

## Union Calendar No. 270

114<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3279

[Report No. 114-351]

To amend titles 5 and 28, United States Code, to require annual reports to Congress on, and the maintenance of databases on, awards of fees and other expenses to prevailing parties in certain administrative proceedings and court cases to which the United States is a party, and for other purposes.

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### IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2015

Mr. COLLINS of Georgia (for himself, Mr. COHEN, Mrs. LUMMIS, Mr. SCHRAMMER, Mr. GOSAR, and Mr. PETERSON) introduced the following bill; which was referred to the Committee on the Judiciary

NOVEMBER 30, 2015

Additional sponsors: Mr. POE of Texas and Mr. TROTT

NOVEMBER 30, 2015

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

# **A BILL**

To amend titles 5 and 28, United States Code, to require annual reports to Congress on, and the maintenance of databases on, awards of fees and other expenses to prevailing parties in certain administrative proceedings and court cases to which the United States is a party, 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 “Open Book on Equal  
5 Access to Justice Act”.

6 **SEC. 2. MODIFICATION OF EQUAL ACCESS TO JUSTICE**  
7 **PROVISIONS.**

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

10           (1) in subsection (c)(1), by striking “, United  
11 States Code”;

12           (2) by redesignating subsection (f) as sub-  
13 section (i); and

14           (3) by striking subsection (e) and inserting the  
15 following:

16       “(e)(1) The Chairman of the Administrative Con-  
17 ference of the United States, after consultation with the  
18 Chief Counsel for Advocacy of the Small Business Admin-  
19 istration, shall report to the Congress, not later than  
20 March 31 of each year, on the amount of fees and other  
21 expenses awarded during the preceding fiscal year pursu-  
22 ant to this section. The report shall describe the number,  
23 nature, and amount of the awards, the claims involved in  
24 the controversy, and any other relevant information that  
25 may aid the Congress in evaluating the scope and impact

1 of such awards. The report shall be made available to the  
2 public online.

3 “(2)(A) The report required by paragraph (1) shall  
4 account for all payments of fees and other expenses  
5 awarded under this section that are made pursuant to a  
6 settlement agreement, regardless of whether the settle-  
7 ment agreement is sealed or otherwise subject to non-  
8 disclosure provisions.

9 “(B) The disclosure of fees and other expenses re-  
10 quired under subparagraph (A) does not affect any other  
11 information that is subject to nondisclosure provisions in  
12 the settlement agreement.

13 “(f) The Chairman of the Administrative Conference  
14 shall create and maintain online a searchable database  
15 containing the following information with respect to each  
16 award of fees and other expenses under this section:

17 “(1) The case name and number of the adver-  
18 sary adjudication, if available.

19 “(2) The name of the agency involved in the  
20 adversary adjudication.

21 “(3) A description of the claims in the adver-  
22 sary adjudication.

23 “(4) The name of each party to whom the  
24 award was made, as such party is identified in the  
25 order or other agency document making the award.

1           “(5) The amount of the award.

2           “(6) The basis for the finding that the position  
3           of the agency concerned was not substantially justi-  
4           fied.

5           “(g) The online searchable database described in sub-  
6           section (f) may not reveal any information the disclosure  
7           of which is prohibited by law or court order.

8           “(h) The head of each agency shall provide to the  
9           Chairman of the Administrative Conference in a timely  
10          manner all information requested by the Chairman to  
11          comply with the requirements of subsections (e), (f), and  
12          (g).”.

13          (b) COURT CASES.—Section 2412(d) of title 28,  
14          United States Code, is amended by adding at the end the  
15          following:

16          “(5)(A) The Chairman of the Administrative Con-  
17          ference of the United States shall submit to the Congress,  
18          not later than March 31 of each year, a report on the  
19          amount of fees and other expenses awarded during the  
20          preceding fiscal year pursuant to this subsection. The re-  
21          port shall describe the number, nature, and amount of the  
22          awards, the claims involved in each controversy, and any  
23          other relevant information that may aid the Congress in  
24          evaluating the scope and impact of such awards. The re-  
25          port shall be made available to the public online.

1       “(B)(i) The report required by subparagraph (A)  
2 shall account for all payments of fees and other expenses  
3 awarded under this subsection that are made pursuant to  
4 a settlement agreement, regardless of whether the settle-  
5 ment agreement is sealed or otherwise subject to non-  
6 disclosure provisions.

7       “(ii) The disclosure of fees and other expenses re-  
8 quired under clause (i) does not affect any other informa-  
9 tion that is subject to nondisclosure provisions in the set-  
10 tlement agreement.

11       “(C) The Chairman of the Administrative Conference  
12 shall include and clearly identify in the annual report  
13 under subparagraph (A), for each case in which an award  
14 of fees and other expenses is included in the report—

15               “(i) any amounts paid from section 1304 of  
16 title 31 for a judgment in the case;

17               “(ii) the amount of the award of fees and other  
18 expenses; and

19               “(iii) the statute under which the plaintiff filed  
20 suit.

21       “(6) The Chairman of the Administrative Conference  
22 shall create and maintain online a searchable database  
23 containing the following information with respect to each  
24 award of fees and other expenses under this subsection:

25               “(A) The case name and number.

1           “(B) The name of the agency involved in the  
2 case.

3           “(C) The name of each party to whom the  
4 award was made, as such party is identified in the  
5 order or other court document making the award.

6           “(D) A description of the claims in the case.

7           “(E) The amount of the award.

8           “(F) The basis for the finding that the position  
9 of the agency concerned was not substantially justi-  
10 fied.

11          “(7) The online searchable database described in  
12 paragraph (6) may not reveal any information the dislo-  
13 sure of which is prohibited by law or court order.

14          “(8) The head of each agency (including the Attorney  
15 General of the United States) shall provide to the Chair-  
16 man of the Administrative Conference of the United  
17 States in a timely manner all information requested by  
18 the Chairman to comply with the requirements of para-  
19 graphs (5), (6), and (7).”.

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

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

24               (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.—The amendments made by  
8 subsections (a) and (b) shall first apply with respect  
9 to awards of fees and other expenses that are made  
10 on or after the date of the enactment of this Act.

11 (2) INITIAL REPORTS.—The first reports re-  
12 quired by section 504(e) of title 5, United States  
13 Code, and section 2412(d)(5) of title 28, United  
14 States Code, shall be submitted not later than  
15 March 31 of the calendar year following the first  
16 calendar year in which a fiscal year begins after the  
17 date of the enactment of this Act.

18 (3) ONLINE DATABASES.—The online databases  
19 required by section 504(f) of title 5, United States  
20 Code, and section 2412(d)(6) of title 28, United  
21 States Code, shall be established as soon as prac-  
22 ticable after the date of the enactment of this Act,  
23 but in no case later than the date on which the first  
24 reports under section 504(e) of title 5, United States  
25 Code, and section 2412(d)(5) of title 28, United



- 1 States Code, are required to be submitted under
- 2 paragraph (2) of this subsection.

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