

111TH CONGRESS
1ST SESSION

H. R. 4113

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2009

Mr. SMITH of Texas (for himself and Mr. COBLE) introduced the following bill; which was referred to the Committee on the Judiciary

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 2009”.

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. Indexing the amount in controversy.
- Sec. 104. Facilitating use of declarations to specify damages.
- Sec. 105. Removal and remand procedures.
- Sec. 106. 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. Cure or waiver of defects.
- Sec. 206. Effective date.

1 **TITLE I—JURISDICTIONAL** 2 **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

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

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—

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

3 (2) by striking “the State” and inserting “the
4 State or foreign state”; and

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

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

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

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

15 **SEC. 103. INDEXING THE AMOUNT IN CONTROVERSY.**

16 (a) IN GENERAL.—Section 1332 of title 28, United
17 States Code, is amended by adding at the end the fol-
18 lowing new subsection:

19 “(f)(1) Effective on January 1, 2011, and January
20 1 of each fifth year thereafter, the dollar amount then in
21 effect as the minimum amount in controversy applicable
22 under subsection (a) shall be adjusted by an amount,
23 rounded to the nearest \$5,000 (or, if midway between mul-
24 tiples of \$5,000, to the next higher multiple of \$5,000),
25 which reflects the change in the Consumer Price Index for

1 the month of September of the appropriate year, over the
2 Consumer Price Index for the month of September of the
3 fifth year preceding the appropriate year.

4 “(2) The Director of the Administrative Office of the
5 United States Courts shall determine the amount of each
6 adjustment under paragraph (1) and, not later than No-
7 vember 15 of the appropriate year, shall submit for publi-
8 cation in the Federal Register the amount (and the per-
9 centage change in the Consumer Price Index that is the
10 basis for the amount) and the new minimum amount in
11 controversy to take effect on January 1 of the succeeding
12 calendar year.

13 “(3) As used in this subsection—

14 “(A) the term ‘appropriate year’ means the cal-
15 endar year preceding the calendar year in which the
16 adjustment under paragraph (1) is to take effect;
17 and

18 “(B) the term ‘Consumer Price Index’ means
19 the Consumer Price Index for All Urban Consumers
20 published by the Department of Labor.”.

21 (b) CONFORMING AMENDMENT.—Section 1332(a) of
22 title 28, United States Code, is amended by inserting “as
23 adjusted under subsection (f),” after “\$75,000,”.

1 **SEC. 104. FACILITATING USE OF DECLARATIONS TO SPECI-**
2 **FY DAMAGES.**

3 (a) REMOVAL GENERALLY.—Section 1441(a) of title
4 28, United States Code, is amended by adding at the end
5 the following new sentence: “If the plaintiff has filed a
6 declaration in State court, as part of or in addition to the
7 initial pleading, providing that the plaintiff will neither
8 seek nor accept an award of damages or entry of other
9 relief exceeding the amount specified in section 1332(a),
10 the case may not be removed on the basis of the jurisdic-
11 tion under section 1332(a) as long as the plaintiff abides
12 by the declaration and the declaration is binding under
13 the laws and practice of the State. If the plaintiff has filed
14 such a declaration in State court but thereafter fails to
15 abide by that declaration, the defendant or defendants
16 may file a notice of removal within 30 days after receiving,
17 through service or otherwise, a copy of an amended plead-
18 ing, motion, order or other paper from which it may first
19 be ascertained that the plaintiff seeks or is willing to ac-
20 cept an award of damages or other relief exceeding the
21 amount specified in section 1332(a).”.

22 (b) PROCEDURE AFTER REMOVAL.—Section 1447 of
23 title 28, United States Code, is amended by adding at the
24 end the following new subsection:

25 “(f) Within 30 days after the filing of a notice of re-
26 moval of a civil action in which the district court’s removal

1 jurisdiction rests solely on original jurisdiction under sec-
2 tion 1332(a), the plaintiff may file a declaration with the
3 district court providing that the plaintiff will neither seek
4 nor accept an award of damages or entry of other relief
5 exceeding the amount specified in section 1332(a) of this
6 title. Upon the filing of such a declaration, the district
7 court shall remand the action to State court unless equi-
8 table circumstances warrant retaining the case.”.

9 **SEC. 105. REMOVAL AND REMAND PROCEDURES.**

10 (a) **ACTIONS REMOVABLE GENERALLY.**—Section
11 1441 of title 28, United States Code, is amended—

12 (1) by amending subsection (c) to read as fol-
13 lows:

14 “(c)(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).”; and

7 (2) in subsection (f), by striking “under this
8 section” and inserting “under this title or other ap-
9 plicable law”.

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

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

15 **“§ 1446. Procedure for removal of civil actions”.**

16 (2) Subsection (a) is amended by striking “or
17 criminal prosecution”.

18 (3) Subsection (b) is amended—

19 (A) by inserting “(1)” after “(b)”;

20 (B) by designating the second paragraph
21 as paragraph (3);

22 (C) by inserting after paragraph (1) (as
23 designated by subparagraph (A) of this para-
24 graph) the following:

1 “(2) When a civil action is removed solely under sec-
2 tion 1441(a), all defendants who have been properly joined
3 and served must join in or consent to the removal of the
4 action. A defendant shall have 30 days after receipt by
5 or service on that defendant of the initial pleading or sum-
6 mons described in paragraph (1) to file the notice of re-
7 moval. During the 30-day period before a defendant files
8 a notice of removal, any other defendant served before the
9 beginning of that 30-day period may consent to the re-
10 moval by the later-served defendant even though that ear-
11 lier-served defendant did not previously initiate or consent
12 to removal.”;

13 (D) in paragraph (3) (as designated by
14 subparagraph (B) of this paragraph), by strik-
15 ing “action.” and inserting “action, unless equi-
16 table considerations warrant removal. Such eq-
17 uitable considerations include whether the
18 plaintiff has acted in bad faith, whether the de-
19 fendant has acted diligently in seeking to re-
20 move the action, and whether the case has pro-
21 gressed in State court to a point where removal
22 would be disruptive.”; and

23 (E) by adding at the end the following:

24 “(4) If removal of a civil action is sought on the basis
25 of the jurisdiction conferred by section 1332(a), the sum

1 demanded in good faith in the initial pleading shall be
2 deemed to be the amount in controversy, except that—

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

5 “(i) nonmonetary relief; or

6 “(ii) a money judgment, but the State
7 practice either does not permit demand for a
8 specific sum or permits recovery of damages in
9 excess of the amount demanded; and

10 “(B) removal of the action is proper on the
11 basis of an amount in controversy asserted under
12 subparagraph (A) if the district court finds, by the
13 preponderance of the evidence, that the amount in
14 controversy exceeds the amount specified in section
15 1332(a).

16 “(5)(A) In a case to which paragraph (3) applies that
17 is not removable solely because the amount in controversy
18 does not exceed the amount specified in section 1332(a),
19 information relating to the amount in controversy in the
20 record of the State proceeding, or in responses to dis-
21 covery, shall be treated as an ‘other paper’ under para-
22 graph (3). If the defendant first receives such a paper,
23 through service or otherwise, within 1 year after the com-
24 mencement of the action but during the trial or within
25 30 days before the date set for trial, removal may be had

1 only upon a finding that the plaintiff deliberately failed
2 to disclose the actual amount in controversy in order to
3 prevent removal.

4 “(B) If the notice of removal is filed more than 1
5 year after commencement of the action and a finding is
6 made that the plaintiff deliberately failed to disclose the
7 actual amount in controversy to prevent removal, that
8 finding shall be deemed an equitable consideration under
9 paragraph (3) that warrants removal.”.

10 (4) Section 1446 is further amended—

11 (A) by striking “thirty days” each place it
12 appear and inserting “30 days”;

13 (B) by striking subsections (c) and (e);
14 and

15 (C) by redesignating subsections (d) and
16 (f) as subsections (c) and (d), respectively.

17 (c) PROCEDURE FOR REMOVAL OF CRIMINAL AC-
18 TIONS.—Chapter 89 of title 28, United States Code, is
19 amended by inserting after section 1446 the following new
20 section:

21 “§ 1446a. Procedure for removal of criminal prosecu-
22 tions

23 “(a) NOTICE OF REMOVAL.—A defendant or defend-
24 ants desiring to remove any criminal prosecution from a
25 State court shall file in the district court of the United

1 States for the district and division within which such pros-
2 ecution is pending a notice of removal signed pursuant to
3 Rule 11 of the Federal Rules of Civil Procedure and con-
4 taining a short and plain statement of the grounds for
5 removal, together with a copy of all process, pleadings, and
6 orders served upon such defendant or defendants in such
7 action.

8 “(b) REQUIREMENTS.—(1) A notice of removal of a
9 criminal prosecution shall be filed not later than 30 days
10 after the arraignment in the State court, or at any time
11 before trial, whichever is earlier, except that for good
12 cause shown the United States district court may enter
13 an order granting the defendant or defendants leave to
14 file the notice at a later time.

15 “(2) A notice of removal of a criminal prosecution
16 shall include all grounds for such removal. A failure to
17 state grounds that exist at the time of the filing of the
18 notice shall constitute a waiver of such grounds, and a
19 second notice may be filed only on grounds not existing
20 at the time of the original notice. For good cause shown,
21 the United States district court may grant relief from the
22 limitations of this paragraph.

23 “(3) The filing of a notice of removal of a criminal
24 prosecution shall not prevent the State court in which such
25 prosecution is pending from proceeding further, except

1 that a judgment of conviction shall not be entered unless
2 the prosecution is first remanded.

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

8 “(5) If the United States district court does not order
9 the summary remand of such prosecution, it shall order
10 an evidentiary hearing to be held promptly and, after such
11 hearing, shall make such disposition of the prosecution as
12 justice shall require. If the United States district court
13 determines that removal shall be permitted, it shall so no-
14 tify the State court in which prosecution is pending, which
15 shall proceed no further.

16 “(c) WRIT OF HABEAS CORPUS.—If the defendant
17 or defendants are in actual custody on process issued by
18 the State court, the district court shall issue its writ of
19 habeas corpus, and the marshal shall thereupon take such
20 defendant or defendants into the marshal’s custody and
21 delivery a copy of the writ to the clerk of such State
22 court.”.

23 (d) CONFORMING AMENDMENTS.—The table of sec-
24 tions for chapter 89 of title 28, United States Code, is
25 amended—

1 (1) in the item relating to section 1446, by in-
2 serting “of civil actions” after “removal”; and

3 (2) by inserting after the item relating to sec-
4 tion 1446 the following new item:

“1446a. Procedure for removal of criminal prosecutions.”.

5 **SEC. 106. EFFECTIVE DATE.**

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

11 (b) **APPLICABILITY OF CHANGE IN JURISDICTIONAL**
12 **AMOUNT.**—Any change in the amount in controversy
13 under section 1332(a) of title 28, United States Code, that
14 is made pursuant to the amendments made by section 103
15 shall apply to any action commenced on or after the date
16 such change becomes effective.

17 (c) **TREATMENT OF CASES REMOVED TO FEDERAL**
18 **COURT.**—For purposes of subsections (a) and (b), an ac-
19 tion or prosecution commenced in State court and re-
20 moved to Federal court shall be deemed to commence on
21 the date the action or prosecution was commenced in State
22 court.

1 **TITLE II—VENUE AND**
2 **TRANSFER IMPROVEMENTS**

3 **SEC. 201. SCOPE AND DEFINITIONS.**

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

7 **“§ 1390. Scope**

8 “(a) VENUE DEFINED.—As used in this chapter, the
9 term ‘venue’ refers to the geographic specification of the
10 proper court or courts for the litigation of a civil action
11 that is within the subject-matter jurisdiction of the district
12 courts in general, and does not refer to any grant or re-
13 striction of subject-matter jurisdiction providing for a civil
14 action to be adjudicated only by the district court for a
15 particular district or districts.

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

22 “(c) CLARIFICATION REGARDING CASES REMOVED
23 FROM STATE COURTS.—This chapter shall not determine
24 the district court to which a civil action pending in a State
25 court may be removed, but shall govern the transfer of

1 an action so removed as between districts and divisions
2 of the United States district courts.”.

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

“Sec. 1390. Scope.”.

7 **SEC. 202. VENUE GENERALLY.**

8 Section 1391 of title 28, United States Code, is
9 amended as follows:

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

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

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

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

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

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

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

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

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

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

15 “(2) a party with the capacity to sue and be
16 sued in its common name under applicable law,
17 whether or not incorporated, shall be deemed to re-
18 side, if a defendant, in any judicial district in which
19 such defendant is subject to the court’s personal ju-
20 risdiction in the civil action in question and, if a
21 plaintiff, only in the judicial district in which it
22 maintains its principal place of business; and

23 “(3) a defendant not resident in the United
24 States may be sued in any judicial district, and the
25 joinder of such a defendant shall be disregarded in

1 determining where the action may be brought with
2 respect to other defendants.

3 “(d) DIVISIONS WITHIN DISTRICT.—Notwith-
4 standing any other provision of law, a civil action that may
5 be brought in a judicial district may be brought in any
6 division thereof, subject to the power of the district court
7 to provide by local rule or court order for a civil action
8 to be brought in a particular division and for the transfer
9 of any civil action between divisions of the district.”.

10 (2) By redesignating subsections (e), (f), and
11 (g) as subsections (f), (g), and (h), respectively, and
12 inserting after subsection (d) the following new sub-
13 section:

14 “(e) For purposes of venue under this chapter, in a
15 State which has more than one judicial district and in
16 which a defendant that is a corporation is subject to per-
17 sonal jurisdiction at the time an action is commenced,
18 such corporation shall be deemed to reside in any district
19 in that State within which its contacts would be sufficient
20 to subject it to personal jurisdiction if that district were
21 a separate State, and, if there is no such district, the cor-
22 poration shall be deemed to reside in the district within
23 which it has the most significant contacts.”.

24 (3) In subsection (f), as redesignated—

25 (A) in the first paragraph—

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

4 (ii) by striking “(f) A civil action”
 5 and inserting the following:

6 “(f) ACTIONS WHERE DEFENDANT IS OFFICER OR
 7 EMPLOYEE OF THE UNITED STATES.—

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

9 (B) in the second undesignated paragraph
 10 by striking “The summons and complaint” and
 11 inserting the following:

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

13 (4) In subsection (g), as redesignated, by strik-
 14 ing “(g) A civil action” and inserting “(g) CIVIL AC-
 15 TIONS AGAINST A FOREIGN STATE.—A civil action”.

16 (5) In subsection (h), as redesignated, by strik-
 17 ing “(h) A civil action” and inserting “(h)
 18 MULTIPARTY, MULTIFORUM, LITIGATION.—A civil
 19 action”.

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

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

1 **SEC. 204. CHANGE OF VENUE.**

2 Section 1404 of title 28, United States Code, is
3 amended—

4 (1) in subsection (a), by striking “or division
5 where it might have been brought”;

6 (2) in subsection (b), by striking the first sen-
7 tence and inserting the following: “Any civil action
8 may, in the discretion of the district court, be trans-
9 ferred anywhere within the district for trial or for
10 any other phase of the litigation.”;

11 (3) by striking subsection (c); and

12 (4) in subsection (d)—

13 (A) by redesignating subsection (d) as sub-
14 section (c); and

15 (B) by striking “As used in this section”
16 and inserting “Transfers from a district court
17 of the United States to the District Court of
18 Guam, the District Court for the Northern
19 Mariana Islands, or the District Court of the
20 Virgin Islands shall not be permitted under this
21 section. As otherwise used in this section,”.

22 **SEC. 205. CURE OR WAIVER OF DEFECTS.**

23 Section 1406(a) of title 28, United States Code, is
24 amended—

25 (1) by striking “division or”; and

26 (2) by striking “or division”.

1 **SEC. 206. EFFECTIVE DATE.**

2 The amendments made by this title—

3 (1) shall take effect upon the expiration of the
4 30-day period beginning on the date of the enact-
5 ment of this Act; and

6 (2) shall apply to—

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

10 (B) any action that is removed from a
11 State court to a United States district court
12 and that had been commenced, within the
13 meaning of State law, on or after such effective
14 date.

○