

112TH CONGRESS  
1ST SESSION

# H. R. 368

To amend title 28, United States Code, to clarify and improve certain provisions relating to the removal of litigation against Federal officers or agencies to Federal courts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 20, 2011

Mr. JOHNSON of Georgia (for himself and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title 28, United States Code, to clarify and improve certain provisions relating to the removal of litigation against Federal officers or agencies to 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.**

4 This Act may be cited as the “Removal Clarification  
5 Act of 2011”.

1 **SEC. 2. REMOVAL OF CERTAIN LITIGATION TO FEDERAL**  
2 **COURTS.**

3 (a) CLARIFICATION OF INCLUSION OF CERTAIN  
4 TYPES OF PROCEEDINGS.—Section 1442 of title 28,  
5 United States Code, is amended—

6 (1) in subsection (a), in the matter preceding  
7 paragraph (1)—

8 (A) by inserting “that is” after “or crimi-  
9 nal prosecution”;

10 (B) by inserting “and that is” after “in a  
11 State court”; and

12 (C) by inserting “or directed to” after  
13 “against”; and

14 (2) by adding at the end the following:

15 “(c) As used in subsection (a), the terms ‘civil action’  
16 and ‘criminal prosecution’ include any proceeding (wheth-  
17 er or not ancillary to another proceeding) to the extent  
18 that in such proceeding a judicial order, including a sub-  
19 poena for testimony or documents, is sought or issued. If  
20 removal is sought for a proceeding described in the pre-  
21 vious sentence, and there is no other basis for removal,  
22 only that proceeding may be removed to the district  
23 court.”.

24 (b) CONFORMING AMENDMENTS.—Section 1442(a)  
25 of title 28, United States Code, is amended—

26 (1) in paragraph (1)—

1 (A) by striking “capacity for” and insert-  
2 ing “capacity, for or relating to”; and

3 (B) by striking “sued”; and

4 (2) in each of paragraphs (3) and (4), by in-  
5 serting “or relating to” after “for”.

6 (c) APPLICATION OF TIMING REQUIREMENT.—Sec-  
7 tion 1446 of title 28, United States Code, is amended by  
8 adding at the end the following:

9 “(g) Where the civil action or criminal prosecution  
10 that is removable under section 1442(a) is a proceeding  
11 in which a judicial order for testimony or documents is  
12 sought or issued or sought to be enforced, the 30-day re-  
13 quirement of subsections (b) and (c) is satisfied if the per-  
14 son or entity desiring to remove the proceeding files the  
15 notice of removal not later than 30 days after receiving,  
16 through service, notice of any such proceeding.”.

17 (d) REVIEWABILITY ON APPEAL.—Section 1447(d) of  
18 title 28, United States Code, is amended by inserting  
19 “1442 or” before “1443”.

20 **SEC. 3. PAYGO COMPLIANCE.**

21 The budgetary effects of this Act, for the purpose of  
22 complying with the Statutory Pay-As-You-Go Act of 2010,  
23 shall be determined by reference to the latest statement  
24 titled “Budgetary Effects of PAYGO Legislation” for this  
25 Act, submitted for printing in the Congressional Record

1 by the Chairman of the House Budget Committee, pro-  
2 vided that such statement has been submitted prior to the  
3 vote on passage.

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