

Calendar No. 200

112TH CONGRESS
1ST SESSIONH. R. 394

IN THE SENATE OF THE UNITED STATES

MARCH 1, 2011

Received; read twice and referred to the Committee on the Judiciary

OCTOBER 17, 2011

Reported by Mr. LEAHY, with amendments

[Omit the part struck through and insert the part printed in italic]

AN ACT

To amend title 28, United States Code, to clarify the jurisdiction of the Federal courts, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Federal Courts Jurisdiction and Venue Clarification Act
6 of 2011”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—JURISDICTIONAL IMPROVEMENTS

Sec. 101. Treatment of resident aliens.

Sec. 102. Citizenship of corporations and insurance companies with foreign contacts.

Sec. 103. Removal and remand procedures.

Sec. 104. Effective date.

TITLE II—VENUE AND TRANSFER IMPROVEMENTS

Sec. 201. Scope and definitions.

Sec. 202. Venue generally.

Sec. 203. Repeal of section 1392.

Sec. 204. Change of venue.

Sec. 205. Effective date.

TITLE I—JURISDICTIONAL IMPROVEMENTS

3 SEC. 101. TREATMENT OF RESIDENT ALIENS.

4 Section 1332(a) of title 28, United States Code, is

5 amended—

6 (1) by striking the last sentence; and

14 SEC. 102. CITIZENSHIP OF CORPORATIONS AND INSUR-
15 ANCE COMPANIES WITH FOREIGN CONTACTS

16 Section 1332(c)(1) of title 28, United States Code

17 is amended—

18 (1) by striking "any State" and inserting
19 "every State and foreign state";

6 “(A) every State and foreign state of which
7 the insured is a citizen;

10 “(C) the State or foreign state where the
11 insurer has its principal place of business;
12 and”.

13 SEC. 103. REMOVAL AND REMAND PROCEDURES.

14 (a) ACTIONS REMOVABLE GENERALLY.—Section
15 1441 of title 28, United States Code, is amended as fol-
16 lows:

20 (2) Subsection (a) is amended—

21 (A) by striking “(a) Except” and inserting
22 “(a) GENERALLY.—Except”: and

23 (B) by striking the last sentence:

1 “(b) REMOVAL BASED ON DIVERSITY OF CITIZEN-
2 SHIP.—(1) In determining whether a civil action is remov-
3 able on the basis of the jurisdiction under section 1332(a)
4 of this title, the citizenship of defendants sued under ficti-
5 tious names shall be disregarded.

6 “(2) A civil action otherwise removable solely on the
7 basis of the jurisdiction under section 1332(a) of this title
8 may not be removed if any of the parties in interest prop-
9 erly joined and served as defendants is a citizen of the
10 State in which such action is brought.”.

11 (4) Subsection (c) is amended to read as fol-
12 lows:

13 “(c) JOINDER OF FEDERAL LAW CLAIMS AND STATE
14 LAW CLAIMS.—(1) If a civil action includes—

15 “(A) a claim arising under the Constitution,
16 laws, or treaties of the United States (within the
17 meaning of section 1331 of this title), and

18 “(B) a claim not within the original or supple-
19 mental jurisdiction of the district court or a claim
20 that has been made nonremovable by statute,

21 the entire action may be removed if the action would be
22 removable without the inclusion of the claim described in
23 subparagraph (B).

24 “(2) Upon removal of an action described in para-
25 graph (1), the district court shall sever from the action

1 all claims described in paragraph (1)(B) and shall remand
2 the severed claims to the State court from which the ac-
3 tion was removed. Only defendants against whom a claim
4 described in paragraph (1)(A) has been asserted are re-
5 quired to join in or consent to the removal under para-
6 graph (1).”.

7 (5) Subsection (d) is amended by striking “(d)
8 Any” and inserting “(d) ACTIONS AGAINST FOR-
9 EIGN STATES.—Any”.

10 (6) Subsection (e) is amended by striking
11 “(e)(1) Notwithstanding” and inserting “(e)
12 MULTIPARTY, MULTIFORUM JURISDICTION.—(1)
13 Notwithstanding”.

14 (7) Subsection (f) is amended by striking “(f)
15 The court” and inserting “(f) DERIVATIVE RE-
16 MOVAL JURISDICTION.—The court”.

17 (b) PROCEDURE FOR REMOVAL OF CIVIL ACTIONS.—
18 Section 1446 of title 28, United States Code, is amended
19 as follows:

20 (1) The section heading is amended to read as
21 follows:

22 **“§ 1446. Procedure for removal of civil actions”.**

23 (2) Subsection (a) is amended—
24 (A) by striking “(a) A defendant” and in-
25 serting “(a) GENERALLY.—A defendant”; and

1 (B) by striking “or criminal prosecution”.

2 (3) Subsection (b) is amended—

3 (A) by striking “(b) The notice” and in-
4 serting “(b) REQUIREMENTS; GENERALLY.—(1)
5 The notice”; and

6 (B) by striking the second paragraph and
7 inserting the following:

8 “(2)(A) When a civil action is removed solely under
9 section 1441(a), all defendants who have been properly
10 joined and served must join in or consent to the removal
11 of the action.

12 "(B) Each defendant shall have 30 days after receipt
13 by or service on that defendant of the initial pleading or
14 summons described in paragraph (1) to file the notice of
15 removal

16 “(C) If defendants are served at different times, and
17 a later-served defendant files a notice of removal, any ear-
18 lier-served defendant may consent to the removal even
19 though that earlier-served defendant did not previously
20 initiate or consent to removal.

21 “(3) Except as provided in subsection (c), if the case
22 stated by the initial pleading is not removable, a notice
23 of removal may be filed within thirty days after receipt
24 by the defendant, through service or otherwise, of a copy
25 of an amended pleading, motion, order or other paper

1 from which it may first be ascertained that the case is
2 one which is or has become removable.”;

3 (C) by striking subsection (c) and inserting
4 the following:

5 “(c) REQUIREMENTS; REMOVAL BASED ON DIVER-
6 SITY OF CITIZENSHIP.—(1) A case may not be removed
7 under subsection (b)(3) on the basis of jurisdiction con-
8 ferred by section 1332 more than 1 year after commence-
9 ment of the action, unless the district court finds that the
10 plaintiff has acted in bad faith in order to prevent a de-
11 fendant from removing the action.

12 “(2) If removal of a civil action is sought on the basis
13 of the jurisdiction conferred by section 1332(a), the sum
14 demanded in good faith in the initial pleading shall be
15 deemed to be the amount in controversy, except that—

16 “(A) the notice of removal may assert the
17 amount in controversy if the initial pleading seeks—

18 “(i) nonmonetary relief; or

19 “(ii) a money judgment, but the State
20 practice either does not permit demand for a
21 specific sum or permits recovery of damages in
22 excess of the amount demanded; and

23 “(B) removal of the action is proper on the
24 basis of an amount in controversy asserted under
25 subparagraph (A) if the district court finds, by the

1 preponderance of the evidence, that the amount in
2 controversy exceeds the amount specified in section
3 1332(a).

4 “(3)(A) If the case stated by the initial pleading is
5 not removable solely because the amount in controversy
6 does not exceed the amount specified in section 1332(a),
7 information relating to the amount in controversy in the
8 record of the State proceeding, or in responses to dis-
9 covery, shall be treated as an ‘other paper’ under sub-
10 section (b)(3).

11 “(B) If the notice of removal is filed more than 1
12 year after commencement of the action and the district
13 court finds that the plaintiff deliberately failed to disclose
14 the actual amount in controversy to prevent removal, that
15 finding shall be deemed bad faith under paragraph (1).”.

16 (4) Section 1446 is further amended—

17 (A) in subsection (d), by striking “(d)
18 Promptly” and inserting “(d) NOTICE TO AD-
19 VERSE PARTIES AND STATE COURT.—Prompt-
20 ly”;

21 (B) by striking “thirty days” each place it
22 appears and inserting “30 days”;

23 (C) by striking subsection (e); and

1 (D) in subsection (f), by striking “(f) With
2 respect” and inserting “(e) COUNTERCLAIM IN
3 337 PROCEEDING.—With respect”.

4 (c) PROCEDURE FOR REMOVAL OF CRIMINAL AC-
5 TIONS.—Chapter 89 of title 28, United States Code, is
6 amended by adding at the end the following new section:

7 **“§ 14541455. Procedure for removal of criminal pros-**
8 **ecutions**

9 “(a) NOTICE OF REMOVAL.—A defendant or defend-
10 ants desiring to remove any criminal prosecution from a
11 State court shall file in the district court of the United
12 States for the district and division within which such pros-
13 ecution is pending a notice of removal signed pursuant to
14 Rule 11 of the Federal Rules of Civil Procedure and con-
15 taining a short and plain statement of the grounds for
16 removal, together with a copy of all process, pleadings, and
17 orders served upon such defendant or defendants in such
18 action.

19 "(b) REQUIREMENTS.—(1) A notice of removal of a
20 criminal prosecution shall be filed not later than 30 days
21 after the arraignment in the State court, or at any time
22 before trial, whichever is earlier, except that for good
23 cause shown the United States district court may enter
24 an order granting the defendant or defendants leave to
25 file the notice at a later time.

1 “(2) A notice of removal of a criminal prosecution
2 shall include all grounds for such removal. A failure to
3 state grounds that exist at the time of the filing of the
4 notice shall constitute a waiver of such grounds, and a
5 second notice may be filed only on grounds not existing
6 at the time of the original notice. For good cause shown,
7 the United States district court may grant relief from the
8 limitations of this paragraph.

9 “(3) The filing of a notice of removal of a criminal
10 prosecution shall not prevent the State court in which such
11 prosecution is pending from proceeding further, except
12 that a judgment of conviction shall not be entered unless
13 the prosecution is first remanded.

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

19 “(5) If the United States district court does not order
20 the summary remand of such prosecution, it shall order
21 an evidentiary hearing to be held promptly and, after such
22 hearing, shall make such disposition of the prosecution as
23 justice shall require. If the United States district court
24 determines that removal shall be permitted, it shall so no-

1 tify the State court in which prosecution is pending, which
2 shall proceed no further.

3 “(c) WRIT OF HABEAS CORPUS.—If the defendant
4 or defendants are in actual custody on process issued by
5 the State court, the district court shall issue its writ of
6 habeas corpus, and the marshal shall thereupon take such
7 defendant or defendants into the marshal’s custody and
8 deliver a copy of the writ to the clerk of such State
9 court.”.

10 (d) CONFORMING AMENDMENTS.—

11 (1) The table of sections for chapter 89 of title
12 28, United States Code, is amended—

13 (A) in the item relating to section 1441, by
14 striking “Actions removable generally” and in-
15 serting “Removal of civil actions”;

16 (B) in the item relating to section 1446, by
17 inserting “of civil actions” after “removal”; and

18 (C) by adding at the end the following new
19 item:

“~~1454. Procedure for removal of criminal prosecutions.~~

“*1455. Procedure for removal of criminal prosecutions.*”.

20 (2) Section 1453(b) of title 28, United States
21 Code, is amended by striking “1446(b)” and insert-
22 ing “1446(c)(1)”.

1 **SEC. 104. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Subject to subsection (b), the
3 amendments made by this title shall take effect upon the
4 expiration of the 30-day period beginning on the date of
5 the enactment of this Act, and shall apply to any action
6 or prosecution commenced on or after such effective date.

7 (b) TREATMENT OF CASES REMOVED TO FEDERAL
8 COURT.—For purposes of subsection (a), an action or
9 prosecution commenced in State court and removed to
10 Federal court shall be deemed to commence on the date
11 the action or prosecution was commenced, within the
12 meaning of State law, in State court.

13 **TITLE II—VENUE AND**
14 **TRANSFER IMPROVEMENTS**

15 **SEC. 201. SCOPE AND DEFINITIONS.**

16 (a) IN GENERAL.—Chapter 87 of title 28, United
17 States Code, is amended by inserting before section 1391
18 the following new section:

19 **“§ 1390. Scope**

20 “(a) VENUE DEFINED.—As used in this chapter, the
21 term ‘venue’ refers to the geographic specification of the
22 proper court or courts for the litigation of a civil action
23 that is within the subject-matter jurisdiction of the district
24 courts in general, and does not refer to any grant or re-
25 striction of subject-matter jurisdiction providing for a civil

1 action to be adjudicated only by the district court for a
2 particular district or districts.

3 “(b) EXCLUSION OF CERTAIN CASES.—Except as
4 otherwise provided by law, this chapter shall not govern
5 the venue of a civil action in which the district court exer-
6 cises the jurisdiction conferred by section 1333, except
7 that such civil actions may be transferred between district
8 courts as provided in this chapter.

9 “(c) CLARIFICATION REGARDING CASES REMOVED
10 FROM STATE COURTS.—This chapter shall not determine
11 the district court to which a civil action pending in a State
12 court may be removed, but shall govern the transfer of
13 an action so removed as between districts and divisions
14 of the United States district courts.”.

15 (b) CONFORMING AMENDMENT.—The table of sec-
16 tions at the beginning of chapter 87 of title 28, United
17 States Code, is amended by inserting before the item relat-
18 ing to section 1391 the following new item:

“1390. Scope.”.

19 **SEC. 202. VENUE GENERALLY.**

20 Section 1391 of title 28, United States Code, is
21 amended as follows:

22 (1) By striking subsections (a) through (d) and
23 inserting the following:

24 “(a) APPLICABILITY OF SECTION.—Except as other-
25 wise provided by law—

1 “(1) this section shall govern the venue of all
2 civil actions brought in district courts of the United
3 States; and

4 “(2) the proper venue for a civil action shall be
5 determined without regard to whether the action is
6 local or transitory in nature.

7 “(b) VENUE IN GENERAL.—A civil action may be
8 brought in—

9 “(1) a judicial district in which any defendant
10 resides, if all defendants are residents of the State
11 in which the district is located;

12 “(2) a judicial district in which a substantial
13 part of the events or omissions giving rise to the
14 claim occurred, or a substantial part of property
15 that is the subject of the action is situated; or

16 “(3) if there is no district in which an action
17 may otherwise be brought as provided in this sec-
18 tion, any judicial district in which any defendant is
19 subject to the court’s personal jurisdiction with re-
20 spect to such action.

21 “(c) RESIDENCY.—For all venue purposes—

22 “(1) a natural person, including an alien law-
23 fully admitted for permanent residence in the United
24 States, shall be deemed to reside in the judicial dis-
25 trict in which that person is domiciled;

1 “(2) an entity with the capacity to sue and be
2 sued in its common name under applicable law,
3 whether or not incorporated, shall be deemed to re-
4 side, if a defendant, in any judicial district in which
5 such defendant is subject to the court’s personal ju-
6 risdiction with respect to the civil action in question
7 and, if a plaintiff, only in the judicial district in
8 which it maintains its principal place of business;
9 and

10 “(3) a defendant not resident in the United
11 States may be sued in any judicial district, and the
12 joinder of such a defendant shall be disregarded in
13 determining where the action may be brought with
14 respect to other defendants.

15 “(d) RESIDENCY OF CORPORATIONS IN STATES
16 WITH MULTIPLE DISTRICTS.—For purposes of venue
17 under this chapter, in a State which has more than one
18 judicial district and in which a defendant that is a cor-
19 poration is subject to personal jurisdiction at the time an
20 action is commenced, such corporation shall be deemed to
21 reside in any district in that State within which its con-
22 tacts would be sufficient to subject it to personal jurisdic-
23 tion if that district were a separate State, and, if there
24 is no such district, the corporation shall be deemed to re-

1 side in the district within which it has the most significant
2 contacts.”.

3 (2) In subsection (e)—

4 (A) in the first paragraph—

5 (i) by striking “(1)”, “(2)”, and “(3)”
6 and inserting “(A)”, “(B)”, and “(C)”, re-
7 spectively; and

8 (ii) by striking “(e) A civil action”
9 and inserting the following:

10 “(e) ACTIONS WHERE DEFENDANT IS OFFICER OR
11 EMPLOYEE OF THE UNITED STATES.—

12 “(1) IN GENERAL.—A civil action”; and

13 (B) in the second undesignated paragraph
14 by striking “The summons and complaint” and
15 inserting the following:

16 “(2) SERVICE.—The summons and complaint”.

17 (3) In subsection (f), by striking “(f) A civil ac-
18 tion” and inserting “(f) CIVIL ACTIONS AGAINST A
19 FOREIGN STATE.—A civil action”.

20 (4) In subsection (g), by striking “(g) A civil
21 action” and inserting “(g) MULTIPARTY,
22 MULTIFORUM LITIGATION.—A civil action”.

1 **SEC. 203. REPEAL OF SECTION 1392.**

2 Section 1392 of title 28, United States Code, and the
3 item relating to that section in the table of sections at
4 the beginning of chapter 87 of such title, are repealed.

5 **SEC. 204. CHANGE OF VENUE.**

6 Section 1404 of title 28, United States Code, is
7 amended—

8 (1) in subsection (a), by inserting before the pe-
9 riod at the end the following: “or to any district or
10 division to which all parties have consented”; and

11 (2) in subsection (d), by striking “As used in
12 this section,” and inserting “Transfers from a dis-
13 trict court of the United States to the District Court
14 of Guam, the District Court for the Northern Mar-
15 iana Islands, or the District Court of the Virgin Is-
16 lands shall not be permitted under this section. As
17 otherwise used in this section.”.

18 **SEC. 205. EFFECTIVE DATE.**

19 The amendments made by this title—

20 (1) shall take effect upon the expiration of the
21 30-day period beginning on the date of the enact-
22 ment of this Act; and

23 (2) shall apply to—

24 (A) any action that is commenced in a
25 United States district court on or after such ef-
26 fective date; and

1 (B) any action that is removed from a
2 State court to a United States district court
3 and that had been commenced, within the
4 meaning of State law, on or after such effective
5 date.

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