

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2770

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.

---

## IN THE SENATE OF THE UNITED STATES

JULY 31, 2014

Mr. WALSH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## 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”.

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 (c)(1), by striking “, United  
6 States Code”;

7 (2) by redesignating subsection (f) as sub-  
8 section (i); and

9 (3) by striking subsection (e) and inserting the  
10 following:

11 “(e)(1) Not later than March 31 of the first calendar  
12 year beginning after the date of enactment of the Open  
13 Book on Equal Access to Justice Act, and every year  
14 thereafter, the Chairman of the Administrative Conference  
15 of the United States, after consultation with the Chief  
16 Counsel for Advocacy of the Small Business Administra-  
17 tion, shall submit to Congress and make publicly available  
18 on an Internet Web site a report on the amount of fees  
19 and other expenses awarded during the preceding fiscal  
20 year under this section.

21 “(2) Each report under paragraph (1) shall describe  
22 the number, nature, and amount of the awards, the claims  
23 involved in the controversy, and any other relevant infor-  
24 mation that may aid Congress in evaluating the scope and  
25 impact of such awards.

1       “(3)(A) Each report under paragraph (1) shall ac-  
2 count for all payments of fees and other expenses awarded  
3 under this section that are made pursuant to a settlement  
4 agreement, regardless of whether the settlement agree-  
5 ment is sealed or otherwise subject to nondisclosure provi-  
6 sions.

7       “(B) The disclosure of fees and other expenses re-  
8 quired under subparagraph (A) shall not affect any other  
9 information that is subject to a nondisclosure provision in  
10 a settlement agreement.

11       “(f) As soon as practicable, and in any event not later  
12 than the date on which the first report under subsection  
13 (e)(1) is required to be submitted, the Chairman of the  
14 Administrative Conference of the United States shall cre-  
15 ate and maintain a searchable database on an Internet  
16 Web site containing the following information with respect  
17 to each award of fees and other expenses under this sec-  
18 tion made on or after the date of enactment of the Open  
19 Book on Equal Access to Justice Act:

20               “(1) The case name and number of the adver-  
21 sary adjudication, if available, hyperlinked to the  
22 case (if available) in any case in which the party  
23 other than the agency is not an individual.

24               “(2) The name of the agency involved in the  
25 adversary adjudication.

1           “(3) A description of the claims in the adver-  
2 sary adjudication.

3           “(4) For an award made to an individual, a  
4 statement indicating that the award was made to an  
5 individual that shall not include any personally iden-  
6 tifiable information.

7           “(5) For an award made to a party other than  
8 an individual, the name of the party.

9           “(6) The amount of the award.

10          “(7) The basis for the finding that the position  
11 of the agency concerned was not substantially justi-  
12 fied.

13          “(g) The searchable database described in subsection  
14 (f) may not reveal any information the disclosure of which  
15 is prohibited by law or a court order.

16          “(h) The head of each agency shall provide to the  
17 Chairman of the Administrative Conference of the United  
18 States in a timely manner all information requested by  
19 the Chairman to comply with the requirements of sub-  
20 sections (e), (f), and (g).”.

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

24                 “(5)(A) Not later than March 31 of the first  
25 calendar year beginning after the date of enactment

1 of the Open Book on Equal Access to Justice Act,  
2 and every year thereafter, the Chairman of the Ad-  
3 ministrative Conference of the United States, after  
4 consultation with the Chief Counsel for Advocacy of  
5 the Small Business Administration, shall submit to  
6 Congress and make publicly available on an Internet  
7 Web site a report on the amount of fees and other  
8 expenses awarded during the preceding fiscal year  
9 pursuant to this subsection.

10 “(B) Each report under subparagraph (A) shall  
11 describe the number, nature, and amount of the  
12 awards, the claims involved in the controversy, and  
13 any other relevant information that may aid Con-  
14 gress in evaluating the scope and impact of such  
15 awards.

16 “(C)(i) Each report under subparagraph (A)  
17 shall account for all payments of fees and other ex-  
18 penses awarded under this subsection that are made  
19 pursuant to a settlement agreement, regardless of  
20 whether the settlement agreement is sealed or other-  
21 wise subject to nondisclosure provisions.

22 “(ii) The disclosure of fees and other expenses  
23 required under clause (i) shall not affect any other  
24 information that is subject to a nondisclosure provi-  
25 sions in a settlement agreement.

1           “(D) As soon as practicable, and in any event  
2 not later than the date on which the first report  
3 under subsection (e)(1) is required to be submitted,  
4 the Chairman of the Administrative Conference of  
5 the United States shall include and clearly identify  
6 in each annual report under subparagraph (A), for  
7 each case in which an award of fees and other ex-  
8 penses is included in the report—

9           “(i) any amounts paid under section 1304  
10 of title 31 for a judgment in the case;

11           “(ii) the amount of the award of fees and  
12 other expenses; and

13           “(iii) the statute under which the plaintiff  
14 filed suit.

15           “(6) The Chairman of the Administrative Con-  
16 ference of the United States shall create and main-  
17 tain a searchable database on an Internet Web site  
18 containing the following information with respect to  
19 each award of fees and other expenses under this  
20 subsection:

21           “(A) The case name and number, hyper-  
22 linked to the case (if available) in any case in  
23 which the party other than the agency is not an  
24 individual.

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

3           “(C) For an award made to an individual,  
4 a statement indicating that the award was  
5 made to an individual that shall not include any  
6 personally identifiable information.

7           “(D) For an award made to a party other  
8 than an individual, the name of the party.

9           “(E) The amount of the award.

10           “(F) The basis for the finding that the po-  
11 sition of the agency concerned was not substan-  
12 tially justified.

13           “(7) The searchable database described in para-  
14 graph (6) may not reveal any information the disclo-  
15 sure of which is prohibited by law or a court order.

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

23           (c) TECHNICAL AMENDMENTS.—Section 2412 of title  
24 28, United States Code, is amended—

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

3           (2) in subsection (e)—

4                 (A) by striking “of section 2412 of title  
5 28, United States Code,” and inserting “of this  
6 section”; and

7                 (B) by striking “of such title”.

○