

113TH CONGRESS  
1ST SESSION

# H. R. 3037

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, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2013

Mrs. LUMMIS (for herself, Mr. GOSAR, Mr. CONAWAY, Mr. COFFMAN, Mr. FRANKS of Arizona, Mr. SMITH of Nebraska, Mr. NUNES, Mr. SIMPSON, Mr. DUNCAN of South Carolina, Mr. STEWART, Mr. TIPTON, Mr. WALDEN, Mr. CHAFFETZ, and Mr. PEARCE) introduced the following bill; which was referred to the Committee on the Judiciary

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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, 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”.

1 **SEC. 2. MODIFICATION OF EQUAL ACCESS TO JUSTICE**  
2 **PROVISIONS.**

3 (a) AGENCY PROCEEDINGS.—Section 504 of title 5,  
4 United States Code, is amended—

5 (1) in subsection (a)—

6 (A) in paragraph (1)—

7 (i) by inserting after the first sentence  
8 the following: “Fees and other expenses  
9 may be awarded under this subsection only  
10 to a prevailing party who has a direct and  
11 personal interest in the adversary adjudica-  
12 tion because of medical costs, property  
13 damage, determination of benefits, unpaid  
14 disbursement, fees and other expenses in-  
15 curred in defense of the adjudication, in-  
16 terest in a policy concerning such medical  
17 costs, property damage, determination of  
18 benefits, unpaid disbursement, fees and  
19 other expenses, or otherwise.”; and

20 (ii) by adding at the end the fol-  
21 lowing: “The agency conducting the adver-  
22 sary adjudication shall make any party  
23 against whom the adjudication is brought,  
24 at the time the adjudication is commenced,  
25 aware of the provisions of this section.”;  
26 and

1 (B) in paragraph (3), in the first sen-  
2 tence—

3 (i) by striking “may reduce” and in-  
4 serting “shall reduce”; and

5 (ii) by striking “unduly and unreason-  
6 ably” and inserting “unduly or unreason-  
7 ably”;

8 (2) in subsection (b)(1)—

9 (A) in subparagraph (A)(ii), by striking  
10 “\$125 per hour” and all that follows through  
11 the end and inserting “\$200 per hour.);”;

12 (B) in subparagraph (B)(ii), by striking “;  
13 except that” and all that follows through “sec-  
14 tion 601;” and inserting “except that—

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

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

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

24 “(bb) a ‘subsidiary’ of a party is an  
25 entity the equity or other evidences of own-

1                   ership in which are owned or controlled by  
2                   that party;”;

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

5                   (4) by adding at the end the following new sub-  
6                   section:

7                   “(g) The Director of the Office of Management and  
8                   Budget shall adjust the maximum hourly fee set forth in  
9                   subsection (b)(1)(A)(ii) for the fiscal year beginning Octo-  
10                  ber 1, 2015, and for each fiscal year thereafter, to reflect  
11                  changes in the Consumer Price Index, as determined by  
12                  the Secretary of Labor.”.

13                  (b) COURT CASES.—Section 2412(d) of title 28,  
14                  United States Code, is amended—

15                  (1) by amending paragraph (1)(A) to read as  
16                  follows: “(A) Except as otherwise specifically pro-  
17                  vided by statute, a court, in any civil action (other  
18                  than cases sounding in tort), including proceedings  
19                  for judicial review of agency action, brought by or  
20                  against the United States in any court having juris-  
21                  diction of that action, shall award to a prevailing  
22                  party (other than the United States) fees and other  
23                  expenses, in addition to any costs awarded pursuant  
24                  to subsection (a), incurred by that party in the civil  
25                  action, unless the court finds that the position of the

1 United States was substantially justified or that spe-  
2 cial circumstances make an award unjust. Fees and  
3 other expenses may be awarded under this para-  
4 graph only to a prevailing party who has a direct  
5 and personal interest in the civil action because of  
6 medical costs, property damage, determination of  
7 benefits, unpaid disbursement, fees and other ex-  
8 penses incurred in defense of the civil action, inter-  
9 est in a policy concerning such medical costs, prop-  
10 erty damage, determination of benefits, unpaid dis-  
11 bursement, fees and other expenses, or otherwise.”;

12 (2) in paragraph (1)(C)—

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

15 (B) by striking “unduly and unreasonably”  
16 and inserting “unduly or unreasonably”;

17 (3) in paragraph (2)—

18 (A) in subparagraph (A)(ii), by striking  
19 “\$125” and all that follows through the end  
20 and inserting “\$200 per hour.);”;

21 (B) in subparagraph (B)(ii), by striking “;  
22 except that” and all that follows through “sec-  
23 tion 601 of Title 5;” and inserting “except  
24 that—

1           “(I) the net worth of a party (other than  
2           an individual or a unit of local government)  
3           shall include the net worth of any parent entity  
4           or subsidiary of that party; and

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

6                   “(aa) a ‘parent entity’ of a party is an  
7                   entity that owns or controls the equity or  
8                   other evidences of ownership in that party;  
9                   and

10                   “(bb) a ‘subsidiary’ of a party is an  
11                   entity the equity or other evidences of own-  
12                   ership in which are owned or controlled by  
13                   that party;”); and

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

15           “(5) The Director of the Office of Management and  
16           Budget shall adjust the maximum hourly fee set forth in  
17           paragraph (2)(A)(ii) for the fiscal year beginning October  
18           1, 2015, and for each fiscal year thereafter, to reflect  
19           changes in the Consumer Price Index, as determined by  
20           the Secretary of Labor.”.

21           (c) CLERICAL AMENDMENTS.—Section 2412 of title  
22           28, United States Code, is amended—

23                   (1) in subsection (d)(3), by striking “United  
24                   States Code,”; and

25                   (2) in subsection (e)—

1 (A) by striking “of section 2412 of title  
2 28, United States Code,” and inserting “of this  
3 section”; and

4 (B) by striking “of such title” and insert-  
5 ing “of this title”.

6 (d) EFFECTIVE DATE.—

7 (1) IN GENERAL.— Subject to paragraph (2),  
8 this Act and the amendments made by this Act shall  
9 take effect on the date of the enactment of this Act.

10 (2) APPLICABILITY OF CERTAIN AMEND-  
11 MENTS.—The amendments made by subsections (a)  
12 and (b) shall first apply with respect to awards of  
13 fees and other expenses that are made under section  
14 504 of title 5, United States Code, or section  
15 2412(d) of title 28, United States Code, on or after  
16 the date of the enactment of this Act.

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