

CLARIFICATION OF VENUE PROVISION

JULY 11, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MOORHEAD, from the Committee on Judiciary, submitted the following

REPORT

[To accompany S. 532]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the Act (S. 532) to clarify the rules governing venue, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the Act do pass.

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PURPOSE AND SUMMARY

S. 532 is a technical amendment to paragraph (3) of section 1391(a) of title 28 of the United States Code. The bill is based on a proposal by the Judicial Conference of the United States and is intended to update the Code to comply with amendments made to venue provisions that ensure that in multi-defendant cases, there is at least one federal district where venue is proper.

BACKGROUND AND NEED FOR THE LEGISLATION

BACKGROUND

S. 532 is a technical amendment to title 28 of the United States Code. Its purpose is to update the code to comply with amendments made to venue provisions that ensure that in multi-defendant cases, there is at least one federal district where venue is proper.

28 U.S.C. § 1391 venue provisions relating to diversity provides—
 (a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in:

- (1) a judicial district where any defendant resides, if all defendants reside in the same state;
- (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
- (3) a judicial district in which the defendants are subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

As currently written it is uncertain whether in a multi-defendant case to which this subsection applies, venue lies so long as *any* defendant is subject to personal jurisdiction in the district, or only when *all* defendants are subject to personal jurisdiction. A review of the legislative history states that the purpose of the amendment was to make subsection 1391(a)(3) “more closely parallel * * * 1391(b)(3).” Section 1391(b)(3) in turn provides for fall back federal question venue in a district in which “*any* defendant may be found.”

It is the conclusion of the Committee that § 1391(a)(3) should be clarified to ensure venue in any judicial district in which *any defendant* is subject to personal jurisdiction, provided there was not a district in which the action could otherwise have been brought. This is consistent with the legislative history to create a safety valve to ensure that the venue requirements do not defeat the ability to bring suit in federal court if subject matter and personal jurisdiction are available. Furthermore, in multi-defendant cases, if a particular defendant is not subject to personal jurisdiction in a particular district, that defendant alone may move to be dismissed from the action for lack of personal jurisdiction, and the action may continue with the other defendants. S. 532 simply clarifies these issues.

HEARINGS

S. 532 was introduced in the Senate on March 10, 1995, by Senator Hatch and then referred to the Senate Committee on the Judiciary. On March 16, 1995, the Senate Committee on the Judiciary ordered reported the bill S. 532, by a voice vote, to the Senate under a unanimous consent request.

On April 24, 1995, S. 532 was referred to the House Judiciary Subcommittee on Courts and Intellectual Property. The Subcommittee held a hearing on S. 532 and related court proposals on

May 11, 1995. At that hearing, Judge Ann Clarie Williams of the United States District Court for the Northern District of Illinois testified in support of S. 532 on behalf of the Judicial Conference of the United States.

COMMITTEE CONSIDERATION

On May 16, 1995, the Subcommittee on Courts and Intellectual Property met in open session and ordered reported the bill S. 532, by a voice vote, a quorum being present. On June 7, 1995, the Committee met in open session and ordered reported the bill S. 532 without amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, S. 532, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 13, 1995.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary, House of Representatives,
Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 532, as ordered reported by the House Committee on the Judiciary on June 7, 1995. This act would clarify a provision in current law relating to judicial venue for civil actions brought in federal districts courts. CBO estimates that enacting this legislation would result in no cost to the federal government or to state or local governments. Enacting S. 532 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply to the act.

If you wish further details in this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

JUNE E. O'NEILL, *Director*.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that S. 532 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Section 1. Currently, paragraph (3) of section 1391(a) of title 28, United States Code provides that venue lies in “a judicial district in which the defendants are subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.” The problem with this language is that it may be read to mean that all defendants must be subject to personal jurisdiction in a district in order for venue to lie. Under this reading, there would be cases in which there would be no proper venue. This section would eliminate any ambiguity by amending paragraph (3) of section 1391(a) of title 28, United States Code to provide that venue would be proper under this provision in a district in which *any* defendant is subject to personal jurisdiction. This is consistent with the legislative history to create a safety valve to ensure that the venue requirements do not defeat the ability to bring suite in federal court if subject matter and personal jurisdiction are available.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 1391 OF TITLE 28, UNITED STATES CODE

§ 1391. Venue generally

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which [the defendants are] *any defendant is* subject to personal jurisdiction at the time

the action is commenced, if there is no district in which the action may otherwise be brought.

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