

116TH CONGRESS
2D SESSION

S. 4988

To provide for the modernization of electronic case management systems,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2020

Mr. PORTMAN (for himself and Mr. WYDEN) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the modernization of electronic case
management systems, 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 “Open Courts Act of
5 2020”.

6 **SEC. 2. MODERNIZATION OF ELECTRONIC COURT RECORDS**
7 **SYSTEMS.**

8 (a) CONSOLIDATION.—Not later than the date speci-
9 fied in subsection (e), the Director of the Administrative
10 Office of the United States Courts, in coordination with

1 the Administrator of General Services, shall develop, de-
2 liver, and sustain, consistent with the requirements of this
3 section and section 3, one system for all public court
4 records.

5 (b) REQUIREMENTS OF SYSTEM.—The system de-
6 scribed under subsection (a) shall comply with the fol-
7 lowing requirements:

8 (1) The system shall provide search functions,
9 developed in coordination with the Administrator of
10 General Services, for use by the public and by par-
11 ties before the court.

12 (2) The system shall make public court records
13 automatically accessible to the public upon filing.

14 (3) Any information made available through a
15 website established pursuant to section 205 of the
16 E–Government Act of 2002 shall be included in the
17 system.

18 (4) Any website for the system shall substan-
19 tially comply with the requirements under sub-
20 sections (b) and (c) of section 205 of the E–Govern-
21 ment Act of 2002.

22 (5) To the extent practicable, external websites
23 shall be able to link to documents on the system.
24 Each website established pursuant to section 205 of

1 the E–Government Act of 2002 shall contain a link
2 to the system.

3 (c) DATA STANDARDS.—

4 (1) ESTABLISHMENT OF DATA STANDARDS.—

5 The Director of the Administrative Office of the
6 United States Courts, in coordination with the Ad-
7 ministrator of General Services and the Archivist of
8 the United States, shall establish data standards for
9 the system established under subsection (a).

10 (2) REQUIREMENTS.—The data standards es-
11 tablished under paragraph (1) shall, to the extent
12 reasonable and practicable—

13 (A) incorporate widely accepted common
14 data elements;

15 (B) incorporate a widely accepted, non-
16 proprietary, full text searchable, platform-inde-
17 pendent computer-readable format; and

18 (C) be capable of being continually up-
19 graded as necessary.

20 (3) DEADLINES.—Not later than 6 months
21 after the date of enactment of this Act, the Director
22 of the Administrative Office of the United States
23 Courts shall issue guidance to all Federal courts on
24 the data standards established under this section.

1 (d) USE OF TECHNOLOGY.—In carrying out the du-
 2 ties under subsection (a), the Director shall use modern
 3 technology in order—

4 (1) to improve security, data accessibility, data
 5 quality, affordability, and performance; and

6 (2) to minimize the burden on pro se litigants.

7 (e) DATE SPECIFIED.—The date specified in this
 8 subsection is the date that is 2 years after the date of
 9 the enactment of this Act, unless the Administrator of
 10 General Services certifies to Congress, by not later than
 11 90 days after such date of enactment, that an additional
 12 period of time is required. If the Administrator so cer-
 13 tifies, the date specified in this subsection is the date that
 14 is 3 years after the date of enactment of this Act.

15 (f) FUNDS FOR ESTABLISHMENT, OPERATION, AND
 16 MAINTENANCE OF MODERNIZED COURT RECORDS SYS-
 17 TEM.—

18 (1) SHORT TERM ACCESS FEES TO FUND ES-
 19 TABLISHMENT OF MODERNIZED COURT RECORDS
 20 SYSTEM.—

21 (A) IN GENERAL.—Section 303 of the Ju-
 22 diciary Appropriations Act, 1992 (title III of
 23 Public Law 102–140; 105 Stat. 807) (28
 24 U.S.C. 1913 note) is amended—

1 (i) in subsection (a), by inserting
2 “The Judicial Conference shall prescribe a
3 schedule of additional fees for any person
4 other than a government agency who ac-
5 crues such fees for access in an amount of
6 \$25,000 or greater in any quarter. All fees
7 collected shall be deposited as offsetting
8 collections to the Judiciary Information
9 Technology Fund pursuant to section
10 612(c)(1)(A) of title 28, United States
11 Code, to reimburse expenses incurred in
12 carrying out section 2 of the Open Courts
13 Act of 2020.” before “The Director of the
14 Administrative Office of the United States
15 Courts”; and

16 (ii) in subsection (b), by striking “All
17 fees hereafter” and inserting “Except as
18 otherwise provided in this section, all fees
19 hereafter”.

20 (B) EXCESS FEES.—Amounts deposited in
21 the Judiciary Information Technology Fund
22 pursuant to the amendments made by subpara-
23 graph (A) and not used to reimburse expenses
24 incurred in carrying out section 2 of this Act

1 may be used pursuant to section 612(a) of title
2 28, United States Code.

3 (C) EFFECTIVE DATE.—The amendment
4 made by subparagraph (A) shall take effect on
5 the date of enactment of this Act.

6 (2) FILING FEES TO FUND OPERATION AND
7 MAINTENANCE OF MODERNIZED COURT RECORDS
8 SYSTEM.—

9 (A) IN GENERAL.—Section 303 of the Ju-
10 diciary Appropriations Act, 1992 (title III of
11 Public Law 102–140; 105 Stat. 807) (28
12 U.S.C. 1913 note) is amended by striking sub-
13 sections (a) and (b), and inserting the fol-
14 lowing:

15 “(a) To cover the costs of carrying out section 2 of
16 the Open Courts Act of 2020, the Judicial Conference
17 may, only to the extent necessary, prescribe schedules of
18 reasonable filing fees, pursuant to sections 1913, 1914,
19 1926, 1930, and 1932 of title 28, United States Code,
20 which—

21 “(1) shall be based on the extent of use of the
22 system described under such section 2 for purposes
23 of such action;

24 “(2) shall in addition be based on factors in-
25 cluding the nature of the action and claim for relief,

1 the amount of damages demanded, the estimated
2 complexity of the type of action, and the interests of
3 justice;

4 “(3) may be prescribed for the filing of a coun-
5 terclaim;

6 “(4) shall not apply in the case of a pro se liti-
7 gant or litigant who certifies their financial hard-
8 ship; and

9 “(5) shall not be a basis for denying access to
10 the courts of the United States.

11 “(b) The Judicial Conference and the Director shall
12 transmit each schedule of fees prescribed under subsection
13 (a) to Congress at least 90 days before the schedule be-
14 comes effective. All fees collected under subsection (a)
15 shall be deposited as offsetting collections to the Judiciary
16 Information Technology Fund pursuant to section
17 612(c)(1)(A) of title 28, United States Code, to reimburse
18 expenses incurred in carrying out section 2 of the Open
19 Courts Act of 2020.

20 “(c) The Judicial Conference shall review a schedule
21 of fees prescribed under subsection (a) three years after
22 it becomes effective and every three years thereafter to
23 ensure that the fees meet the requirements of this section.
24 If the fees do not meet the requirements of this section,
25 the Judicial Conference shall prescribe a new schedule of

1 fees pursuant to subsection (a) and submit the new sched-
 2 ule of fees to Congress pursuant to subsection (b).

3 “(d) Amounts deposited to the Judiciary Information
 4 Technology Fund pursuant to this section and not used
 5 to reimburse expenses incurred in carrying out section 2
 6 of the Open Courts Act of 2020 may be used pursuant
 7 to section 612(a) of title 28, United States Code.”.

8 (B) EFFECTIVE DATE.—The amendment
 9 made by subparagraph (A) shall take effect on
 10 the date specified in subsection (e).

11 **SEC. 3. PUBLIC ACCESS TO ELECTRONIC COURT RECORDS**
 12 **SYSTEM REQUIREMENT.**

13 (a) IN GENERAL.—Not later than the date specified
 14 in subsection (d), the Director of the Administrative Office
 15 of the United States Courts, in coordination with the Ad-
 16 ministrator of General Services, shall make all materials
 17 in the system established under section 2 publicly acces-
 18 sible, free of charge.

19 (b) USE OF TECHNOLOGY.—In providing public ac-
 20 cess under subsection (a), the Director shall, in coordina-
 21 tion with the Administrator of General Services, use mod-
 22 ern technology in order—

23 (1) to improve security, data accessibility, ease
 24 of public access, affordability, and performance; and

25 (2) to minimize the burden on pro se litigants.

1 (c) DATE SPECIFIED.—The date specified in this
2 subsection is the date that is 2 years after the date of
3 the enactment of this Act, unless the Administrator of
4 General Services certifies to Congress, by not later than
5 90 days after such date of enactment, that an additional
6 period of time is required. If the Administrator so cer-
7 tifies, the date specified in this subsection is the date that
8 is 3 years after the date of enactment of this Act.

9 (d) FUNDING FOR PUBLIC ACCESS TO MODERNIZED
10 ELECTRONIC COURT RECORDS SYSTEM.—

11 (1) IN GENERAL.—Section 303 of the Judiciary
12 Appropriations Act, 1992 (title III of Public Law
13 102–140; 105 Stat. 807) (28 U.S.C. 1913 note) is
14 amended by adding at the end the following:

15 “(c)(1) To cover the costs of ensuring the public ac-
16 cessibility, free of charge, of all materials in the system
17 described under sections 2 and 3 of the Open Courts Act
18 of 2020 in accordance with section 3 of such Act, the Judi-
19 cial Conference shall collect an annual fee from Federal
20 agencies equal to the Public Access to Court Electronic
21 Records access fees paid by those agencies in 2018, as
22 adjusted for inflation. All fees collected under this sub-
23 section shall be deposited as offsetting collections to the
24 Judiciary Information Technology Fund pursuant to sec-
25 tion 612(c)(1)(A) of title 28, United States Code, to reim-

1 burse expenses incurred in providing services in accord-
 2 ance with section 3 of the Open Courts Act of 2020.

3 “(2) To cover any additional marginal costs of ensur-
 4 ing the public accessibility, free of charge, of all materials
 5 in the system described under sections 2 and 3 of the
 6 Open Courts Act of 2020 in accordance with section 3 of
 7 such Act, the Judicial Conference may prescribe schedules
 8 of reasonable filing fees, pursuant to sections 1913, 1914,
 9 1926, 1930, and 1932 of title 28, United States Code.
 10 The schedules—

11 “(A) shall be based on the extent of use of the
 12 system described under such section 2;

13 “(B) shall, in addition, be based on factors in-
 14 cluding the nature of the type of action and claim
 15 for relief, the amount of damages demanded, the es-
 16 timated complexity of the type of action, and the in-
 17 terests of justice;

18 “(C) may be prescribed for the filing of a coun-
 19 terclaim;

20 “(D) shall not apply to a pro se litigant or a
 21 litigant who certifies their financial hardship; and

22 “(E) shall not be a basis for denying access to
 23 the courts of the United States.

24 “(3)(A) The Judicial Conference and the Director
 25 shall transmit each schedule of fees prescribed under this

1 subsection to Congress at least 90 days before the sched-
2 ule becomes effective. All fees collected under this sub-
3 section shall be deposited as offsetting collections to the
4 Judiciary Information Technology Fund pursuant to sec-
5 tion 612(c)(1)(A) of title 28, United States Code, to reim-
6 burse expenses incurred in providing services in accord-
7 ance with section 3 of the Open Courts Act of 2020.

8 “(B) The Judicial Conference shall review a schedule
9 of fees prescribed under this paragraph three years after
10 it becomes effective and every three years thereafter to
11 ensure that the fees meet the requirements of this para-
12 graph. If the fees do not meet the requirements of this
13 paragraph, the Judicial Conference shall prescribe a new
14 schedule of fees pursuant to this paragraph and submit
15 the new schedule of fees to Congress pursuant to subpara-
16 graph (A).

17 “(C) Amounts deposited to the Judiciary Information
18 Technology Fund pursuant to this subsection and not used
19 to reimburse expenses incurred in carrying out section 3
20 of the Open Courts Act of 2020 may be used to reimburse
21 expenses incurred in carrying out section 2 of the Open
22 Courts Act of 2020. Amounts not used to reimburse ex-
23 penses incurred in carrying out section 2 of the Open
24 Courts Act of 2020 may be used pursuant to section
25 612(a) of title 28, United States Code.”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall take effect beginning on the
3 date specified in subsection (d).

4 **SEC. 4. RULE OF CONSTRUCTION.**

5 Nothing in this Act, or the amendments made by this
6 Act, shall be construed to—

7 (1) affect the filing fees or other filing proce-
8 dures for prisoners; or

9 (2) abrogate, limit, or modify the requirements
10 described in section 1915 of title 28, United States
11 Code.

12 **SEC. 5. DIGITAL ACCESSIBILITY STANDARDS.**

13 The system described under sections 2 and 3 of this
14 Act or the amendments made by such sections shall com-
15 ply with relevant digital accessibility standards established
16 pursuant to section 508 of the Rehabilitation Act of 1973.

17 **SEC. 6. GAO REVIEW.**

18 (a) IN GENERAL.—Not later than 180 days after the
19 date of enactment of this Act, and quarterly thereafter,
20 the Comptroller General of the United States shall notify
21 Congress whether the Director of the Administrative Of-
22 fice of United States Courts has—

23 (1) produced additional usable functionality of
24 the system described under sections 2 and 3 of this
25 Act;

1 (2) held live, publicly accessible demonstrations
2 of software in development; and

3 (3) allowed the Comptroller General or a des-
4 ignee to attend all sprint reviews held during the ap-
5 plicable period.

6 (b) AUDIT.—Not later than 180 days after the date
7 of the enactment of this Act, and annually thereafter, the
8 Comptroller General of the United States shall—

9 (1) conduct an audit of the system established
10 under this Act, including the compliance of vendors
11 with the quality assessment surveillance plan, code
12 quality, and whether the system is meeting the needs
13 of users; and

14 (2) shall submit to Congress a report that con-
15 tains—

16 (A) the results of the audit required under
17 paragraph (1); and

18 (B) any recommendations to improve the
19 system established under this Act.

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