

114TH CONGRESS
1ST SESSION

H. R. 3754

To amend titles 5 and 28, United States Code, to facilitate recovering the costs of litigation and agency adjudications for prevailing parties in an action against the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 2015

Mr. AUSTIN SCOTT of Georgia introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend titles 5 and 28, United States Code, to facilitate recovering the costs of litigation and agency adjudications for prevailing parties in an action against the United States, 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 “Halting Government
5 Overreach Act of 2015”.

1 **SEC. 2. CHANGING LIMITATIONS ON RECOVERY OF FEES**
2 **AND EXPENSES BY THE PREVAILING PARTY**
3 **IN AN ACTION AGAINST THE UNITED STATES.**

4 (a) CIVIL ACTIONS.—

5 (1) REMOVING THE SUBSTANTIAL JUSTIFICA-
6 TION EXCEPTION.—

7 (A) IN GENERAL.—Section 2412(d) of title
8 28, United States Code, is amended—

9 (i) in paragraph (1)(A), by striking “,
10 unless the court finds that the position of
11 the United States was substantially justi-
12 fied or that special circumstances make an
13 award unjust”;

14 (ii) in paragraph (1)(B), by striking
15 “The party shall also allege that the posi-
16 tion of the United States was not substan-
17 tially justified. Whether or not the position
18 of the United States was substantially jus-
19 tified shall be determined on the basis of
20 the record (including the record with re-
21 spect to the action or failure to act by the
22 agency upon which the civil action is
23 based) which is made in the civil action for
24 which fees and other expenses are
25 sought.”; and

(iii) in paragraph (3), by striking “, unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust”.

(B) CONFORMING AMENDMENT.—Section 2412(d)(2) of title 28, United States Code, is amended by striking subparagraph (D).

(2) REQUIRING DIRECT AND PERSONAL INTEREST.—Section 2412(d)(1)(A) of title 28, United States Code, is amended by adding at the end the following: “Such award may only be made if the prevailing party has a direct and personal interest in the action because of an injury that gave rise to the action.”.

(3) EXCLUDING NET WORTH FROM THE DEFINITION OF “PARTY”.—Section 2412(d)(2)(B) of title 28, United States Code, is amended—

(A) by striking “whose net worth did not exceed \$2,000,000 at the time the civil action was filed”;

(B) by striking “, the net worth of which did not exceed \$7,000,000 at the time the civil action was filed, and”; and

1 (C) by striking “; except” and all that fol-
2 lows through “defined in section 601 of title 5”.

3 (b) AGENCY ADJUDICATIONS.—

4 (1) REMOVING THE SUBSTANTIAL JUSTIFICA-
5 TION EXCEPTION.—

6 (A) IN GENERAL.—Section 504 of title 5,
7 United States Code, is amended—

8 (i) in subsection (a)(1), by striking “,
9 unless the adjudicative officer of the agen-
10 cy finds that the position of the agency
11 was substantially justified or that special
12 circumstances make an award unjust.
13 Whether or not the position of the agency
14 was substantially justified shall be deter-
15 mined on the basis of the administrative
16 record, as a whole, which is made in the
17 adversary adjudication for which fees and
18 other expenses are sought”; and

19 (ii) in subsection (a)(2), by striking
20 “The party shall also allege that the posi-
21 tion of the agency was not substantially
22 justified.”.

23 (B) CONFORMING AMENDMENT.—Section
24 504(b)(1) of title 5, United States Code, is
25 amended—

- 1 (i) in subparagraph (D), by adding
2 “and” at the end; and
3 (ii) by striking subparagraph (E).

4 (2) REQUIRING DIRECT AND PERSONAL INTER-
5 EST.—Section 504(a)(1) of title 5, United States
6 Code, is amended by adding at the end the fol-
7 lowing: “Such award may only be made if the pre-
8 vailing party has a direct and personal interest in
9 the proceeding because of an injury that gave rise to
10 the proceeding.”.

11 (3) EXCLUDING NET WORTH FROM THE DEFINI-
12 TION OF “PARTY”.—Section 504(b)(1)(B) of title
13 5, United States Code, is amended—

14 (A) by striking “whose net worth did not
15 exceed \$2,000,000 at the time the adversary
16 adjudication was initiated”;

17 (B) by striking “, the net worth of which
18 did not exceed \$7,000,000 at the time the ad-
19 versary adjudication was initiated, and”;

20 (C) by striking “; except” and all that fol-
21 lows through “defined in section 601”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply with respect to actions initiated
24 after the date of the enactment of this Act.

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