

Calendar No. 197

112TH CONGRESS
1ST SESSION

H. R. 368

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, without amendment

AN ACT

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”.

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