

114TH CONGRESS  
1ST SESSION

# S. 1353

To ensure appropriate judicial review of Federal Government actions by amending the prohibition on the exercise of jurisdiction by the United States Court of Federal Claims of certain claims pending in other courts.

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## IN THE SENATE OF THE UNITED STATES

MAY 14, 2015

Mr. WICKER (for himself, Mr. LEAHY, Mr. CORNYN, and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To ensure appropriate judicial review of Federal Government actions by amending the prohibition on the exercise of jurisdiction by the United States Court of Federal Claims of certain claims pending in other courts.

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 “Ensuring Access to  
5       Justice for Claims Against the United States Act”.

1 **SEC. 2. JURISDICTION OF UNITED STATES COURT OF FED-**  
2 **ERAL CLAIMS.**

3 (a) AMENDMENTS TO TITLE 28, UNITED STATES  
4 CODE.—

5 (1) IN GENERAL.—Section 1500 of title 28,  
6 United States Code, is amended to read as follows:

7 **“§ 1500. Presumption of stay**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘court’ means any of the courts  
10 described in section 610; and

11 “(2) the term ‘Court of Federal Claims’ means  
12 the United States Court of Federal Claims.

13 “(b) PRESUMPTION OF STAY.—Except as provided in  
14 subsection (d), if a civil action is pending in, or on appeal  
15 from, the Court of Federal Claims, and the plaintiff or  
16 assignee of the plaintiff also has pending in any other  
17 court a civil action that includes a claim against the  
18 United States or an agency or officer of the United States  
19 arising from substantially the same set of operative facts,  
20 the court presiding over the action that was filed later  
21 shall stay the action, in whole or in part, until the action  
22 that was filed first is no longer pending.

23 “(c) DETERMINING FIRST-FILED ACTION.—

24 “(1) APPEALS.—For purposes of subsection  
25 (b), the date of filing for a civil action that is pend-  
26 ing on appeal from the Court of Federal Claims is

1 the date on which the action was filed in the Court  
2 of Federal Claims.

3 “(2) ACTIONS OR APPEALS FILED ON SAME  
4 DAY.—For purposes of subsection (b), if the actions  
5 described in subsection (b) were filed on the same  
6 day, without regard to the time of day, the action  
7 that is pending in, or on appeal from, the Court of  
8 Federal Claims shall be treated as having been filed  
9 first.

10 “(d) EXCEPTIONS.—The requirement to stay an ac-  
11 tion under subsection (b) shall not apply if—

12 “(1) the parties in each of the actions that in-  
13 clude a claim based on substantially the same set of  
14 operative facts otherwise agree; or

15 “(2) in exceptional circumstances the court  
16 finds, upon the motion of any party, that termi-  
17 nation or modification of the stay is necessary to  
18 preserve material evidence or to prevent irreparable  
19 prejudice to that party.

20 The United States Court of Appeals for the Federal Cir-  
21 cuit shall have jurisdiction of an appeal from an interlocu-  
22 tory order terminating or modifying a stay pursuant to  
23 paragraph (2).”.

24 (2) TECHNICAL AND CONFORMING AMEND-  
25 MENT.—The table of sections for chapter 91 of title

1 28, United States Code, is amended by striking the  
2 item relating to section 1500 and inserting the fol-  
3 lowing:

“1500. Presumption of stay.”.

4 (b) APPLICABILITY.—

5 (1) IN GENERAL.—Section 1500 of title 28,  
6 United States Code, as amended by subsection (a),  
7 shall apply to any action pending on, or filed on or  
8 after, the date of the enactment of this Act, but does  
9 not apply in a case in which the action filed later (as  
10 determined in accordance with such section, as so  
11 amended) is pending (on such date of enactment) in  
12 a court of appeals of the United States or the Su-  
13 preme Court of the United States, or in a case in  
14 which a judgment has been entered as of such date  
15 of enactment but for which the time to file an appeal  
16 has not expired.

17 (2) PREVIOUS JURISDICTIONAL BAR.—Any  
18 claim in an action pending on the date of the enact-  
19 ment of this Act either in a court of appeals of the  
20 United States or the Supreme Court of the United  
21 States, or for which the time to file an appeal has  
22 not expired, shall not be subject to the jurisdictional  
23 bar under section 1500 of title 28, United States

1 Code, as in effect on the day before the date of the  
2 enactment of this Act.

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