

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4113

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

To amend title 28, United States Code, to clarify the jurisdiction of the 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
 3 “Federal Courts Jurisdiction and Venue Clarification Act  
 4 of 2010”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for  
 6 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—JURISDICTIONAL IMPROVEMENTS**

Sec. 101. Treatment of resident aliens.

Sec. 102. Citizenship of corporations and insurance companies with foreign con-  
 tacts.

Sec. 103. Removal and remand procedures.

Sec. 104. Effective date.

**TITLE II—VENUE AND TRANSFER IMPROVEMENTS**

Sec. 201. Scope and definitions.

Sec. 202. Venue generally.

Sec. 203. Repeal of section 1392.

Sec. 204. Change of venue.

Sec. 205. Effective date.

7 **TITLE I—JURISDICTIONAL**  
 8 **IMPROVEMENTS**

9 **SEC. 101. TREATMENT OF RESIDENT ALIENS.**

10 Section 1332(a) of title 28, United States Code, is  
 11 amended—

12 (1) by striking the last sentence; and

13 (2) in paragraph (2), by inserting after “foreign  
 14 state” the following: “, except that the district  
 15 courts shall not have original jurisdiction under this  
 16 subsection of an action between citizens of a State  
 17 and citizens or subjects of a foreign state who are

1 lawfully admitted for permanent residence in the  
2 United States and are domiciled in the same State”.

3 **SEC. 102. CITIZENSHIP OF CORPORATIONS AND INSUR-**  
4 **ANCE COMPANIES WITH FOREIGN CONTACTS.**

5 Section 1332(c)(1) of title 28, United States Code,  
6 is amended—

7 (1) by striking “any State” and inserting  
8 “every State and foreign state”;

9 (2) by striking “the State” and inserting “the  
10 State or foreign state”; and

11 (3) by striking all that follows “party-defend-  
12 ant,” and inserting “such insurer shall be deemed a  
13 citizen of—

14 “(A) every State and foreign state of which  
15 the insured is a citizen;

16 “(B) every State and foreign state by  
17 which the insurer has been incorporated; and

18 “(C) the State or foreign state where the  
19 insurer has its principal place of business;  
20 and”.

21 **SEC. 103. REMOVAL AND REMAND PROCEDURES.**

22 (a) **ACTIONS REMOVABLE GENERALLY.**—Section  
23 1441 of title 28, United States Code, is amended as fol-  
24 lows:

1           (1) The section heading is amended by striking  
2           **“Actions removable generally”** and inserting  
3           **“Removal of civil actions”**.

4           (2) Subsection (a) is amended—

5                 (A) by striking “(a) Except” and inserting  
6                 “(a) GENERALLY.—Except”; and

7                 (B) by striking the last sentence;

8           (3) Subsection (b) is amended to read as fol-  
9           lows:

10           “(b) REMOVAL BASED ON DIVERSITY OF CITIZEN-  
11 SHIP.—(1) In determining whether a civil action is remov-  
12 able on the basis of the jurisdiction under section 1332(a)  
13 of this title, the citizenship of defendants sued under ficti-  
14 tious names shall be disregarded.

15           “(2) A civil action otherwise removable solely on the  
16 basis of the jurisdiction under section 1332(a) of this title  
17 may not be removed if any of the parties in interest prop-  
18 erly joined and served as defendants is a citizen of the  
19 State in which such action is brought.”.

20           (4) Subsection (c) is amended to read as fol-  
21 lows:

22           “(c) JOINDER OF FEDERAL LAW CLAIMS AND STATE  
23 LAW CLAIMS.—(1) If a civil action includes—

1           “(A) a claim arising under the Constitution,  
2           laws, or treaties of the United States (within the  
3           meaning of section 1331 of this title), and

4           “(B) a claim not within the original or supple-  
5           mental jurisdiction of the district court or a claim  
6           that has been made nonremovable by statute,

7           the entire action may be removed if the action would be  
8           removable without the inclusion of the claim described in  
9           subparagraph (B).

10          “(2) Upon removal of an action described in para-  
11          graph (1), the district court shall sever from the action  
12          all claims described in paragraph (1)(B) and shall remand  
13          the severed claims to the State court from which the ac-  
14          tion was removed. Only defendants against whom a claim  
15          described in paragraph (1)(A) has been asserted are re-  
16          quired to join in or consent to the removal under para-  
17          graph (1).”.

18                 (5) Subsection (d) is amended by striking “(d)  
19                 Any” and inserting “(d) ACTIONS AGAINST FOR-  
20                 EIGN STATES.—Any”.

21                 (6) Subsection (e) is amended by striking  
22                 “(e)(1) Notwithstanding” and inserting “(e)  
23                 MULTIPARTY, MULTIFORUM JURISDICTION.—(1)  
24                 Notwithstanding”.

25                 (7) Subsection (f) is amended—

1 (A) by striking “(f) The court” and insert-  
2 ing “(f) DERIVATIVE REMOVAL JURISDIC-  
3 TION.—The court”; and

4 (B) by striking “under this section” and  
5 inserting “under this title or other applicable  
6 law”.

7 (b) PROCEDURE FOR REMOVAL OF CIVIL ACTIONS.—  
8 Section 1446 of title 28, United States Code, is amended  
9 as follows:

10 (1) The section heading is amended to read as  
11 follows:

12 **“§ 1446. Procedure for removal of civil actions”.**

13 (2) Subsection (a) is amended—

14 (A) by striking “(a) A defendant” and in-  
15 serting “(a) GENERALLY.—A defendant”; and

16 (B) by striking “or criminal prosecution”.

17 (3) Subsection (b) is amended—

18 (A) by striking “(b) The notice” and in-  
19 serting “(b) REQUIREMENTS; GENERALLY.—(1)  
20 The notice”; and

21 (B) by striking the second paragraph and  
22 inserting the following:

23 “(2)(A) When a civil action is removed solely under  
24 section 1441(a), all defendants who have been properly

1 joined and served must join in or consent to the removal  
2 of the action.

3 “(B) Each defendant shall have 30 days after receipt  
4 by or service on that defendant of the initial pleading or  
5 summons described in paragraph (1) to file the notice of  
6 removal.

7 “(C) If defendants are served at different times, and  
8 a later-served defendant files a notice of removal, any ear-  
9 lier-served defendant may consent to the removal even  
10 though that earlier-served defendant did not previously  
11 initiate or consent to removal.

12 “(3) Except as provided in subsection (c), if the case  
13 stated by the initial pleading is not removable, a notice  
14 of removal may be filed within thirty days after receipt  
15 by the defendant, through service or otherwise, of a copy  
16 of an amended pleading, motion, order or other paper  
17 from which it may first be ascertained that the case is  
18 one which is or has become removable.”;

19 (C) by striking subsection (c) and inserting  
20 the following:

21 “(c) REQUIREMENTS; REMOVAL BASED ON DIVER-  
22 SITY OF CITIZENSHIP.—(1) A case may not be removed  
23 under subsection (b)(3) on the basis of jurisdiction con-  
24 ferred by section 1332 more than 1 year after commence-  
25 ment of the action, unless the plaintiff has acted in bad

1 faith in order to prevent a defendant from removing the  
2 action.

3 “(2) If removal of a civil action is sought on the basis  
4 of the jurisdiction conferred by section 1332(a), the sum  
5 demanded in good faith in the initial pleading shall be  
6 deemed to be the amount in controversy, except that—

7 “(A) the notice of removal may assert the  
8 amount in controversy if the initial pleading seeks—

9 “(i) nonmonetary relief; or

10 “(ii) a money judgment, but the State  
11 practice either does not permit demand for a  
12 specific sum or permits recovery of damages in  
13 excess of the amount demanded; and

14 “(B) removal of the action is proper on the  
15 basis of an amount in controversy asserted under  
16 subparagraph (A) if the district court finds, by the  
17 preponderance of the evidence, that the amount in  
18 controversy exceeds the amount specified in section  
19 1332(a).

20 “(3)(A) If the case stated by the initial pleading is  
21 not removable solely because the amount in controversy  
22 does not exceed the amount specified in section 1332(a),  
23 information relating to the amount in controversy in the  
24 record of the State proceeding, or in responses to dis-

1 covery, shall be treated as an ‘other paper’ under sub-  
2 section (b)(3).

3 “(B) If the notice of removal is filed more than 1  
4 year after commencement of the action and a finding is  
5 made that the plaintiff deliberately failed to disclose the  
6 actual amount in controversy to prevent removal, that  
7 finding shall be deemed bad faith under paragraph (1).”.

8 (4) Section 1446 is further amended—

9 (A) in subsection (d), by striking “(d)  
10 Promptly” and inserting “(d) NOTICE TO AD-  
11 VERSE PARTIES AND STATE COURT.—Prompt-  
12 ly”;

13 (B) by striking “thirty days” each place it  
14 appears and inserting “30 days”;

15 (C) by striking subsection (e); and

16 (D) in subsection (f), by striking “(f) With  
17 respect” and inserting “(e) COUNTERCLAIM IN  
18 337 PROCEEDING.—With respect”.

19 (c) PROCEDURE FOR REMOVAL OF CRIMINAL AC-  
20 TIONS.—Chapter 89 of title 28, United States Code, is  
21 amended by adding at the end the following new section:

22 **“§ 1454. Procedure for removal of criminal prosecu-**  
23 **tions**

24 “(a) NOTICE OF REMOVAL.—A defendant or defend-  
25 ants desiring to remove any criminal prosecution from a

1 State court shall file in the district court of the United  
2 States for the district and division within which such pros-  
3 ecution is pending a notice of removal signed pursuant to  
4 Rule 11 of the Federal Rules of Civil Procedure and con-  
5 taining a short and plain statement of the grounds for  
6 removal, together with a copy of all process, pleadings, and  
7 orders served upon such defendant or defendants in such  
8 action.

9 “(b) REQUIREMENTS.—(1) A notice of removal of a  
10 criminal prosecution shall be filed not later than 30 days  
11 after the arraignment in the State court, or at any time  
12 before trial, whichever is earlier, except that for good  
13 cause shown the United States district court may enter  
14 an order granting the defendant or defendants leave to  
15 file the notice at a later time.

16 “(2) A notice of removal of a criminal prosecution  
17 shall include all grounds for such removal. A failure to  
18 state grounds that exist at the time of the filing of the  
19 notice shall constitute a waiver of such grounds, and a  
20 second notice may be filed only on grounds not existing  
21 at the time of the original notice. For good cause shown,  
22 the United States district court may grant relief from the  
23 limitations of this paragraph.

24 “(3) The filing of a notice of removal of a criminal  
25 prosecution shall not prevent the State court in which such

1 prosecution is pending from proceeding further, except  
2 that a judgment of conviction shall not be entered unless  
3 the prosecution is first remanded.

4 “(4) The United States district court in which such  
5 notice is filed shall examine the notice promptly. If it  
6 clearly appears on the face of the notice and any exhibits  
7 annexed thereto that removal should not be permitted, the  
8 court shall make an order for summary remand.

9 “(5) If the United States district court does not order  
10 the summary remand of such prosecution, it shall order  
11 an evidentiary hearing to be held promptly and, after such  
12 hearing, shall make such disposition of the prosecution as  
13 justice shall require. If the United States district court  
14 determines that removal shall be permitted, it shall so no-  
15 tify the State court in which prosecution is pending, which  
16 shall proceed no further.

17 “(c) WRIT OF HABEAS CORPUS.—If the defendant  
18 or defendants are in actual custody on process issued by  
19 the State court, the district court shall issue its writ of  
20 habeas corpus, and the marshal shall thereupon take such  
21 defendant or defendants into the marshal’s custody and  
22 deliver a copy of the writ to the clerk of such State  
23 court.”.

24 (d) CONFORMING AMENDMENTS.—

1           (1) The table of sections for chapter 89 of title  
2           28, United States Code, is amended—

3                   (A) in the item relating to section 1441, by  
4                   striking “Actions removable generally” and in-  
5                   serting “Removal of civil actions”;

6                   (B) in the item relating to section 1446, by  
7                   inserting “of civil actions” after “removal”; and

8                   (C) by adding at the end the following new  
9                   item:

          “1454. Procedure for removal of criminal prosecutions.”.

10           (2) Section 1453(b) of title 28, United States  
11           Code, is amended by striking “1446(b)” and insert-  
12           ing “1446(c)(1)”.

13 **SEC. 104. EFFECTIVE DATE.**

14           (a) **IN GENERAL.**—Subject to subsection (b), the  
15           amendments made by this title shall take effect upon the  
16           expiration of the 30-day period beginning on the date of  
17           the enactment of this Act, and shall apply to any action  
18           or prosecution commenced on or after such effective date.

19           (b) **TREATMENT OF CASES REMOVED TO FEDERAL**  
20           **COURT.**—For purposes of subsection (a), an action or  
21           prosecution commenced in State court and removed to  
22           Federal court shall be deemed to commence on the date  
23           the action or prosecution was commenced, within the  
24           meaning of State law, in State court.

1                   **TITLE II—VENUE AND**  
2                   **TRANSFER IMPROVEMENTS**

3   **SEC. 201. SCOPE AND DEFINITIONS.**

4           (a) IN GENERAL.—Chapter 87 of title 28, United  
5 States Code, is amended by inserting before section 1391  
6 the following new section:

7   **“§ 1390. Scope**

8           “(a) VENUE DEFINED.—As used in this chapter, the  
9 term ‘venue’ refers to the geographic specification of the  
10 proper court or courts for the litigation of a civil action  
11 that is within the subject-matter jurisdiction of the district  
12 courts in general, and does not refer to any grant or re-  
13 striction of subject-matter jurisdiction providing for a civil  
14 action to be adjudicated only by the district court for a  
15 particular district or districts.

16           “(b) EXCLUSION OF CERTAIN CASES.—Except as  
17 otherwise provided by law, this chapter shall not govern  
18 the venue of a civil action in which the district court exer-  
19 cises the jurisdiction conferred by section 1333, except  
20 that such civil actions may be transferred between district  
21 courts as provided in this chapter.

22           “(c) CLARIFICATION REGARDING CASES REMOVED  
23 FROM STATE COURTS.—This chapter shall not determine  
24 the district court to which a civil action pending in a State  
25 court may be removed, but shall govern the transfer of

1 an action so removed as between districts and divisions  
2 of the United States district courts.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-  
4 tions at the beginning of chapter 87 of title 28, United  
5 States Code, is amended by inserting before the item relat-  
6 ing to section 1391 the following new item:

“Sec. 1390. Scope.”.

7 **SEC. 202. VENUE GENERALLY.**

8 Section 1391 of title 28, United States Code, is  
9 amended as follows:

10 (1) By striking subsections (a) through (d) and  
11 inserting the following:

12 “(a) APPLICABILITY OF SECTION.—Except as other-  
13 wise provided by law—

14 “(1) this section shall govern the venue of all  
15 civil actions brought in district courts of the United  
16 States; and

17 “(2) the proper venue for a civil action shall be  
18 determined without regard to whether the action is  
19 local or transitory in nature.

20 “(b) VENUE IN GENERAL.—A civil action may be  
21 brought in—

22 “(1) a judicial district in which any defendant  
23 resides, if all defendants are residents of the State  
24 in which the district is located;

1           “(2) a judicial district in which a substantial  
2 part of the events or omissions giving rise to the  
3 claim occurred, or a substantial part of property  
4 that is the subject of the action is situated; or

5           “(3) if there is no district in which an action  
6 may otherwise be brought as provided in this sec-  
7 tion, any judicial district in which any defendant is  
8 subject to the court’s personal jurisdiction with re-  
9 spect to such action.

10          “(c) RESIDENCY.—For all venue purposes—

11           “(1) a natural person, including an alien law-  
12 fully admitted for permanent residence in the United  
13 States, shall be deemed to reside in the judicial dis-  
14 trict in which that person is domiciled;

15           “(2) a party with the capacity to sue and be  
16 sued in its common name under applicable law,  
17 whether or not incorporated, shall be deemed to re-  
18 side, if a defendant, in any judicial district in which  
19 such defendant is subject to the court’s personal ju-  
20 risdiction with respect to the civil action in question  
21 and, if a plaintiff, only in the judicial district in  
22 which it maintains its principal place of business;  
23 and

24           “(3) a defendant not resident in the United  
25 States may be sued in any judicial district, and the

1 joinder of such a defendant shall be disregarded in  
 2 determining where the action may be brought with  
 3 respect to other defendants.

4 “(d) RESIDENCY OF CORPORATIONS IN STATES  
 5 WITH MULTIPLE DISTRICTS.—For purposes of venue  
 6 under this chapter, in a State which has more than one  
 7 judicial district and in which a defendant that is a cor-  
 8 poration is subject to personal jurisdiction at the time an  
 9 action is commenced, such corporation shall be deemed to  
 10 reside in any district in that State within which its con-  
 11 tacts would be sufficient to subject it to personal jurisdic-  
 12 tion if that district were a separate State, and, if there  
 13 is no such district, the corporation shall be deemed to re-  
 14 side in the district within which it has the most significant  
 15 contacts.”.

16 (2) In subsection (e)—

17 (A) in the first paragraph—

18 (i) by striking “(1)”, “(2)”, and “(3)”  
 19 and inserting “(A)”, “(B)”, and “(C)”, re-  
 20 spectively; and

21 (ii) by striking “(e) A civil action”  
 22 and inserting the following:

23 “(e) ACTIONS WHERE DEFENDANT IS OFFICER OR  
 24 EMPLOYEE OF THE UNITED STATES.—

25 “(1) IN GENERAL.—A civil action”; and

1 (B) in the second undesignated paragraph  
2 by striking “The summons and complaint” and  
3 inserting the following:

4 “(2) SERVICE.—The summons and complaint”.

5 (3) In subsection (f), by striking “(f) A civil ac-  
6 tion” and inserting “(f) CIVIL ACTIONS AGAINST A  
7 FOREIGN STATE.—A civil action”.

8 (4) In subsection (g), by striking “(g) A civil  
9 action” and inserting “(g) MULTIPARTY,  
10 MULTIFORUM LITIGATION.—A civil action”.

11 **SEC. 203. REPEAL OF SECTION 1392.**

12 Section 1392 of title 28, United States Code, and the  
13 item relating to that section in the table of sections at  
14 the beginning of chapter 87 of such title, are repealed.

15 **SEC. 204. CHANGE OF VENUE.**

16 Section 1404 of title 28, United States Code, is  
17 amended—

18 (1) in subsection (a), by inserting before the pe-  
19 riod at the end the following: “or to any district or  
20 division to which all parties have consented”; and

21 (2) in subsection (d), by striking “As used in  
22 this section” and inserting “Transfers from a dis-  
23 trict court of the United States to the District Court  
24 of Guam, the District Court for the Northern Mar-  
25 iana Islands, or the District Court of the Virgin Is-

1 lands shall not be permitted under this section. As  
2 otherwise used in this section,”.

3 **SEC. 205. EFFECTIVE DATE.**

4 The amendments made by this title—

5 (1) shall take effect upon the expiration of the  
6 30-day period beginning on the date of the enact-  
7 ment of this Act; and

8 (2) shall apply to—

9 (A) any action that is commenced in a  
10 United States district court on or after such ef-  
11 fective date; and

12 (B) any action that is removed from a  
13 State court to a United States district court  
14 and that had been commenced, within the  
15 meaning of State law, on or after such effective  
16 date.

Passed the House of Representatives September 28,  
2010.

Attest:

LORRAINE C. MILLER,

*Clerk.*