

2/20/96 Amended / do Pass H. 5128  
3/25/96 Referred to Labor

MAR 16 1995

LABOR & INDUSTRIAL RELATIONS

HOUSE FILE 452  
BY KREMER

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the Iowa occupational safety and health law by  
2 permitting recovery of certain costs and fees in proceedings  
3 under the law, delaying the imposition of certain civil  
4 penalties, and providing an effective date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 452

1 Section 1. Section 88.8, Code 1995, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 4. AWARD OF ATTORNEY FEES AND COSTS. An  
4 eligible party may be awarded reasonable attorney fees and  
5 costs by the board if the party prevails on any significant  
6 issue before the appeal board by achieving some of the  
7 benefits the party sought in contesting the citation and if  
8 the position of the commissioner was found not to be  
9 substantially justified. An award pursuant to this subsection  
10 shall not be made if special circumstances make an award  
11 unjust, including action by the prevailing party to unduly or  
12 unreasonably protract the proceedings. For purposes of this  
13 subsection, "eligible party" means a party in a proceeding  
14 before the appeal board that is a sole proprietorship,  
15 partnership, corporation, association, unit of local  
16 government, or public or private organization with a net worth  
17 of not more than seven million dollars and no more than five  
18 hundred employees, a cooperative association or charitable  
19 organization with no more than five hundred employees, or an  
20 individual with a net worth of not more than two million  
21 dollars.

22 Sec. 2. Section 88.14, Code 1995, is amended by adding the  
23 following new subsection:

24 NEW SUBSECTION. 13. PENALTIES - ABATEMENT PERIOD.  
25 Notwithstanding any provision of this chapter to the contrary,  
26 a civil penalty shall not be imposed, except for willful  
27 violations, until the employer has failed to correct the  
28 violation within the abatement period fixed in the citation.

29 Sec. 3. CONTINGENT EFFECTIVE DATE. This Act takes effect  
30 when the director of the department of employment services  
31 certifies to the general assembly that the Act does not  
32 conflict with federal law or certifies to the general assembly  
33 that the secretary of labor of the United States, or the  
34 secretary's designee, has approved the Act.

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EXPLANATION

1 This bill provides that a party that prevails on any  
2 significant issue before the employment appeal board  
3 concerning an occupational safety and health act (OSHA)  
4 citation may be awarded reasonable attorney fees and costs by  
5 the board if the position of the labor commissioner concerning  
6 the citation was not substantially justified and an award of  
7 fees and costs would not be unjust. The bill provides that  
8 only certain parties are eligible for an award based on the  
9 size or net worth of the party seeking a recovery.

10 This bill also provides that no civil penalty for an OSHA  
11 violation, except for a willful violation, shall be imposed  
12 until the employer has failed to correct the violation within  
13 the abatement period specified in a citation.

14 This bill does not take effect until the director of the  
15 department of employment services certifies that the bill does  
16 not conflict with federal law or that the United States  
17 secretary of labor has approved the bill.

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HOUSE FILE 452

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1 Amend House File 452 as follows:

2 1. Page 1, by striking lines 3 through 34 and  
3 inserting the following:

4 "NEW SUBSECTION. 4. AWARD OF ATTORNEY FEES AND  
5 COSTS.

6 a. For the purposes of this subsection, unless the  
7 context otherwise requires:

8 (1) "Eligible party" means a party in a proceeding  
9 before the appeal board that is a sole proprietorship,  
10 partnership, corporation, association, unit or  
11 division of government, or public or private  
12 organization with a net worth of not more than seven  
13 million dollars and not more than five hundred  
14 employees, a cooperative association or charitable  
15 organization with no more than five hundred employees,  
16 or an individual with a net worth of not more than two  
17 million dollars.

18 (2) "Prevailing party" means an eligible party  
19 which establishes that the party has substantially  
20 prevailed with the amount in controversy or has  
21 substantially prevailed with respect to the most  
22 significant issue or set of issues presented and has  
23 established that another party's position was not  
24 substantially justified. The determination as to  
25 whether a party is a prevailing party is to be  
26 determined in accordance with chapter 17A.

27 b. The appeal board may award a prevailing party  
28 in an administrative hearing reasonable litigation  
29 costs not to exceed twenty-five thousand dollars per  
30 contested case by the appeal board based on the  
31 following:

32 (1) The reasonable expenses of expert witnesses.

33 (2) The reasonable costs of studies, reports, and  
34 tests.

35 (3) The reasonable fees of attorneys.

36 However, litigation costs do not include any costs  
37 prior to the filing of a notice of contest pursuant to  
38 this section.

39 c. The appeal board, in its discretion, may reduce  
40 or deny the amount to be awarded pursuant to this  
41 subsection to the extent the prevailing party during  
42 the course of the proceedings engaged in conduct which  
43 unduly and unreasonably protracted the final  
44 resolution of the matter in controversy. An award  
45 shall not be made in the case of a settlement or for  
46 issues which have been settled.

47 d. A party seeking an award of litigation costs  
48 shall, within thirty days of a final adjudication,  
49 submit to the appeal board an application which shows  
50 the applicant is a prevailing party and is eligible to

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1 receive an award under this subsection, and the amount  
2 sought, including an itemized statement from any  
3 attorney, agent, or expert witness representing or  
4 appearing in behalf of the applicant stating the  
5 actual time expended and the rate at which fees and  
6 other expenses were computed. The applicant shall  
7 also allege that the position of the opposing party  
8 was not substantially justified. When a party appeals  
9 the underlying merits of an adversary adjudication, no  
10 decision on an application for litigation costs in  
11 connection with the adversary adjudication shall be  
12 made under this subsection until a final and  
13 unreviewable decision is rendered by the board or a  
14 court on the appeal or until the underlying merits of  
15 the case have been finally determined pursuant to the  
16 appeal.

17 e. The decision of the appeal board to award  
18 litigation costs shall provide reasons for the award  
19 made, and is subject to appeal in accordance with  
20 section 17A.15."

21 2. Title page, by striking lines 3 and 4 and  
22 inserting the following: "under the law."

By COMMITTEE ON LABOR AND  
INDUSTRIAL RELATIONS  
TYRRELL of Iowa, Chairperson

H-5128 FILED FEBRUARY 28, 1996