section 504(b)(1)(C) of title 5, United States Code.

5 “(b) PROCEEDINGS.—An employer who—

6 “(1) is the prevailing party in any proceeding
7 for judicial review of any action instituted under this
8 Act, and

9 “(2) had not more than 100 employees and a
10 net worth of not more than \$7,000,000 at the time
11 the action addressed under subsection (1) 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) of 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 “(c) APPLICABILITY.—

23 “(1) COMMISSION PROCEEDINGS.—Subsection
24 (a) shall apply to proceedings commenced on or after
25 the date of enactment of this section.

1 “(2) COURT PROCEEDINGS.—Subsection (b)
2 shall apply to proceedings for judicial review com-
3 menced on or after the date of enactment of this
4 section.”.

Passed the House of Representatives July 12, 2005.

Attest: **JEFF TRANDAHL,**
Clerk.