

Public Law 102-198
102d Congress

An Act

To make certain technical corrections in the Judicial Improvements Act of 1990 and other provisions of law relating to the courts.

Dec. 9, 1991
[S. 1284]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JUDICIAL COUNCILS OF CIRCUITS.

Section 332(a)(1) of title 28, United States Code, as amended by section 323 of the Judicial Improvements Act of 1990, is amended by—

- (1) striking “such member” and inserting “such number”; and
- (2) striking “services” and inserting “service”.

SEC. 2. CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.

Chapter 23 of title 28, United States Code, as added by section 103 of the Judicial Improvements Act of 1990, is amended—

- (1) in section 471 by striking “this title” and inserting “this chapter”; and
- (2) in section 474(a)—
 - (A) in paragraph (1)—
 - (i) by striking “chief judges” and inserting “chief judge”; and
 - (ii) by striking “court of appeals for such”; and
 - (B) in paragraph (2)—
 - (i) by striking “a court of appeals” and inserting “a circuit may designate another judge of the court of appeals of that circuit,”; and
 - (ii) by striking “court to perform the chief” and inserting “court, to perform that chief”.

SEC. 3. VENUE.

Section 1391(b) of title 28, United States Code, as amended by section 311 of the Judicial Improvements Act of 1990, is amended by striking “if (1)” and inserting “in (1)”.

SEC. 4. REMOVAL OF SEPARATE AND INDEPENDENT CLAIMS.

Section 1441(c) of title 28, United States Code, as amended by section 312 of the Judicial Improvements Act of 1990, is amended by—

- (1) striking the comma after “title”; and
- (2) striking “may may” and inserting “may”.

SEC. 5. APPEAL OF ABSTENTION DETERMINATIONS UNDER TITLE 11 OF THE UNITED STATES CODE.

Section 305(c) of title 11, United States Code, as amended by section 309 of the Judicial Improvements Act of 1990, is amended by striking “this title” both places it appears and inserting “title 28”.

SEC. 6. OUTSIDE EARNED INCOME LIMITATIONS.

Section 502(b) of the Ethics in Government Act of 1978 (5 U.S.C. App. 7 502(b)), as amended by section 601(a) of the Ethics Reform Act of 1989 and section 319 of the Judicial Improvements Act of 1990, is amended to read as follows:

“(b) **TEACHING COMPENSATION OF JUSTICES AND JUDGES RETIRED FROM REGULAR ACTIVE SERVICE.**—For purposes of the limitation under section 501(a), any compensation for teaching approved under subsection (a)(5) of this section shall not be treated as outside earned income—

“(1) when received by a justice of the United States retired from regular active service under section 371(b) of title 28, United States Code;

“(2) when received by a judge of the United States retired from regular active service under section 371(b) of title 28, United States Code, for teaching performed during any calendar year for which such judge has met the requirements of subsection (f) of section 371 of title 28, United States Code, as certified in accordance with such subsection; or

“(3) when received by a justice or judge of the United States retired from regular active service under section 372(a) of title 28, United States Code.”.

SEC. 7. RETIREMENT SYSTEM FOR CLAIMS COURT JUDGES.

(a) **RETIREMENT OF JUDGES OF THE CLAIMS COURT.**—Section 178 of title 28, United States Code, as added by section 306(a) of the Judicial Improvements Act of 1990, is amended—

(1) in subsection (f)(2)(A) by inserting “(except for subchapters III and VII)” after “chapter 84”; and

(2) in subsection (j)—

(A) in paragraph (1)—

(i) by striking “(2)” and inserting “(4)”; and

(ii) by striking “so practices law” and inserting “engages in any such activity”;

(B) in paragraph (2) by striking “If” and inserting “Subject to paragraph (4), if”; and

(C) in paragraph (3) by inserting “for” after “(other than”.

(b) **CIVIL SERVICE RETIREMENT SYSTEM.**—Section 8339(n) of title 5, United States Code, as amended by section 306(c)(4) of the Judicial Improvements Act of 1990, is amended by inserting a comma after “United States commissioner”.

(c) **THRIFT SAVINGS PLAN.**—(1) The section 8440b of title 5, United States Code, entitled “Claims Court Judges”, as added by section 306(d) of the Judicial Improvements Act of 1990, is amended—

(A) by redesignating such section as section 8440c; and

(B) in subsection (b)—

(i) in paragraph (4)(A) by striking “subsection (d)” and inserting “subsection (c)”;

(ii) by striking paragraph (7) and redesignating paragraph (8) as (7); and

(iii) by adding at the end the following:

“(8) Notwithstanding paragraph (4)(B), if any Claims Court judge who elects to make contributions to the Thrift Savings Fund under subsection (a) retires before becoming entitled to an annuity under section 178 of title 28, and such judge’s nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the

nonforfeitable account balance to the participant in a single payment unless the judge elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e).

“(9) Notwithstanding paragraph (4)(A), if any Claims Court judge retires under circumstances making such judge eligible to make an election under section 8433(b), and such judge’s nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b).”.

(2) The table of sections at the beginning of chapter 84 of title 5, United States Code, is amended by striking

“8440b. Claims Court judges.”

and inserting after the last item under subchapter III the following:

“8440c. Claims Court judges.”

(3) Paragraphs (8) and (9) of section 8440c(b) of title 5, United States Code (as added by paragraph (1)) shall be effective as of January 1, 1991, and shall apply to any Claims Court judge retiring on or after such date.

Effective date.
5 USC 8440c
note.

(4)(A) The section 8440c of title 5, United States Code, entitled “Judges of the United States Court of Veterans Appeals” is amended by redesignating such section as section 2440d.

5 USC 8440c,
8440d.

(B) The table of sections at the beginning of subchapter III of chapter 84 of title 5, United States Code, is amended by striking

“8440c. Judges of the United States Court of Veterans Appeals.”

and inserting

“8440d. Judges of the United States Court of Veterans Appeals.”.

(C) Section 5(b) of Public Law 102-82 is amended—

5 USC 8440d
note.

(i) by striking “8440c” and inserting “8440d”; and

(ii) by striking “(as added by subsection (a))”.

(D) section 7296(f)(2)(A) of title 38, United States Code, as amended by section 5(c)(1) of Public Law 102-82, is amended by striking “8440c” and inserting “8440d”.

(E) section 7297(n) of title 38, United States Code, as amended by section 5(c)(2) of Public Law 102-82, is amended by striking “8440c” and inserting “8440d”.

(d) **FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.**—Section 8402(g) of title 5, United States Code, as added by section 306(e) of the Judicial Improvement Act of 1990, is amended by inserting a comma after “such chapter”.

SEC. 8. NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL.

(a) **MEMBERSHIP.**—Section 411 of the National Commission on Judicial Discipline and Removal Act (title IV of the Judicial Improvements Act of 1990) (28 U.S.C. 372 note) is amended by striking subsections (e) and (f) and redesignating subsections (g) through (h) as subsections (e) through (f), respectively.

(b) **CLERICAL AMENDMENTS.**—(1) The subtitle heading for subtitle II of the Judicial Discipline and Removal Reform Act of 1990 is amended by striking “Impeachment” and inserting “Discipline and Removal”.

28 USC 372 note.

(2) Section 409 of the National Commission on Judicial Discipline and Removal Act (28 U.S.C. note) is amended by striking “hereafter” and inserting “hereinafter”.

SEC. 9. STUDY OF CRIMINAL JUSTICE ACT PROGRAM.

18 USC 3006A note.

Section 318(c) of the Judicial Improvements Act of 1990 is amended by striking “March 31, 1992” and inserting “March 31, 1993”.

SEC. 10. OTHER TECHNICAL CORRECTIONS TO TITLE 28, UNITED STATES CODE.

(a) **PROCEDURE FOR REMOVAL.**—Section 1446 of title 28, United States Code, is amended—

(1) by striking “petition for” each place it appears and inserting “notice of”;

(2) in subsection (c)(3), by striking “petition is first denied” and inserting “prosecution is first remanded”;

(3) by striking paragraphs (4) and (5) of subsection (c) and inserting the following:

“(4) The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

“(5) If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the prosecution as justice shall require. If the United States district court determines that removal shall be permitted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.”;

(4) by striking “petition” each place it appears and inserting “notice”; and

(5) in subsection (d)—

(A) by striking “the removal” and inserting “removal”; and

(B) by striking out “and bond”.

(b) **PROCEDURE AFTER REMOVAL GENERALLY.**—Section 1447(b) of title 28, United States Code, is amended by striking “petitioner” and inserting “removing party”.

(c) **APPOINTMENT OF CIRCUIT JUDGES.**—Section 44(c) of title 28, United States Code, is amended by striking “this Act” and inserting “the Federal Courts Improvement Act of 1982”.

28 USC 2074 note.
28 USC app.

SEC. 11. AMENDMENTS TO RULES OF CIVIL PROCEDURE.

(a) **TECHNICAL AMENDMENT.**—Rule 15(c)(3) of the Federal Rules of Civil Procedure for the United States Courts, as transmitted to the Congress by the Supreme Court pursuant to section 2074 of title 28, United States Code, to become effective on December 1, 1991, is amended by striking “Rule 4(m)” and inserting “Rule 4(j)”.

28 USC app.

(b) **AMENDMENT TO FORMS.**—Form 1-A, Notice of Lawsuit and Request for Waiver of Service of Summons, and Form 1-B, Waiver of Service of Summons, included in the transmittal by the Supreme Court described in subsection (a), shall not be effective and Form 18-

A, Notice and Acknowledgment for Service by Mail, abrogated by the Supreme Court in such transmittal, effective December 1, 1991, shall continue in effect on or after that date.

SEC. 12. CONFORMITY WITH RULES OF APPELLATE PROCEDURE.

Section 2107 of title 28, United States Code, is amended—

- (1) by designating the first and second paragraphs as subsections (a) and (b), respectively;
- (2) by striking the third and fourth paragraphs;
- (3) by designating the fifth paragraph as subsection (d); and
- (4) by inserting after subsection (b), as so designated, the following:

“(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds—

- “(1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and

“(2) that no party would be prejudiced,
the district court may, upon motion filed within 180 days after entry of the judgment or order or within 7 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.”.

Approved December 9, 1991.

LEGISLATIVE HISTORY—S. 1284:

HOUSE REPORTS: No. 102-322 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 137 (1991):

June 12, considered and passed Senate.

Nov. 19, considered and passed House, amended.

Nov. 22, Senate concurred in House amendments.