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Judicial Improvement Act of 1999, S. 248, 106th Congress

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Summary

This legislation,¹ affecting the federal judiciary and judicial procedure, contains measures ranging from a requirement for a three-judge court in certain instances to expanding the jurisdiction of the U.S. district courts to improve their ability to handle complex multidistrict litigation arising from a single accident, such as an airplane crash. This report, which will be revised if the Act's provisions are significantly changed, gives a brief sketch of the proposals, several of which are identical, or substantially similar, to portions of H.R. 1252, 105th Congress, as passed by the House of Representatives.²

Section 1. Short title. The Act may be cited as the "Judicial Improvement Act of 1999."

Section 2. Procedures for Certain Injunctions. Would require a three-judge court, composed of one U.S. circuit court judge and two U.S. district court judges, to hear, on an expedited basis, any application for an interlocutory or permanent injunction against the enforcement, operation or execution of a state law adopted by referendum or an Act of Congress [sic] on the ground that the state law conflicts with the United States Constitution, federal law, or a treaty of the United States. Appeal of the decision would be to a circuit court of appeals. Would limit a temporary restraining order in such cases to no longer than 10 days and an interlocutory injunction to no longer than 60 days. Would require that appeal from orders granting such interlocutory injunctions be filed within 14 days, and that courts of appeal dispose of the appeal within 100 days after the issuance of the order granting relief, and further, that the interlocutory order would remain

¹Introduced January 19, 1999, 145 *Cong. Rec.* S701 (statement of Sen. Hatch).

²144 *Cong. Rec.* H2286 (daily ed. April 23, 1998). See: CRS Report 98-187 A, *Judicial Reform Act of 1998, H.R. 1252, 105th Congress*, by P. L. Morgan, which includes pros/cons. Sections 4, 5, 7, 9, 10, 11, and 18 of this bill were included in H.R. 1252. The arguments advanced for the provisions in that bill could be expected to be forwarded for the similar sections of S. 2163.



in force no longer than 60 days after the appellate decision or until replaced by a permanent injunction.

Section 3. Limitations on Remedial Authority. Would provide that in any civil action where a consent judgment is entered or prospective relief is issued which binds state or local officials, such relief would be terminable upon the motion of any party or intervener: (1) 5 years after the court granted or approved the prospective relief; (2) 2 years after the date the court has entered an order denying termination of prospective relief; or (3) if granted before enactment of this legislation, 2 years after the date of enactment. The court would have to make certain findings to preclude termination. Parties or interveners could seek modification or termination of relief before it is available under this timetable. The court would be required to rule promptly on termination or modification motions and if a ruling is not made within 60 days, the order or consent judgment binding state or local officials would automatically terminate and be of no further legal force. Would set procedures, including powers, duties, and compensation for special masters in such situations. Would prohibit federal courts from directly ordering a unit of federal, state, or local government to increase taxes as part of a judicial remedy but would not limit the authority of a federal court to order a remedy that may lead to a tax increase. Would not limit state court remedial power.

Section 4. Interlocutory Appeals of Court Orders Relating to Class Actions . Would authorize a party to an action to appeal a district court determination of whether the proceedings may be maintained as a class action. If the appeal application is made within 10 days of the district court determination, the court of appeals at its discretion could grant the appeal. Application for appeal would not automatically stay district court proceedings.

Section 5. Multiparty, Multiforum Jurisdiction of District Courts. Would give U.S. district courts original jurisdiction of any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 25 natural persons have died or incurred injury in the accident at a discrete location and, in the case of injury, the injury has resulted in damages which exceed \$50,000 per person, exclusive of interest and costs if: (1) a defendant resides in a state and a substantial part of the accident took place in another state or other location, regardless of whether that defendant is also a resident of the state where a substantial part of the accident took place; (2) any two defendants reside in different states, regardless of whether such defendants are also residents of the same state or states; or (3) substantial parts of the accident took place in different states. Any person with a claim arising out of the accident would be allowed to intervene as a party plaintiff even if the party could not have brought an action in a district court as an original matter. Numerous terms are defined and conforming amendments made to statutes pertaining to venue, multidistrict litigation, remands for damage determinations, appeals, and removal of actions. In determining the source of substantive law, the district courts would not be bound by the choice of law rules of any state and may consider the following factors in choosing the applicable law: (1) the place of the injury; (2) the place of the conduct causing the injury; (3) the principal places of business or domiciles of the parties; (4) the danger of creating unnecessary incentives for forum shopping; and (5) whether the choice of law would be reasonably foreseeable to the parties. Upon a showing of good cause, the law of more than one state could be applied. Provision is made for service of subpoenas any place within the United States or outside the United States if permitted by law.

Section 6. Appeals of Merit Systems Protection Board. Would, under certain circumstances, require that an individual first seeking corrective action for a prohibited personnel practice from the Special Counsel to seek that relief within 60 days of receiving notice of the personnel action at issue as a condition precedent to seeking corrective action from the Merit Systems Protection Board.

Section 7. Extension of Judiciary Information Technology Fund. Would eliminate the provision in 28 U.S.C. § 612, which authorizes the Judiciary Information Technology Fund, subjecting the activities of the Fund to the management process of the executive branch.

Section 8. Authorization for Voluntary Services. Would authorize the Administrative Assistant to the Chief Justice to accept voluntary personal services for the purpose of providing tours of the Supreme Court building if: (1) the Chief Justice approves; (2) the volunteer agrees, in writing, to waive any claims against the United States, except those involving work injuries; (3) the volunteer is considered an employee of the United States only for purposes of compensation for work related injuries and federal tort claims procedure; and (4) the volunteer services do not result in the reduction of pay or displacement of any employee of the Supreme Court.

Section 9. Offsetting Receipts. Would allow the judiciary to retain any additional offsetting receipts derived from increases in miscellaneous fees charged in the federal courts of appeals, district courts, bankruptcy courts, the Court of Federal Claims, and by the Judicial Panel on Multi-district Litigation.

Section 10. Sunset of Civil Justice Expense and Delay Reduction Plans. Would provide that the requirement for district court civil justice expense and delay reduction plans be eliminated retroactively to December 1, 1997.

Section 11. Creation of Certifying Officers in the Judicial Branch. Would enable the Director of the Administrative Office of the United States Courts to appoint disbursing officials in the various court units who would be responsible for the propriety of payments they request. Would also enable the Director to appoint disbursing officials in the various court units who would be responsible for ensuring that payment requests are proper, certified and approved.

Section 12. Limitation on Collateral Relief. Would apply to federal courts hearing petitions for collateral review of custody or sentence of a person convicted in whole or in part on the basis of a voluntarily given confession of that person. Would require adherence to standards mandated statutorily by 18 U.S.C. § 3501 and 28 U.S.C. § 2254 in determining the voluntariness of confessions in federal and state cases, respectively.

Section 13. Laurie Show Victim Protection. Would prohibit a federal court from barring the retrial in state court of a person filing a writ of habeas corpus.³

³In response to *Lambert v. Blackwell*, 962 F.Supp. 1521 (E.D.Pa. 1997), *vacated*, 134 F.3d 506 (3rd Cir. 1997). [After testimony on a convicted murderess' petition for a writ of habeas corpus, (continued...)]

Section 14. Rule of Construction Relating to Retroactive Application of Statutes. Would provide that any Act of Congress would be prospective in application unless a provision in the Act expressly specifies otherwise.

Section 15. Appropriate Remedies for Prison Conditions. Would set forth procedures for entering prospective relief in any civil action with respect to prison conditions. Would require specific written findings as to the law, facts, and relief granted in each case, as well as on the estimated impact of the prospective relief on public safety and the operation of any affected criminal justice system. Specifies procedure for motions to terminate relief including contents of motions, supporting documentation required, and allocation of the burden of persuasion. Also sets procedures for summary determination of the motion, authority to conduct an evidentiary hearing and/or limited discovery. Law concerning special masters for civil actions with respect to prison conditions would be amended relative to compensation and duties that may be assigned them.

Section 16. Limitation on Fees. Would limit attorneys fees in certain successful litigation involving prisoners to the lesser of a rate of \$100 per hour or the hourly rate authorized for court-appointed counsel under the Criminal Justice Act.⁴

Section 17. Notice of Malicious Filings. Would authorize a federal court, on its own motion or the motion of an adverse party, to make a finding that a state prisoner has: (1) filed a claim for a malicious purpose; (2) filed a claim to harass a party; or (3) testified falsely or presented false information to the court and transmit such findings to the state department of corrections or other appropriate state authority. Pursuant to state law, the authority could, if considered appropriate, revoke good time or consider the finding in determining release dates, etc., for the state prisoner.

Section 18. Limitation on Prisoner Release Orders. Would remove the jurisdiction of federal courts, in civil actions with respect to prison conditions, to enter or carry out any prisoner release order that would result in the release from, or nonadmission to, a prison on the basis of prison conditions if the prisoner is convicted of a felony. Would also be applicable if the person is being imprisoned or reimprisoned because of a violation of the terms or conditions of parole, probation, pretrial release, or a diversionary program, relating to the commission of a felony. Would prohibit reinstatement of certain revoked credit toward service of sentence for satisfactory behavior.⁵ Would authorize the Bureau of Prisons to revoke such credit, at any time before vesting, for noncompliance with institutional disciplinary regulations.

³(...continued)

the district court entered an order granting the *writ*, releasing the petitioner from custody, and barring the State from conducting a retrial of the petitioner. The 3rd Circuit vacated and remanded the case for dismissal on the ground that the petitioner had not exhausted her state court remedies. Victim of the murder was Laurie Show.].

⁴18 U.S.C. § 3006A.

⁵This provision is unclear due to apparent typographical errors.

Section 19. Repeal of Section 140. Would repeal section 140 of P. L. 97-92, which requires specific congressional authorization before the obligation or expenditure of funds to increase the salary of Article III judges.⁶

Section 20. Severability. Provides that the remainder of the Act shall not be affected if any provision of the legislation is found to be unconstitutional.

⁶See generally CRS Government Division Memorandum of August 9, 1996: *Judicial Salaries*, by Sharon S. Gressle.