

### CHAPTER 133—REVIEW—MISCELLANEOUS PROVISIONS

Sec.	
2101.	Supreme Court; time for appeal or certiorari; docketing; stay.
2102.	Priority of criminal case on appeal from State court.
[2103.	Repealed.]
2104.	Reviews of State court decisions.
2105.	Scope of review; abatement.
2106.	Determination.
2107.	Time for appeal to court of appeals.
2108.	Proof of amount in controversy.
2109.	Quorum of Supreme Court justices absent.
[2110.	Repealed.]
2111.	Harmless error.
2112.	Record on review and enforcement of agency orders.
2113.	Definition.

#### HISTORICAL AND REVISION NOTES

##### 1949 ACT

This section inserts in the chapter analysis of chapter 133 of title 28, U.S.C., a new item “2111,” in view of the insertion in such title, by another section of this bill, of a new section 2111.

#### Editorial Notes

##### AMENDMENTS

1988—Pub. L. 100-352, § 5(c), (d)(2), June 27, 1988, 102 Stat. 663, struck out item 2103 “Appeal from State court or from a United States court of appeals improvidently taken regarded as petition for writ of certiorari” and substituted “Reviews of State court decisions” for “Appeals from State courts” in item 2104.

1982—Pub. L. 97-164, title I, § 136, Apr. 2, 1982, 96 Stat. 41, struck out item 2110 “Time for appeal to Court of Claims in tort claims cases”.

1970—Pub. L. 91-358, title I, § 172(a)(2)(B), July 29, 1970, 84 Stat. 590, added item 2113.

1962—Pub. L. 87-669, § 2, Sept. 19, 1962, 76 Stat. 556, substituted “or from a United States court of appeals improvidently taken regarded as petition for” for “improvidently taken regarded as” in item 2103.

1958—Pub. L. 85-791, § 1, Aug. 28, 1958, 72 Stat. 941, added item 2112.

1949—Act May 24, 1949, ch. 139, § 105, 63 Stat. 104, added item 2111.

#### § 2101. Supreme Court; time for appeal or certiorari; docketing; stay

(a) A direct appeal to the Supreme Court from any decision under section 1253 of this title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme

Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

(d) The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

(g) The time for application for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces shall be as prescribed by rules of the Supreme Court.

(June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, § 106, 63 Stat. 104; Pub. L. 98-209, § 10(b), Dec. 6, 1983, 97 Stat. 1406; Pub. L. 100-352, § 5(b), June 27, 1988, 102 Stat. 663; Pub. L. 103-337, div. A, title IX, § 924(d)(1)(C), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 118-31, div. A, title V, § 533(a)(2)(B), Dec. 22, 2023, 137 Stat. 261.)

#### AMENDMENT OF SUBSECTION (g)

*Pub. L. 118-31, div. A, title V, § 533(a)(2)(B), (b), Dec. 22, 2023, 137 Stat. 261, provided that, effective on the date that is one year after Dec. 22, 2023, and applicable with respect to any action of the United States Court of Appeals for the Armed Forces in granting or refusing to grant a petition for review submitted to such Court for the first time on or after Dec. 22, 2023, with certain provisos, subsection (g) of this section is amended to read as follows:*

*“(g) The time for application for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces, or the decision of a Court of Criminal Appeals that the United States Court of Appeals for the Armed Forces refuses to grant a petition to review, shall be as prescribed by rules of the Supreme Court.”*

*See 2023 Amendment note below.*

#### HISTORICAL AND REVISION NOTES

##### 1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 47, 47a, 349a, 350, 380, 380a, section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation (Feb. 11, 1903, ch. 544, § 2, 32 Stat. 1167; Mar. 3, 1911, ch. 231, §§ 210, 266, 291, 36 Stat. 1150, 1162, 1167; Mar. 4, 1913, ch. 160, 37 Stat. 1013; Oct. 22, 1913, ch. 32, 38 Stat. 220; Sept. 6, 1916, ch. 448, § 6, 39 Stat. 727; Feb. 13, 1925, ch. 229, §§ 1, 8 (a, b, d), 43 Stat. 938, 940;

Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 936; Aug. 24, 1937, ch. 754, §§2, 3, 50 Stat. 752; June 9, 1944, ch. 239, 58 Stat. 272).

Section consolidates section 350 of title 28, U.S.C., 1940 ed., with those portions of sections 47, 47a, 349a, 380, and 380a, of said title 28, section 29, of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., respective time for taking direct appeal. (For disposition of other provisions of said sections, see Distribution Table.)

Subsection (a) of the revised section is derived from sections 349a and 380a of title 28, U.S.C., 1940 ed. The phrase “under rules prescribed by the Supreme Court” was substituted for the phrase “under such rules as may be prescribed by the proper courts” which appeared in both such sections. The Supreme Court by its revised rules 10–13 has made adequate provision for filing record and docketing case. (See Revised Rules of the Supreme Court following section 354 of title 28, U.S.C., 1940 ed.)

Subsection (b) is in accord with sections 47 and 47a of title 28, U.S.C., 1940 ed., and section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation.

Subsection (c), with respect to the time for taking other appeals or petitioning for a writ of certiorari, substitutes, as more specific, the words “ninety days” for the words “three months” contained in section 350 of title 28, U.S.C., 1940 ed. The provision in said section 350 for allowance of additional time was retained, notwithstanding the language of the Supreme Court in *Comm’r v. Bedford’s Estate*, 1945, 65 S.Ct. 1157, 1159, 325 U.S. 283, 89 L.Ed. 1611, to the effect that the 3 months’ period is “more than ample \* \* \* to determine whether to seek further review”.

In subsection (c), words “in a civil action, suit, or proceeding” were added because section 350 of title 28, U.S.C., 1940 ed., was superseded as to criminal cases by Federal Rules of Criminal Procedure, Rule 39(a)(2), (b)(2).

Words “or the United States Court of Appeals for the District of Columbia” in section 350 of title 28, U.S.C., 1940 ed., were omitted as covered by “court of appeals” in subsection (d) of this revised section.

Words in section 350 of title 28, U.S.C., 1940 ed., “excepting that writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months”, were omitted as obsolete, in view of the independence of the Philippines recognized by section 1240 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions.

Subsection (e) relates only to supersedeas or stay of execution of judgments sought to be reviewed in the Supreme Court on writ of certiorari. Supersedeas or stay of proceedings taken to the Supreme Court by appeal from courts of appeals, or direct appeals from a district court or three-judge courts, is governed by Rule 62 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

#### 1949 ACT

This section clarifies the meaning of subsection (c) of section 2101 of title 28, U.S.C. At present, such subsection, after the words, “ninety days after entry of such judgment or decree”, reads, “unless, upon application for writ of certiorari, for good cause, the Supreme Court or a justice thereof allows an additional time not exceeding sixty days.”

The new subsection (d) of section 2101 supplies an omission in revised title 28, U.S.C., and confirms the authority of the Supreme Court to regulate the time for seeking review of State criminal cases.

The other amendment merely renumbers subsections (d) and (e) of such section 2101 as subsections (e) and (f), respectively.

### Editorial Notes

#### AMENDMENTS

2023—Subsec. (g). Pub. L. 118–31 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as fol-

lows: “The time for application for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces shall be as prescribed by rules of the Supreme Court.”

1994—Subsec. (g). Pub. L. 103–337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1988—Subsec. (a). Pub. L. 100–352 substituted “section 1253” for “sections 1252, 1253, and 2282”.

1983—Subsec. (g). Pub. L. 98–209 added subsec. (g).

1949—Subsec. (c). Act May 24, 1949, §106(a), clarified the allowance of an additional 60 days in which to apply for a writ of certiorari.

Subsecs. (d) to (f). Act May 24, 1949, §106(b), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2023 AMENDMENT

Amendment by Pub. L. 118–31(a) effective on the date that is one year after Dec. 22, 2023, and applicable with respect to any action of the United States Court of Appeals for the Armed Forces in granting or refusing to grant a petition for review submitted to such Court for the first time on or after Dec. 22, 2023, with provisions for inapplicability to pending decisions, finality of decisions before effective date, and requiring Supreme Court to prescribe rules to carry out subsection (g) of this section by the effective date specified, see section 533(b) of Pub. L. 118–31, set out as a note under section 867a of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective on first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of Title 10, Armed Forces.

### § 2102. Priority of criminal case on appeal from State court

Criminal cases on review from State courts shall have priority, on the docket of the Supreme Court, over all cases except cases to which the United States is a party and such other cases as the court may decide to be of public importance.

(June 25, 1948, ch. 646, 62 Stat. 962.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §351 (Mar. 3, 1911, ch. 231, §253, 36 Stat. 1160; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Changes were made in phraseology.

### [§ 2103. Repealed. Pub. L. 100–352, § 5(c), June 27, 1988, 102 Stat. 663]

Section, acts June 25, 1948, ch. 646, 62 Stat. 962; Sept. 19, 1962, Pub. L. 87–669, §1, 76 Stat. 556, provided that appeal from State court or from a United States court of appeals improvidently taken be regarded as petition for writ of certiorari.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF REPEAL

Repeal effective ninety days after June 27, 1988, except that such repeal not to apply to cases pending in