

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

# S. 3161

To provide a definition of a prevailing party for Federal fee-shifting statutes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 2002

Mr. FEINGOLD (for himself, Mr. KENNEDY, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide a definition of a prevailing party for Federal fee-shifting statutes

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 “Settlement Encourage-  
5       ment and Fairness Act”.

6       **SEC. 2. DEFINITION OF PREVAILING PARTY.**

7       (a) IN GENERAL.—Chapter 1 of title 1, United  
8       States Code, is amended by adding at the end the fol-  
9       lowing:

1 **“§ 8. Definition of ‘prevailing party’**

2       “(a) IN GENERAL.—In determining the meaning of  
3 any Act of Congress, or of any ruling, regulation, or inter-  
4 pretation of the various administrative bureaus and agen-  
5 cies of the United States, or of any judicial or administra-  
6 tive rule, which provides for the recovery of attorneys’  
7 fees, the term ‘prevailing party’ shall include, in addition  
8 to a party who substantially prevails through a judicial  
9 or administrative judgment or order, or an enforceable  
10 written agreement, a party whose pursuit of a nonfrivolous  
11 claim or defense was a catalyst for a voluntary or unilat-  
12 eral change in position by the opposing party that provides  
13 any significant part of the relief sought.

14       “(b) RELATIONSHIP TO OTHER LAWS.—

15               “(1) SPECIAL CRITERIA FOR PREVAILING DE-  
16 FENDANTS.—If an Act, ruling, regulation, interpre-  
17 tation, or rule described in subsection (a) requires a  
18 defendant, but not a plaintiff, to satisfy certain dif-  
19 ferent or additional criteria to qualify for the recov-  
20 ery of attorneys’ fees, subsection (a) shall not affect  
21 the requirement that such defendant satisfy such  
22 criteria.

23               “(2) SPECIAL CRITERIA UNRELATED TO PRE-  
24 VAILING.—If an Act, ruling, regulation, interpreta-  
25 tion, or rule described in subsection (a) requires a  
26 party to satisfy certain criteria, unrelated to whether

1 or not such party has prevailed, to qualify for the  
2 recovery of attorneys' fees, subsection (a) shall not  
3 affect the requirement that such party satisfy such  
4 criteria.”.

5 (b) CLERICAL AMENDMENT.—The table of sections  
6 at the beginning of chapter 1 of title 1, United States  
7 Code, is amended by adding at the end the following new  
8 item:

“8. Definition of ‘prevailing party’.”.

9 (c) APPLICATION.—Section 8 of title 1, United States  
10 Code, as added by this Act, shall apply to any case pend-  
11 ing or filed on or after the date of enactment of this Act.

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