

106TH CONGRESS  
1ST SESSION

# H. R. 605

To amend title 38, United States Code, to improve retirement authorities applicable to judges of the United States Court of Appeals for Veterans Claims, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1999

Mr. STUMP (for himself and Mr. EVANS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

---

## A BILL

To amend title 38, United States Code, to improve retirement authorities applicable to judges of the United States Court of Appeals for Veterans Claims, 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 “Court of Appeals for  
5 Veterans Claims Act of 1999”.

1 **SEC. 2. AUTHORITY TO PRESCRIBE RULES AND REGULA-**  
2 **TIONS.**

3 Section 7254 of title 38, United States Code, is  
4 amended by adding at the end the following new sub-  
5 section:

6 “(f) The Court may prescribe rules and regulations  
7 to carry out this chapter.”.

8 **SEC. 3. RECALL OF RETIRED JUDGES.**

9 (a) **AUTHORITY TO RECALL RETIRED JUDGES.—**  
10 Chapter 72 of title 38, United States Code, is amended  
11 by inserting after section 7256 the following new section:

12 **“§ 7257. Recall of retired judges**

13 “(a)(1) A retired judge of the Court may be recalled  
14 for further service on the Court in accordance with this  
15 section. To be eligible to be recalled for such service, a  
16 retired judge must at the time of the judge’s retirement  
17 provide to the chief judge of the Court (or, in the case  
18 of the chief judge, to the clerk of the Court) notice in writ-  
19 ing that the retired judge is available for further service  
20 on the Court in accordance with this section and is willing  
21 to be recalled under this section. Such a notice provided  
22 by a retired judge is irrevocable.

23 “(2) For the purposes of this section—

24 “(A) a retired judge is a judge of the Court of  
25 Veterans Appeals who retires from the Court under

1 section 7296 of this title or under chapter 83 or 84  
2 of title 5; and

3 “(B) a recall-eligible retired judge is a retired  
4 judge who has provided a notice under paragraph  
5 (1).

6 “(b)(1) The chief judge may recall for further service  
7 on the court a recall-eligible retired judge in accordance  
8 with this section. Such a recall shall be made upon written  
9 certification by the chief judge that substantial service is  
10 expected to be performed by the retired judge for such  
11 period, not to exceed 90 days (or the equivalent), as deter-  
12 mined by the chief judge to be necessary to meet the needs  
13 of the Court.

14 “(2) A recall-eligible retired judge may not be re-  
15 called for more than 90 days (or the equivalent) during  
16 any calendar year without the judge’s consent or for more  
17 than a total of 180 days (or the equivalent) during any  
18 calendar year.

19 “(3) If a recall-eligible retired judge is recalled by the  
20 chief judge in accordance with this section and (other than  
21 in the case of a judge who has previously during that cal-  
22 endar year served at least 90 days (or the equivalent) of  
23 recalled service on the court) declines (other than by rea-  
24 son of disability) to perform the service to which recalled,

1 the chief judge shall remove that retired judge from the  
2 status of a recall-eligible judge.

3 “(4) A recall-eligible retired judge who becomes per-  
4 manently disabled and as a result of that disability is un-  
5 able to perform further service on the court shall be re-  
6 moved from the status of a recall-eligible judge. Deter-  
7 mination of such a disability shall be made in the same  
8 manner as is applicable to judges of the United States  
9 under section 371 of title 28.

10 “(c) A retired judge who is recalled under this section  
11 may exercise all of the powers and duties of the office of  
12 a judge in active service.

13 “(d)(1) The pay of a recall-eligible retired judge who  
14 retired under section 7296 of this title is specified in sub-  
15 section (c) of that section.

16 “(2) A judge who is recalled under this section who  
17 retired under chapter 83 or 84 of title 5 shall be paid,  
18 during the period for which the judge serves in recall sta-  
19 tus, pay at the rate of pay in effect under section 7253(e)  
20 of this title for a judge performing active service, less the  
21 amount of the judge’s annuity under the applicable provi-  
22 sions of chapter 83 or 84 of title 5.

23 “(e)(1) Except as provided in subsection (d), a judge  
24 who is recalled under this section who retired under chap-

1 ter 83 or 84 of title 5 shall be considered to be a reem-  
 2 ployed annuitant under that chapter.

3 “(2) Nothing in this section affects the right of a  
 4 judge who retired under chapter 83 or 84 of title 5 to  
 5 serve as a reemployed annuitant in accordance with the  
 6 provisions of title 5.”.

7 (b) CLERICAL AMENDMENT.—The table of sections  
 8 at the beginning of such chapter is amended by inserting  
 9 after the item relating to section 7256 the following new  
 10 item:

“7257. Recall of retired judges.”.

11 **SEC. 4. CALCULATION OF YEARS OF SERVICE AS A JUDGE.**

12 Section 7296(b) of title 38, United States Code, is  
 13 amended by adding at the end the following new para-  
 14 graph:

15 “(4) For purposes of calculating the years of service  
 16 of an individual under this subsection and subsection (c),  
 17 only those years of service as a judge of the Court shall  
 18 be credited. In determining the number of years of such  
 19 service, that portion of the aggregate number of years of  
 20 such service that is a fractional part of one year shall be  
 21 disregarded if less than 183 days and shall be credited  
 22 as a full year if 183 days or more.”.

23 **SEC. 5. JUDGES’ RETIRED PAY.**

24 (a) IN GENERAL.—Subsection (c)(1) of section 7296  
 25 of title 38, United States Code, is amended by striking

1 “at the rate of pay in effect at the time of retirement.”

2 and inserting the following: “as follows:

3           “(A) In the case of a judge who is a recall-eligible  
4       ble retired judge under section 7257 of this title or  
5       who was a recall-eligible retired judge under that  
6       section and was removed from recall status under  
7       subsection (b)(4) of that section by reason of disability,  
8       the retired pay of the judge shall be the pay of  
9       a judge of the court (or of the chief judge, if the individual  
10      retired from service as chief judge).

11          “(B) In the case of a judge who at the time of  
12      retirement did not provide notice under section 7257  
13      of this title of availability for service in a recalled  
14      status, the retired pay of the judge shall be the rate  
15      of pay applicable to that judge at the time of retirement.  
16      ment.

17          “(C) In the case of a judge who was a recall-eligible  
18      retired judge under section 7257 of this title  
19      and was removed from recall status under subsection  
20      (b)(3) of that section, the retired pay of the judge  
21      shall be the pay of the judge at the time of the removal  
22      from recall status.”.

23      (b) COST-OF-LIVING ADJUSTMENTS.—Subsection (f)  
24      of such section is amended by adding at the end the following  
25      new paragraph:

1       “(3)(A) A cost-of-living adjustment provided by law  
 2 in annuities payable under civil service retirement laws  
 3 shall apply to retired pay under this section only in the  
 4 case of retired pay computed under paragraph (2) of sub-  
 5 section (c).

6       “(B)(i) If such a cost-of-living adjustment would (but  
 7 for this subparagraph) result in the retired pay of a re-  
 8 tired chief judge being in excess of the annual rate of pay  
 9 in effect for the chief judge of the court as provided in  
 10 section 7253(e)(1) of this title, such adjustment may be  
 11 made in the retired pay of that retired chief judge only  
 12 in such amount as results in the retired pay of the retired  
 13 chief judge being equal to that annual rate of pay (as in  
 14 effect on the effective date of such adjustment).

15       “(ii) If such a cost-of-living adjustment would (but  
 16 for this subparagraph) result in the retired pay of a re-  
 17 tired judge (other than a retired chief judge) being in ex-  
 18 cess of the annual rate of pay in effect for judges of the  
 19 court as provided in section 7253(e)(2) of this title, such  
 20 adjustment may be made only in such amount as results  
 21 in the retired pay of the retired judge being equal to that  
 22 annual rate of pay (as in effect on the effective date of  
 23 such adjustment).”.

24       (c) COORDINATION WITH MILITARY RETIRED  
 25 PAY.—Subsection (f) of such section is further amended

1 by adding after paragraph (3), as added by subsection (b),  
 2 the following new paragraph:

3 “(4) Notwithstanding subsection (c) of section 5532  
 4 of title 5, if a regular or reserve member of a uniformed  
 5 service who is receiving retired or retainer pay becomes  
 6 a judge of the court, or becomes eligible therefor while  
 7 a judge of the court, such retired or retainer pay shall  
 8 not be paid during the judge’s regular active service on  
 9 the court, but shall be resumed or commenced without re-  
 10 duction upon retirement as a judge.”.

11 **SEC. 6. LIMITATION ON ACTIVITIES OF RETIRED JUDGES.**

12 (a) IN GENERAL.—Chapter 72 of title 38, United  
 13 States Code, is amended by adding at the end the follow-  
 14 ing new section:

15 **“§ 7299. Limitation on activities of retired judges**

16 “If a retired judge of the Court in the practice of  
 17 law represents (or supervises or directs the representation  
 18 of) a client in making any claim relating to veterans’ bene-  
 19 fits against the United States or any agency thereof, the  
 20 retired judge shall forfeit all rights to retired pay under  
 21 section 7296 of this title or under chapter 83 or 84 of  
 22 title 5 for the period beginning on the date on which the  
 23 representation begins and ending one year after the date  
 24 on which the representation ends.”.



1 (b) CLERICAL AMENDMENT.—The table of sections  
 2 at the beginning of such chapter is amended by adding  
 3 at the end the following new item:

“7299. Limitation on activities of retired judges.”.

4 **SEC. 7. EARLY RETIREMENT AUTHORITY FOR CURRENT**  
 5 **JUDGES IN ORDER TO PROVIDE FOR STAG-**  
 6 **GERED TERMS OF JUDGES.**

7 (a) RETIREMENT AUTHORIZED.—One eligible judge  
 8 may retire in accordance with this section with respect to  
 9 each year beginning in 1999 and ending in 2003.

10 (b) ELIGIBLE JUDGES.—For purposes of this section,  
 11 an eligible judge is an associate judge of the United States  
 12 Court of Appeals for Veterans Claims who—

13 (1) has at least 10 years of service creditable  
 14 under section 7296 of title 38, United States Code;

15 (2) has made an election to receive retired pay  
 16 under section 7296 of such title;

17 (3) has at least 20 years of service described in  
 18 section 7297(l) of such title; and

19 (4) is at least 55 years of age.

20 (c) MULTIPLE ELIGIBLE JUDGES.—If for any year  
 21 specified in subsection (a) more than one eligible judge  
 22 provides notice in accordance with subsection (d), the  
 23 judge who has the greatest seniority as a judge of the  
 24 United States Court of Appeals for Veterans Claims shall

1 be the judge who is eligible to retire in accordance with  
2 this section in that year.

3 (d) NOTICE.—An eligible judge who desires to retire  
4 in accordance with this section with respect to any year  
5 covered by subsection (a) shall provide to the President  
6 and the chief judge of the United States Court of Appeals  
7 for Veterans Claims written notice to that effect not later  
8 than April 1 of that year, except that in the case of an  
9 eligible judge desiring to retire with respect to 1999, such  
10 notice shall be provided not later than November 1, 1999,  
11 or 15 days after the date of the enactment of this Act,  
12 whichever is later. Such a notice shall specify the retire-  
13 ment date in accordance with subsection (e). Notice pro-  
14 vided under this subsection shall be irrevocable.

15 (e) DATE OF RETIREMENT.—A judge who is eligible  
16 to retire in accordance with this section shall be retired  
17 during the fiscal year in which notice is provided pursuant  
18 to subsection (d), but not earlier than 90 days after the  
19 date on which that notice is provided, except that a judge  
20 retired in accordance with this section with respect to  
21 1999 shall be retired not earlier than 90 days, and not  
22 later than 120 days, after the date on which notice is pro-  
23 vided pursuant to subsection (d).

24 (f) APPLICABLE PROVISIONS.—Except as provided in  
25 subsection (g), a judge retired in accordance with this sec-

1 tion shall be considered for all purposes to be retired under  
2 section 7296(b)(1) of title 38, United States Code.

3 (g) RATE OF RETIRED PAY.—The rate of retired pay  
4 for a judge retiring in accordance with this section is—

5 (1) the rate applicable to that judge under sec-  
6 tion 7296(c)(1) of title 38, United States Code, mul-  
7 tiplied by

8 (2) the fraction (not in excess of 1) in which—

9 (A) the numerator is the sum of: (i) the  
10 number of years of service of the judge as a  
11 judge of the United States Court of Appeals for  
12 Veterans Claims creditable under section 7296  
13 of such title; and (ii) the age of the judge; and

14 (B) the denominator is 80.

15 (h) ADJUSTMENTS IN RETIRED PAY FOR JUDGES  
16 AVAILABLE FOR RECALL.—Subject to section  
17 7296(f)(3)(B) of title 38, United States Code, an adjust-  
18 ment provided by law in annuities payable under civil serv-  
19 ice retirement laws shall apply to retired pay under this  
20 section in the case of a judge who is a recall-eligible retired  
21 judge under section 7257 of title 38, United States Code,  
22 or who was a recall-eligible retired judge under that sec-  
23 tion and was removed from recall status under subsection  
24 (b)(4) of that section by reason of disability.

1       (i) DUTY OF ACTUARY.—Section 7298(e)(2) of title  
2 38, United States Code, is amended—

3           (1) by redesignating subparagraph (C) as sub-  
4 paragraph (D); and

5           (2) by inserting after subparagraph (B) the fol-  
6 lowing new subparagraph:

7       “(C) For purposes of subparagraph (B), the term  
8 ‘present value’ includes a value determined by an actuary  
9 with respect to a payment that may be made under sub-  
10 section (b) from the retirement fund within the contempla-  
11 tion of law.”.

○