

Calendar No. 198

112TH CONGRESS
1ST SESSION

S. 1636

To amend title 28, United States Code, to clarify the jurisdiction of the Federal courts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2011

Ms. KLOBUCHAR (for herself, Mr. SESSIONS, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

OCTOBER 17, 2011

Reported by Mr. LEAHY, without amendment

A BILL

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”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 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 con-
 tacts.

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.

3 **TITLE I—JURISDICTIONAL** 4 **IMPROVEMENTS**

5 **SEC. 101. TREATMENT OF RESIDENT ALIENS.**

6 Section 1332(a) of title 28, United States Code, is
 7 amended—

8 (1) by striking the last sentence; and

9 (2) in paragraph (2), by inserting after “foreign
 10 state” the following: “, except that the district
 11 courts shall not have original jurisdiction under this
 12 subsection of an action between citizens of a State
 13 and citizens or subjects of a foreign state who are
 14 lawfully admitted for permanent residence in the
 15 United States and are domiciled in the same State”.

1 **SEC. 102. CITIZENSHIP OF CORPORATIONS AND INSUR-**
 2 **ANCE COMPANIES WITH FOREIGN CONTACTS.**

3 Section 1332(c)(1) of title 28, United States Code,
 4 is amended—

5 (1) by striking “any State” and inserting
 6 “every State and foreign state”;

7 (2) by striking “the State” and inserting “the
 8 State or foreign state”; and

9 (3) by striking all that follows “party-defend-
 10 ant,” and inserting “such insurer shall be deemed a
 11 citizen of—

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

14 “(B) every State and foreign state by
 15 which the insurer has been incorporated; and

16 “(C) the State or foreign state where the
 17 insurer has its principal place of business;
 18 and”.

19 **SEC. 103. REMOVAL AND REMAND PROCEDURES.**

20 (a) **ACTIONS REMOVABLE GENERALLY.**—Section
 21 1441 of title 28, United States Code, is amended as fol-
 22 lows:

23 (1) The section heading is amended by striking
 24 “**Actions removable generally**” and inserting
 25 “**Removal of civil actions**”.

26 (2) Subsection (a) is amended—

1 (A) by striking “(a) Except” and inserting

2 “(a) GENERALLY.—Except”; and

3 (B) by striking the last sentence;

4 (3) Subsection (b) is amended to read as fol-
5 lows:

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

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

16 (4) Subsection (c) is amended to read as fol-
17 lows:

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

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

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

1 the entire action may be removed if the action would be
2 removable without the inclusion of the claim described in
3 subparagraph (B).

4 “(2) Upon removal of an action described in para-
5 graph (1), the district court shall sever from the action
6 all claims described in paragraph (1)(B) and shall remand
7 the severed claims to the State court from which the ac-
8 tion was removed. Only defendants against whom a claim
9 described in paragraph (1)(A) has been asserted are re-
10 quired to join in or consent to the removal under para-
11 graph (1).”.

12 (5) Subsection (d) is amended by striking “(d)
13 Any” and inserting “(d) ACTIONS AGAINST FOR-
14 EIGN STATES.—Any”.

15 (6) Subsection (e) is amended by striking
16 “(e)(1) Notwithstanding” and inserting “(e)
17 MULTIPARTY, MULTIFORUM JURISDICTION.—(1)
18 Notwithstanding”.

19 (7) Subsection (f) is amended by striking “(f)
20 The court” and inserting “(f) DERIVATIVE RE-
21 MOVAL JURISDICTION.—The court”.

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

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

3 **“§ 1446. Procedure for removal of civil actions”.**

4 (2) Subsection (a) is amended—

5 (A) by striking “(a) A defendant” and in-
6 serting “(a) GENERALLY.—A defendant”; and

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

8 (3) Subsection (b) is amended—

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

11 The notice”; and

12 (B) by striking the second paragraph and
13 inserting the following:

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

18 “(B) Each defendant shall have 30 days after receipt
19 by or service on that defendant of the initial pleading or
20 summons described in paragraph (1) to file the notice of
21 removal.

22 “(C) If defendants are served at different times, and
23 a later-served defendant files a notice of removal, any ear-
24 lier-served defendant may consent to the removal even

1 though that earlier-served defendant did not previously
2 initiate or consent to removal.

3 “(3) Except as provided in subsection (c), if the case
4 stated by the initial pleading is not removable, a notice
5 of removal may be filed within thirty days after receipt
6 by the defendant, through service or otherwise, of a copy
7 of an amended pleading, motion, order or other paper
8 from which it may first be ascertained that the case is
9 one which is or has become removable.”;

10 (C) by striking subsection (c) and inserting
11 the following:

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

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

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

25 “(i) nonmonetary relief; or

1 “(ii) a money judgment, but the State
2 practice either does not permit demand for a
3 specific sum or permits recovery of damages in
4 excess of the amount demanded; and

5 “(B) removal of the action is proper on the
6 basis of an amount in controversy asserted under
7 subparagraph (A) if the district court finds, by the
8 preponderance of the evidence, that the amount in
9 controversy exceeds the amount specified in section
10 1332(a).

11 “(3)(A) If the case stated by the initial pleading is
12 not removable solely because the amount in controversy
13 does not exceed the amount specified in section 1332(a),
14 information relating to the amount in controversy in the
15 record of the State proceeding, or in responses to dis-
16 covery, shall be treated as an ‘other paper’ under sub-
17 section (b)(3).

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

23 (4) Section 1446 is further amended—

24 (A) in subsection (d), by striking “(d)
25 Promptly” and inserting “(d) NOTICE TO AD-

1 VERSE PARTIES AND STATE COURT.—Prompt-
2 ly”;

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

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

6 (D) in subsection (f), by striking “(f) With
7 respect” and inserting “(e) COUNTERCLAIM IN
8 337 PROCEEDING.—With respect”.

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

12 **“§ 1455. Procedure for removal of criminal prosecu-
13 tions**

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

24 “(b) REQUIREMENTS.—(1) A notice of removal of a
25 criminal prosecution shall be filed not later than 30 days

1 after the arraignment in the State court, or at any time
2 before trial, whichever is earlier, except that for good
3 cause shown the United States district court may enter
4 an order granting the defendant or defendants leave to
5 file the notice at a later time.

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

14 “(3) The filing of a notice of removal of a criminal
15 prosecution shall not prevent the State court in which such
16 prosecution is pending from proceeding further, except
17 that a judgment of conviction shall not be entered unless
18 the prosecution is first remanded.

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

24 “(5) If the United States district court does not order
25 the summary remand of such prosecution, it shall order

1 an evidentiary hearing to be held promptly and, after such
2 hearing, shall make such disposition of the prosecution as
3 justice shall require. If the United States district court
4 determines that removal shall be permitted, it shall so no-
5 tify the State court in which prosecution is pending, which
6 shall proceed no further.

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

14 (d) CONFORMING AMENDMENTS.—

15 (1) The table of sections for chapter 89 of title
16 28, United States Code, is amended—

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

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

22 (C) by adding at the end the following new
23 item:

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

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

4 **SEC. 104. EFFECTIVE DATE.**

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

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

16 **TITLE II—VENUE AND**
17 **TRANSFER IMPROVEMENTS**

18 **SEC. 201. SCOPE AND DEFINITIONS.**

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

22 **“§ 1390. Scope**

23 “(a) VENUE DEFINED.—As used in this chapter, the
24 term ‘venue’ refers to the geographic specification of the
25 proper court or courts for the litigation of a civil action

1 that is within the subject-matter jurisdiction of the district
 2 courts in general, and does not refer to any grant or re-
 3 striction of subject-matter jurisdiction providing for a civil
 4 action to be adjudicated only by the district court for a
 5 particular district or districts.

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

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

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

“1390. Scope.”.

22 **SEC. 202. VENUE GENERALLY.**

23 Section 1391 of title 28, United States Code, is
 24 amended as follows:

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

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

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

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

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

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

16 “(2) a judicial district in which a substantial
17 part of the events or omissions giving rise to the
18 claim occurred, or a substantial part of property
19 that is the subject of the action is situated; or

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

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

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

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

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

19 “(d) RESIDENCY OF CORPORATIONS IN STATES
20 WITH MULTIPLE DISTRICTS.—For purposes of venue
21 under this chapter, in a State which has more than one
22 judicial district and in which a defendant that is a cor-
23 poration is subject to personal jurisdiction at the time an
24 action is commenced, such corporation shall be deemed to
25 reside in any district in that State within which its con-

1 tacts would be sufficient to subject it to personal jurisdic-
 2 tion if that district were a separate State, and, if there
 3 is no such district, the corporation shall be deemed to re-
 4 side in the district within which it has the most significant
 5 contacts.”.

6 (2) In subsection (e)—

7 (A) in the first paragraph—

8 (i) by striking “(1)”, “(2)”, and “(3)”
 9 and inserting “(A)”, “(B)”, and “(C)”, re-
 10 spectively; and

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

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

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

16 (B) in the second undesignated paragraph
 17 by striking “The summons and complaint” and
 18 inserting the following:

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

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

23 (4) In subsection (g), by striking “(g) A civil
 24 action” and inserting “(g) MULTIPARTY,
 25 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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