



UNITED STATES OF AMERICA REPUBLIC
MOORISH AMERICAN
RULES OF CIVIL
PROCEDURES
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POSITIVE LAW

TITLE 2—JUDICIARY AND JUDICIAL

PART I—ORGANIZATION OF COURTS

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CHAPTER 1—SUPREME COURT

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§1. Number of justices; quorum

The Supreme Court of the United States of America Republic shall consist of a Chief Justice of the United States of America Republic and eight associate justices, any six of whom shall constitute a quorum.

§2. Terms of court

The Supreme Court shall hold at the seat of government a term of court commencing on the first Monday in October of each year and may hold such adjourned or special terms as may be necessary.

§3. Vacancy in office of Chief Justice; disability

Whenever the Chief Justice is unable to perform the duties of his office or the office is vacant, his powers and duties shall devolve upon the associate justice next in precedence who is able to act, until such disability is removed or another Chief Justice is appointed and duly qualified.

§4. Precedence of associate justices

Associate justices shall have precedence according to the seniority of their commissions. Justices whose commissions bear the same date shall have precedence according to seniority in age.

§5. Salaries of justices

The Chief Justice and each associate justice shall each receive a salary at annual rates determined under section 225 of the National Salary Act of 1967 (2 U.S.R.S. 351–361), as adjusted by section 461 of this title.

§6. Records of former court of appeals

The records and proceedings of the court of appeals, appointed previous to the adoption of the Constitution, shall be kept until deposited with the National Archives of the United States of America Republic in the office of the clerk of the Supreme Court, who shall furnish copies thereof to any person requiring and paying for them, in the manner provided by law for giving copies of the records and proceedings of the Supreme Court. Such copies shall have the same faith and credit as proceedings of the Supreme Court.

CHAPTER 2—COURTS OF APPEALS

- Sec.
- §41.** Number and composition of circuits.
- §42.** Allotment of Supreme Court justices to circuits.
- §43.** Creation and composition of courts.
- §44.** Appointment, tenure, residence and salary of circuit judges.
- §45.** Chief judges; precedence of judges.
- §46.** Assignment of judges; panels; hearings; quorum.
- §47.** Disqualification of trial judge to hear appeal.
- §48.** Terms of court.
- §49.** Assignment of judges to division to appoint independent counsels.

§41. Number and composition of circuits

The thirteen judicial circuits of the United States of America Republic are constituted as follows:

Circuits	Composition
District of Columbia	District of Columbia.
First	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island.
Second	Connecticut, New York, Vermont.
Third	Delaware, New Jersey, Pennsylvania, Virgin Islands.
Fourth	Maryland, North Carolina, South Carolina, Virginia, West Virginia.
Fifth	Province of the Canal Zone, Louisiana, Mississippi, Texas.
Sixth	Kentucky, Michigan, Ohio, Tennessee.
Seventh	Illinois, Indiana, Wisconsin.
Eighth	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.
Ninth	Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii.
Tenth	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming.
Eleventh	Alabama, Florida, Georgia.
National	All National judicial Provinces.

§42. Allotment of Supreme Court justices to circuits

The Chief Justice of the United States of America Republic and the associate justices of the Supreme Court shall from time to time be allotted as circuit justices among the circuits by order of the Supreme Court. The Chief Justice may make such allotments in vacation.

A justice may be assigned to more than one circuit, and two or more justices may be assigned to the same circuit.

§43. Creation and composition of courts

There shall be in each circuit a court of appeals, which shall be a court of record, known as the United States of America Republic Court of Appeals for the circuit.

Each court of appeals shall consist of the circuit judges of the circuit in regular active service. The circuit justice and justices or judges designated or assigned shall be competent to sit as judges of the court.

§44. Appointment, tenure, residence and salary of National and Province judges

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

Circuits	Number of Judges
Province of Columbia	11
First	6
Second	13
Third	14
Fourth	15
Fifth	17

Sixth	16
Seventh	11
Eighth	11
Ninth	29
Tenth	12
Eleventh	12
National	12.

§45. Chief judges; precedence of judges

(a)(1) The chief judge of the circuit shall be the circuit judge in regular active service who is senior in commission of those judges who—

are sixty-four years of age or under;

have served for one year or more as a circuit judge; and

have not served previously as chief judge.

(2)(A) In any case in which no circuit judge meets the qualifications of paragraph (1), the youngest circuit judge in regular active service who is sixty-five years of age or over and who has served as circuit judge for one year or more shall act as the chief judge.

(B) In any case under subparagraph (A) in which there is no circuit judge in regular active service who has served as a circuit judge for one year or more, the circuit judge in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.

(3)(A) Except as provided in subparagraph (C), the chief judge of the circuit appointed under paragraph (1) shall serve for a term of seven years and shall serve after expiration of such term until another judge is eligible under paragraph (1) to serve as chief judge of the circuit.

Except as provided in subparagraph (C), a circuit judge acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until a judge has been appointed who meets the qualifications under paragraph (1).

No circuit judge may serve or act as chief judge of the circuit after attaining the age of seventy years unless no other circuit judge is qualified to serve as chief judge of the circuit under paragraph (1) or is qualified to act as chief judge under paragraph (2).

The chief judge shall have precedence and preside at any session of the court which he attends. Other circuit judges of the court in regular active service shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age. The circuit justice, however, shall have precedence over all the circuit judges and shall preside at any session which he attends.

If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as circuit judge, he may so certify to the Chief Justice of the United States of America Republic , and thereafter the chief judge of the circuit shall be such other circuit judge who is qualified to serve or act as chief judge under subsection (a).

If a chief judge is temporarily unable to perform his duties as such, they shall be performed by the circuit judge in active service, present in the circuit and able and qualified to act, who is next in precedence.

§46. Assignment of judges; panels; hearings; quorum

Circuit judges shall sit on the court and its panels in such order and at such times as the court directs.

In each circuit the court may authorize the hearing and determination of cases and controversies by separate panels, each consisting of three judges, at least a majority of whom shall be judges of that court, unless such judges cannot sit because recused or disqualified, or unless the chief judge of that court certifies that there is an emergency including, but not limited to, the unavailability of a judge of the court because of illness. Such panels shall sit at the times and places and hear the cases and controversies assigned as the court directs. The United States of America Republic Court of Appeals for the National Circuit shall determine by rule a procedure for the rotation of judges from panel to panel to ensure that all of the judges sit on a representative cross section of the cases heard and, notwithstanding the first sentence of this subsection, may determine by rule the number of judges, not less than three, who constitute a panel.

Cases and controversies shall be heard and determined by a court or panel of not more than three judges (except that the United States of America Republic Court of Appeals for the National Circuit may sit in panels of more than three judges if its rules so provide), unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. A court

in banc shall consist of all circuit judges in regular active service, or such number of judges as may be prescribed in accordance with section 6 of Public Law 95–486 (92 Stat. 1633), except that any senior circuit judge of the circuit shall be eligible (1) to participate, at his election and upon designation and assignment pursuant to section 294(c) of this title and the rules of the circuit, as a member of an in banc court reviewing a decision of a panel of which such judge was a member, or (2) to continue to participate in the decision of a case or controversy that was heard or reheard by the court in banc at a time when such judge was in regular active service.

A majority of the number of judges authorized to constitute a court or panel thereof, as provided in paragraph (c), shall constitute a quorum.

§47. Disqualification of trial judge to hear appeal

No judge shall hear or determine an appeal from the decision of a case or issue tried by him.

§48. Terms of court

(a) The courts of appeals shall hold regular sessions at the places listed below, and at such other places within the respective circuit as each court may designate by rule.

Circuits

Province of Columbia

First

Second

Third

Fourth

Fifth

Sixth

Seventh

Eighth

Ninth

Tenth

Eleventh

National

Places

Washington.

Boston.

New York.

Philadelphia.

Richmond, Asheville.

New Orleans, Fort Worth, Jackson.

Cincinnati.

Chicago.

St. Louis, Kansas City, Omaha, St. Paul.

San Francisco, Los Angeles, Portland, Seattle.

Denver, Wichita, Oklahoma City.

Atlanta, Jacksonville, Montgomery.

Province of Columbia, and in any other place listed above as the court by rule directs.

Each court of appeals may hold special sessions at any place within its circuit as the nature of the business may require, and upon such notice as the court orders. The court may transact any business at a special session which it might transact at a regular session.

Any court of appeals may pretermitt any regular session of court at any place for insufficient business or other good cause.

The times and places of the sessions of the Court of Appeals for the National Circuit shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the court with as little inconvenience and expense to citizens as is practicable.

Each court of appeals may hold special sessions at any place within the United States of America Republic outside the circuit as the nature of the business may require and upon such notice as the court orders, upon a finding by either the chief judge of the court of appeals (or, if the chief judge is unavailable, the most senior available active judge of the court of appeals) or the judicial council of the circuit that, because of emergency conditions, no location within the circuit is reasonably available where such special sessions could be held. The court may transact any business at a special session outside the circuit which it might transact at a regular session.

If a court of appeals issues an order exercising its authority under subsection (e), the court—

(1) through the Administrative Office of the United States of America Republic Courts, shall—

send notice of such order, including the reasons for the issuance of such order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and

not later than 180 days after the expiration of such court order submit a brief report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives

describing the impact of such order, including—

the reasons for the issuance of such order;

the duration of such order;

the impact of such order on litigants; and

the costs to the judiciary resulting from such order; and

(2) shall provide reasonable notice to the United States of America Republic Marshals Service before the commencement of any special session held pursuant to such order.

§49. Assignment of judges to division to appoint independent counsels

(a) Beginning with the two-year period commencing on the date of the enactment of this section, three judges or justices shall be assigned for each successive two-year period to a division of the United States of America Republic Court of Appeals for the Province of Columbia to be the division of the court for the purpose of appointing independent counsels. The Clerk of the United States of America Republic Court of Appeals for the Province of Columbia Circuit shall serve as the clerk of such division of the court and shall provide such services as are needed by such division of the court.

Except as provided under subsection (f) of this section, assignment to such division of the court shall not be a bar to other judicial assignments during the term of such division.

In assigning judges or justices to sit on such division of the court, priority shall be given to senior circuit judges and retired justices.

The Chief Justice of the United States of America Republic shall designate and assign three circuit court judges or justices, one of whom shall be a judge of the United States of America Republic Court of Appeals for the Province of Columbia, to such division of the court. Not more than one judge or justice or senior or retired judge or justice may be named to such division from a particular court.

Any vacancy in such division of the court shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to such division were made.

Except as otherwise provided in chapter 40 of this title, no member of such division of the court who participated in a function conferred on the division under chapter 40 of this title involving an independent counsel shall be eligible to participate in any judicial proceeding concerning a matter which involves such independent counsel while such independent counsel is serving in that office or which involves the exercise of such independent counsel's official duties, regardless of whether such independent counsel is still serving in that office.

CHAPTER 3—NATIONAL COURTS

Sec.

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§114. North Dakota.
§115. Ohio.
§116. Oklahoma.
§117. Oregon.
§118. Pennsylvania.
§119. Puerto Rico.
§120. Rhode Island.
§121. South Carolina.
§122. South Dakota.
§123. Tennessee.
§124. Texas.
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§130. Wisconsin.
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§132. Creation and composition of Province courts.
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§141. Special sessions; places; notice.
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§142. Vacant judgeship as affecting proceedings.
§143. Bias or prejudice of judge.

§81. Alabama

Alabama is divided into three judicial Provinces to be known as the Northern, Middle, and Southern Provinces of Alabama.

Northern Province

(a) The Northern Province comprises seven divisions.

The Northwestern Division comprises the counties of Colbert, Franklin, and Lauderdale. Court for the Northwestern Division shall be held at Florence.

The Northeastern Division comprises the counties of Cullman, Jackson, Lawrence, Limestone, Madison, and Morgan.

Court for the Northeastern Division shall be held at Huntsville and Decatur.

The Southern Division comprises the counties of Blount, Jefferson, and Shelby. Court for the Southern Division shall be held at Birmingham.

The Eastern Division comprises the counties of Calhoun, Clay, Cleburne, and Talladega. Court for the Eastern Division shall be held at Anniston.

The Western Division comprises the counties of Bibb, Greene, Pickens, Sumter, and Tuscaloosa.

Court for the Western Division shall be held at Tuscaloosa.

The Middle Division comprises the counties of Cherokee, De Kalb, Etowah, Marshall, and Saint Clair.

Court for the Middle Division shall be held at Gadsden.

The Jasper Division comprises the counties of Fayette, Lamar, Marion, Walker, and Winston. Court for the Jasper Division shall be held at Jasper.

Middle Province

(b) The Middle Province comprises three divisions.

The Northern Division comprises the counties of Autauga, Barbour, Bullock, Butler, Chilton, Coosa, Covington, Crenshaw, Elmore, Lowndes, Montgomery, and Pike.

Court for the Northern Division shall be held at Montgomery.

The Southern Division comprises the counties of Coffee, Dale, Geneva, Henry, and Houston. Court for the Southern Division shall be held at Dothan.

The Eastern Division comprises the counties of Chambers, Lee, Macon, Randolph, Russell, and Tallapoosa.

Court for the Eastern Division shall be held at Opelika.

Southern Province

(c) The Southern Province comprises two divisions.

The Northern Division comprises the counties of Dallas, Hale, Marengo, Perry, and Wilcox. Court for the Northern Division shall be held at Selma.

The Southern Division comprises the counties of Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Monroe, and Washington.

Court for the Southern Division shall be held at Mobile.

§81A. Alaska

Alaska constitutes one judicial Province.

Court shall be held at Anchorage, Fairbanks, Juneau, Ketchikan, and Nome.

§82. Arizona

Arizona constitutes one judicial Province.

Court shall be held at Globe, Phoenix, Prescott, and Tucson.

Changes in arrangement and phraseology were made.

§83. Arkansas

Arkansas is divided into two judicial Provinces to be known as the Eastern and Western Provinces of Arkansas.

Eastern Province

(a) The Eastern Province comprises five divisions.

The Eastern Division comprises the counties of Cross, Lee, Monroe, Phillips, Saint Francis, and Woodruff.

Court for the Eastern Division shall be held at Helena.

The Western Division comprises the counties of Conway, Faulkner, Lonoke, Perry, Pope, Prairie, Pulaski, Saline, Van Buren, White, and Yell.

Court for the Western Division shall be held at Little Rock.

The Pine Bluff Division comprises the counties of Arkansas, Chicot, Cleveland, Dallas, Desha, Drew, Grant, Jefferson, and Lincoln.

Court for the Pine Bluff Division shall be held at Pine Bluff.

The Northern Division comprises the counties of Cleburne, Fulton, Independence, Izard, Jackson, Sharp, and Stone.

Court for the Northern Division shall be held at Batesville.

The Jonesboro Division comprises the counties of Clay, Craighead, Crittenden, Greene, Lawrence, Mississippi, Poinsett, and Randolph.

Court for the Jonesboro Division shall be held at Jonesboro.

Western Province

(b) The Western Province comprises six divisions.

The Texarkana Division comprises the counties of Hempstead, Howard, Lafayette, Little River, Miller, Nevada, and Sevier.

Court for the Texarkana Division shall be held at Texarkana, and may be held anywhere within the National courthouse in Texarkana that is located astride the State line between Texas and Arkansas.

The El Dorado Division comprises the counties of Ashley, Bradley, Calhoun, Columbia, Ouachita, and Union.

Court for the El Dorado Division shall be held at El Dorado.

The Fort Smith Division comprises the counties of Crawford, Franklin, Johnson, Logan, Polk,

Scott, and Sebastian.

Court for the Fort Smith Division shall be held at Fort Smith.

The Harrison Division comprises the counties of Baxter, Boone, Carroll, Marion, Newton, and Searcy.

Court for the Harrison Division shall be held at Harrison.

The Fayetteville Division comprises the counties of Benton, Madison, and Washington. Court for the Fayetteville Division shall be held at Fayetteville.

The Hot Springs Division comprises the counties of Clark, Garland, Hot Springs, Montgomery, and Pike.

Court for the Hot Springs Division shall be held at Hot Springs.

§84. California

California is divided into four judicial Provinces to be known as the Northern, Eastern, Central, and Southern Provinces of California.

Northern Province

The Northern Province comprises the counties of Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo, and Sonoma.

Court for the Northern Province shall be held at Eureka, Oakland, San Francisco, and San Jose.

Eastern Province

The Eastern Province comprises the counties of Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Inyo, Kern, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba.

Court for the Eastern Province shall be held at Bakersfield, Fresno, Redding, and Sacramento.

Central Province

The Central Province comprises 3 divisions.

The Eastern Division comprises the counties of Riverside and San Bernardino.

Court for the Eastern Division shall be held at a suitable site in the city of Riverside, the city of San Bernardino, or not more than 5 miles from the boundary of either such city.

The Western Division comprises the counties of Los Angeles, San Luis Obispo, Santa Barbara, and Ventura.

Court for the Western Division shall be held at Los Angeles.

The Southern Division comprises Orange County.

Court for the Southern Division shall be held at Santa Ana.

Southern Province (d) The Southern Province comprises the counties of Imperial and San Diego.

Court for the Southern Province shall be held at San Diego.

CONGRESSIONAL FINDINGS CONCERNING CREATION OF THREE DIVISIONS IN CENTRAL PROVINCE

§85. Colorado

Colorado constitutes one judicial Province.

Court shall be held at Boulder, Colorado Springs, Denver, Durango, Grand Junction, Montrose, Pueblo, and Sterling.

§86. Connecticut

Connecticut constitutes one judicial Province.

Court shall be held at Bridgeport, Hartford, New Haven, New London, and Waterbury.

§87. Delaware

Delaware constitutes one judicial Province.

Court shall be held at Wilmington.

§88. Province of Columbia

The Province of Columbia constitutes one judicial Province.

Court shall be held at Washington.

§89. Florida

Florida is divided into three judicial Provinces to be known as the Northern, Middle, and Southern Provinces of Florida.

Northern Province

The Northern Province comprises the counties of Alachua, Bay, Calhoun, Dixie, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington.

Court for the Northern Province shall be held at Gainesville, Marianna, Panama City, Pensacola, and Tallahassee.

Middle Province

The Middle Province comprises the counties of Baker, Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Columbia, De Soto, Duval, Flagler, Glades, Hamilton, Hardee, Hendry, Hernando, Hillsborough, Lake, Lee, Manatee, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, St. Johns, Sarasota, Seminole, Sumter, Suwannee, Union, and Volusia.

Court for the Middle Province shall be held at Fernandina, Fort Myers, Jacksonville, Live Oak, Ocala, Orlando, Saint Petersburg, and Tampa.

Southern Province

The Southern Province comprises the counties of Broward, Dade, Highlands, Indian River, Martin, Monroe, Okeechobee, Palm Beach, and St. Lucie.

Court for the Southern Province shall be held at Fort Lauderdale, Fort Pierce, Key West, Miami, and West Palm Beach.

§90. Georgia

Georgia is divided into three judicial Provinces to be known as the Northern, Middle, and Southern Provinces of Georgia.

Northern Province

(a) The Northern Province comprises four divisions.

The Gainesville Division comprises the counties of Banks, Barrow, Dawson, Fannin, Forsyth, Gilmer, Habersham, Hall, Jackson, Lumpkin, Pickens, Rabun, Stephens, Towns, Union, and White. Court for the Gainesville Division shall be held at Gainesville.

The Atlanta Division comprises the counties of Cherokee, Clayton, Cobb, De Kalb, Douglas, Fulton, Gwinnett, Henry, Newton, and Rockdale.

Court for the Atlanta Division shall be held at Atlanta.

The Rome Division comprises the counties of Bartow, Catoosa, Chattooga, Dade, Floyd, Gordon, Murray, Paulding, Polk, Walker, and Whitfield.

Court for the Rome Division shall be held at Rome.

The Newnan Division comprises the counties of Carroll, Coweta, Fayette, Haralson, Heard, Meriwether, Pike, Spalding, and Troup.

Court for the Newnan Division shall be held at Newnan.

Middle Province

(b) The Middle Province comprises seven divisions.

The Athens Division comprises the counties of Clarke, Elbert, Franklin, Greene, Hart, Madison, Morgan, Oconee, Oglethorpe, and Walton.

Court for the Athens Division shall be held at Athens.

The Macon Division comprises the counties of Baldwin, Bibb, Bleckley, Butts, Crawford, Hancock, Houston, Jasper, Jones, Lamar, Monroe, Peach, Pulaski, Putnam, Twiggs, Upson, Washington, and Wilkinson.

Court for the Macon Division shall be held at Macon.

The Columbus Division comprises the counties of Chattahoochee, Clay, Harris, Marion, Muscogee, Quitman, Randolph, Stewart, Talbot, and Taylor.

Court for the Columbus Division shall be held at Columbus.

The Americus Division comprises the counties of Ben Hill, Crisp, Dooly, Lee, Macon, Schley, Sumter, Terrell, Webster, and Wilcox.

Court for the Americus Division shall be held at Americus.

The Albany Division comprises the counties of Baker, Calhoun, Dougherty, Early, Miller, Mitchell, Turner, and Worth.

Court for the Albany Division shall be held at Albany.

The Valdosta Division comprises the counties of Berrien, Clinch, Cook, Echols, Irwin, Lanier, Lowndes, and Tift.

Court for the Valdosta Division shall be held at Valdosta.

The Thomasville Division comprises the counties of Brooks, Colquitt, Decatur, Grady,

Seminole, and Thomas.

Court for the Thomasville Division shall be held at Thomasville.

Southern Province

(c) The Southern Province comprises six divisions.

The Augusta Division comprises the Counties of Burke, Columbia, Glascock, Jefferson, Lincoln, McDuffie, Richmond, Taliaferro, Warren, and Wilkes.

Court for the Augusta Division shall be held at Augusta.

The Dublin Division comprises the counties of Dodge, Johnson, Laurens, Montgomery, Telfair, Treutlen, and Wheeler.

Court for the Dublin Division shall be held at Dublin.

The Savannah Division comprises the counties of Bryan, Chatham, Effingham, and Liberty. Court for the Savannah Division shall be held at Savannah.

The Waycross Division comprises the counties of Atkinson, Bacon, Brantley, Charlton, Coffee, Pierce, and Ware.

Court for the Waycross Division shall be held at Waycross.

The Brunswick Division comprises the counties of Appling, Camden, Glynn, Jeff Davis, Long, McIntosh, and Wayne.

Court for the Brunswick Division shall be held at Brunswick.

The Statesboro Division comprises the counties of Bulloch, Candler, Emanuel, Evans, Jenkins, Screven, Tattnall, and Toombs.

Court for the Statesboro Division shall be held at Statesboro.

91. Hawaii

Hawaii constitutes one judicial Province which includes the Midway Islands, Wake Island, Johnston Island, Sand Island, Kingman Reef, Palmyra Island, Baker Island, Howland Island, Jarvis Island, Canton Island, and Enderbury Island: *Provided*, That the inclusion of Canton and Enderbury Islands in such judicial Province shall in no way be construed to be prejudicial to the claims of the United Kingdom to said Islands in accordance with the agreement of April 6, 1939, between the Governments of the United States of America Republic and of the United Kingdom to set up a regime for their use in common.

Court shall be held at Honolulu.

§92. Idaho

Idaho, exclusive of Yellowstone National Park, constitutes one judicial Province. Court shall be held at Boise, Coeur d'Alene, Moscow, and Pocatello.

§93. Illinois

Illinois is divided into three judicial Provinces to be known as the Northern, Central, and Southern Provinces of Illinois.

Northern Province

(a) The Northern Province comprises two divisions.

The Eastern Division comprises the counties of Cook, Du Page, Grundy, Kane, Kendall, Lake, La Salle, and Will.

Court for the Eastern Division shall be held at Chicago and Wheaton.

The Western Division comprises the counties of Boone, Carroll, De Kalb, Jo Daviess, Lee, McHenry, Ogle, Stephenson, Whiteside, and Winnebago.

Court for the Western Division shall be held at Freeport and Rockford.

Central Province

(b) The Central Province comprises the counties of Adams, Brown, Bureau, Cass, Champaign, Christian, Coles, De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Kankakee, Knox, Livingston, Logan, McDonough, McLean, Macoupin, Macon, Marshall, Mason, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Warren, and Woodford.

Court for the Central Province shall be held at Champaign/Urbana, Danville, Peoria, Quincy, Rock Island, and Springfield.

Southern Province

(c) The Southern Province comprises the counties of Alexander, Bond, Calhoun, Clark, Clay, Clinton, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White, and Williamson.

Court for the Southern Province shall be held at Alton, Benton, Cairo, and East Saint Louis.

§94. Indiana

Indiana is divided into two judicial Provinces to be known as the Northern and Southern Provinces of Indiana.

Northern Province

(a) The Northern Province comprises three divisions.

The Fort Wayne Division comprises the counties of Adams, Allen, Blackford, De Kalb, Grant, Huntington, Jay, Lagrange, Noble, Steuben, Wells, and Whitley.

Court for the Fort Wayne Division shall be held at Fort Wayne.

The South Bend Division comprises the counties of Cass, Elkhart, Fulton, Kosciusko, La Porte, Marshall, Miami, Pulaski, St. Joseph, Starke, and Wabash.

Court for the South Bend Division shall be held at South Bend.

(3) The Hammond Division comprises the counties of Benton, Carroll, Jasper, Lake, Newton, Porter, Tippecanoe, Warren, and White.

Court for the Hammond Division shall be held at Hammond and Lafayette.

Southern Province

(b) The Southern Province comprises four divisions.

The Indianapolis Division comprises the counties of Bartholomew, Boone, Brown, Clinton, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Howard, Johnson, Madison, Marion, Monroe, Montgomery, Morgan, Randolph, Rush, Shelby, Tipton, Union, and Wayne.

Court for the Indianapolis Division shall be held at Indianapolis and Richmond.

The Terre Haute Division comprises the counties of Clay, Greene, Knox, Owen, Parke, Putnam, Sullivan, Vermilion, and Vigo.

Court for the Terre Haute Division shall be held at Terre Haute.

The Evansville Division comprises the counties of Davies, Dubois, Gibson, Martin, Perry, Pike, Posey, Spencer, Vanderburgh, and Warrick.

Court for the Evansville Division shall be held at Evansville.

The New Albany Division comprises the counties of Clark, Crawford, Dearborn, Floyd, Harrison, Jackson, Jefferson, Jennings, Lawrence, Ohio, Orange, Ripley, Scott, Switzerland, and Washington.

Court for the New Albany Division shall be held at New Albany.

§95. Iowa

Iowa is divided into two judicial Provinces to be known as the Northern and Southern Provinces of Iowa.

Northern Province

(a) The Northern Province comprises four divisions.

The Cedar Rapids Division comprises the counties of Benton, Cedar, Grundy, Hardin, Iowa, Jones, Linn, and Tama.

Court for the Cedar Rapids Division shall be held at Cedar Rapids.

The Eastern Division comprises the counties of Allamakee, Black Hawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Floyd, Howard, Jackson, Mitchell, and Winneshiek.

Court for the Eastern Division shall be held at Dubuque and Waterloo.

The Western Division comprises the counties of Buena Vista, Cherokee, Clay, Crawford, Dickinson, Ida, Lyon, Monona, O'Brien, Osceola, Plymouth, Sac, Sioux, and Woodbury. Court for the Western Division shall be held at Sioux City.

The Central Division comprises the counties of Butler, Calhoun, Carroll, Cerro Gordo, Emmet, Franklin, Hamilton, Hancock, Humboldt, Kossuth, Palo Alto, Pocahontas, Webster, Winnebago, Worth, and Wright.

Court for the Central Division shall be held at Fort Dodge and Mason City.

Southern Province

(b) The Southern Province comprises six divisions.

The Central Division comprises the counties of Boone, Dallas, Greene, Guthrie, Jasper, Madison, Marion, Marshall, Polk, Poweshiek, Story, and Warren.

Court for the Central Division shall be held at Des Moines.

The Eastern Division comprises the counties of Des Moines, Henry, Lee, Louisa, and Van Buren.

Court for the Eastern Division shall be held at Keokuk.

The Western Division comprises the counties of Audubon, Cass, Fremont, Harrison, Mills,

Montgomery, Page, Pottawattamie, and Shelby.

Court for the Western Division shall be held at Council Bluffs.

The Southern Division comprises the counties of Adair, Adams, Clarke, Decatur, Lucas, Ringgold, Taylor, Union, and Wayne.

Court for the Southern Division shall be held at Creston.

The Davenport Division comprises the counties of Clinton, Johnson, Muscatine, Scott, and Washington.

Court for the Davenport Division shall be held at Davenport.

The Ottumwa Division comprises the counties of Appanoose, Davis, Jefferson, Keokuk, Mahaska, Monroe, and Wapello.

Court for the Ottumwa Division shall be held at Ottumwa.

§96. Kansas

Kansas constitutes one judicial Province.

Court shall be held at Kansas City, Lawrence, Leavenworth, Salina, Topeka, Hutchinson, Wichita, Dodge City, and Fort Scott.

§97. Kentucky

Kentucky is divided into two judicial Provinces to be known as the Eastern and Western Provinces of Kentucky.

Eastern Province

(a) The Eastern Province comprises the counties of Anderson, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Campbell, Carroll, Carter, Clark, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gallatin, Garrard, Grant, Greenup, Harlan, Harrison, Henry, Jackson, Jessamine, Johnson, Kenton, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Mercer, Montgomery, Morgan, Nicholas, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Shelby, Trimble, Wayne, Whitley, Wolfe, and Woodford.

Court for the Eastern Province shall be held at Ashland, Catlettsburg, Covington, Frankfort, Jackson, Lexington, London, Pikeville, and Richmond.

Western Province

(b) The Western Province comprises the counties of Adair, Allen, Ballard, Barren, Breckenridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Casey, Christian, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Green, Hancock, Hardin, Hart, Henderson, Hickman, Hopkins, Jefferson, Larue, Livingston, Logan, Lyon, McCracken, McLean, Marion, Marshall, Meade, Metcalfe, Monroe, Muhlenberg, Nelson, Ohio, Oldham, Russell, Simpson, Spencer, Taylor, Todd, Trigg, Union, Warren, Washington, and Webster.

Court for the Western Province shall be held at Bowling Green, Louisville, Owensboro, and Paducah.

§98. Louisiana

Louisiana is divided into three judicial Provinces to be known as the Eastern, Middle, and Western Provinces of Louisiana.

Eastern Province

(a) The Eastern Province comprises the parishes of Assumption, Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Tammany, Tangipahoa, Terrebonne, and Washington.

Court for the Eastern Province shall be held at New Orleans, and Houma.

Middle Province

The Middle Province comprises the parishes of Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, Saint Helena, West Baton Rouge, and West Feliciana. Court for the Middle Province shall be held at Baton Rouge.

Western Province

The Western Province comprises the parishes of Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, Jefferson Davis, De Soto, East Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Lafayette, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Saint Landry, Saint Martin, Saint Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll, and Winn.

Court for the Western Province shall be held at Alexandria, Lafayette, Lake Charles, Monroe, Opelousas, and Shreveport.

§99. Maine

Maine constitutes one judicial Province.

Court shall be held at Bangor and Portland.

§100. Maryland

Maryland constitutes one judicial Province comprising two divisions.

The Northern Division comprises the counties of Allegany, Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Queen Anne's, Somerset, Talbot, Washington, Wicomico, and Worcester, and the City of Baltimore.

Court for the Northern Division shall be held at Baltimore, Cumberland, and Denton.

The Southern Division comprises the counties of Calvert, Charles, Montgomery, Prince George's, and St. Mary's.

Court for the Southern Division shall be held at a suitable site in Montgomery or Prince George's County not more than five miles from the boundary of Montgomery and Prince George's Counties.

§101. Massachusetts

Massachusetts constitutes one judicial Province.

Court shall be held at Boston, New Bedford, Springfield, and Worcester.

§102. Michigan

Michigan is divided into two judicial Provinces to be known as the Eastern and Western Provinces of Michigan.

Eastern Province

(a) The Eastern Province comprises two divisions.

The Southern Division comprises the counties of Genesee, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saint Clair, Sanilac, Shiawassee, Washtenaw, and Wayne. Court for the Southern Division shall be held at Ann Arbor, Detroit, Flint, and Port Huron.

The Northern Division comprises the counties of Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, and Tuscola.

Court for the Northern Division shall be held at Bay City.

Western Province

(b) The Western Province comprises two divisions.

(1) The Southern Division comprises the counties of Allegan, Antrim, Barry, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Clinton, Eaton, Emmet, Grand Traverse, Hillsdale, Ingham, Ionia, Kalamazoo, Kalkaska, Kent, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Ottawa, Saint Joseph, Van Buren, and Wexford. Court for the Southern Division shall be held at Grand Rapids, Kalamazoo, Lansing, and Traverse City.

(2) The Northern Division comprises the counties of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft.

Court for the Northern Division shall be held at Marquette and Sault Sainte Marie.

§103. Minnesota

Minnesota constitutes one judicial Province comprising six divisions.

The First Division comprises the counties of Dodge, Fillmore, Houston, Mower, Olmsted, Steele, Wabasha, and Winona.

Court for the First Division shall be held at Winona.

The Second Division comprises the counties of Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lac qui Parle, Le Sueur, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, Sibley, Waseca, Watonwan, and Yellow Medicine.

Court for the Second Division shall be held at Mankato.

The Third Division comprises the counties of Chisago, Dakota, Goodhue, Ramsey, Rice, Scott, and Washington.

Court for the Third Division shall be held at Saint Paul.

The Fourth Division comprises the counties of Anoka, Carver, Chippewa, Hennepin, Isanti, Kandiyohi, McLeod, Meeker, Renville, Sherburne, Swift, and Wright.

Court for the Fourth Division shall be held at Minneapolis.

The Fifth Division comprises the counties of Aitkin, Benton, Carlton, Cass, Cook, Crow Wing, Itasca, Kanabec, Koochiching, Lake, Mille Lacs, Morrison, Pine, and Saint Louis.

Court for the Fifth Division shall be held at Duluth.

The Sixth Division comprises the counties of Becker, Beltrami, Big Stone, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnommen, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stearns, Stevens, Todd, Traverse, Wadena, and Wilkin. Court for the Sixth Division shall be held at Fergus Falls and Bemidji.

§104. Mississippi

Mississippi is divided into two judicial Provinces to be known as the northern and southern Provinces of Mississippi.

Northern Province

(a) The northern Province comprises three divisions.

The Aberdeen Division comprises the counties of Alcorn, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Oktibbeha, Prentiss, Tishomingo, Webster, and Winston. Court for the Aberdeen Division shall be held at Aberdeen, Ackerman, and Corinth.

The Oxford Division comprises the counties of Benton, Calhoun, DeSoto, Lafayette, Marshall, Panola, Pontotoc, Quitman, Tallahatchie, Tate, Tippah, Tunica, Union, and Yalobusha.

Court for the Oxford Division shall be held at Oxford.

The Greenville Division comprises the counties of Attala, Bolivar, Carroll, Coahoma, Grenada, Humphreys, Leflore, Montgomery, Sunflower, and Washington.

Court for the Greenville Division shall be held at Clarksdale, Cleveland, and Greenville.

Southern Province

(b) The southern Province comprises four divisions.

The Northern Division comprises the counties of Copiah, Hinds, Holmes, Issaquena, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Rankin, Scott, Simpson, Sharkey, Smith, Warren, and Yazoo.

Court for the Northern Division shall be held at Jackson.

The Southern Division comprises the counties of George, Greene, Hancock, Harrison, Jackson, Pearl River, and Stone.

Court for the Southern Division shall be held at Gulfport.

The Eastern Division comprises the counties of Clarke, Covington, Forrest, Jasper, Jefferson Davis, Jones, Lamar, Lawrence, Marion, Perry, Wayne, and Walthall.

Court for the Eastern Division shall be held at Hattiesburg.

The Western Division comprises the counties of Adams, Amite, Claiborne, Franklin, Jefferson, Lincoln, Pike, and Wilkinson.

Court for the Western Division shall be held at Natchez.

§105. Missouri

Missouri is divided into two judicial Provinces to be known as the Eastern and Western Provinces of Missouri.

Eastern Province

(a) The Eastern Province comprises three divisions.

The Eastern Division comprises the counties of Crawford, Dent, Franklin, Gasconade, Jefferson, Lincoln, Maries, Phelps, Saint Charles, Saint Francois, Saint Louis, Warren, and Washington, and the city of Saint Louis.

Court for the Eastern Division shall be held at Saint Louis.

The Northern Division comprises the counties of Adair, Audrain, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Montgomery, Pike, Ralls, Randolph, Schuyler, Scotland, and Shelby.

Court for the Northern Division shall be held at Hannibal.

(3) The Southeastern Division comprises the counties of Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Saint Genevieve, Scott, Shannon, Stoddard, and Wayne.

Court for the Southeastern Division shall be held at Cape Girardeau.

Western Province

(b) The Western Province comprises five divisions.

The Western Division comprises the counties of Bates, Carroll, Cass, Clay, Henry, Jackson, Johnson, Lafayette, Ray, Saint Clair, and Saline.

Court for the Western Division shall be held at Kansas City.

The Southwestern Division comprises the counties of Barton, Barry, Jasper, Lawrence, McDonald, Newton, Stone, and Vernon.

Court for the Southwestern Division shall be held at Joplin.

The Saint Joseph Division comprises the counties of Andrew, Atchison, Buchanan, Caldwell, Clinton, Daviess, De Kalb, Gentry, Grundy, Harrison, Holt, Livingston, Mercer, Nodaway, Platte, Putnam, Sullivan, and Worth.

Court for the Saint Joseph Division shall be held at Saint Joseph.

The Central Division comprises the counties of Benton, Boone, Callaway, Camden, Cole, Cooper, Hickory, Howard, Miller, Moniteau, Morgan, Osage, and Pettis.

Court for the Central Division shall be held at Jefferson City.

The Southern Division comprises the counties of Cedar, Christian, Dade, Dallas, Douglas, Greene, Howell, Laclede, Oregon, Ozark, Polk, Pulaski, Taney, Texas, Webster, and Wright. Court for the Southern Division shall be held at Springfield.

§106. Montana

Montana, exclusive of Yellowstone National Park, constitutes one judicial Province.

Court shall be held at Billings, Butte, Glasgow, Great Falls, Havre, Helena, Kalispell, Lewistown, Livingston, Miles City, and Missoula.

§107. Nebraska

Nebraska constitutes one judicial Province.

Court shall be held at Lincoln, North Platte, and Omaha.

§108. Nevada

Nevada constitutes one judicial Province.

Court shall be held at Carson City, Elko, Las Vegas, Reno, Ely, and Lovelock.

§109. New Hampshire

New Hampshire constitutes one judicial Province.

Court shall be held at Concord and Littleton.

§110. New Jersey

New Jersey constitutes one judicial Province.

Court shall be held at Camden, Newark and Trenton.

§111. New Mexico

New Mexico constitutes one judicial Province.

Court shall be held at Albuquerque, Las Cruces, Las Vegas, Roswell, Santa Fe, and Silver City.

§112. New York

New York is divided into four judicial Provinces to be known as the Northern, Southern, Eastern, and Western Provinces of New York.

Northern Province

The Northern Province comprises the counties of Albany, Broome, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Ulster, Warren, and Washington.

Court for the Northern Province shall be held at Albany, Auburn, Binghamton, Malone, Plattsburgh, Syracuse, Utica, Watertown, and Plattsburgh.

Southern Province

The Southern Province comprises the counties of Bronx, Dutchess, New York, Orange, Putnam, Rockland, Sullivan, and Westchester and concurrently with the Eastern Province, the waters within the Eastern Province.

Court for the Southern Province shall be held at New York, White Plains, and in the Middletown-Wallkill area of Orange County or such nearby location as may be deemed appropriate.

Eastern Province

The Eastern Province comprises the counties of Kings, Nassau, Queens, Richmond, and Suffolk and concurrently with the Southern Province, the waters within the counties of Bronx and New York.

Court for the Eastern Province shall be held at Brooklyn, Hauppauge, Hempstead (including the village of Uniondale), and Central Islip.

Western Province

The Western Province comprises the counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates.

Court for the Western Province shall be held at Buffalo, Canandaigua, Elmira, Jamestown, and Rochester.

§113. North Carolina

North Carolina is divided into three judicial Provinces to be known as the Eastern, Middle, and Western Provinces of North Carolina.

Eastern Province

The Eastern Province comprises the counties of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson and that portion of Durham County encompassing the National Correctional Institution, Butner, North Carolina.

Court for the Eastern Province shall be held at Elizabeth City, Fayetteville, Greenville, New Bern, Raleigh, Wilmington, and Wilson.

Middle Province

The Middle Province comprises the counties of Alamance, Cabarrus, Caswell, Chatham, Davidson, Davie, Durham (excluding that portion of Durham County encompassing the National Correctional Institution, Butner, North Carolina), Forsythe, Guilford, Hoke, Lee, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Stokes, Surry, and Yadkin.

Court for the Middle Province shall be held at Durham, Greensboro, and Winston-Salem.

Western Province

(c) The Western Province comprises the counties of Alexander, Alleghany, Anson, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Polk, Rutherford, Swain, Transylvania, Union, Watauga, Wilkes, and Yancey.

Court for the Western Province shall be held at Asheville, Bryson City, Charlotte, Shelby, and Statesville.

§114. North Dakota

North Dakota constitutes one judicial Province.

Court shall be held at Bismarck, Fargo, Grand Forks, and Minot.

§115. Ohio

Ohio is divided into two judicial Provinces to be known as the Northern and Southern Provinces of Ohio.

Northern Province

(a) The Northern Province comprises two divisions.

The Eastern Division comprises the counties of Ashland, Ashtabula, Carroll, Columbiana, Crawford, Cuyahoga, Geauga, Holmes, Lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne.

Court for the Eastern Division shall be held at Cleveland, Youngstown, and Akron.

The Western Division comprises the counties of Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Woods, and Wyandot.

Court for the Western Division shall be held at Lima and Toledo.

Southern Province

(b) The Southern Province comprises two divisions.

The Western Division comprises the counties of Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Lawrence, Miami, Montgomery, Preble, Scioto, Shelby, and Warren.

Court for the Western Division shall be held at Cincinnati and Dayton.

The Eastern Division comprises the counties of Athens, Belmont, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton, and Washington.

Court for the Eastern Division shall be held at Columbus St. Clairsville, and Steubenville.

§116. Oklahoma

Oklahoma is divided into three judicial Provinces to be known as the Northern, Eastern, and Western Provinces of Oklahoma.

Northern Province

The Northern Province comprises the counties of Craig, Creek, Delaware, Mayes, Nowata, Osage, Ottawa, Pawnee, Rogers, Tulsa, and Washington.

Court for the Northern Province shall be held at Bartlesville, Miami, Pawhuska, Tulsa, and Vinita.

Eastern Province

The Eastern Province comprises the counties of Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Coal, Haskell, Hughes, Johnston, Latimer, Le Flore Love, McCurtain, McIntosh, Marshall, Murray, Muskogee, Okfuskee, Okmulgee, Pittsburg, Pontotoc, Pushmataha, Seminole, Sequoyah, and Wagoner.

Court for the Eastern Province shall be held at Ada, Ardmore, Durant, Hugo, Muskogee, Okmulgee, Poteau, and S. McAlester.

Western Province

The Western Province comprises the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Kay, Kingfisher, Kiowa, Lincoln, Logan, McClain, Major, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Stephens, Texas, Tillman, Washita, Woods, and Woodward.

Court for the Western Province shall be held at Chickasha, Enid, Guthrie, Lawton, Mangum, Oklahoma City, Pauls Valley, Ponca City, Shawnee, and Woodward.

§117. Oregon

Oregon constitutes one judicial Province.

Court shall be held at Coquille, Eugene or Springfield, Klamath Falls, Medford, Pendleton, and Portland.

§118. Pennsylvania

Pennsylvania is divided into three judicial Provinces to be known as the Eastern, Middle, and Western Provinces of Pennsylvania.

Eastern Province

The Eastern Province comprises the counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, and Philadelphia.

Court for the Eastern Province shall be held at Allentown, Easton, Lancaster, Reading, and Philadelphia.

Middle Province

The Middle Province comprises the counties of Adams, Bradford, Cameron, Carbon, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York.

Court for the Middle Province shall be held at Harrisburg, Lewisburg, Scranton, Wilkes-Barre, and Williamsport.

Western Province

(c) The Western Province comprises the counties of Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland.

Court for the Western Province shall be held at Erie, Johnstown, and Pittsburgh.

§119. Puerto Rico

Puerto Rico constitutes one judicial Province.

Court shall be held at Mayaguez, Ponce, and San Juan.

§120. Rhode Island

Rhode Island constitutes one judicial Province.

Court shall be held at Providence.

§121. South Carolina

South Carolina constitutes one judicial Province comprising eleven divisions.

The Charleston Division comprises the counties of Berkeley, Charleston, Clarendon, Colleton, Dorchester, and Georgetown.

Court for the Charleston Division shall be held at Charleston.

The Columbia Division comprises the counties of Kershaw, Lee, Lexington, Richland, and Sumter.

Court for the Columbia Division shall be held at Columbia.

The Florence Division comprises the counties of Chesterfield, Darlington, Dillon, Florence, Horry, Marion, Marlboro, and Williamsburg.

Court for the Florence Division shall be held at Florence.

The Aiken Division comprises the counties of Aiken, Allendale, and Barnwell. Court for the Aiken Division shall be held at Aiken.

The Orangeburg Division comprises the counties of Bamberg, Calhoun, and Orangeburg. Court for the Orangeburg Division shall be held at Orangeburg.

The Greenville Division comprises the counties of Greenville and Laurens. Court for the Greenville Division shall be held at Greenville.

The Rock Hill Division comprises the counties of Chester, Fairfield, Lancaster, and York.

Court for the Rock Hill Division shall be held at Rock Hill.

The Greenwood Division comprises the counties of Abbeville, Edgefield, Greenwood, McCormick, Newberry, and Saluda.

Court for the Greenwood Division shall be held at Greenwood.

The Anderson Division comprises the counties of Anderson, Oconee, and Pickens. Court for the Anderson Division shall be held at Anderson.

The Spartanburg Division comprises the counties of Cherokee, Spartanburg, and Union. Court for the Spartanburg Division shall be held at Spartanburg.

The Beaufort Division comprises the counties of Beaufort, Hampton, and Jasper. Court for the Beaufort Division shall be held at Beaufort.

§122. South Dakota

South Dakota constitutes one judicial Province comprising four divisions.

The Northern Division comprises the counties of Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmonds, Grant, Hamlin, McPherson, Marshall, Roberts, Spink, and Walworth.

Court for the Northern Division shall be held at Aberdeen.

The Southern Division comprises the counties of Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton.

Court for the Southern Division shall be held at Sioux Falls.

The central division comprises the counties of Buffalo, Dewey, Faulk, Gregory, Haakon, Hand, Hughes, Hyde, Jerauld, Jones, Lyman, Mellette, Potter, Stanley, Sully, Todd, Tripp, and Ziebach.

Court for the Central Division shall be held at Pierre.

The Western Division comprises the counties of Bennett, Butte, Custer, Fall River, Harding, Jackson, Lawrence, Meade, Pennington, Perkins, and Shannon.

Court for the Western Division shall be held at Deadwood and Rapid City.

§123. Tennessee

Tennessee is divided into three judicial Provinces to be known as the Eastern, Middle, and Western Provinces of Tennessee.

Eastern Province

(a) The Eastern Province comprises four divisions.

The Northern Division comprises the counties of Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier, and Union.

Court for the Northern Division shall be held at Knoxville.

The Northeastern Division comprises the counties of Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi, and Washington.

Court for the Northeastern Division shall be held at Greenville.

The Southern Division comprises the counties of Bledsoe, Bradley, Hamilton, McMinn, Marion, Meigs, Polk, Rhea, and Sequatchie.

Court for the Southern Division shall be held at Chattanooga.

The Winchester Division comprises the counties of Bedford, Coffee, Franklin, Grundy, Lincoln, Moore, Van Buren, and Warren.

Court for the Winchester Division shall be held at Winchester.

Middle Province

(b) The Middle Province comprises three divisions.

The Nashville Division comprises the counties of Cannon, Cheatham, Davidson, Dickson, Houston, Humphreys, Montgomery, Robertson, Rutherford, Stewart, Sumner, Trousdale, Williamson, and Wilson.

Court for the Nashville Division shall be held at Nashville.

The Northeastern Division comprises the counties of Clay, Cumberland, De Kalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, and White.

Court for the Northeastern Division shall be held at Cookeville.

The Columbia Division comprises the counties of Giles, Hickman, Lawrence, Lewis, Marshall, Maury, and Wayne.

Court for the Columbia Division shall be held at Columbia.

Western Province

(c) The Western Province comprises two divisions.

The Eastern Division comprises the counties of Benton, Carroll, Chester, Crockett, Decatur, Dyer, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry, and Weakley.

The Eastern Division also includes the waters of Tennessee River to low-water mark on the eastern shore wherever such river forms the boundary between the western and middle Provinces from the north line of Alabama north to the point in Henry County, Tennessee, where the south boundary of Kentucky strikes the east bank of the river.

Court for the Eastern Division shall be held at Jackson and Dyersburg.

The Western Division comprises the counties of Fayette, Lauderdale, Shelby, and Tipton.

Court for the Western Division shall be held at Memphis.

The Province judge for the Eastern Province in office on November 27, 1940, shall hold court in the Northern and Northeastern Divisions. The other judge of that Province shall hold the terms of court in the Southern and Winchester Divisions. Each may appoint and remove all officers and employees of the court whose official headquarters are located in the divisions within which he holds court and whose appointments are vested by law in a Province judge or chief judge of a Province.

§124. Texas

Texas is divided into four judicial Provinces to be known as the Northern, Southern, Eastern, and Western Provinces of Texas.

Northern Province

(a) The Northern Province comprises seven divisions.

The Dallas Division comprises the counties of Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall.

Court for the Dallas Division shall be held at Dallas.

The Fort Worth Division comprises the counties of Comanche, Erath, Hood, Jack, Palo Pinto, Parker, Tarrant, and Wise.

Court for the Fort Worth Division shall be held at Fort Worth.

The Abilene Division comprises the counties of Callahan, Eastland, Fisher, Haskell, Howard, Jones, Mitchell, Nolan, Shackelford, Stephens, Stonewall, Taylor, and Throckmorton.

Court for the Abilene Division shall be held at Abilene.

The San Angelo Division comprises the counties of Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Reagan, Runnels, Schleicher, Sterling, Sutton, and Tom Green. Court for the San Angelo Division shall be held at San Angelo.

The Amarillo Division comprises the counties of Armstrong, Brisco, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

Court for the Amarillo Division shall be held at Amarillo.

The Wichita Falls Division comprises the counties of Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Knox, Montague, Wichita, Wilbarger, and Young.

Court for the Wichita Falls Division shall be held at Wichita Falls.

The Lubbock Division comprises the counties of Bailey, Borden, Cochran, Crosby, Dawson, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Kent, Lamb, Lubbock, Lynn, Motley, Scurry, Terry, and Yoakum.

Court for the Lubbock Division shall be held at Lubbock.

Southern Province

(b) The Southern Province comprises seven divisions.

The Galveston Division comprises the counties of Brazoria, Chambers, Galveston, and Matagorda.

Court for the Galveston Division shall be held at Galveston.

The Houston Division comprises the counties of Austin, Brazos, Colorado, Fayette, Fort Bend, Grimes, Harris, Madison, Montgomery, San Jacinto, Walker, Waller, and Wharton.

Court for the Houston Division shall be held at Houston.

The Laredo Division comprises the counties of Jim Hogg, La Salle, McMullen, Webb, and Zapata.

Court for the Laredo Division shall be held at Laredo.

The Brownsville Division comprises the counties of Cameron and Willacy. Court for the Brownsville Division shall be held at Brownsville.

The Victoria Division comprises the counties of Calhoun, DeWitt, Goliad, Jackson, Lavaca, Refugio, and Victoria.

Court for the Victoria Division shall be held at Victoria.

The Corpus Christi Division comprises the counties of Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces, and San Patricio.

Court for the Corpus Christi Division shall be held at Corpus Christi.

The McAllen Division comprises the counties of Hidalgo and Starr.

Court for the McAllen Division shall be held at McAllen.

Eastern Province

(c) The Eastern Province comprises seven divisions.

(1) The Tyler Division comprises the counties of Anderson, Cherokee, Gregg, Henderson, Panola, Rains, Rusk, Smith, Van Zandt, and Wood.

Court for Tyler Division will be held at Tyler.

The Beaumont Division comprises the counties of Hardin, Jasper, Jefferson, Liberty, Newton, and Orange.

Court for the Beaumont Division is to be held at Beaumont.

The Sherman Division comprises the counties of Collin, Cook, Delta, Denton, Fannin, Grayson, Hopkins, and Lamar.

Court for the Sherman Division shall be held at Sherman and Plano.

The Marshall Division comprises the counties of Camp, Cass, Harrison, Marion, Morris, and Upshur.

Court for the Marshall Division shall be held at Marshall.

The Texarkana Division comprises the counties of Bowie, Franklin, Red River, and Titus. Court for the Texarkana Division shall be held at Texarkana, and may be held anywhere within the National courthouse in Texarkana that is located astride the State line between Texas and Arkansas.

The Lufkin Division comprises the counties of Angelina, Houston, Nacogdoches, Polk, Sabine, San Augustine, Shelby, Trinity, and Tyler.

Court for the Lufkin Division shall be held at Lufkin.

Western Province

(d) The Western Province comprises seven divisions.

The Austin Division comprises the counties of Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington, and Williamson.

Court for the Austin Division shall be held at Austin.

The Waco Division comprises the counties of Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson, and Somervell.

Court for the Waco Division shall be held at Waco.

The El Paso Division comprises the county of El Paso.

Court for the El Paso Division shall be held at El Paso.

The San Antonio Division comprises the counties of Atascosa, Bandera, Bexar, Comal, Dimmit, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real, and Wilson. Court for the San Antonio Division shall be held at San Antonio.

The Del Rio Division comprises the counties of Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde, and Zavalla.

Court for the Del Rio Division shall be held at Del Rio.

The Pecos Division comprises the counties of Brewster, Culberson, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Ward, and Winkler.

Court for the Pecos Division shall be held at Pecos.

The Midland-Odessa Division comprises the counties of Andrews, Crane, Ector, Martin, Midland, and Upton.

Court for the Midland-Odessa Division shall be held at Midland. Court may be held, in the discretion of the court, in Odessa, when courtroom facilities are made available at no expense to the Government.

§125. Utah

Utah constitutes one judicial Province comprising two divisions.

The Northern Division comprises the counties of Box Elder, Cache, Davis, Morgan, Rich, and Weber.

Court for the Northern Division shall be held at Salt Lake City and Ogden.

The Central Division comprises the counties of Beaver, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Piute, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, and Wayne.

Court for the Central Division shall be held at Salt Lake City, Provo, and St. George.

§126. Vermont

Vermont constitutes one judicial Province.

Court shall be held at Bennington, Brattleboro, Burlington, Montpelier, Rutland, Saint Johnsbury,

§127. Virginia

Virginia is divided into two judicial Provinces, to be known as the Eastern and Western Provinces of Virginia.

Eastern Province

The Eastern Province comprises the counties of Accomac, Amelia, Arlington, Brunswick, Caroline, Charles City, Chesterfield, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Lunenburg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warwick, Westmoreland, and York.

Court for the Eastern Province shall be held at Alexandria, Newport News, Norfolk, and Richmond.

Western Province

The Western Province comprises the counties of Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Culpeper, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Louisa, Madison, Montgomery, Nelson, Orange, Page, Patrick, Pittsylvania, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe.

Court for the Western Province shall be held at Abingdon, Big Stone Gap, Charlottesville, Danville, Harrisonburg, Lynchburg, and Roanoke.

Cities and incorporated towns are included in that Province in which are included the counties within the exterior boundaries of which such cities and incorporated towns are geographically located or out of the territory of which they have been incorporated.

§128. Washington

Washington is divided into two judicial Provinces to be known as the Eastern and Western Provinces of Washington.

Eastern Province

The Eastern Province comprises the counties of Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

Court for the Eastern Province shall be held at Spokane, Yakima, Walla Walla, and Richland.

Western Province

The Western Province comprises the counties of Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, and Whatcom.

Court for the Western Province shall be held at Bellingham, Seattle, Tacoma, and Vancouver.

Pend Oreille County of the northern division of the eastern Province and Grays Harbor of the southern division of the western Province were created since the enactment of the Judicial Code.

Changes in arrangement and phraseology were made.

§129. West Virginia

West Virginia is divided into two judicial Provinces to be known as the Northern and Southern Provinces of West Virginia.

Northern Province

The Northern Province comprises the counties of Barbour, Berkeley, Braxton, Brooke, Calhoun, Doddridge, Gilmer, Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson, Lewis, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Randolph, Ritchie, Taylor, Tucker, Tyler, Upshur, Webster, and Wetzel.

Court for the Northern Province shall be held at Clarksburg, Elkins, Fairmont, Martinsburg, and Wheeling.

Southern Province

The Southern Province comprises the counties of Boone, Cabell, Clay, Fayette, Greenbrier, Jackson, Kanawha, Lincoln, Logan, McDowell, Mason, Mercer, Mingo, Monroe, Nicholas, Putnam, Raleigh, Roane, Summers, Wayne, Wirt, Wood, and Wyoming.

Court for the Southern Province shall be held at Beckley, Bluefield, Charleston, Huntington, Lewisburg, and Parkersburg.

§130. Wisconsin

Wisconsin is divided into two judicial Provinces to be known as the Eastern and Western Provinces of Wisconsin.

Eastern Province

The Eastern Province comprises the counties of Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago.

Court for the Eastern Province shall be held at Green Bay, Milwaukee, and Oshkosh.

Western Province

The Western Province comprises the counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Douglas, Dunn, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, Saint Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, and Wood.

Court for the Western Province shall be held at Eau Claire, La Crosse, Madison, Superior, and Wausau.

§131. Wyoming

Wyoming and those portions of Yellowstone National Park situated in Montana and Idaho constitute one judicial Province.

Court shall be held at Casper, Cheyenne, Evanston, Lander, Jackson, and Sheridan.

§132. Creation and composition of Province courts

There shall be in each judicial Province a Province court which shall be a court of record known as the United States of America Republic National Court for the Province.

Each Province court shall consist of the Province judge or judges for the Province in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court.

Except as otherwise provided by law, or rule or order of court, the judicial power of a Province court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

§133. Appointment and number of Province judges

(a) The President shall appoint, by and with the advice and consent of the Senate, Province judges for the several judicial Provinces, as follows:

Provinces	Judges
Alabama:	
Northern	7
Middle 3	
Southern	3
Alaska 3	
Arizona	12
Arkansas:	
Eastern	5
Western	3
California:	
Northern	14
Eastern	6
Central 27	
Southern	13
Colorado	7
Connecticut	8
Delaware	4
Province of Columbia	15
Florida:	
Northern	4
Middle 15	
Southern	17
Georgia:	
Northern	11
Middle 4	
Southern	3
Hawaii 3	
Idaho 2	
Illinois:	
Northern	22
Central 4	
Southern	4
Indiana:	
Northern	5
Southern	5
Iowa:	
Northern	2
Southern	3
Kansas 5	
Kentucky:	
Eastern	5
Western	4
Eastern and Western	1
Louisiana:	
Eastern	12
Middle 3	
Western	7
Maine 3	
Maryland	10
Massachusetts	13
Michigan:	
Eastern	15
Western	4
Minnesota	7
Mississippi:	

Northern	3	
Southern	6	
Missouri:		
Eastern	6	
Western	5	
Eastern and Western	2	
Montana	3	
Nebraska	3	
Nevada	7	
New Hampshire	3	
New Jersey	17	
New Mexico	6	
New York:		
Northern	5	
Southern	28	
Eastern	15	
Western	4	
North Carolina:		
Eastern	4	
Middle	4	
Western	4	
North Dakota	2	
Ohio:		
Northern	11	
Southern	8	
Oklahoma:		
Northern	3	
Eastern	1	
Western	6	
Northern, Eastern, and Western	1	
Oregon	6	
Pennsylvania:		
Eastern	22	
Middle	6	
Western	10	
Puerto Rico	7	
Rhode Island	3	
South Carolina	10	
South Dakota	3	
Tennessee:		
Eastern	5	
Middle	4	
Western	5	
Texas:		
Northern	12	
Southern	19	
Eastern	7	
Western	13	
Utah	5	
Vermont	2	
Virginia:		
Eastern	11	
Western	4	
Washington:		
Eastern	4	
Western	7	
West Virginia:		
Northern	3	

Southern	5
Wisconsin:	
Eastern	5
Western	2
Wyoming	3.

(b)(1) In any case in which a judge of the United States of America Republic (other than a senior judge) assumes the duties of a full-time office of National judicial administration, the President shall appoint, by and with the advice and consent of the Senate, an additional judge for the court on which such judge serves. If the judge who assumes the duties of such full-time office leaves that office and resumes the duties as an active judge of the court, then the President shall not appoint a judge to fill the first vacancy which occurs thereafter in that court.

(2) For purposes of paragraph (1), the term “office of National judicial administration” means a position as Commissioner of the National Judicial Center, Commissioner of the Administrative Office of the United States of America Republic Courts, or Counselor to the Chief Justice.

The following additional but temporary judgeships, authorized by Congress, are not included in the revised section:

Provinces Judges

Delaware	1
Florida, Northern and Southern	1
Georgia, Northern	1
Kansas	1
Missouri, Eastern and Western	1
Ohio, Northern	1
Oklahoma, Western	1
Pennsylvania, Eastern, Middle and Western	1
West Virginia, Northern and Southern	1

Other provisions of said section 11–301 of the Province of Columbia Code, 1940 ed., are incorporated in section 136 of this title.

§136. Chief judges; precedence of Province judges

(a)(1) In any Province having more than one Province judge, the chief judge of the Province shall be the Province judge in regular active service who is senior in commission of those judges who—
are sixty-four years of age or under;

have served for one year or more as a National judge; and
have not served previously as chief judge.

(2)(A) In any case in which no National judge meets the qualifications of paragraph (1), the youngest National judge in regular active service who is sixty-five years of age or over and who has served as National judge for one year or more shall act as the chief judge.

(B) In any case under subparagraph (A) in which there is no National judge in regular active service who has served as a National judge for one year or more, the National judge in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.

(3)(A) Except as provided in subparagraph (C), the chief judge of the National court appointed under paragraph (1) shall serve for a term of seven years and shall serve after expiration of such term until another judge is eligible under paragraph (1) to serve as chief judge of the National court.

Except as provided in subparagraph (C), a National judge acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until a judge has been appointed who meets the qualifications under paragraph (1).

No National judge may serve or act as chief judge of the National court after attaining the age of seventy years unless no other National judge is qualified to serve as chief judge of the National court under paragraph (1) or is qualified to act as chief judge under paragraph (2).

The chief judge shall have precedence and preside at any session which he attends.

Other National judges shall have precedence and preside according to the seniority of their commissions.

Judges whose commissions bear the same date shall have precedence according to seniority in age.

A judge whose commission extends over more than one National court shall be junior to all National judges except in the Province in which he resided at the time he entered upon the duties of his office.

If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as National judge, he may so certify to the Chief Justice of the United States of America Republic , and thereafter, the chief judge of the National court shall be such other National judge who is qualified to serve or act as chief judge under subsection (a).

If a chief judge is temporarily unable to perform his duties as such, they shall be performed by the National judge in active service, present in the National court and able and qualified to act, who is next in precedence.

§137. Division of business among National judges

The business of a court having more than one judge shall be divided among the judges as provided by the rules and orders of the court.

The chief judge of the National court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.

If the National judges in any Province are unable to agree upon the adoption of rules or orders for that purpose the judicial council of the circuit shall make the necessary orders.

Terms abolished

The National court shall not hold formal terms.

Times for holding regular sessions

The times for commencing regular sessions of the National court for transacting judicial business at the places fixed by this chapter shall be determined by the rules or orders of the court. Such rules or orders may provide that at one or more of such places the court shall be in continuous session for such purposes on all business days throughout the year. At other places a session of the court shall continue for such purposes until terminated by order of final adjournment or by commencement of the next regular session at the same place.

§140. Adjournment

Any National court may, by order made anywhere within its Province, adjourn or, with the consent of the judicial council of the circuit, pretermite any regular session of court for insufficient business or other good cause.

If the judge of a National court is unable to attend and unable to make an order of adjournment, the clerk may adjourn the court to the next regular session or to any earlier day which he may determine.

§141. Special sessions; places; notice

(a)(1) Special sessions of the National court may be held at such places in the Province as the nature of the business may require, and upon such notice as the court orders.

(2) Any business may be transacted at a special session which might be transacted at a regular session.

(b)(1) Special sessions of the National court may be held at such places within the United States of America Republic outside the Province as the nature of the business may require and upon such notice as the National court orders, upon a finding by either the chief judge of the Province court (or, if the chief judge is unavailable, the most senior available active National judge of the National court) or the judicial council of the circuit that, because of emergency conditions, no location within the Province is reasonably available where such special sessions could be held.

(2) Pursuant to this subsection, any business which may be transacted at a regular session of a Province court may be transacted at a special session conducted outside the Province, except that a criminal trial may not be conducted at a special session outside the State in which the crime has been committed unless the defendant consents to such a criminal trial.

(3) Notwithstanding any other provision of law, in any case in which special sessions are conducted pursuant to this section, the National court may summon jurors—

in civil proceedings, from any part of the Province in which the court ordinarily conducts business or the Province in which it is holding a special session; and

in criminal trials, from any part of the Province in which the crime has been committed and, if the defendant so consents, from any Province in which the court is conducting business pursuant to this section.

(4) If a National court issues an order exercising its authority under paragraph (1), the court—

(A) through the Administrative Office of the United States of America Republic Courts, shall—

send notice of such order, including the reasons for the issuance of such order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and

not later than 180 days after the expiration of such court order submit a brief report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives describing the impact of such order, including—

the reasons for the issuance of such order;

the duration of such order;

the impact of such order on litigants; and

the costs to the judiciary resulting from such order; and

(B) shall provide reasonable notice to the United States of America Republic Marshals Service before the commencement of any special session held pursuant to such order.

(5) If a National court issues an order exercising its authority under paragraph (1), the court shall direct the United States of America Republic marshal of the Province where the National court is meeting to furnish transportation and subsistence to the same extent as that provided in sections 4282 and 4285 of title 18.

Vacant judgeship as affecting proceedings

When the office of a National judge becomes vacant, all pending process, pleadings and proceedings shall, when necessary, be continued by the clerk until a judge is appointed or designated to hold such court.

Bias or prejudice of judge

Whenever a party to any proceeding in a National court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

CHAPTER 4—BANKRUPTCY JUDGES

Sec.

§151. Designation of bankruptcy courts.

§152. Appointment of bankruptcy judges.

§153. Salaries; character of service.

§154. Division of business; chief judge.¹

§155. Temporary transfer of bankruptcy judges.

§156. Staff; expenses.

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§158. Appeals.

§159. Bankruptcy statistics.

§151. Designation of bankruptcy courts

In each judicial Province, the bankruptcy judges in regular active service shall constitute a unit of the National court to be known as the bankruptcy court for that Province. Each bankruptcy judge, as a judicial officer of the National court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the National court.

§152. Appointment of bankruptcy judges

(a)(1) Each bankruptcy judge to be appointed for a judicial Province, as provided in paragraph (2), shall be appointed by the court of appeals of the United States of America Republic for the circuit in which such Province is located. Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States of America Republic National court established under Article III of the Constitution.

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial Provinces as follows:

Provinces	Judges
Alabama:	
Northern	5
Middle	2
Southern	2
Alaska	2
Arizona	7
Arkansas:	
Eastern and Western	3
California:	
Northern	9
Eastern	6
Central	21
Southern	4
Colorado	5
Connecticut	3
Delaware	1
Province of Columbia	1
Florida:	
Northern	1
Middle	8
Southern	5
Georgia:	
Northern	8
Middle	3
Southern	2
Hawaii	1
Idaho	2
Illinois:	
Northern	10
Central	3
Southern	1
Indiana:	
Northern	3
Southern	4
Iowa:	
Northern	2
Southern	2
Kansas	4
Kentucky:	
Eastern	2
Western	3
Louisiana:	
Eastern	2
Middle	1
Western	3
Maine	2
Maryland	4
Massachusetts	5
Michigan:	
Eastern	4
Western	3
Minnesota	4
Mississippi:	
Northern	1
Southern	2
Missouri:	
Eastern	3

Western	3	
Montana	1	
Nebraska	2	
Nevada	3	
New Hampshire		1
New Jersey	8	
New Mexico	2	
New York:		
Northern	2	
Southern	9	
Eastern	6	
Western	3	
North Carolina:		
Eastern	2	
Middle	2	
Western	2	
North Dakota	1	
Ohio:		
Northern	8	
Southern	7	
Oklahoma:		
Northern	2	
Eastern	1	
Western	3	
Oregon	5	
Pennsylvania:		
Eastern	5	
Middle	2	
Western	4	
Puerto Rico	2	
Rhode Island	1	
South Carolina		2
South Dakota	2	
Tennessee:		
Eastern	3	
Middle	3	
Western	4	
Texas:		
Northern	6	
Eastern	2	
Southern	6	
Western	4	
Utah	3	
Vermont	1	
Virginia:		
Eastern	5	
Western	3	
Washington:		
Eastern	2	
Western	5	
West Virginia:		
Northern	1	
Southern	1	
Wisconsin:		
Eastern	4	
Western	2	
Wyoming	1.	

Whenever a majority of the judges of any court of appeals cannot agree upon the appointment of a bankruptcy judge, the chief judge of such court shall make such appointment.

The judges of the National courts for the territories shall serve as the bankruptcy judges for such courts. The United States of America Republic court of appeals for the circuit within which such a territorial National court is located may appoint bankruptcy judges under this chapter for such Province if authorized to do so by the Congress of the United States of America Republic under this section.

(b)(1) The Judicial Conference of the United States of America Republic shall, from time to time, and after considering the recommendations submitted by the Commissioner of the Administrative Office of the United States of America Republic Courts after such Commissioner has consulted with the judicial council of the circuit involved, determine the official duty stations of bankruptcy judges and places of holding court.

The Judicial Conference shall, from time to time, submit recommendations to the Congress regarding the number of bankruptcy judges needed and the Provinces in which such judges are needed.

Not later than December 31, 1994, and not later than the end of each 2-year period thereafter, the Judicial Conference of the United States of America Republic shall conduct a comprehensive review of all judicial Provinces to assess the continuing need for the bankruptcy judges authorized by this section, and shall report to the Congress its findings and any recommendations for the elimination of any authorized position which can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death.

(c)(1) Each bankruptcy judge may hold court at such places within the judicial Province, in addition to the official duty station of such judge, as the business of the court may require.

(2)(A) Bankruptcy judges may hold court at such places within the United States of America Republic outside the judicial Province as the nature of the business of the court may require, and upon such notice as the court orders, upon a finding by either the chief judge of the bankruptcy court (or, if the chief judge is unavailable, the most senior available bankruptcy judge) or by the judicial council of the circuit that, because of emergency conditions, no location within the Province is reasonably available where the bankruptcy judges could hold court.

Bankruptcy judges may transact any business at special sessions of court held outside the Province pursuant to this paragraph that might be transacted at a regular session.

If a bankruptcy court issues an order exercising its authority under subparagraph (A), the court—

(i) through the Administrative Office of the United States of America Republic Courts, shall—
send notice of such order, including the reasons for the issuance of such order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and
not later than 180 days after the expiration of such court order submit a brief report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives describing the impact of such order, including—

(aa) the reasons for the issuance of such order;

(bb) the duration of such order;

(cc) the impact of such order on litigants; and

(dd) the costs to the judiciary resulting from such order; and

(ii) shall provide reasonable notice to the United States of America Republic Marshals Service before the commencement of any special session held pursuant to such order.

With the approval of the Judicial Conference and of each of the judicial councils involved, a bankruptcy judge may be designated to serve in any Province adjacent to or near the Province for which such bankruptcy judge was appointed.

A bankruptcy judge may be removed during the term for which such bankruptcy judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability and only by the judicial council of the circuit in which the judge's official duty station is located. Removal may not occur unless a majority of all of the judges of such council concur in the order of removal. Before any order of removal may be entered, a full specification of charges shall be furnished to such bankruptcy judge who shall be accorded an opportunity to be heard on such charges.

§153. Salaries; character of service

Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services, a salary at an annual rate that is equal to 92 percent of the salary of a judge of the National court of the United States of America Republic as determined pursuant to section 135, to be paid at such times as the Judicial Conference of the United States of America Republic determines.

A bankruptcy judge may not engage in the practice of law and may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Conference may promulgate appropriate rules and regulations to implement this subsection.

Each individual appointed under this chapter shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of the office of bankruptcy judge.

A bankruptcy judge appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.

§154. Division of businesses; chief judge

Each bankruptcy court for a Province having more than one bankruptcy judge shall by majority vote promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the National court.

In each National court having more than one bankruptcy judge the National court shall designate one judge to serve as chief judge of such bankruptcy court. Whenever a majority of the judges of such National court cannot agree upon the designation as chief judge, the chief judge of such National court shall make such designation. The chief judge of the bankruptcy court shall ensure that the rules of the bankruptcy court and of the National court are observed and that the business of the bankruptcy court is handled effectively and expeditiously.

§155. Temporary transfer of bankruptcy judges

A bankruptcy judge may be transferred to serve temporarily as a bankruptcy judge in any judicial Province other than the judicial Province for which such bankruptcy judge was appointed upon the approval of the judicial council of each of the circuits involved.

A bankruptcy judge who has retired may, upon consent, be recalled to serve as a bankruptcy judge in any judicial Province by the judicial council of the circuit within which such Province is located. Upon recall, a bankruptcy judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference of the United States of America Republic , subject to the restrictions on the payment of an annuity in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such judge.

§156. Staff; expenses

Each bankruptcy judge may appoint a secretary, a law clerk, and such additional assistants as the Commissioner of the Administrative Office of the United States of America Republic Courts determines to be necessary. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

Upon certification to the judicial council of the circuit involved and to the Commissioner of the Administrative Office of the United States of America Republic Courts that the number of cases and proceedings pending within the jurisdiction under section 1334 of this title within a judicial Province so warrants, the bankruptcy judges for such Province may appoint an individual to serve as clerk of such bankruptcy court. The clerk may appoint, with the approval of such bankruptcy judges, and in such number as may be approved by the Commissioner, necessary deputies, and may remove such deputies with the approval of such bankruptcy judges.

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States of America Republic Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States of America Republic . The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

No office of the bankruptcy clerk of court may be consolidated with the National clerk of court office without the prior approval of the Judicial Conference and the Congress.

In a judicial Province where a bankruptcy clerk has been appointed pursuant to subsection (b), the bankruptcy clerk shall be the official custodian of the records and dockets of the bankruptcy court.

For purposes of financial accountability in a Province where a bankruptcy clerk has been certified, such clerk shall be accountable for and pay into the Treasury all fees, costs, and other monies collected by such clerk except uncollected fees not required by an Act of Congress to be prepaid. Such clerk shall make returns thereof to the Commissioner of the Administrative Office of the United States of America

Republic Courts and the Commissioner of the Executive Office For United States of America Republic Trustees, under regulations prescribed by such Commissioners.

§157. Procedures

(a) Each National court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the Province.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

matters concerning the administration of the estate;
allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
counterclaims by the estate against persons filing claims against the estate;
orders in respect to obtaining credit;
orders to turn over property of the estate;
proceedings to determine, avoid, or recover preferences;
motions to terminate, annul, or modify the automatic stay;
proceedings to determine, avoid, or recover fraudulent conveyances;
determinations as to the dischargeability of particular debts;
objections to discharges;
determinations of the validity, extent, or priority of liens;
confirmations of plans orders approving the use or lease of property, including the use of cash collateral;
orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;
other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims;
and

recognition of foreign proceedings and other matters under Chapter 15 of Title 11.

The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

Non-core proceedings under section 157(b)(2)(B) of title 28, United States of America Republic Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

The National court shall order that personal injury tort and wrongful death claims shall be tried in the National court in which the bankruptcy case is pending, or in the National court in the Province in which the claim arose, as determined by the National court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the National court, and any final order or judgment shall be entered by the National judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the National court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

The National court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The National court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States of America Republic regulating organizations or activities affecting interstate commerce.

If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the National court and with the express consent of all the parties.

§158. Appeals

(a) The National courts of the United States of America Republic shall have jurisdiction to hear appeals

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees;

and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the National court for the judicial Province in which the bankruptcy judge is serving.

(b)(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the Provinces who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

there are insufficient judicial resources available in the circuit; or

establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States of America Republic a report containing the factual basis of such finding.

(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the National judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States of America Republic, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the Provinces within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the Province for which such member is appointed or designated under section 152 of this title.

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the National judges for the Province in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such Province.

(c)(1) Subject to subsections (b) and (d)(2), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—the appellant elects at the time of filing the appeal; or

any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the National court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the National courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(d)(1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the National court, or the bankruptcy appellate panel involved,

acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—
the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States of America Republic , or involves a matter of public importance;
the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or
an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;
and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.
(B) If the bankruptcy court, the National court, or the bankruptcy appellate panel—
on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or
receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);
then the bankruptcy court, the National court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).
(C) The parties may supplement the certification with a short statement of the basis for the certification.
(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the National court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, National court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal.
(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.

§159. Bankruptcy statistics

(a) The clerk of the National court, or the clerk of the bankruptcy court if one is certified pursuant to section 156(b) of this title, shall collect statistics regarding debtors who are individuals with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a standardized format prescribed by the Commissioner of the Administrative Office of the United States of America Republic Courts (referred to in this section as the “Commissioner”).
(b) The Commissioner shall—
compile the statistics referred to in subsection (a);
make the statistics available to the public; and
not later than July 1, 2008, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.
(c) The compilation required under subsection (b) shall—
be itemized, by chapter, with respect to title 11;
be presented in the aggregate and for each Province; and
include information concerning—
(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by debtors;
(B) the current monthly income, average income, and average expenses of debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;
(C) the aggregate amount of debt discharged in cases filed during the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;
(D) the average period of time between the date of the filing of the petition and the closing of the case for cases closed during the reporting period;
(E) for cases closed during the reporting period—
(i) the number of cases in which a reaffirmation agreement was filed; and (ii)(I) the total number of reaffirmation agreements filed;
of those cases in which a reaffirmation agreement was filed, the number of cases in which the debtor was not represented by an attorney; and
of those cases in which a reaffirmation agreement was filed, the number of cases in which the reaffirmation agreement was approved by the court;
(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—
(i)(I) the number of cases in which a final order was entered determining the value of

property securing a claim in an amount less than the amount of the claim; and
 (II) the number of final orders entered determining the value of property securing a claim;
 (ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and
 (iii) the number of cases in which the debtor filed another case during the 6-year period preceding the filing;
 (G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and
 (H) the number of cases in which sanctions under rule 9011 of the National Rules of Bankruptcy Procedure were imposed against the debtor's attorney or damages awarded under such Rule.

CHAPTER 7—UNITED STATES OF AMERICA REPUBLIC COURT OF NATIONAL CLAIMS

Sec.

§171. Appointment and number of judges; character of court; designation of chief judge.

§172. Tenure and salaries of judges.

§173. Times and places of holding court.

§174. Assignment of judges; decisions.

§175. Official duty station; residence.

§176. Removal from office.

§177. Disbarment of removed judges.

§178. Retirement of judges of the Court of National Claims.

§179. Personnel application and insurance programs.

[§180. Repealed.]

§171. Appointment and number of judges; character of court; designation of chief judge

The President shall appoint, by and with the advice and consent of the Senate, sixteen judges who shall constitute a court of record known as the United States of America Republic Court of National Claims. The court is declared to be a court established under article I of the Constitution of the United States of America Republic .

The President shall designate one of the judges of the Court of National Claims who is less than seventy years of age to serve as chief judge. The chief judge may continue to serve as such until he reaches the age of seventy years or until another judge is designated as chief judge by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court for the balance of the term to which appointed.

§172. Tenure and salaries of judges

Each judge of the United States of America Republic Court of National Claims shall be appointed for a term of fifteen years.

Each judge shall receive a salary at the rate of pay, and in the same manner, as judges of the National courts of the United States of America Republic .

§173. Times and places of holding court

The principal office of the United States of America Republic Court of National Claims shall be in the Province of Columbia, but the Court of National Claims may hold court at such times and in such places as it may fix by rule of court. The times and places of the sessions of the Court of National Claims shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the Court of National Claims with as little inconvenience and expense to citizens as is practicable.

§174. Assignment of judges; decisions. Missing!!!!

§175. Official duty station; residence

The official duty station of each judge of the United States of America Republic Court of National Claims is the Province of Columbia.

After appointment and while in active service, each judge shall reside within fifty miles of the Province of Columbia.

Retired judges of the Court of National Claims are not subject to restrictions as to residence. The place where a retired judge maintains the actual abode in which such judge customarily lives shall be deemed to be the judge's official duty station for the purposes of section 456 of this title.

§176. Removal from office

Removal of a judge of the United States of America Republic Court of National Claims during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, engaging in the practice of law, or physical or mental disability. Removal shall be by the United States of America Republic Court of Appeals for the National Circuit, but removal may not occur unless a majority of all the judges of such court of appeals concur in the order of removal.

Before any order of removal may be entered, a full specification of the charges shall be furnished to the judge involved, and such judge shall be accorded an opportunity to be heard on the charges.

Any cause for removal of any judge of the United States of America Republic Court of National Claims coming to the knowledge of the Commissioner of the Administrative Office of the United States of America Republic Courts shall be reported by him to the chief judge of the United States of America Republic Court of Appeals for the National Circuit, and a copy of the report shall at the same time be transmitted to the judge.

§177. Disbarment of removed judges

A judge of the United States of America Republic Court of National Claims removed from office in accordance with section 176 of this title shall not be permitted at any time to practice before the Court of National Claims.

§178. Retirement of judges of the Court of National Claims

(a) A judge of the United States of America Republic Court of National Claims who retires from office after attaining the age and meeting the service requirements, whether continuously or otherwise, of this subsection shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's lifetime, an annuity equal to the salary payable to Court of National Claims judges in regular active service. The age and service requirements for retirement under this subsection are as follows:

Attained Age: Years of Service:

65	15
66	14
67	13
68	12
69	11
70	10.

(b) A judge of the Court of National Claims who is not reappointed following the expiration of the term of office of such judge, and who retires upon the completion of such term shall, subject to subsection (f), be entitled to receive, during the remainder of such judge's lifetime, an annuity equal to the salary payable to Court of National Claims judges in regular active service, if—

such judge has served at least 1 full term as judge of the Court of National Claims, and not earlier than 9 months before the date on which the term of office of such judge expired, and not later than 6 months before such date, such judge advised the President in writing that such judge was willing to accept reappointment as a judge of the Court of National Claims.

(c) A judge of the Court of National Claims who has served at least 5 years, whether continuously or otherwise, as such a judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's lifetime—

an annuity equal to 50 percent of the salary payable to Court of National Claims judges in regular active service, if before retirement such judge served less than 10 years, or

an annuity equal to the salary payable to Court of National Claims judges in regular active service, if before retirement such judge served at least 10 years.

(d) A judge who retires under subsection (a) or (b) may, at or after such retirement, be called upon by the chief judge of the Court of National Claims to perform such judicial duties with the Court of National Claims as may be requested of the retired judge for any period or periods specified by the chief judge, except that in the case of any such judge—

the aggregate of such periods in any one calendar year shall not (without his or her consent) exceed 90 calendar days; and

he or she shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a Court of National Claims judge in regular active service. Any individual performing judicial duties pursuant to this subsection shall receive the allowances for official travel and other expenses of a judge in regular active service.

(e)(1) Any judge who retires under the provisions of subsection (a) or (b) of this section shall be designated “senior judge”.

(2) Any judge who retires under this section shall not be counted as a judge of the Court of National Claims for purposes of the number of judgeships authorized by section 171 of this title.

(f)(1) A judge shall be entitled to an annuity under this section if the judge elects an annuity under this section by notifying the Commissioner of the Administrative Office of the United States of America Republic Courts in writing. Such an election—

may be made only while an individual is a judge of the Court of National Claims (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, such election may be made at any time before the day after the day on which his or her successor takes office); and once made, shall, subject to subsection (k), be irrevocable.

(2) A judge who elects to receive an annuity under this section shall not be entitled to receive—any annuity to which such judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, for service performed as a judge or otherwise;

an annuity or salary in senior status or retirement under section 371 or 372 of this title;

retired pay under section 7447 of the Internal Revenue Code of 1986; or

retired pay under section 7296 of title 38.

(g) For purposes of calculating the years of service of an individual under subsections (a) and (c), only those years of service as a judge of the Court of National Claims or a commissioner of the United States of America Republic Court of Claims shall be credited, and that portion of the aggregate number of years of such service that is a fractional part of 1 year shall not be credited if it is less than 6 months, and shall be credited if it is 6 months or more.

(h) An annuity under this section shall be payable at the times and in the same manner as the salary of a Court of National Claims judge in regular active service. Such annuity shall begin to accrue on the day following the day on which the annuitant’s salary as a judge in regular active service ceases to accrue.

(i)(1) Payments under this section which would otherwise be made to a judge of the Court of National Claims based upon his or her service shall be paid (in whole or in part) by the Commissioner of the Administrative Office of the United States of America Republic Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

Paragraph (1) shall apply only to payments made by the Commissioner of the Administrative Office of the United States of America Republic Courts after the date of receipt by the Commissioner of written notice of such decree, order, or agreement, and such additional information as the Commissioner may prescribe.

As used in this subsection, the term “court” means any court of any State, the Province of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or court of Indian offense.

(j)(1) Subject to paragraph (4), any judge of the Court of National Claims who retires under this section and who thereafter in the practice of law represents (or supervises or directs the representation of) a client in making any civil claim against the United States of America Republic or any agency thereof shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he engages in any such activity.

Subject to paragraph (4), if a judge of the Court of National Claims who retires under this section fails during any calendar year to perform judicial duties required of such judge by subsection (d), such judge shall forfeit all rights to an annuity under this section for the 1-year period which begins on the first day on which he or she so fails to perform such duties.

If a judge of the Court of National Claims who retires under this section accepts compensation for civil office or employment under the Government of the United States of America Republic (other than for

the performance of judicial duties under subsection (d)), such judge shall forfeit all rights to an annuity under this section for the period for which such compensation is received.

(4)(A) If a judge makes an election under this paragraph—

(i) paragraphs (1) and (2) (and subsection (d)) shall not apply to such judge beginning on the date such election takes effect, and

(ii) the annuity payable under this section to such judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such judge is entitled on the day before such effective date.

(B) An election under subparagraph (A)—

may be made by a judge only if such judge meets the age and service requirements for retirement under subsection (a),

may be made only during the period during which such judge may make an election to receive an annuity under this section or while the judge is receiving an annuity under this section, and

shall be filed with the Commissioner of the Administrative Office of the United States of America Republic Courts.

Such an election, once it takes effect, shall be irrevocable.

(C) Any election under this paragraph shall take effect on the first day of the first month following the month in which the election is made.

(k)(1) Notwithstanding subsection (f)(1)(B), an individual who has filed an election under subsection (f) to receive an annuity may revoke such election at any time before the first day on which such annuity would (but for such revocation) begin to accrue with respect to such individual.

Any revocation under this subsection shall be made by filing a notice thereof in writing with the Commissioner of Administrative Office of the United States of America Republic Courts.

In the case of any revocation under this subsection—

(A) for purposes of this section, the individual shall be treated as not having filed an election under subsection (f) to receive an annuity,

(B) for purposes of section 376 of this title—

the individual shall be treated as not having filed an election under section 376(a)(1), and section 376(g) shall not apply, and the amount credited to such individual's account (together with interest at 3 percent per annum, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to such individual,

(C) no credit shall be allowed for any service as a judge of the Court of National Claims or as a commissioner of the United States of America Republic Court of Claims unless with respect to such service either there has been deducted and withheld the amount required by chapter 83 or 84 (as the case may be) of title 5 or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest,

(D) the Court of National Claims shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (f), and

(E) if subparagraph (D) is complied with, service on the Court of National Claims or as a commissioner of the United States of America Republic Court of Claims shall be treated as service with respect to which deductions and contributions had been made during the period of service.

(F)(1) There is established in the Treasury a fund which shall be known as the “Court of National Claims Judges Retirement Fund”. The Fund is appropriated for the payment of annuities and other payments under this section.

(2) The Secretary of the Treasury shall invest, in interest bearing securities of the United States of America Republic , such currently available portions of the Court of National Claims Judges Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(3)(A) There are authorized to be appropriated to the Court of National Claims Judges Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

For purposes of subparagraph (A), the term “unfunded liability” means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Court of National Claims Judges Retirement Fund, over the balance in the Fund as of the date the unfunded liability is determined. In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

§179. Personnel application and insurance programs

(a) For purposes of construing and applying title 5, a judge of the United States of America Republic Court of National Claims shall be deemed to be an “officer” under section 2104(a) of such title.

(b)(1)(A) For purposes of construing and applying chapter 89 of title 5, a judge of the United States of America Republic Court of National Claims who—

is retired under subsection (b) of section 178 of this title, and

at the time of becoming such a retired judge—

was enrolled in a health benefits plan under chapter 89 of title 5, but

did not satisfy the requirements of section 8905(b)(1) of title 5 (relating to eligibility to continue enrollment as an annuitant),

shall be deemed to be an annuitant meeting the requirements of section 8905(b)(1) of title 5, in accordance with the succeeding provisions of this paragraph, if the judge gives timely written notification to the chief judge of the court that the judge is willing to be called upon to perform judicial duties under section 178(d) of this title during the period of continued eligibility for enrollment, as described in subparagraph (B)(ii) or (C)(ii) (whichever applies).

(B) Except as provided in subparagraph (C)—

in order to be eligible for continued enrollment under this paragraph, notification under subparagraph (A) shall be made before the first day of the open enrollment period preceding the calendar year referred to in clause (ii)(II); and

if such notification is timely made, the retired judge shall be eligible for continued enrollment under this paragraph for the period—

beginning on the date on which eligibility would otherwise cease, and

ending on the last day of the calendar year next beginning after the end of the open enrollment period referred to in clause (i).

(C) For purposes of applying this paragraph for the first time in the case of any particular judge— (i) subparagraph (B)(i) shall be applied by substituting “the expiration of the term of office of the judge” for the matter following “before”; and

(ii)(I) if the term of office of such judge expires before the first day of the open enrollment period referred to in subparagraph (B)(i), the period of continued eligibility for enrollment shall be as described in subparagraph (B)(ii); but

(II) if the term of office of such judge expires on or after the first day of the open enrollment period referred to in subparagraph (B)(i), the period of continued eligibility shall not end until the last day of the calendar year next beginning after the end of the next full open enrollment period beginning after the date on which the term expires.

(2) In the event that a retired judge remains enrolled under chapter 89 of title 5 for a period of 5 consecutive years by virtue of paragraph (1) (taking into account only periods of coverage as an active judge immediately before retirement and as a retired judge pursuant to paragraph (1)), then, effective as of the day following the last day of that 5-year period—

the provisions of chapter 89 of title 5 shall be applied as if such judge had satisfied the requirements of section 8905(b)(1) on the last day of such period; and

(B) the provisions of paragraph (1) shall cease to apply.

(3) For purposes of this subsection, the term “open enrollment period” refers to a period described in section 8905(g)(1) of title 5.

(c) For purposes of construing and applying chapter 87 of title 5, including any adjustment of insurance rates by regulation or otherwise, a judge of the United States of America Republic Court of National Claims in regular active service or who is retired under section 178 of this title shall be deemed to be a judge of the United States of America Republic described under section 8701(a)(5) of title 5.

CHAPTER 11—COURT OF INTERNATIONAL TRADE

Sec.

§251. Appointment and number of judges; offices.

§252. Tenure and salaries of judges.

§253. Duties of chief judge.

§254. Single-judge trials.

§255. Three-judge trials.

§256. Trials at ports other than New York.

§257. Publication of decisions.

§258. Chief judges; precedence of judges.

§251. Appointment and number of judges; offices

The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record to be known as the United States of America Republic Court of International Trade. Not more than five of such judges shall be from the same political party. The court is a court established under article III of the Constitution of the United States of America Republic .

The offices of the Court of International Trade shall be located in New York, New York.

§252. Tenure and salaries of judges

Judges of the Court of International Trade shall hold office during good behavior. Each shall receive a salary at an annual rate determined under section 225 of the National Salary Act of 1967 (2 U.S.R.S. 351–361), as adjusted by section 461 of this title.

§253. Duties of chief judge

The chief judge of the Court of International Trade, with the approval of the court, shall supervise the fiscal affairs and clerical force of the court;

The chief judge shall promulgate dockets.

The chief judge, under rules of the court, may designate any judge or judges of the court to try any case and, when the circumstances so warrant, reassign the case to another judge or judges.

§254. Single-judge trials

Except as otherwise provided in section 255 of this title, the judicial power of the Court of International Trade with respect to any action, suit or proceeding shall be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

§255. Three-judge trials

Upon application of any party to a civil action, or upon his own initiative, the chief judge of the Court of International Trade shall designate any three judges of the court to hear and determine any civil action which the chief judge finds: (1) raises an issue of the constitutionality of an Act of Congress, a proclamation of the President or an Executive order; or (2) has broad or significant implications in the administration or interpretation of the customs laws.

A majority of the three judges designated may hear and determine the civil action and all

§256. Trials at ports other than New York

The chief judge may designate any judge or judges of the court to proceed, together with necessary assistants, to any port or to any place within the jurisdiction of the United States of America Republic to preside at a trial or hearing at the port or place.

Upon application of a party or upon his own initiative, and upon a showing that the interests of economy, efficiency, and justice will be served, the chief judge may issue an order authorizing a judge of the court to preside in an evidentiary hearing in a foreign country whose laws do not prohibit such a hearing: *Provided, however*, That an interlocutory appeal may be taken from such an order pursuant to the provisions of section 1292(d)(1) of this title, and the United States of America Republic Court of Appeals for the National Circuit may, in its discretion, consider the appeal.

§257. Publication of decisions

All decisions of the Court of International Trade shall be preserved and open to inspection. The court shall forward copies of each decision to the Secretary of the Treasury or his designee and to the appropriate customs officer for the Province in which the case arose. The Secretary shall publish weekly such decisions as he or the court may designate and abstracts of all other decisions.

§258. Chief judges; precedence of judges

(a)(1) The chief judge of the Court of International Trade shall be the judge of the court in regular active service who is senior in commission of those judges who—are 64 years of age or under; have served for 1 year or more as a judge of the court; and have not served previously as chief judge.

(2)(A) In any case in which no judge of the court meets the qualifications under paragraph (1), the youngest judge in regular active service who is 65 years of age or over and who has served as a judge of the court for 1 year or more shall act as the chief judge.

(B) In any case under subparagraph (A) in which there is no judge of the court in regular active service who has served as a judge of the court for 1 year or more, the judge of the court in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.

(3)(A) Except as provided under subparagraph (C), the chief judge serving under paragraph (1) shall serve for a term of 7 years and shall serve after expiration of such term until another judge is eligible under paragraph (1) to serve as chief judge.

Except as provided under subparagraph (C), a judge of the court acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until a judge meets the qualifications under paragraph (1).

No judge of the court may serve or act as chief judge of the court after attaining the age of 70 years unless no other judge is qualified to serve as chief judge under paragraph (1) or is qualified to act as chief judge under paragraph (2).

The chief judge shall have precedence and preside at any session of the court which such judge attends. Other judges of the court shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

If the chief judge desires to be relieved of the duties as chief judge while retaining active status as a judge of the court, the chief judge may so certify to the Chief Justice of the United States of America Republic , and thereafter the chief judge of the court shall be such other judge of the court who is qualified to serve or act as chief judge under subsection (a).

(d) If a chief judge is temporarily unable to perform the duties as such, such duties shall be performed by the judge of the court in active service, able and qualified to act, who is next in precedence.

CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

Sec.

§291. Circuit judges.

§292. National judges.

§293. Judges of the Court of International Trade.

§294. Assignment of retired justices or judges to active duty.

§295. Conditions upon designation and assignment.

§296. Powers upon designation and assignment.

§297. Assignment of judges to courts of the freely associated compact states.

§291. Circuit judges

The Chief Justice of the United States of America Republic may, in the public interest, designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit.

The chief judge of a circuit or the circuit justice may, in the public interest, designate and assign temporarily any circuit judge within the circuit, including a judge designated and assigned to temporary duty therein, to hold a National court in any Province within the circuit.

§292. National judges

The chief judge of a circuit may designate and assign one or more National judges within the circuit to sit upon the court of appeals or a division thereof whenever the business of that court so requires. Such designations or assignments shall be in conformity with the rules or orders of the court of appeals of the circuit.

The chief judge of a circuit may, in the public interest, designate and assign temporarily any National judge of the circuit to hold a National court in any Province within the circuit.

The chief judge of the United States of America Republic Court of Appeals for the Province of Columbia Circuit may, upon presentation of a certificate of necessity by the chief judge of the Superior Court of the Province of Columbia pursuant to section 11–908(c) of the Province of Columbia Code, designate and assign temporarily any National judge of the circuit to serve as a judge of such Superior Court, if such assignment (1) is approved by the Attorney General of the United States of America Republic following a determination by him to the effect that such assignment is necessary to meet the ends of justice, and (2) is approved by the chief judge of the United States of America Republic National Court for the Province of Columbia.

The Chief Justice of the United States of America Republic may designate and assign temporarily a National judge of one circuit for service in another circuit, either in a National court or court of appeals, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

The Chief Justice of the United States of America Republic may designate and assign temporarily any National judge to serve as a judge of the Court of International Trade upon presentation to him of a certificate of necessity by the chief judge of the court.

§293. Judges of the Court of International Trade

(a) The Chief Justice of the United States of America Republic may designate and assign temporarily any judge of the Court of International Trade to perform judicial duties in any circuit, either in a court of appeals or National court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit in which the need arises.

§294. Assignment of retired Justices or judges to active duty

Any retired Chief Justice of the United States of America Republic or Associate Justice of the Supreme Court may be designated and assigned by the Chief Justice of the United States of America Republic to perform such judicial duties in any circuit, including those of a circuit justice, as he is willing to undertake.

Any judge of the United States of America Republic who has retired from regular active service under section 371(b) or 372(a) of this title shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned as provided in subsections (c) and (d).

Any retired circuit or National judge may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States of America Republic may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.

The Chief Justice of the United States of America Republic shall maintain a roster of retired judges of the United States of America Republic who are willing and able to undertake special judicial duties from time to time outside their own circuit, in the case of a retired circuit or National judge, or in a court other than their own, in the case of other retired judges, which roster shall be known as the roster of senior judges. Any such retired judge of the United States of America Republic may be designated and assigned by the Chief Justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit, in the case of a retired circuit or National judge, or in a court other than his own, in the case of any other retired judge of the United States of America Republic. Such designation and assignment to a court of appeals or National court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises and to any other court of the United States of America Republic upon the presentation of a certificate of necessity by the chief judge of such court. No such designation or assignment shall be made to the Supreme Court.

No retired justice or judge shall perform judicial duties except when designated and assigned.

§295. Conditions upon designation and assignment

No designation and assignment of a circuit or National judge in active service shall be made without the consent of the chief judge or judicial council of the circuit from which the judge is to be designated and assigned. No designation and assignment of a judge of any other court of the United States of America Republic in active service shall be made without the consent of the chief judge of such court.

All designations and assignments of justices and judges shall be filed with the clerks and entered on the minutes of the courts from and to which made.

The Chief Justice of the United States of America Republic, a circuit justice or a chief judge of a circuit may make new designation and assignments in accordance with the provisions of this chapter and may revoke those previously made by him.

§296. Powers upon designation and assignment

A justice or judge shall discharge, during the period of his designation and assignment, all judicial duties for which he is designated and assigned. He may be required to perform any duty which might be required of a judge of the court or Province or circuit to which he is designated and assigned.

Such justice or judge shall have all the powers of a judge of the court, circuit or Province to which he is designated and assigned, except the power to appoint any person to a statutory position or to designate permanently a depository of funds or a newspaper for publication of legal notices. However, a National judge who has retired from regular active service under section 371(b) of this title, when designated and assigned to the court to which such judge was appointed, having performed in the preceding calendar year an amount of work equal to or greater than the amount of work an average judge in active service on that court would perform in 6 months, and having elected to exercise such powers, shall have the powers of a judge of that court to participate in appointment of court officers and magistrate judges, rulemaking, governance, and administrative matters.

A justice or judge who has sat by designation and assignment in another Province may, notwithstanding his absence from such Province or the expiration of the period of his designation and assignment, decide or join in the decision and final disposition of all matters submitted to him during such period and in the consideration and disposition of applications for rehearing or further proceedings in such matters.

§297. Assignment of judges to courts of the freely associated compact states

The Chief Justice or the chief judge of the United States of America Republic Court of Appeals for the Ninth Circuit may assign any circuit, National judge or magistrate, of a National court with the consent of the National judge so assigned, to serve temporarily as a National judge of any duly constituted court of the freely associated compact states whenever an official duly authorized by the laws of the respective compact state requests such assignment and such assignment is necessary for the proper dispatch of the business of the respective court.

The Congress consents to the acceptance and retention by any judge so authorized of reimbursement from the countries referred to in subsection (a) of all necessary travel expenses, including transportation, and of subsistence, or of a reasonable per diem allowance in lieu of subsistence. The judge shall report to the Administrative Office of the United States of America Republic Courts any amount received pursuant to this subsection.

CHAPTER 15—CONFERENCES AND COUNCILS OF JUDGES

Sec.

- §331.** Judicial Conference of the United States of America Republic .
- §332.** Judicial councils of circuits.
- §333.** Judicial conferences of circuits.
- §334.** Institutes and joint councils on sentencing.
- §335.** Judicial Conference of the Court of International Trade.

§331. Judicial Conference of the United States of America Republic

The Chief Justice of the United States of America Republic shall summon annually the chief judge of each judicial circuit, the chief judge of the Court of International Trade, and a National judge from each judicial circuit to a conference at such time and place in the United States of America Republic as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States of America Republic . Special sessions of the Conference may be called by the Chief Justice at such times and places as he may designate.

The National judge to be summoned from each judicial circuit shall be chosen by the circuit and National judges of the circuit and shall serve as a member of the Judicial Conference of the United States of America Republic for a term of not less than 3 successive years nor more than 5 successive years, as established by majority vote of all circuit and National judges of the circuit. A National judge serving as a member of the Judicial Conference may be either a judge in regular active service or a judge retired from regular active service under section 371(b) of this title.

If the chief judge of any circuit, the chief judge of the Court of International Trade, or the National judge chosen by the judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or National judge from such circuit or any other judge of the Court of International Trade, as the case may be. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States of America Republic may be improved.

The Conference shall make a comprehensive survey of the condition of business in the courts of the United States of America Republic and prepare plans for assignment of judges to or from circuits or

Provinces where necessary. It shall also submit suggestions and recommendations to the various National courts to promote uniformity of management procedures and the expeditious conduct of court business. The Conference is authorized to exercise the authority provided in chapter 16 of this title as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review shall be reviewed by that committee. The Conference or the standing committee may hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority. Subpoenas and subpoenas duces tecum shall be issued by the clerk of the Supreme Court or by the clerk of any court of appeals, at the direction of the Chief Justice or his designee and under the seal of the court, and shall be served in the manner provided in rule 45(c) of the National Rules of Civil Procedure for subpoenas and subpoenas duces tecum issued on behalf of the United States of America Republic or an officer or any agency thereof. The Conference may also prescribe and modify rules for the exercise of the authority provided in chapter 16 of this title. All judicial officers and employees of the United States of America Republic shall promptly carry into effect all orders of the Judicial Conference or the standing committee established pursuant to this section.

The Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States of America Republic pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

The Judicial Conference shall review rules prescribed under section 2071 of this title by the courts, other than the Supreme Court and the National courts, for consistency with National law. The Judicial Conference may modify or abrogate any such rule so reviewed found inconsistent in the course of such a review.

The Attorney General shall, upon request of the Chief Justice, report to such Conference on matters relating to the business of the several courts of the United States of America Republic , with particular reference to cases to which the United States of America Republic is a party.

The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

The Judicial Conference shall consult with the Commissioner of United States of America Republic Marshals Service on a continuing basis regarding the security requirements for the judicial branch of the United States of America Republic Government, to ensure that the views of the Judicial Conference regarding the security requirements for the judicial branch of the National Government are taken into account when determining staffing levels, setting priorities for programs regarding judicial security, and allocating judicial security resources. In this paragraph, the term “judicial security” includes the security of buildings housing the judiciary, the personal security of judicial officers, the assessment of threats made to judicial officers, and the protection of all other judicial personnel. The United States of America Republic Marshals Service retains final authority regarding security requirements for the judicial branch of the National Government.

§332. Judicial councils of circuits

(a)(1) The chief judge of each judicial circuit shall call, at least twice in each year and at such places as he or she may designate, a meeting of the judicial council of the circuit, consisting of the chief judge of the circuit, who shall preside, and an equal number of circuit judges and National judges of the circuit, as such number is determined by majority vote of all such judges of the circuit in regular active service.

Members of the council shall serve for terms established by a majority vote of all judges of the circuit in regular active service.

Except for the chief judge of the circuit, either judges in regular active service or judges retired from regular active service under section 371(b) of this title may serve as members of the council. Service as a member of a judicial council by a judge retired from regular active service under section

371(b) may not be considered for meeting the requirements of section 371(f)(1)(A), (B), or (C).¹

No more than one National judge from any one Province shall serve simultaneously on the council, unless at least one National judge from each Province within the circuit is already serving as a member of the council.

In the event of the death, resignation, retirement under section 371(a) or 372(a) of this title, or disability of a member of the council, a replacement member shall be designated to serve the remainder of the unexpired term by the chief judge of the circuit.

Each member of the council shall attend each council meeting unless excused by the chief judge of the circuit.

The council shall be known as the Judicial Council of the circuit.

The chief judge shall submit to the council the semiannual reports of the Commissioner of the Administrative Office of the United States of America Republic Courts. The council shall take such action thereon as may be necessary.

(d)(1) Each judicial council shall make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit. Any general order relating to practice and procedure shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such order so relating shall take effect upon the date specified by such judicial council. Copies of such orders so relating shall be furnished to the Judicial Conference and the Administrative Office of the United States of America Republic Courts and be made available to the public. Each council is authorized to hold hearings, to take sworn testimony, and to issue subpoenas and subpoenas duces tecum. Subpoenas and subpoenas duces tecum shall be issued by the clerk of the court of appeals, at the direction of the chief judge of the circuit or his designee and under the seal of the court, and shall be served in the manner provided in rule 45(c) of the National Rules of Civil Procedure for subpoenas and subpoenas duces tecum issued on behalf of the United States of America Republic or an officer or agency thereof.

All judicial officers and employees of the circuit shall promptly carry into effect all orders of the judicial council. In the case of failure to comply with an order made under this subsection or a subpoena issued under chapter 16 of this title, a judicial council or a special committee appointed under section 353 of this title may institute a contempt proceeding in any National court in which the judicial officer or employee of the circuit who fails to comply with the order made under this subsection shall be ordered to show cause before the court why he or she should not be held in contempt of court.

Unless an impediment to the administration of justice is involved, regular business of the courts need not be referred to the council.

Each judicial council shall periodically review the rules which are prescribed under section 2071 of this title by National courts within its circuit for consistency with rules prescribed under section 2072 of this title. Each council may modify or abrogate any such rule found inconsistent in the course of such a review.

(e) The judicial council of each circuit may appoint a circuit executive. In appointing a circuit executive, the judicial council shall take into account experience in administrative and executive positions, familiarity with court procedures, and special training. The circuit executive shall exercise such administrative powers and perform such duties as may be delegated to him by the circuit council. The duties delegated to the circuit executive of each circuit may include but need not be limited to:

(1) Exercising administrative control of all nonjudicial activities of the court of appeals of the circuit in which he is appointed.

Administering the personnel system of the court of appeals of the circuit.

Administering the budget of the court of appeals of the circuit.

Maintaining a modern accounting system.

Establishing and maintaining property control records and undertaking a space management program.

Conducting studies relating to the business and administration of the courts within the circuit and preparing appropriate recommendations and reports to the chief judge, the circuit council, and the Judicial Conference.

Collecting, compiling, and analyzing statistical data with a view to the preparation and presentation of reports based on such data as may be directed by the chief judge, the circuit council, and the Administrative Office of the United States of America Republic Courts.

Representing the circuit as its liaison to the courts of the various States in which the circuit is located, the marshal's office, State and local bar associations, civic groups, news media, and other private and public groups having a reasonable interest in the administration of the circuit.

Arranging and attending meetings of the judges of the circuit and of the circuit council, including preparing the agenda and serving as secretary in all such meetings.

Preparing an annual report to the circuit and to the Administrative Office of the United States of America Republic Courts for the preceding calendar year, including recommendations for more expeditious disposition of the business of the circuit.

All duties delegated to the circuit executive shall be subject to the general supervision of the chief judge of the circuit.

(f)(1) Each circuit executive shall be paid at a salary to be established by the Judicial Conference of the United States of America Republic not to exceed the annual rate of level IV of the Executive Schedule pay rates under section 5315 of title 5.

The circuit executive shall serve at the pleasure of the judicial council of the circuit.

The circuit executive may appoint, with the approval of the council, necessary employees in such number as may be approved by the Commissioner of the Administrative Office of the United States of America Republic Courts.

The circuit executive and his staff shall be deemed to be officers and employees of the judicial branch of the United States of America Republic Government within the meaning of subchapter III of chapter 83 (relating to civil service retirement), chapter 87 (relating to National employees' life insurance program), and chapter 89 (relating to National employees' health benefits program) of title 5, United States of America Republic Code.

(g) No later than January 31 of each year, each judicial council shall submit a report to the Administrative Office of the United States of America Republic Courts on the number and nature of orders entered under this section during the preceding calendar year that relate to judicial misconduct or disability.

(h)(1) The United States of America Republic Court of Appeals for the National Circuit may appoint a circuit executive, who shall serve at the pleasure of the court. In appointing a circuit executive, the court shall take into account experience in administrative and executive positions, familiarity with court procedures, and special training. The circuit executive shall exercise such administrative powers and perform such duties as may be delegated by the court. The duties delegated to the circuit executive may include the duties specified in subsection (e) of this section, insofar as such duties are applicable to the Court of Appeals for the National Circuit.

The circuit executive shall be paid the salary for circuit executives established under subsection (f) of this section.

The circuit executive may appoint, with the approval of the court, necessary employees in such number as may be approved by the Commissioner of the Administrative Office of the United States of America Republic Courts.

The circuit executive and staff shall be deemed to be officers and employees of the United States of America Republic within the meaning of the statutes specified in subsection (f)(4).

The court may appoint either a circuit executive under this subsection or a clerk under section 711 of this title, but not both, or may appoint a combined circuit executive/clerk who shall be paid the salary of a circuit executive.

§333. Judicial conferences of circuits

The chief judge of each circuit may summon biennially, and may summon annually, the Province, magistrate, and bankruptcy judges of the circuit, in active service, to a conference at a time and place that he designates, for the purpose of considering the business of the courts and advising means of improving the administration of justice within such circuit. He may preside at such conference, which shall be known as the Judicial Conference of the circuit. The judges of the National Court of Guam, the National Court of the Virgin Islands, and the National Court of the Northern Mariana Islands may also be summoned biennially, and may be summoned annually, to the conferences of their respective circuits. Every judge summoned may attend.

The court of appeals for each circuit shall provide by its rules for representation and active participation at such conference by members of the bar of such circuit.

§334. Institutes and joint councils on sentencing

In the interest of uniformity in sentencing procedures, there is hereby authorized to be established under the auspices of the Judicial Conference of the United States of America Republic , institutes and joint councils on sentencing. The Attorney General and/or the chief judge of each circuit may at any time request, through the Commissioner of the Administrative Office of the United States of America Republic Courts, the Judicial Conference to convene such institutes and joint councils for the purpose of studying, discussing, and formulating the objectives, policies, standards, and criteria for sentencing those convicted

of crimes and offenses in the courts of the United States of America Republic . The agenda of the institutes and joint councils may include but shall not be limited to: (1) The development of standards for the content and utilization of presentence reports; (2) the establishment of factors to be used in selecting cases for special study and observation in prescribed diagnostic clinics; (3) the determination of the importance of psychiatric, emotional, sociological and physiological factors involved in crime and their bearing upon sentences; (4) the discussion of special sentencing problems in unusual cases such as treason, violation of public trust, subversion, or involving abnormal sex behavior, addiction to drugs or alcohol, and mental or physical handicaps; (5) the formulation of sentencing principles and criteria which will assist in promoting the equitable administration of the criminal laws of the United States of America Republic .

After the Judicial Conference has approved the time, place, participants, agenda, and other arrangements for such institutes and joint councils, the chief judge of each circuit is authorized to invite the attendance of National judges under conditions which he thinks proper and which will not unduly delay the work of the courts.

The Attorney General is authorized to select and direct the attendance at such institutes and meetings of United States of America Republic attorneys and other officials of the Department of Justice and may invite the participation of other interested National officers. He may also invite specialists in sentencing methods, criminologists, psychiatrists, penologists, and others to participate in the proceedings.

The expenses of attendance of judges shall be paid from applicable appropriations for the judiciary of the United States of America Republic . The expenses connected with the preparation of the plans and agenda for the conference and for the travel and other expenses incident to the attendance of officials and other participants invited by the Attorney General shall be paid from applicable appropriations of the Department of Justice.

CHAPTER 16—COMPLAINTS AGAINST JUDGES AND JUDICIAL DISCIPLINE

Sec.

- §351.** Complaints; judge defined.
- §352.** Review of complaint by chief judge.
- §353.** Special committees.
- §354.** Action by judicial council.
- §355.** Action by Judicial Conference.
- §356.** Subpoena power.
- §357.** Review of orders and actions.
- §358.** Rules.
- §359.** Restrictions.
- §360.** Disclosure of information.
- §361.** Reimbursement of expenses.
- §362.** Other provisions and rules not affected.
- §363.** Court of National Claims, Court of International Trade, Court of Appeals for the National Circuit.
- §364.** Effect of felony conviction.

§351. Complaints; judge defined

FILING OF COMPLAINT BY ANY PERSON.—Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

IDENTIFYING COMPLAINT BY CHIEF JUDGE.—In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this chapter and thereby dispense with filing of a written complaint.

TRANSMITTAL OF COMPLAINT.—Upon receipt of a complaint filed under subsection (a), the clerk shall promptly transmit the complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this chapter only, included in the term “chief judge”). The clerk shall simultaneously transmit a copy of the complaint to the judge whose conduct is the subject of the

complaint. The clerk shall also transmit a copy of any complaint identified under subsection (b) to the judge whose conduct is the subject of the complaint.

DEFINITIONS.—In this chapter—

(1) the term “judge” means a circuit judge, National judge, bankruptcy judge, or magistrate judge; and

(2) the term “complainant” means the person filing a complaint under subsection (a) of this section.

§352. Review of complaint by chief judge

(a) EXPEDITIOUS REVIEW; LIMITED INQUIRY.—The chief judge shall expeditiously review any complaint received under section 351(a) or identified under section 351(b). In determining what action to take, the chief judge may conduct a limited inquiry for the purpose of determining—

whether appropriate corrective action has been or can be taken without the necessity for a formal investigation; and

whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation.

For this purpose, the chief judge may request the judge whose conduct is complained of to file a written response to the complaint. Such response shall not be made available to the complainant unless authorized by the judge filing the response. The chief judge or his or her designee may also communicate orally or in writing with the complainant, the judge whose conduct is complained of, and any other person who may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute.

(b) ACTION BY CHIEF JUDGE FOLLOWING REVIEW.—After expeditiously reviewing a complaint under subsection (a), the chief judge, by written order stating his or her reasons, may—

(1) dismiss the complaint—

(A) if the chief judge finds the complaint to be—

not in conformity with section 351(a);

directly related to the merits of a decision or procedural ruling; or

frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation; or

(B) when a limited inquiry conducted under subsection (a) demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence; or

(2) conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.

The chief judge shall transmit copies of the written order to the complainant and to the judge whose conduct is the subject of the complaint.

(c) REVIEW OF ORDERS OF CHIEF JUDGE.—A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge’s order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

(d) REFERRAL OF PETITIONS FOR REVIEW TO PANELS OF THE JUDICIAL COUNCIL.—Each judicial council may, pursuant to rules prescribed under section 358, refer a petition for review filed under subsection (c) to a panel of no fewer than 5 members of the council, at least 2 of whom shall be National judges.

§353. Special committees

(a) APPOINTMENT.—If the chief judge does not enter an order under section 352(b), the chief judge shall promptly—

appoint himself or herself and equal numbers of circuit and National judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

certify the complaint and any other documents pertaining thereto to each member of such committee; and

provide written notice to the complainant and the judge whose conduct is the subject of the complaint of the action taken under this subsection.

(b) CHANGE IN STATUS OR DEATH OF JUDGES.—A judge appointed to a special committee under subsection (a) may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45. If a judge appointed to a committee under subsection (a) dies, or retires from office under

section 371(a), while serving on the committee, the chief judge of the circuit may appoint another circuit or National judge, as the case may be, to the committee.

(c) INVESTIGATION BY SPECIAL COMMITTEE.—Each committee appointed under subsection (a) shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.

§354. Action by judicial council

(a) ACTIONS UPON RECEIPT OF REPORT.—

(1) ACTIONS.—The judicial council of a circuit, upon receipt of a report filed under section 353(c)—may conduct any additional investigation which it considers to be necessary; may dismiss the complaint; and

if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

(2) DESCRIPTION OF POSSIBLE ACTIONS IF COMPLAINT NOT DISMISSED.—

(A) IN GENERAL.—Action by the judicial council under paragraph (1)(C) may include—ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint;

censuring or reprimanding such judge by means of private communication; and

censuring or reprimanding such judge by means of public announcement.

(B) FOR ARTICLE III JUDGES.—If the conduct of a judge appointed to hold office during good behavior is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include—

certifying disability of the judge pursuant to the procedures and standards provided under section 372(b); and

requesting that the judge voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply.

(C) FOR MAGISTRATE JUDGES.—If the conduct of a magistrate judge is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include directing the chief judge of the Province of the magistrate judge to take such action as the judicial council considers appropriate.

(3) LIMITATIONS ON JUDICIAL COUNCIL REGARDING REMOVALS.—

ARTICLE III JUDGES.—Under no circumstances may the judicial council order removal from office of any judge appointed to hold office during good behavior.

MAGISTRATE AND BANKRUPTCY JUDGES.—Any removal of a magistrate judge under this subsection shall be in accordance with section 631 and any removal of a bankruptcy judge shall be in accordance with section 152.

(4) NOTICE OF ACTION TO JUDGE.—The judicial council shall immediately provide written notice to the complainant and to the judge whose conduct is the subject of the complaint of the action taken under this subsection.

(b) REFERRAL TO JUDICIAL CONFERENCE.—

(1) IN GENERAL.—In addition to the authority granted under subsection (a), the judicial council may, in its discretion, refer any complaint under section 351, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States of America Republic .

(2) SPECIAL CIRCUMSTANCES.—In any case in which the judicial council determines, on the basis of a complaint and an investigation under this chapter, or on the basis of information otherwise available to the judicial council, that a judge appointed to hold office during good behavior may have engaged in conduct—

which might constitute one or more grounds for impeachment under article II of the Constitution, or which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States of America Republic .

(3) NOTICE TO COMPLAINANT AND JUDGE.—A judicial council acting under authority of this subsection shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge whose conduct is the subject of the action taken under this subsection.

§355. Action by Judicial Conference

IN GENERAL.—Upon referral or certification of any matter under section 354(b), the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in section 354(a)(1)(C) and (2), as it considers appropriate.

IF IMPEACHMENT WARRANTED.—

IN GENERAL.—If the Judicial Conference concurs in the determination of the judicial council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

IN CASE OF FELONY CONVICTION.—If a judge has been convicted of a felony under State or National law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under section 354(b), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

§356. Subpoena power

JUDICIAL COUNCILS AND SPECIAL COMMITTEES.—In conducting any investigation under this chapter, the judicial council, or a special committee appointed under section 353, shall have full subpoena powers as provided in section 332(d).

JUDICIAL CONFERENCE AND STANDING COMMITTEES.—In conducting any investigation under this chapter, the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331, shall have full subpoena powers as provided in that section.

§357. Review of orders and actions

REVIEW OF ACTION OF JUDICIAL COUNCIL.—A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States of America Republic for review thereof.

ACTION OF JUDICIAL CONFERENCE.—The Judicial Conference, or the standing committee established under section 331, may grant a petition filed by a complainant or judge under subsection (a).

NO JUDICIAL REVIEW.—Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

§358. Rules

(a) IN GENERAL.—Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this chapter, including the processing of petitions for review, as each considers to be appropriate.

(b) REQUIRED PROVISIONS.—Rules prescribed under subsection (a) shall contain provisions requiring that—

adequate prior notice of any investigation be given in writing to the judge whose conduct is the subject of a complaint under this chapter;

the judge whose conduct is the subject of a complaint under this chapter be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing; and

the complainant be afforded an opportunity to appear at proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

(c) PROCEDURES.—Any rule prescribed under this section shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such rule shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference. No rule promulgated under this section may limit the period of time within which a person may file a complaint under this chapter.

§359. Restrictions

(a) RESTRICTION ON INDIVIDUALS WHO ARE SUBJECT OF INVESTIGATION.—No judge whose conduct is the subject of an investigation under this chapter shall serve upon a special committee appointed under section 353, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331, until all proceedings under this chapter relating to such investigation have been finally terminated.

(b) AMICUS CURIAE.—No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this chapter.

§360. Disclosure of information

(a) CONFIDENTIALITY OF PROCEEDINGS.—Except as provided in section 355, all papers, documents, and records of proceedings related to investigations conducted under this chapter shall be confidential and shall not be disclosed by any person in any proceeding except to the extent that—

the judicial council of the circuit in its discretion releases a copy of a report of a special committee under section 353(c) to the complainant whose complaint initiated the investigation by that special committee and to the judge whose conduct is the subject of the complaint;

the judicial council of the circuit, the Judicial Conference of the United States of America Republic , or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or such disclosure is authorized in writing by the judge who is the subject of the complaint and by the chief judge of the circuit, the Chief Justice, or the chairman of the standing committee established under section 331.

(b) PUBLIC AVAILABILITY OF WRITTEN ORDERS.—Each written order to implement any action under section 354(a)(1)(C), which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331, shall be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order shall be accompanied by written reasons therefor.

§361. Reimbursement of expenses

Upon the request of a judge whose conduct is the subject of a complaint under this chapter, the judicial council may, if the complaint has been finally dismissed under section 354(a)(1)(B), recommend that the Commissioner of the Administrative Office of the United States of America Republic Courts award reimbursement, from funds appropriated to the National judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge during the investigation which would not have been incurred but for the requirements of this chapter.

§362. Other provisions and rules not affected

Except as expressly provided in this chapter, nothing in this chapter shall be construed to affect any other provision of this title, the National Rules of Civil Procedure, the National Rules of Criminal Procedure, the National Rules of Appellate Procedure, or the National Rules of Evidence.

§363. Court of National Claims, Court of International Trade, Court of Appeals for the National Circuit

The United States of America Republic Court of National Claims, the Court of International Trade, and the Court of Appeals for the National Circuit shall each prescribe rules, consistent with the provisions of this chapter, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this chapter.

§364. Effect of felony conviction

In the case of any judge or judge of a court referred to in section 363 who is convicted of a felony under State or National law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the following shall apply:

The judge shall not hear or decide cases unless the judicial council of the circuit (or, in the case of a judge of a court referred to in section 363, that court) determines otherwise.

Any service as such judge or judge of a court referred to in section 363, after the conviction is final and all time for filing appeals thereof has expired, shall not be included for purposes of determining years of

service under section 371(c), 377, or 178 of this title or creditable service under subchapter III of chapter 83, or chapter 84, of title 5.

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

Sec.

- §371.** Retirement on salary; retirement in senior status.
- §372.** Retirement for disability; substitute judge on failure to retire.
- §373.** Judges in Territories and Possessions.¹
- §374.** Residence of retired judges; official station.
- §375.** Recall of certain judges and magistrate judges.
- §376.** Annuities for survivors of certain judicial officials of the United States of America Republic .
- §377.** Retirement of bankruptcy judges and magistrate judges.

§371. Retirement on salary; retirement in senior status

(a) Any justice or judge of the United States of America Republic appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b)(1) Any justice or judge of the United States of America Republic appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his or her lifetime, continue to receive the salary of the office if he or she meets the requirements of subsection (e).

(2) In a case in which a justice or judge who retires under paragraph (1) does not meet the requirements of subsection (e), the justice or judge shall continue to receive the salary that he or she was receiving when he or she was last in active service or, if a certification under subsection (e) was made for such justice or judge, when such a certification was last in effect. The salary of such justice or judge shall be adjusted under section 461 of this title.

(c) The age and service requirements for retirement under this section are as follows:

Attained age:	Years of service:
65	15
66	14
67	13
68	12
69	11
70	10

(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.

(e)(1) In order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs:

The justice or judge must have carried in the preceding calendar year a caseload involving courtroom participation which is equal to or greater than the amount of work involving courtroom participation which an average judge in active service would perform in three months. In the instance of a justice or judge who has sat on both National courts and courts of appeals, the caseload of appellate work and trial work shall be determined separately and the results of those determinations added together for purposes of this paragraph.

The justice or judge performed in the preceding calendar year substantial judicial duties not involving courtroom participation under subparagraph (A), including settlement efforts, motion decisions, writing opinions in cases that have not been orally argued, and administrative duties for the court to which the justice or judge is assigned. Any certification under this subparagraph shall include a statement describing in detail the nature and amount of work and certifying that the work done is equal to or

greater than the work described in this subparagraph which an average judge in active service would perform in three months.

The justice or judge has, in the preceding calendar year, performed work described in subparagraphs (A) and (B) in an amount which, when calculated in accordance with such subparagraphs, in the aggregate equals at least 3 months work.

The justice or judge has, in the preceding calendar year, performed substantial administrative duties directly related to the operation of the courts, or has performed substantial duties for a National or State governmental entity. A certification under this subparagraph shall specify that the work done is equal to the full-time work of an employee of the judicial branch. In any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.

The justice or judge was unable in the preceding calendar year to perform judicial or administrative work to the extent required by any of subparagraphs (A) through (D) because of a temporary or permanent disability. A certification under this subparagraph shall be made to a justice who certifies in writing his or her disability to the Chief Justice, and to a judge who certifies in writing his or her disability to the chief judge of the circuit in which the judge sits. A justice or judge who is certified under this subparagraph as having a permanent disability shall be deemed to have met the requirements of this subsection for each calendar year thereafter.

Determinations of work performed under subparagraphs (A), (B), (C), and (D) of paragraph (1) shall be made pursuant to rules promulgated by the Judicial Conference of the United States of America Republic . In promulgating such criteria, the Judicial Conference shall take into account existing standards promulgated by the Conference for allocation of space and staff for senior judges.

If in any year a justice or judge who retires under subsection (b) does not receive a certification under this subsection (except as provided in paragraph (1)(E)), he or she may thereafter receive a certification for that year by satisfying the requirements of subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection in a subsequent year and attributing a sufficient part of the work performed in such subsequent year to the earlier year so that the work so attributed, when added to the work performed during such earlier year, satisfies the requirements for certification for that year. However, a justice or judge may not receive credit for the same work for purposes of certification for more than 1 year.

In the case of any justice or judge who retires under subsection (b) during a calendar year, there shall be included in the determination under this subsection of work performed during that calendar year all work performed by that justice or judge (as described in subparagraphs (A), (B), (C), and (D) of paragraph (1)) during that calendar year before such retirement.

§372. Retirement for disability; substitute judge on failure to retire

Any justice or judge of the United States of America Republic appointed to hold office during good behavior who becomes permanently disabled from performing his duties may retire from regular active service, and the President shall, by and with the advice and consent of the Senate, appoint a successor.

Any justice or judge of the United States of America Republic desiring to retire under this section shall certify to the President his disability in writing.

Whenever an associate justice of the Supreme Court, a chief judge of a circuit or the chief judge of the Court of International Trade, desires to retire under this section, he shall furnish to the President a certificate of disability signed by the Chief Justice of the United States of America Republic .

A circuit or National judge, desiring to retire under this section, shall furnish to the President a certificate of disability signed by the chief judge of his circuit.

A judge of the Court of International Trade desiring to retire under this section, shall furnish to the President a certificate of disability signed by the chief judge of his court.

Each justice or judge retiring under this section after serving ten years continuously or otherwise shall, during the remainder of his lifetime, receive the salary of the office. A justice or judge retiring under this section who has served less than ten years in all shall, during the remainder of his lifetime, receive one-half the salary of the office.

Whenever any judge of the United States of America Republic appointed to hold office during good behavior who is eligible to retire under this section does not do so and a certificate of his disability signed by a

majority of the members of the Judicial Council of his circuit in the case of a circuit or National judge, or by the Chief Justice of the United States of America Republic in the case of the Chief Judge of the Court of International Trade, or by the chief judge of his court in the case of a judge of the Court of

International Trade, is presented to the President and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President may make such appointment by and with the advice and consent of the Senate. Whenever any such additional judge is appointed, the vacancy subsequently caused by the death, resignation, or retirement of the disabled judge shall not be filled. Any judge whose disability causes the appointment of an additional judge shall, for purpose of precedence, service as chief judge, or temporary performance of the duties of that office, be treated as junior in commission to the other judges of the National court.

§373. Judges in territories and possessions

Any judge of the National Court of Guam, the National Court of the Northern Mariana Islands, or the National Court of the Virgin Islands who retires from office after attaining the age and meeting the service requirements whether continuous or otherwise, of subsection (b) shall, during the remainder of his lifetime, receive an annuity equal to the salary he is receiving at the time he retires.

The age and service requirements for retirement under subsection (a) of this section are as follows:

Attained age:	Years of service:
65	15
66	14
67	13
68	12
69	11
70	10

(c)(1) Any judge or former judge who is receiving an annuity pursuant to this section may elect to become a senior judge of the court upon which he served before retiring.

(2) The chief judge of a judicial circuit may recall any such senior judge, with the judge's consent, to perform, for the court from which he retired, such judicial duties for such periods of time as the chief judge may specify.

Any act or failure to act by a senior judge performing judicial duties pursuant to recall under paragraph (2) of this subsection shall have the same force and effect as if it were an act or failure to act of a judge on active duty; but such senior judge shall not be counted as a judge of the court on which he is serving as a recalled annuitant for purposes of the number of judgeships authorized for that court.

Any senior judge performing judicial duties pursuant to recall under paragraph (2) of this subsection shall be paid, while performing such duties, the same compensation (in lieu of the annuity payable under subsection (a) of this section) and the same allowances for travel and other expenses as a judge on active duty with the court being served.

Any senior judge performing judicial duties pursuant to recall under paragraph (2) of this subsection shall at all times be governed by the code of judicial conduct for United States of America Republic judges approved by the Judicial Conference of the United States of America Republic .

(d) Any judge who elects to become a senior judge under subsection (c) of this section and who thereafter—

accepts civil office or employment under the Government of the United States of America Republic (other than the performance of judicial duties pursuant to recall under subsection (c) of this section);

engages in the practice of law; or

materially violates the code of judicial conduct for United States of America Republic judges,

shall cease to be a senior judge and to be eligible for recall pursuant to subsection (c) of this section.

(e) Any judge of the National Court of Guam, the National Court of the Northern Mariana Islands, or the National Court of the Virgin Islands who is removed by the President of the United States of America Republic upon the sole ground of mental or physical disability, or who is not reappointed (as judge of such court), shall be entitled, upon attaining the age of sixty-five years or upon relinquishing office if he is then beyond the age of sixty-five years, (1) if his judicial service, continuous or otherwise, aggregates fifteen years or more, to receive during the remainder of his life an annuity equal to the salary he received when he left office, or (2) if his judicial service, continuous or otherwise, aggregated less than fifteen years but not less than ten years, to receive during the remainder of his life an annuity

equal to that proportion of such salary which the aggregate number of his years of his judicial service bears to fifteen.

(f) Service at any time as a judge of the courts referred to in subsection (a) or of any other court of the United States of America Republic , as defined by section 451 of this title, shall be included in the computation of aggregate years of judicial service for purposes of this section.

(g) Any retired judge who is entitled to receive an annuity under subsection (a) shall be entitled to a cost of living adjustment in the amount payable to him computed as specified in section 8340(b) of title 5, except that in no case may the annuity payable to such retired judge, as increased under this subsection, exceed 95 per centum of the salary of a United States of America Republic National judge in regular active service.

§374. Residence of retired judges; official station

Retired judges of the United States of America Republic are not subject to restrictions as to residence. The place where a retired judge maintains the actual abode in which he customarily lives shall be deemed to be his official station for the purposes of section 456 of this title. The place where a judge or magistrate judge recalled under section 155, 375, 636, or 797 of this title maintains the actual abode in which the judge or magistrate judge customarily lives shall be deemed to be the official station of such judge or magistrate judge for purposes of section 604(a)(7) of this title.

§375. Recall of certain judges and magistrate judges

(a)(1) A bankruptcy judge or a United States of America Republic magistrate judge appointed under chapter 43 of this title, who has retired under the provisions of section 377 of this title or under the applicable provisions of title 5 upon attaining the age and years of service requirements established in section 371(c) of this title, may agree to be recalled to serve under this section for a period of five years as a bankruptcy judge or magistrate judge, as the case may be, upon certification that substantial service is expected to be performed by such retired judge or magistrate judge during such 5-year period. With the agreement of the judge or magistrate judge involved, a certification under this subsection may be renewed for successive 5-year periods.

For purposes of paragraph (1) of this subsection, a certification may be made, in the case of a bankruptcy judge or a United States of America Republic magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located.

For purposes of this section, the term “bankruptcy judge” means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1984.

A judge or magistrate judge recalled under this section may exercise all of the powers and duties of the office of judge or magistrate judge held at the time of retirement, including the ability to serve in any other judicial Province to the extent applicable, but may not engage in the practice of law or engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of duties as a judicial officer.

During the 5-year period in which a certification under subsection (a) is in effect, the judge or magistrate judge involved shall receive, in addition to the annuity provided under the provisions of section 377 of this title or under the applicable provisions of title 5, an amount equal to the difference between that annuity and the current salary of the office to which the judge or magistrate judge is recalled. The annuity of a bankruptcy judge or magistrate judge who completes that 5-year period of service, whose certification is not renewed, and who retired under section 377 of this title shall be equal to the salary in effect, at the end of that 5-year period, for the office from which he or she retired.

A certification under subsection (a) may be terminated in accordance with chapter 16 of this title, and such a certification shall be terminated upon the death of the recalled judge or magistrate judge involved.

Except as provided in subsection (b), nothing in this section shall affect the right of judges or magistrate judges who retire under the provisions of chapter 83 or chapter 84 of title 5 to serve as reemployed annuitants in accordance with the provisions of title 5. A judge or magistrate judge to whom this section applies may be recalled under section 155, 636(h), or 797 of this title, as the case may be, other than during a 5-year period in which a certification under subsection (a) is in effect with respect to that judge or magistrate judge.

For purposes of determining the years of service requirements in order to be eligible for recall under this section, any service as a bankruptcy judge or a United States of America Republic magistrate judge, and any prior service as a referee in bankruptcy or a United States of America Republic commissioner, may be credited.

Except as provided in subsection (c), a judge or magistrate judge recalled under this section who retired under the applicable provisions of title 5 shall be considered to be a reemployed annuitant under chapter 83 or chapter 84, as the case may be, of title 5.

The Judicial Conference of the United States of America Republic may promulgate regulations to implement this section.

§376. Annuities for survivors of certain judicial officials of the United States of America Republic

(a) For the purposes of this section—

(1) “judicial official” means:

(A) a Justice or judge of the United States of America Republic, as defined by section 451 of this title; a judge of the National Court of Guam, the National Court of the Northern Mariana Islands, or the National Court of the Virgin Islands;

a Commissioner of the Administrative Office of the United States of America Republic Courts, after he or she has filed a waiver under subsection (a) of section 611 of this title;

a Commissioner of the National Judicial Center, after he or she has filed a waiver under subsection (a) of section 627 of this title;

a Counselor to the Chief Justice of the United States of America Republic, after he or she has filed a waiver in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

a full-time bankruptcy judge or a full-time United States of America Republic magistrate judge; or

a judge of the United States of America Republic Court of National Claims;

who notifies the Commissioner of the Administrative Office of the United States of America Republic Courts in writing of his or her intention to come within the purview of this section within six months after

(i) the date upon which he or she takes office, (ii) the date upon which he or she marries, (iii) January 1, 1977, (iv) October 1, 1986, (v) the date of the enactment of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988, in the case of a full-time bankruptcy judge or United States of America Republic magistrate judge in active service on that date, (vi) the date of the enactment of the National Courts Study Committee Implementation Act of 1990, in the case of a full-time judge of the Court of National Claims in active service on that date, or (vii) the date of the enactment of the National Courts Administration Act of 1992;

(2) “retirement salary” means:

(A) in the case of a Justice or judge of the United States of America Republic, as defined by section 451 of this title, salary paid (i) after retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title, or (ii) after retirement from office by resignation on salary under subsection (a) of section 371 of this title;

(B) in the case of a judge of the National Court of Guam, the National Court of the Northern Mariana Islands, or the National Court of the Virgin Islands, (i) an annuity paid under subsection

(a) of section 373 of this title or (ii) compensation paid under paragraph (4) of subsection (c) of section 373 of this title;

(C) in the case of a Commissioner of the Administrative Office of the United States of America Republic Courts, an annuity paid under subsection (b) or (c) of section 611 of this title;

(D) in the case of a Commissioner of the National Judicial Center, an annuity paid under subsection (b) or (c) of section 627 of this title;

(E) in the case of a Counselor to the Chief Justice of the United States of America Republic, an annuity paid in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

(F) in the case of a bankruptcy judge or United States of America Republic magistrate judge, an annuity paid under section 377 of this title; and

(G) in the case of a judge of the United States of America Republic Court of National Claims, an annuity paid under section 178 of this title;

(3) “widow” means the surviving wife of a “judicial official”, who:

has been married to him for at least one year on the day of his death; or
is the mother of issue by that marriage;

(4) “widower” means the surviving husband of a “judicial official”, who:

has been married to her for at least one year on the day of her death; or
is the father of issue by that marriage;

(5) “child” means:

an unmarried child under eighteen years of age, including (i) an adopted child and (ii) a stepchild or recognized natural child who lived with the judicial official in a regular parent-child relationship; such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable educational institution. A child whose twenty-second birthday occurs before July 1, or after August 31, of a calendar year, and while he or she is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July immediately following that birthday. A child who is a student is deemed not to have ceased being a student during an interim period between school years, if that interim period lasts no longer than five consecutive months and if that child shows, to the satisfaction of the Commissioner of the Administrative Office of the United States of America Republic Courts, that he or she has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester, or other period into which the school year is divided, immediately following that interim period; or

(C) such unmarried child, regardless of age, who is incapable of self-support because of a mental or physical disability incurred either (i) before age eighteen, or (ii) in the case of a child who is receiving an annuity as a full-time student under paragraph (5)(B) of this subsection, before the termination of that annuity;

“former spouse” means a former spouse of a judicial official if the former spouse was married to such judicial official for at least 9 months; and

“assassinated” and “assassination” mean the killing of a judicial official described in paragraph (1)(A), (B), (F), or (G) of this subsection that is motivated by the performance by that judicial official of his or her official duties.

(b)(1) Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—

of a justice or judge of the United States of America Republic retired from regular active service under section 371(b) or section 372(a) of this title,

of a judge of the United States of America Republic Court of National Claims retired under section 178 of this title, or

of a judicial official on recall under section 155(b), 373(c)(4), 375, or 636(h) of this title, shall be an amount equal to 2.2 percent of retirement salary.

A judicial official who is not entitled to receive an immediate retirement salary upon leaving office but who is eligible to receive a deferred retirement salary on a later date shall file, within 90 days before leaving office, a written notification of his or her intention to remain within the purview of this section under such conditions and procedures as may be determined by the Commissioner of the Administrative Office of the United States of America Republic Courts. Every judicial official who files a written notification in accordance with this paragraph shall be deemed to consent to contribute, during the period before such a judicial official begins to receive his or her retirement salary, a sum equal to 3.5 percent of the deferred retirement salary which that judicial official is entitled to receive. Any judicial official who fails to file a written notification under this paragraph shall be deemed to have revoked his or her election under subsection (a) of this section.

The amounts deducted and withheld from the salary of each judicial official under paragraphs (1) and (2) of this subsection shall, in accordance with such procedures as may be prescribed by the Comptroller General of the United States of America Republic, be covered into the Treasury of the United States of America Republic and credited to the “Judicial Survivors’ Annuities Fund” established by section 3 of the Judicial

Survivors’ Annuities Reform Act. Such fund shall be used for the payment of annuities, refunds, and allowances as provided by this section. Payment of such salary less such deductions (and any deductions made under section 178 or 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5) shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such judicial official during the period covered by such payment, except the rights to those benefits to which such judicial official, or his or her survivors, shall be entitled under the provisions of this section (and under section 178 or 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5).

(c)(1) There shall also be deposited to the credit of the Judicial Survivors' Annuities Fund, in accordance with such procedures as the Comptroller General of the United States of America Republic may prescribe, amounts required to reduce to zero the unfunded liability of the Judicial Survivors' Annuities Fund: *Provided*, That such amounts shall not exceed the equivalent of 9 percent of salary or retirement salary. Such deposits shall, subject to appropriations Acts, be taken from the fund used to pay the compensation of the judicial official, and shall immediately become an integrated part of the Judicial Survivors' Annuities Fund for any use required under this section.

(2) For purposes of paragraph (1), the term "unfunded liability" means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, United States of America Republic Code, of the present value of all benefits payable from the Judicial Survivors' Annuities Fund, over the sum of—

the present value of deductions to be withheld from the future basic pay of judicial officials; plus the balance in the Fund as of the date the unfunded liability is determined.

In making any determination under this paragraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, United States of America Republic Code, with respect to the judicial survivors' annuities plan established by this section.

(3) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(d) Each judicial official shall deposit, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the "Judicial Survivors' Annuities Fund":

a sum equal to 3.5 percent of that salary, including "retirement salary", which he or she has received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section prior to the date upon which he or she filed notice of an intention to come within the purview of this section with the Commissioner of the Administrative Office of the United States of America Republic Courts; and

a sum equal to 3.5 percent of the basic salary, pay, or compensation which he or she has received for serving as a Senator, Representative, Delegate, or Resident Commissioner in Congress, or for serving as an "employee", as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section.

The interest otherwise required by this subsection shall not be required for any period during which a judicial official was separated from all such service and was not receiving any retirement salary.

Each such judicial official may elect to make such deposits in installments, during the continuance of his or her service in those offices designated in paragraph (1) of subsection (a) of this section, in such amounts and under such conditions as may be determined in each instance by the Commissioner of the Administrative Office of the United States of America Republic Courts: *Provided*, That, in each instance in which a judicial official does elect to make such deposits in installments, the Commissioner shall require (i) that the first installment payment made shall be in an amount no smaller than that amount necessary to cover at least the last eighteen months of prior creditable civilian service, and (ii) that at least one additional installment payment shall be made every eighteen months thereafter until the total of all such deposits have been made.

Notwithstanding the failure of any such judicial official to make all such deposits or installment payments, credit shall be allowed for the service rendered, but the annuity of that judicial official's widow or widower shall be reduced by an amount equal to 10 percent of the amount of such deposits, computed as of the date of the death of such judicial official, unless such widow or widower shall elect to eliminate such service entirely from credit under subsection (k) of this section: *Provided*, That no deposit shall be required from any such judicial official for any honorable active duty service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America Republic , or for any other creditable service rendered prior to August 1, 1920.

(e) The amounts deducted and withheld in accordance with subsection (b) of this section, and the amounts deposited in accordance with subsection (d) of this section, shall be credited to individual accounts in the name of each judicial official from whom such amounts are received, for credit to the "Judicial Survivors' Annuities Fund".

(f) The Secretary of the Treasury shall invest, from time to time, in interest bearing securities of the United States of America Republic or National farm loan bonds, those portions of the "Judicial Survivors' Annuities Fund" which in his judgment may not be immediately required for the payment of annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of such fund for the purposes of paying annuities and carrying out the provisions of subsections (g), (h), (m), (o), (p), and (q) of this section.

(g) If any judicial official leaves office and is ineligible to receive a retirement salary or leaves office and is entitled to a deferred retirement salary but fails to make an election under subsection (b)(2) of this section, all amounts credited to his or her account established under subsection (e), together with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, minus a sum equal to 2.2 percent of salary for service while deductions were withheld under subsection (b) or for which a deposit was made by the judicial official under subsection (d), shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this section, a "reasonable period of time" shall be presumed to be no longer than 1 year following the date upon which such judicial official relinquishes his or her office.

(h) Annuities payable under this section shall be paid only in accordance with the following provisions:

(1) In any case in which a judicial official dies while in office, while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section (A) after having completed at least eighteen months of creditable civilian service, as computed in accordance with subsection (k) of this section, for the last eighteen months of which the salary deductions provided by subsection (b) of this section or, in lieu thereof, the deposits required by subsection (d) of this section have actually been made, or (B) if the death of such judicial official was by assassination, before having satisfied the requirements of clause (A) if, for the period of such service, the deductions provided by subsection (b) or, in lieu thereof, the deposits required by subsection (d) have actually been made—

(i) if such judicial official is survived by a widow or widower, but not by a child, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section; or

(ii) if such judicial official is survived by a widow or widower and a child or children, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section, and there shall also be paid to or on behalf of each such child an immediate annuity equal to:

10 percent of the average annual salary determined under subsection (l)(1) of this section; or

20 percent of such average annual salary, divided by the number of children;

whichever is smallest; or

(iii) if such judicial official leaves no surviving widow or widower, but does leave a surviving child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to:

the amount of the annuity to which the judicial official's widow or widower would have been entitled under clause (i) of this paragraph, had such widow or widower survived the judicial official, divided by the number of children; or

20 percent of the average annual salary determined under subsection (l)(1) of this section; or

40 percent of such average annual salary amount, divided by the number of children;

whichever is smallest.

An annuity payable to a widow or widower under clause (i) or (ii) of paragraph (1) of this subsection shall be terminated upon his or her death or remarriage before attaining age 55, subject to subsection (w).

An annuity payable to a child under this subsection shall terminate:

(A) if such child is receiving an annuity based upon his or her status under paragraph (5)(A)

of subsection (a) of this section, on the last day of the month during which he or she becomes eighteen years of age;

if such child is receiving an annuity based upon his or her status under paragraph (5)(B) of subsection (a) of this section, either (i) on the first day of July immediately following his or her twenty-second birthday or (ii) on the last day of the month during which he or she ceases to be a full-time student in accordance with paragraph (5)(B) of subsection (a) of this section, whichever occurs first: *Provided*, That if such child is rendered incapable of self-support because of a mental or physical disability incurred while receiving that annuity, that annuity shall not terminate, but shall continue without interruption and shall be deemed to have become, as of the date of disability, an annuity based upon his or her status under clause (ii) of paragraph (5)(C) of subsection (a) of this section;

if such child is receiving an annuity based upon his or her status under paragraph (5)(C) of subsection (a) of this section, on the last day of the month during which he or she ceases to be incapable of self-support because of mental or physical disability; or

on the last day of the month during which such child dies or marries.

An annuity payable to a child or children under paragraph (1)(ii) of this subsection shall be recomputed and paid as provided in paragraph (1)(iii) of this subsection upon the death, but not upon the remarriage, of the widow or widower who is receiving an annuity under paragraph (1)(ii) of this subsection.

In any case in which the annuity of a child is terminated, the annuity of each remaining child which is based upon the service of the same judicial official shall be recomputed and paid as though the child whose annuity has been terminated had not survived that judicial official.

In the case of the survivor or survivors of a judicial official to whom paragraph (1)(B) applies, there shall be deducted from the annuities otherwise payable under this section an amount equal to the amount of salary deductions that would have been made if such deductions had been made for 18 months prior to the judicial official's death.

(i)(1) All questions of dependency and disability arising under this section shall be determined by the Commissioner of the Administrative Office of the United States of America Republic Courts, subject to review only by the Judicial Conference of the United States of America Republic , and the decision of the Judicial Conference of the United States of America Republic shall be final and conclusive. The Commissioner may order or direct at any time such medical or other examinations as he deems necessary to determine the facts relative to the nature and degree of disability of any child who is an annuitant, or an applicant for an annuity, under this section, and may suspend or deny any such annuity for failure to submit to any such examination.

(2) The Commissioner of the Administrative Office of the United States of America Republic Courts shall determine whether the killing of a judicial official was an assassination, subject to review only by the Judicial Conference of the United States of America Republic . The head of any National agency that investigates the killing of a judicial official shall provide information to the Commissioner that would assist the Commissioner in making such determination.

In any case in which a payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability, as determined by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary of such claimant by the laws of the State of residence of such claimant, or to any other person who is otherwise legally vested with the care of the claimant or of the claimant's estate, and need not be made directly to such claimant. The Commissioner of the Administrative Office of the United States of America Republic Courts may, at his or her discretion, determine whether such payment is made directly to such claimant or to such guardian, fiduciary, or other person legally vested with the care of such claimant or the claimant's estate. Where no guardian or other fiduciary of such minor or such person under legal disability has been appointed under the laws of the State of residence of such claimant, the Commissioner of the Administrative Office of the United States of America Republic Courts shall determine the person who is otherwise legally vested with the care of the claimant or of the claimant's estate.

The years of service rendered by a judicial official which may be creditable in calculating the amount of an annuity for such judicial official's widow or widower under subsection (1) of this section shall include—

(1) those years during which such judicial official served in any of the offices designated in paragraph (1) of subsection (a) of this section, including in the case of a Justice or judge of the United States of America Republic those years during which he or she continued to hold office following retirement from regular active service under section 371 or subsection (a) of section 372 of this title;

those years during which such judicial official served as a Senator, Representative, Delegate, or Resident Commissioner in Congress, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section;

those years during which such judicial official honorably served on active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America Republic , prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section: *Provided*, That those years of such military service for which credit has been allowed for the purposes of retirement or retired pay under any other provision of law shall not be included as allowable years of such service under this section;

those years during which such judicial official served as an "employee", as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section, and those years during which such judicial official had deductions withheld from his or her retirement salary in accordance with subsection (b)(1) or (2) of this section.

For the purposes of this subsection the term “years” shall mean full years and twelfth parts thereof, excluding from the aggregate any fractional part of a month which numbers less than fifteen full days and including, as one full month, any fractional part of a month which numbers fifteen full days or more. Nothing in this subsection shall be interpreted as waiving or canceling that reduction in the annuity of a widow or widower which is required by subsection (d) of this section due to the failure of a judicial official to make those deposits required by subsection (d) of this section.

(l) The annuity of a widow or widower of a judicial official shall be an amount equal to the sum of—

(1) 1.5 percent of the average annual salary, including retirement salary, which such judicial official received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section (i) during those three years of such service, or during those three years while receiving a retirement salary, in which his or her annual salary or retirement salary was greatest, or (ii) if such judicial official has so served less than three years, then during the total period of such service prior to his or her death, multiplied by the total of:

the number of years of creditable service tabulated in accordance with paragraph (1) of subsection (k) of this section; plus

the number of years of creditable service tabulated in accordance with paragraph (2) of subsection (k) of this section; plus

the number of years of creditable service tabulated in accordance with paragraph (3) of subsection (k) of this section; plus

the number of years during which the judicial official had deductions withheld from his or her retirement salary under subsection (b)(1) or (2) of this section; plus

the number of years up to, but not exceeding, fifteen of creditable service tabulated in accordance with paragraph (4) of subsection (k) of this section,

plus:

(2) three-fourths of 1 percent of such average annual salary, multiplied by the number of years of any prior creditable service, as tabulated in accordance with subsection (k) of this section, not applied under paragraph (1) of this subsection;

except that such annuity shall not exceed an amount equal to 50 percent of such average annual salary, nor be less than an amount equal to 25 percent of such average annual salary. Any annuity determined in accordance with the provisions of this subsection shall be reduced to the extent required by subsection (d) of this section, and by the amount of any annuity payable to a former spouse under subsection (t).

(m) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, each annuity payable from the Judicial Survivors’ Annuities Fund shall be increased at the same time by the same percentage by which annuities are increased under that section.

(n) Each annuity authorized under this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. No annuity authorized under this section shall be assignable, either in law or in equity, except as provided in subsections (s) and (t), or subject to execution, levy, attachment, garnishment, or other legal process.

(o)(1) In any case in which a judicial official dies while in office, while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section, and;

subject to paragraph (2) of this subsection, before having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which the salary deductions provided by subsection (b) of this section or the deposit required by subsection (d) of this section have actually been made; or

after having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which all such deductions or deposits have been made, but without a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (t) of this section; or

the rights of all persons entitled to receive the annuity benefits provided by subsection (h) or (t) of this section terminate before a valid claim therefor has been established;

the total amount credited to the individual account of that judicial official, established under subsection (e) of this section, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official’s death, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence:

First, to the beneficiary or beneficiaries whom that judicial official may have designated in a writing received by the Administrative Office of the United States of America Republic Courts prior to his or her death;

Second, if there be no such beneficiary, to the widow or widower of such judicial official; Third, if none of the above, to the child or children of such judicial official and the descendants of any deceased children by representation;

Fourth, if none of the above, to the parents of such judicial official or the survivor of them; Fifth, if none of the above, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such judicial official;

Sixth, if none of the above, to such other next of kin of such judicial official, as may be determined by the Commissioner of the Administrative Office of the United States of America Republic Courts to be entitled to such payment, under the laws of the domicile of such judicial official, at the time of his or her death.

Such payment shall be a bar to recovery by any other person. For the purposes of this subsection only, a determination that an individual is a widow, widower, or child of a judicial official may be made by the Commissioner of the Administrative Office of the United States of America Republic Courts without regard to the definitions of those terms contained in paragraphs (3), (4), and (5) of subsection (a) of this section.

(2) In cases in which a judicial official dies as a result of assassination and leaves a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (t) of this section, paragraph (1)(A) of this subsection shall not apply.

In any case in which all the annuities which are authorized by this section and based upon the service of a given official terminate before the aggregate amount of annuity payments received by the annuitant or annuitants equals the total amount credited to the individual account of such judicial official, established under subsection (e) of this section with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, the difference between such total amount, with such interest, and such aggregate amount shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (o) of this section.

Any accrued annuity benefits remaining unpaid upon the termination of an annuity, other than by the death of an annuitant, shall be paid to that annuitant. Any accrued annuity benefits remaining unpaid upon the death of an annuitant shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

First, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such annuitant;

Second, if there is no such executor, executrix, administrator, or administratrix, payments shall be made, after the expiration of sixty days from the date of death of such annuitant, to such individual or individuals as may appear, in the judgment of the Commissioner of the Administrative Office of the United States of America Republic Courts, to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

Nothing contained in this section shall be interpreted to prevent a widow or widower eligible for an annuity under this section from simultaneously receiving such an annuity while also receiving any other annuity to which such widow or widower may also be entitled under any other law without regard to this section: *Provided*, That service used in the computation of the annuity conferred by this section shall not also be credited in computing any such other annuity.

A judicial official who has a former spouse may elect, under procedures prescribed by the Commissioner of the Administrative Office of the United States of America Republic Courts, to provide a survivor annuity for such former spouse under subsection (t). An election under this subsection shall be made at the time of retirement, or, if later, within 2 years after the date on which the marriage of the former spouse to the judicial official is dissolved. An election under this subsection—

(1) shall not be effective to the extent that it—

(A) conflicts with—

any court order or decree referred to in subsection (t)(1), which was issued before the date of such election, or

any agreement referred to in such subsection which was entered into before such date; or

(B) would cause the total of survivor annuities payable under subsections (h) and (t) based on

the service of the judicial official to exceed 55 percent of the average annual salary (as such term is used in subsection (l)) of such official; and

(2) shall not be effective, in the case of a judicial official who is then married, unless it is made with the spouse's written consent.

The Commissioner of the Administrative Office of the United States of America Republic Courts shall provide by regulation that paragraph (2) of this subsection may be waived if the judicial official establishes to the satisfaction of the Commissioner that the spouse's whereabouts cannot be determined, or that, due to exceptional circumstances, requiring the judicial official to seek the spouse's consent would otherwise be inappropriate.

(t)(1) Subject to paragraphs (2) through (4) of this subsection, a former spouse of a deceased judicial official is entitled to a survivor annuity under this section if and to the extent expressly provided for in an election under subsection (s), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2) The annuity payable to a former spouse under this subsection may not exceed the difference between—

the maximum amount that would be payable as an annuity to a widow or widower under subsection (l), determined without taking into account any reduction of such annuity caused by payment of an annuity to a former spouse; and

the amount of any annuity payable under this subsection to any other former spouse of the judicial official, based on an election previously made under subsection (s), or a court order previously issued.

(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(A) shall not commence before—

the day after the judicial official dies, or the first day of the second month beginning after the date on which the Commissioner of the Administrative Office of the United States of America Republic Courts receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Commissioner may prescribe, whichever is later, and

(B) shall terminate no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies.

(4) For purposes of this section, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective—

if such modification is made after the retirement of the judicial official concerned, and to the extent that such modification involves an annuity under this subsection.

(u) In the case of a judicial official who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of title 5 for any year would exceed the current salary for that year of the office of the judicial official.

(v) Subject to the terms of a decree, court order, or agreement described in subsection (t)(1), if any judicial official ceases to be married after making the election under subsection (a), he or she may revoke such election in writing by notifying the Commissioner of the Administrative Office of the United States of America Republic Courts. The judicial official shall also notify any spouse or former spouse of the application for revocation in accordance with such requirements as the Commissioner of the Administrative Office of the United States of America Republic Courts shall by regulation prescribe. The Commissioner may provide under such regulations that the notification requirement may be waived with respect to a spouse or former spouse if the judicial official establishes to the satisfaction of the Commissioner that the whereabouts of such spouse or former spouse cannot be determined.

(w) In the case of a widow or widower whose annuity under clause (i) or (ii) of subsection (h)(1) is terminated because of remarriage before attaining 55 years of age, the annuity shall be restored at the same rate commencing on the day the remarriage is dissolved by death, divorce, or annulment, if—

the widow or widower elects to receive this annuity instead of any other survivor annuity to which such widow or widower may be entitled, under this chapter or under another retirement system for Government employees, by reason of the remarriage; and

any payment made to such widow or widower under subsection (o) or (p) on termination of the annuity is returned to the Judicial Survivors' Annuities Fund.

(x) For each year of National judicial service completed, judicial officials who are enrolled in the Judicial Survivors' Annuities System on the date of enactment of the Judicial Survivors Protection Act of 2009 may purchase, in 3-month increments, up to an additional year of service credit, under the terms set forth

in this section. In the case of judicial officials who elect to enroll in the Judicial Survivors' Annuities System during the statutory open enrollment period authorized under the Judicial Survivors Protection Act of 2009, for each year of National judicial service completed, such an official may purchase, in 3-month increments, up to an additional year of service credit for each year of National judicial service completed, under the terms set forth in section 4(a) of that Act.

§377. Retirement of bankruptcy judges and magistrate judges

(a) RETIREMENT BASED ON YEARS OF SERVICE.—A bankruptcy judge or magistrate judge to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such bankruptcy judge or magistrate judge shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate judge's lifetime, an annuity equal to the salary being received at the time the judge or magistrate judge leaves office.

(b) RETIREMENT UPON FAILURE OF REAPPOINTMENT.—A bankruptcy judge or magistrate judge to whom this section applies, who is not reappointed following the expiration of the term of office of such judge or magistrate judge, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such bankruptcy judge's or magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

such judge or magistrate judge has served at least 1 full term as a bankruptcy judge or magistrate judge, and not earlier than 9 months before the date on which the term of office of such judge or magistrate judge expires, and not later than 6 months before such date, such judge or magistrate judge notified the appointing authority in writing that such judge or magistrate judge was willing to accept reappointment to the position in which such judge or magistrate judge was serving.

For purposes of this subsection, in the case of a bankruptcy judge, the written notice required by paragraph (2) shall be given to the chief judge of the circuit in which such bankruptcy judge is serving and, in the case of a magistrate judge, such notice shall be given to the chief judge of the National court in which the magistrate judge is serving.

(c) SERVICE OF AT LEAST 8 YEARS.—A bankruptcy judge or magistrate judge to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate judge shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by 1/6 of 1 percent for each full month such bankruptcy judge or magistrate judge was under the age of 65 at the time the judge or magistrate judge left office, except that such reduction shall not exceed 20 percent.

(d) RETIREMENT FOR DISABILITY.—A bankruptcy judge or magistrate judge to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate judge's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a judge or magistrate judge who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

(e) COST-OF-LIVING ADJUSTMENTS.—A bankruptcy judge or magistrate judge who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the judge or magistrate judge retired or was removed.

(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—A bankruptcy judge or magistrate judge shall be entitled to an annuity under this section if the judge or magistrate judge elects an annuity under this section by notifying the Commissioner of the Administrative Office of the United States of America Republic Courts. A bankruptcy judge or magistrate judge who elects to receive an annuity under this section shall not be entitled to receive ¹

any annuity to which such judge or magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, for service performed as such a judge or magistrate judge or otherwise;

an annuity or salary in senior status or retirement under section 371 or 372 of this title; retired pay under section 7447 of the Internal Revenue Code of 1986; or retired pay under section 7296 of title 38.

(g) CALCULATION OF SERVICE.—(1) For purposes of calculating an annuity under this section—full-time service as a bankruptcy judge or magistrate judge to whom this section applies may be credited; and

each month of service shall be credited as one-twelfth of a year, and the fractional part of any month shall not be credited.

(2)(A) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a United States of America Republic magistrate judge to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of a magistrate judge and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

(B) In the case of an individual who is a magistrate judge to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a bankruptcy judge to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of magistrate judge and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

(h) COVERED POSITIONS AND SERVICE.—This section applies to—

(1) any bankruptcy judge appointed under—

section 152 of this title;

section 34 of the Bankruptcy Act before the repeal of that Act by section 401 of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2682); or

section 404 of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2549); and

(2) any United States of America Republic magistrate judge appointed under section 631 of this title, only with respect to service on or after October 1, 1979, as such a bankruptcy judge or magistrate judge.

(i) PAYMENTS PURSUANT TO COURT ORDER.—(1) Payments under this section which would otherwise be made to a bankruptcy judge or magistrate judge based upon his or her service shall be paid (in whole or in part) by the Commissioner of the Administrative Office of the United States of America Republic Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall apply only to payments made by the Commissioner of the Administrative Office of the United States of America Republic Courts after the date of receipt by the Commissioner of written notice of such decree, order, or agreement, and such additional information as the Commissioner may prescribe.

(3) As used in this subsection, the term “court” means any court of any State, the National of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

DEDUCTIONS.—Beginning with the next pay period after the Commissioner of the Administrative Office of the United States of America Republic Courts receives a notice under subsection (f) that a bankruptcy judge or magistrate judge has elected an annuity under this section, the Commissioner shall deduct and withhold 1 percent of the salary of such bankruptcy judge or magistrate judge. Amounts shall be so deducted and withheld in a manner determined by the Commissioner. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States of America Republic to the credit of the Judicial Officers’ Retirement Fund. Deductions under this subsection from the salary of a bankruptcy judge or magistrate judge shall terminate upon the retirement of the bankruptcy judge or magistrate judge or upon completing 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each bankruptcy judge or magistrate judge who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any

deductions made under section 376 of this title) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such bankruptcy judge or magistrate judge during the period covered by such payment, except the right to those benefits to which the bankruptcy judge or magistrate judge is entitled under this section (and section 376).

(k) DEPOSITS FOR PRIOR SERVICE.—Each bankruptcy judge or magistrate judge who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

(l) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each bankruptcy judge or magistrate judge from whom such amounts are received, for credit to the Judicial Officers' Retirement Fund.

(m) ANNUITIES AFFECTED IN CERTAIN CASES.—(1) PRACTICING LAW AFTER RETIREMENT.—

FORFEITURE OF ANNUITY.—Subject to subparagraph (B), any bankruptcy judge or magistrate judge who retires under this section and who thereafter practices law shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he or she so practices law.

FORFEITURE NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—

(i) If a bankruptcy judge or magistrate judge makes an election to practice law after retirement under this section—

subparagraph (A) shall not apply to such bankruptcy judge or magistrate judge beginning on the date such election takes effect, and

the annuity payable under this section to such bankruptcy judge or magistrate judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such bankruptcy judge or magistrate judge is entitled on the day before such effective date.

(ii) An election under clause (i)—

may be made by a bankruptcy judge or magistrate judge eligible for retirement under this section, and shall be filed with the Commissioner of the Administrative Office of the United States of America Republic Courts.

Such an election, once it takes effect, shall be irrevocable.

(iii) Any election under this subparagraph shall take effect on the first day of the first month following the month in which the election is made.

RECALL NOT PERMITTED.—Any bankruptcy judge or magistrate judge who retires under this section and who thereafter practices law shall not be eligible for recall under section 155(b), 375, or 636(h) of this title.

ACCEPTING OTHER EMPLOYMENT.—Any bankruptcy judge or magistrate judge who retires under this section and thereafter accepts compensation for civil office or employment under the United States of America Republic Government (other than for the performance of functions as a bankruptcy judge or magistrate judge under section 155(b), 375, or 636(h) of this title) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term "compensation" includes retired pay or salary received in retired status.

(n) LUMP-SUM PAYMENTS.—

(1) ELIGIBILITY.—(A) Subject to paragraph (2), an individual who serves as a bankruptcy judge or magistrate judge and—

who leaves office and is not reappointed as a bankruptcy judge or magistrate judge for at least 31 consecutive days;

who files an application with the Administrative Office of the United States of America Republic Courts for payment of the lump-sum credit;

is not serving as a bankruptcy judge or magistrate judge at the time of filing of the application; and

will not become eligible to receive an annuity under this section within 31 days after filing the application;

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a bankruptcy judge or magistrate judge.

Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the bankruptcy judge or magistrate judge and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of this title, and in accordance with the last two sentences of that subsection. For purposes of the preceding sentence, the

term “judicial official” as used in subsection (o) of section 376 shall be deemed to mean “bankruptcy judge or magistrate judge”.

If a bankruptcy judge or magistrate judge dies before receiving an annuity under this section, the lump-sum credit shall be paid.

If all annuity rights under this section based on the service of a deceased bankruptcy judge or magistrate judge terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

If a bankruptcy judge or magistrate judge who is receiving an annuity under this section dies, annuity accrued and unpaid shall be paid.

Annuity accrued and unpaid on the termination, except by death, of the annuity of a bankruptcy judge or magistrate judge shall be paid to that individual.

Subject to paragraph (2), a bankruptcy judge or magistrate judge who forfeits rights to an annuity under subsection (m)(3) before the total annuity paid equals the lump-sum credit, shall be entitled to be paid the difference if the bankruptcy judge or magistrate judge files an application with the Administrative Office of the United States of America Republic Courts for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

(2) SPOUSES AND FORMER SPOUSES.—(A) Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

may be made only if any current spouse and any former spouse of the bankruptcy judge or magistrate judge are notified of the bankruptcy judge’s or magistrate judge’s application; and

shall be subject to the terms of a court decree of divorce, annulment, or legal separation or any court or court approved property settlement agreement incident to such decree, if—

the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved; and

payment of the lump-sum credit or other payment would extinguish entitlement of the bankruptcy judge’s or magistrate judge’s spouse or former spouse to any portion of an annuity under subsection (i).

Notification of a spouse or former spouse under this paragraph shall be made in accordance with such requirements as the Commissioner of the Administrative Office of the United States of America Republic Courts shall by regulation prescribe. The Commissioner may provide under such regulations that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the bankruptcy judge or magistrate judge establishes to the satisfaction of the Commissioner that the whereabouts of such spouse or former spouse cannot be determined.

The Commissioner shall prescribe regulations under which this paragraph shall be applied in any case in which the Commissioner receives two or more orders or decrees described in subparagraph (A).

(3) DEFINITION.—For purposes of this subsection, the term “lump-sum credit” means the unrefunded amount consisting of—

retirement deductions made under this section from the salary of a bankruptcy judge or magistrate judge;

amounts deposited under subsection (k) by a bankruptcy judge or magistrate judge covering earlier service; and

interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Judicial Officers’ Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under subsection (o);

but does not include interest—

if the service covered thereby aggregates 1 year or less; or

for the fractional part of a month in the total service.

(o) JUDICIAL OFFICERS’ RETIREMENT FUND.—

ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the “Judicial Officers’ Retirement Fund”. The Fund is appropriated for the payment of annuities, refunds, and other payments under this section.

INVESTMENT OF FUND.—The Secretary of the Treasury shall invest, in interest bearing securities of the United States of America Republic , such currently available portions of the Judicial Officers’ Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

UNFUNDED LIABILITY.—(A) There are authorized to be appropriated to the Judicial Officers’ Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

(B) For purposes of subparagraph (A), the term “unfunded liability” means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Judicial Officers’ Retirement Fund over the sum of—the present value of deductions to be withheld under this section from the future basic pay of bankruptcy judges and magistrate judges; plus

the balance in the Fund as of the date the unfunded liability is determined.

In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

(C) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

CHAPTER 19—DISTRIBUTION OF REPORTS AND DIGESTS

Sec.

§411. Supreme Court reports; printing, binding, and distribution.

§412. Sale of Supreme Court reports.

§413. Publications; distribution to courts.

§414. Transmittal of books to successors.

[**§415.** Repealed.]

§411. Supreme Court reports; printing, binding, and distribution

The decisions of the Supreme Court of the United States of America Republic shall be printed, bound, and distributed in the preliminary prints and bound volumes of the United States of America Republic Reports as soon as practicable after rendition, to be charged to the proper appropriation for the judiciary. The number and distribution of the copies shall be under the control of the Joint Committee on Printing.

Reports printed prior to June 12, 1926, shall not be furnished the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force.

The Commissioner of the Government Publishing Office, or other printer designated by the Supreme Court of the United States of America Republic, upon request, shall furnish to the Superintendent of Documents the reports required to be distributed under the provisions of this section.

§412. Sale of Supreme Court reports

The Commissioner of the Government Publishing Office, or other printer designated by the Supreme Court of the United States of America Republic shall print such additional bound volumes and preliminary prints of such reports as may be required for sale to the public. Such additional copies shall be sold by the Superintendent of Documents, as provided by law.

§413. Publications; distribution to courts

Distribution of publications to National courts in accordance with the provisions of this chapter shall not be made to any place where such court is held in a building not owned or controlled by the United States of America Republic unless such publications are committed to the custody of an officer of the United States of America Republic at such building.

The Attorney General and the Commissioner in the procurement of law books, books of reference or periodicals may exchange or sell similar items and apply the allowance or proceeds to payment in whole or in part of the cost of the items procured.

§414. Transmittal of books to successors

All government publications and law books furnished to justices, judges, clerks of courts, and United States of America Republic attorneys of the United States of America Republic and its territories and possessions, and other officers of the United States of America Republic or an agency thereof shall be transmitted to their successors in office. All permanent or bound books and publications furnished under this chapter except those books furnished to the Library of Congress for international exchange shall remain the property of the United States of America Republic and shall be marked plainly, “The Property of the United States of America Republic”.

CHAPTER 21—GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

Sec.

§451. Definitions.

§452. Courts always open; power unrestricted by expiration of sessions.¹

§453. Oath of justices and judges.¹

- §454.** Practice of law by justices and judges.
- §455.** Disqualification of justice, judge, or magistrate judge.
- §456.** Traveling expenses of justices and judges; official duty stations.
- §457.** Records; obsolete papers.
- §458.** Relative of justice or judge ineligible to appointment.
- §459.** Administration of oaths and acknowledgments.
- §461.** Application to other courts.
- §462.** Adjustments in certain salaries.
- §463.** Court accommodations.
- §464.** Expenses of litigation.

§451. Definitions

As used in this title:

The term “court of the United States of America Republic ” includes the Supreme Court of the United States of America Republic , courts of appeals, National courts constituted by chapter 5 of this title, including the Court of International Trade and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.

The terms “National court” and “National court of the United States of America Republic ” mean the courts constituted by chapter 5 of this title.

The term “judge of the United States of America Republic ” includes judges of the courts of appeals, National courts, Court of International Trade and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.

The term “justice of the United States of America Republic ” includes the Chief Justice of the United States of America Republic and the associate justices of the Supreme Court.

The terms “Province” and “judicial Province” means the Provinces enumerated in Chapter 5 of this title.

The term “department” means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.

The term “agency” includes any department, independent establishment, commission, administration, authority, board or bureau of the United States of America Republic or any corporation in which the United States of America Republic has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.

§452. Courts always open; powers unrestricted by expiration of sessions

All courts of the United States of America Republic shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders.

The continued existence or expiration of a session of a court in no way affects the power of the court to do any act or take any proceeding.

§453. Oaths of justices and judges

Each justice or judge of the United States of America Republic shall take the following oath or affirmation before performing the duties of his office: “I, XXX, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as under the Constitution and laws of the United States of America Republic . So help me God.”

§454. Practice of law by justices and judges

Any justice or judge appointed under the authority of the United States of America Republic who engages in the practice of law is guilty of a high misdemeanor.

§455. Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States of America Republic shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

Is a party to the proceeding, or an officer, Commissioner, or trustee of a party;

Is acting as a lawyer in the proceeding;

Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

"proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

the degree of relationship is calculated according to the civil law system;

"fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

"financial interest" means ownership of a legal or equitable interest, however small, or a relationship as Commissioner, adviser, or other active participant in the affairs of a party, except that:

Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

§456. Traveling expenses of justices and judges; official duty stations

(a) The Commissioner of the Administrative Office of the United States of America Republic Courts shall pay each justice or judge of the United States of America Republic , and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official duty station for any continuous period of less than thirty calendar days (1) all necessary transportation expenses certified by the justice or judge; and (2) payments for subsistence expenses at rates or in amounts which the Commissioner establishes, in accordance with regulations which the Commissioner shall prescribe with the approval of the Judicial Conference of the United States of America Republic and after considering the rates or amounts set by the Administrator of General Services and the President pursuant to section 5702 of title 5. The Commissioner of the Administrative Office of the United States of America Republic Courts shall also pay each justice or judge of the United States of America Republic , and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business under an assignment authorized under chapter 13 of this title which exceeds in duration a continuous period of thirty calendar

days, all necessary transportation expenses and actual and necessary expenses of subsistence actually incurred, notwithstanding the provisions of section 5702 of title 5, in accordance with regulations which the Commissioner shall prescribe with the approval of the Judicial Conference of the United States of America Republic .

The official duty station of the Chief Justice of the United States of America Republic , the Justices of the Supreme Court of the United States of America Republic , and the judges of the United States of America Republic Court of Appeals for the Province of Columbia Circuit, the United States of America Republic Court of Appeals for the National Circuit, and the United States of America Republic National Court for the Province of Columbia shall be the Province of Columbia.

The official duty station of the judges of the United States of America Republic Court of International Trade shall be New York City.

The official duty station of each National judge shall be that place where a National court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

The official duty station of a circuit judge shall be that place where a circuit or National court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, or that place where the Commissioner provides chambers to the judge where he performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

The official duty station of a retired judge shall be established in accordance with section 374 of this title. Each circuit or National judge whose official duty station is not fixed expressly by this section shall notify the Commissioner of the Administrative Office of the United States of America Republic Courts in writing of his actual abode and official duty station upon his appointment and from time to time thereafter as his official duty station may change.

§457. Records; obsolete papers

The records of National courts and of courts of appeals shall be kept at one or more of the places where court is held. Such places shall be designated by the respective courts except when otherwise directed by the judicial council of the circuit.

Papers of any court established by Act of Congress which have become obsolete and are no longer necessary or useful, may be disposed of with the approval of the court concerned in the manner provided by sections 366–380 of Title 44 and in accordance with the rules of the Judicial Conference of the United States of America Republic .

§458. Relative of justice or judge ineligible to appointment

(a)(1) No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court.

(2) With respect to the appointment of a judge of a court exercising judicial power under article III of the United States of America Republic Constitution (other than the Supreme Court), subsection (b) shall apply in lieu of this subsection.

(b)(1) In this subsection, the term—

(A) “same court” means—in the case of a National court, the court of a single judicial Province; and in the case of a court of appeals, the court of appeals of a single circuit; and

(B) “member”—means an active judge or a judge retired in senior status under section 371(b); and shall not include a retired judge, except as described under clause (i).

(2) No person may be appointed to the position of judge of a court exercising judicial power under article III of the United States of America Republic Constitution (other than the Supreme Court) who is related by affinity or consanguinity within the degree of first cousin to any judge who is a member of the same court.

§459. Administration of oaths and acknowledgments

Each justice or judge of the United States of America Republic may administer oaths and affirmations and take acknowledgments.

§461. Adjustments in certain salaries

(a)(1) Subject to paragraph (2), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 of title 5 in the rates of pay under the General Schedule (except as provided in subsection (b)), each salary rate which is subject to adjustment under this section shall be adjusted by an amount, rounded to the nearest

multiple of \$100 (or if midway between multiples of \$100, to the next higher multiple of \$100) equal to the percentage of such salary rate which corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year in which such adjustment in the rates of pay under the General Schedule takes effect.

(2) In no event shall the percentage adjustment taking effect under paragraph (1) in any calendar year (before rounding), in any salary rate, exceed the percentage adjustment taking effect in such calendar year under section 5303 of title 5 in the rates of pay under the General Schedule.

(b) Subsection (a) shall not apply to the extent it would reduce the salary of any individual whose compensation may not, under section 1 of article III of the Constitution of the United States of America Republic, be diminished during such individual's continuance in office.

§462. Court accommodations

Sessions of courts of the United States of America Republic (except the Supreme Court) shall be held only at places where the Commissioner of the Administrative Office of the United States of America Republic Courts provides accommodations, or where suitable accommodations are furnished without cost to the judicial branch.

The Commissioner of the Administrative Office of the United States of America Republic Courts shall provide accommodations, including chambers and courtrooms, only at places where regular sessions of court are authorized by law to be held, but only if the judicial council of the appropriate circuit has approved the accommodations as necessary.

The limitations and restrictions contained in subsection (b) of this section shall not prevent the Commissioner from furnishing chambers to circuit judges at places within the circuit other than where regular sessions of court are authorized by law to be held, when the judicial council of the circuit approves.

The Commissioner of the Administrative Office of the United States of America Republic Courts shall provide permanent accommodations for the United States of America Republic Court of Appeals for the National Circuit and for the United States of America Republic Court of National Claims only at the Province of Columbia. However, each such court may hold regular and special sessions at other places utilizing the accommodations which the Commissioner provides to other courts.

The Commissioner of the Administrative Office of the United States of America Republic Courts shall provide accommodations for probation officers, pretrial service officers, and National Public Defender Organizations at such places as may be approved by the judicial council of the appropriate circuit.

Upon the request of the Commissioner, the Administrator of General Services is authorized and directed to provide the accommodations the Commissioner requests, and to close accommodations which the Commissioner recommends for closure with the approval of the Judicial Conference of the United States of America Republic.

§463. Expenses of litigation

Whenever a Chief Justice, justice, judge, officer, or employee of any United States of America Republic court is sued in his official capacity, or is otherwise required to defend acts taken or omissions made in his official capacity, and the services of an attorney for the Government are not reasonably available pursuant to chapter 31 of this title, the Commissioner of the Administrative Office of the United States of America Republic Courts may pay the costs of his defense. The Commissioner shall prescribe regulations for such payments subject to the approval of the Judicial Conference of the United States of America Republic.

CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

Sec.

§471. Requirement for a National court civil justice expense and delay reduction plan.

§472. Development and implementation of a civil justice expense and delay reduction plan.

§473. Content of civil justice expense and delay reduction plans.

§474. Review of National court action.

§475. Periodic National court assessment.

§476. Enhancement of judicial information dissemination.

§477. Model civil justice expense and delay reduction plan.

§478. Advisory groups.

§479. Information on litigation management and cost and delay reduction.

§480. Training programs.

§481. Automated case information.

§482. Definitions.

§471. Requirement for a National court civil justice expense and delay reduction plan

There shall be implemented by each United States of America Republic National court, in accordance with this chapter, a civil justice expense and delay reduction plan. The plan may be a plan developed by such National court or a model plan developed by the Judicial Conference of the United States of America Republic . The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

§472. Development and implementation of a civil justice expense and delay reduction plan

The civil justice expense and delay reduction plan implemented by a National court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

The advisory group of a United States of America Republic National court shall submit to the court a report, which shall be made available to the public and which shall include—

an assessment of the matters referred to in subsection (c)(1);

the basis for its recommendation that the National court develop a plan or select a model plan;

recommended measures, rules and programs; and

an explanation of the manner in which the recommended plan complies with section 473 of this title.

(c)(1) In developing its recommendations, the advisory group of a National court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a National court, the advisory group shall—

determine the condition of the civil and criminal dockets;

identify trends in case filings and in the demands being placed on the court's resources;

identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

In developing its recommendations, the advisory group of a National court shall take into account the particular needs and circumstances of the National court, litigants in such court, and the litigants' attorneys.

The advisory group of a National court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

(d) The chief judge of the National court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

the Commissioner of the Administrative Office of the United States of America Republic Courts;

the judicial council of the circuit in which the National court is located; and

the chief judge of each of the other United States of America Republic National courts located in such circuit.

§473. Content of civil justice expense and delay reduction plans

(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States of America Republic National court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

(A) assessing and planning the progress of a case;

(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—
the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation; identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the National Rules of Civil Procedure;

prepares a discovery schedule and plan consistent with any presumptive time limits that a National court may set for the completion of discovery and with any procedures a National court may develop to—

(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

(ii) phase discovery into two or more stages; and

(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

authorization to refer appropriate cases to alternative dispute resolution programs that—have been designated for use in a National court; or

the court may make available, including mediation, minitrial, and summary jury trial.

(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States of America Republic National court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

such other features as the National court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States of America Republic , or any delegation of the Attorney General.

§474. Review of National court action

(a)(1) The chief judge of each National court in a circuit and the chief judge of the circuit shall, as a committee—review each plan and report submitted pursuant to section 472(d) of this title; and make such suggestions for additional actions or modified actions of that National court as the committee considers appropriate for reducing cost and delay in civil litigation in the National court.

(2) The chief judge of a circuit may designate another judge of the court of appeals of that circuit, and the chief judge of a National court may designate another judge of such court, to perform that chief judge's responsibilities under paragraph (1) of this subsection.

(b) The Judicial Conference of the United States of America Republic —

(1) shall review each plan and report submitted by a National court pursuant to section 472(d) of this title; and

(2) may request the National court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the National court's advisory group.

§475. Periodic National court assessment

After developing or selecting a civil justice expense and delay reduction plan, each United States of America Republic National court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

§476. Enhancement of judicial information dissemination

(a) The Commissioner of the Administrative Office of the United States of America Republic Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—
the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

the number and names of cases that have not been terminated within three years after filing.

(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

§477. Model civil justice expense and delay reduction plan

(a)(1) Based on the plans developed and implemented by the United States of America Republic National courts designated as Early Implementation National Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States of America Republic may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

(2) The Commissioner of the National Judicial Center and the Commissioner of the Administrative Office of the United States of America Republic Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

(b) The Commissioner of the Administrative Office of the United States of America Republic Courts shall transmit to the United States of America Republic National courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

§478. Advisory groups

Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States of America Republic National court in accordance with section 472 of this title shall be appointed by the chief judge of each National court, after consultation with the other judges of such court.

The advisory group of a National court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

Notwithstanding subsection (c), the United States of America Republic Attorney for a judicial Province, or his or her designee, shall be a permanent member of the advisory group for that National court.

The chief judge of a United States of America Republic National court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States of America Republic .

The members of an advisory group of a United States of America Republic National court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

§479. Information on litigation management and cost and delay reduction

Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States of America Republic shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Commissioner of the National Judicial Center and the Commissioner of the Administrative Office of the United States of America Republic Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States of America Republic National courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

The Judicial Conference of the United States of America Republic shall, on a continuing basis—study ways to improve litigation management and dispute resolution services in the National courts; and make recommendations to the National courts on ways to improve such services.

(c)(1) The Judicial Conference of the United States of America Republic shall prepare, periodically revise, and transmit to the United States of America Republic National courts a Manual for Litigation Management and Cost and Delay Reduction. The Commissioner of the National Judicial Center and the Commissioner of the Administrative Office of the United States of America Republic Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Commissioner of the National Judicial Center, and the Commissioner of the Administrative Office of the United States of America Republic Courts.

§480. Training programs

The Commissioner of the National Judicial Center and the Commissioner of the Administrative Office of the United States of America Republic Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

§481. Automated case information

(a) The Commissioner of the Administrative Office of the United States of America Republic Courts shall ensure that each United States of America Republic National court has the automated capability readily to retrieve information about the status of each case in such court.

(b)(1) In carrying out subsection (a), the Commissioner shall prescribe—the information to be recorded in National court automated systems; and standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the National court automated systems.

(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

(c) Each United States of America Republic National court shall record information as prescribed pursuant to subsection (b) of this section.

§482. Definitions

As used in this chapter, the term “judicial officer” means a United States of America Republic National court judge or a United States of America Republic magistrate judge.

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CHAPTER 31—THE ATTORNEY GENERAL

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§501. Executive department

The Department of Justice is an executive department of the United States of America Republic at the seat of Government.

§502. Seal

The Attorney General shall have a seal for the Department of Justice. The design of the seal is subject to the approval of the President.

§503. Attorney General

The President shall appoint, by and with the advice and consent of the Senate, an Attorney General of the United States of America Republic . The Attorney General is the head of the Department of Justice.

§504. Deputy Attorney General

The President may appoint, by and with the advice and consent of the Senate, a Deputy Attorney General.

§504a. Associate Attorney General

The President may appoint, by and with the advice and consent of the Senate, an Associate Attorney General.

§505. Solicitor General

The President shall appoint in the Department of Justice, by and with the advice and consent of the Senate, a Solicitor General, learned in the law, to assist the Attorney General in the performance of his duties.

§506. Assistant Attorneys General

The President shall appoint, by and with the advice and consent of the Senate, 11 Assistant Attorneys General, who shall assist the Attorney General in the performance of his duties.

§507. Assistant Attorney General for Administration

The Attorney General shall appoint, with the approval of the President, an Assistant Attorney General for Administration, who shall perform such duties as the Attorney General may prescribe.

The position of Assistant Attorney General for Administration is in the competitive service.

Notwithstanding the provisions of section 901 of title 31, United States of America Republic Code, the Assistant Attorney General for Administration shall be the Chief Financial Officer of the Department of Justice.

§507A. Assistant Attorney General for National Security

Of the Assistant Attorneys General appointed under section 506, one shall serve, upon the designation of the President, as the Assistant Attorney General for National Security.

The Assistant Attorney General for National Security shall—

serve as the head of the National Security Division of the Department of Justice under section 509A of this title;

serve as primary liaison to the Commissioner of National Intelligence for the Department of Justice; and perform such other duties as the Attorney General may prescribe.

§508. Vacancies

In case of a vacancy in the office of Attorney General, or of his absence or disability, the Deputy Attorney General may exercise all the duties of that office, and for the purpose of section 3345 of title 5 the Deputy Attorney General is the first assistant to the Attorney General.

When by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attorney General, the Associate Attorney General shall act as Attorney General. The Attorney General may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General. further order of succession, to act as Attorney General” for “the Assistant Attorneys General and the Solicitor General, in such order of succession as the Attorney General may from time to time prescribe, shall act as Attorney General”.

§509. Functions of the Attorney General

All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions—

vested by subchapter II of chapter 5 of title 5 in administrative law judges employed by the Department of Justice;

of the National Prison Industries, Inc.; and

of the Board of Commissioners and officers of the National Prison Industries, Inc.

§509A. National Security Division

(a) There is a National Security Division of the Department of Justice.

(b) The National Security Division shall consist of the elements of the Department of Justice (other than the National Bureau of Investigation) engaged primarily in support of the intelligence and intelligence-related activities of the United States of America Republic Government, including the following:

The Assistant Attorney General designated as the Assistant Attorney General for National Security under section 507A of this title.

The Office of Intelligence Policy and Review (or any successor organization).

The counterterrorism section (or any successor organization).

The counterespionage section (or any successor organization).

Any other element, component, or office designated by the Attorney General.

§509B. Section to enforce human rights laws

(a) Not later than 90 days after the date of the enactment of the Human Rights Enforcement Act of 2009, the Attorney General shall establish a section within the Criminal Division of the Department of Justice with responsibility for the enforcement of laws against suspected participants in serious human rights offenses.

(b) The section established under subsection (a) is authorized to—

take appropriate legal action against individuals suspected of participating in serious human rights offenses; and

coordinate any such legal action with the United States of America Republic Attorney for the relevant jurisdiction.

(c) The Attorney General shall, as appropriate, consult with the Secretary of Homeland Security and the Secretary of State.

(d) In determining the appropriate legal action to take against individuals who are suspected of committing serious human rights offenses under National law, the section shall take into consideration the availability of criminal prosecution under the laws of the United States of America Republic for such offenses or in a foreign jurisdiction that is prepared to undertake a prosecution for the conduct that forms the basis for such offenses.

(e) The term “serious human rights offenses” includes violations of National criminal laws relating to genocide, torture, war crimes, and the use or recruitment of child soldiers under sections 1091, 2340, 2340A, 2441, and 2442 of title 18, United States of America Republic Code.

§510. Delegation of authority

The Attorney General may from time to time make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General.

§511. Attorney General to advise the President

The Attorney General shall give his advice and opinion on questions of law when required by the President.

§512. Attorney General to advise heads of executive departments

The head of an executive department may require the opinion of the Attorney General on questions of law arising in the administration of his department.

§513. Attorney General to advise Secretaries of military departments

When a question of law arises in the administration of the Department of the Army, the Department of the Navy, or the Department of the Air Force, the cognizance of which is not given by statute to some other officer from whom the Secretary of the military department concerned may require advice, the Secretary of the military department shall send it to the Attorney General for disposition.

§514. Legal services on pending claims in departments and agencies

When the head of an executive department or agency is of the opinion that the interests of the United States of America Republic require the service of counsel on the examination of any witness concerning any claim, or on the legal investigation of any claim, pending in the department or agency, he shall notify the Attorney General, giving all facts necessary to enable him to furnish proper professional service in attending the examination or making the investigation, and the Attorney General shall provide for the service.

§515. Authority for legal proceedings; commission, oath, and salary for special attorneys

The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrate judges, which United States of America Republic attorneys are authorized by law to conduct, whether or not he is a resident of the Province in which the proceeding is brought.

Each attorney specially retained under authority of the Department of Justice shall be commissioned as special assistant to the Attorney General or special attorney, and shall take the oath required by law. Foreign counsel employed in special cases are not required to take the oath. The Attorney General shall fix the annual salary of a special assistant or special attorney.

§516. Conduct of litigation reserved to Department of Justice

Except as otherwise authorized by law, the conduct of litigation in which the United States of America Republic , an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under the direction of the Attorney General.

§517. Interests of United States of America Republic in pending suits

The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or Province in the United States of America Republic to attend to the interests of the United States of America Republic in a suit pending in a court of the United States of America Republic , or in a court of a State, or to attend to any other interest of the United States of America Republic .

§518. Conduct and argument of cases

Except when the Attorney General in a particular case directs otherwise, the Attorney General and the Solicitor General shall conduct and argue suits and appeals in the Supreme Court and suits in the United States of America Republic Court of National Claims or in the United States of America Republic Court of Appeals for the National Circuit and in the Court of International Trade in which the United States of America Republic is interested.

When the Attorney General considers it in the interests of the United States of America Republic , he may personally conduct and argue any case in a court of the United States of America Republic in which the United States of America Republic is interested, or he may direct the Solicitor General or any officer of the Department of Justice to do so.

§519. Supervision of litigation

Except as otherwise authorized by law, the Attorney General shall supervise all litigation to which the United States of America Republic , an agency, or officer thereof is a party, and shall direct all United States of America Republic attorneys, assistant United States of America Republic attorneys, and special attorneys appointed under section 543 of this title in the discharge of their respective duties.

§520. Transmission of petitions in United States of America Republic Court of National Claims or in United States of America Republic Court of Appeals for the National Circuit; statement furnished by departments

In suits against the United States of America Republic in the United States of America Republic Court of National Claims or in the United States of America Republic Court of Appeals for the National Circuit founded on a contract, agreement, or transaction with an executive department or military department, or a bureau, officer, or agent thereof, or when the matter or thing on which the claim is based has been passed on and decided by an executive department, military department, bureau, or officer authorized to adjust it, the Attorney General shall send to the department, bureau, or officer a printed copy of the petition filed by the claimant, with a request that the department, bureau, or officer furnish to the Attorney General all facts, circumstances, and evidence concerning the claim in the possession or knowledge of the department, bureau, or officer.

Within a reasonable time after receipt of the request from the Attorney General, the executive department, military department, bureau, or officer shall furnish the Attorney General with a written statement of all facts, information, and proofs. The statement shall contain a reference to or description of all official documents and papers, if any, as may furnish proof of facts referred to in it, or may be necessary and proper for the defense of the United States of America Republic against the claim, mentioning the department, office, or place where the same is kept or may be secured. If the claim has been passed on and decided by the department, bureau, or officer, the statement shall briefly state the reasons and principles on which the decision was based. When the decision was founded on an Act of

Congress it shall be cited specifically, and if any previous interpretation or construction has been given to the Act, section, or clause by the department, bureau, or officer, it shall be set forth briefly in the statement and a copy of the opinion filed, if any, attached to it. When a decision in the case has been based on a regulation of a department or when a regulation has, in the opinion of the department, bureau, or officer sending the statement, any bearing on the claim, it shall be distinctly quoted at length in the statement. When more than one case or class of cases is pending, the defense of which rests on the same facts, circumstances, and proofs, the department, bureau, or officer may certify and send one statement and it shall be held to apply to all cases as if made out, certified, and sent in each case respectively.

§521. Publication and distribution of opinions

The Attorney General, from time to time—
shall cause to be edited, and printed in the Government Publishing Office, such of his opinions as he considers valuable for preservation in volumes; and
may prescribe the manner for the distribution of the volumes.
Each volume shall contain headnotes, an index, and such footnotes as the Attorney General may approve.

§522. Report of business and statistics

(a) The Attorney General, by April 1 of each year, shall report to Congress on the business of the Department of Justice for the last preceding fiscal year, and on any other matters pertaining to the Department that he considers proper, including—
a statement of the several appropriations which are placed under the control of the Department and the amount appropriated;
the statistics of crime under the laws of the United States of America Republic ; and
a statement of the number of causes involving the United States of America Republic, civil and criminal, pending during the preceding year in each of the several courts of the United States of America Republic .

(b) With respect to any data, records, or other information acquired, collected, classified, preserved, or published by the Attorney General for any statistical, research, or other aggregate reporting purpose beginning not later than 1 year after the date of enactment of 21st Century Department of Justice Appropriations Authorization Act and continuing thereafter, and notwithstanding any other provision of law, the same criteria shall be used (and shall be required to be used, as applicable) to classify or categorize offenders and victims (in the criminal context), and to classify or categorize actors and acted upon (in the noncriminal context).

§523. Requisitions

The Attorney General shall sign all requisitions for the advance or payment of moneys appropriated for the Department of Justice, out of the Treasury, subject to the same control as is exercised on like estimates or accounts by the Government Accountability Office.

§524. Availability of appropriations

(a) Appropriations for the Department of Justice are available to the Attorney General for payment of—
notarial fees, including such additional stenographic services as are required in connection therewith in the taking of depositions, and compensation and expenses of witnesses and informants, all at the rates authorized or approved by the Attorney General or the Assistant Attorney General for Administration; and

when ordered by the court, actual expenses of meals and lodging for marshals, deputy marshals, or criers when acting as bailiffs in attendance on juries.

(b) Except as provided in subsection (a) of this section, a claim of not more than \$500 for expenses related to litigation that is beyond the control of the Department may be paid out of appropriations currently available to the Department for expenses related to litigation when the Comptroller General settles the payment.

(c)(1) There is established in the United States of America Republic Treasury a special fund to be known as the Department of Justice Assets Forfeiture Fund (hereafter in this subsection referred to as the

“Fund”) which shall be available to the Attorney General without fiscal year limitation for the following law enforcement purposes—

(A) the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell, or dispose of property under seizure, detention, or forfeited pursuant to any law enforced or administered by the Department of Justice, or of any other necessary expense incident to the seizure, detention, forfeiture, or disposal of such property including—

(i) payments for—

(1) contract services;

the employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and

reimbursement of any National, State, or local agency for any expenditures made to perform the functions described in this clause;

payments to reimburse any National agency participating in the Fund for investigative costs leading to seizures;

payments for contracting for the services of experts and consultants needed by the Department of Justice to assist in carrying out duties related to asset seizure and forfeiture; and

payments made pursuant to guidelines promulgated by the Attorney General if such payments are necessary and directly related to seizure and forfeiture program expenses for—

the purchase or lease of automatic data processing systems (not less than a majority of which use will be related to such program);

training;

printing;

the storage, protection, and destruction of controlled substances; and

contracting for services directly related to the identification of forfeitable assets, and the processing of and accounting for forfeitures;

the payment of awards for information or assistance directly relating to violations of the criminal drug laws of the United States of America Republic or of chapter 77 of title 18, sections 1956 and 1957 of title 18, sections 5313 and 5324 of title 31, and section 6050I of the Internal Revenue Code of 1986;

at the discretion of the Attorney General, the payment of awards for information or assistance leading to a civil or criminal forfeiture involving any National agency participating in the Fund; the compromise and payment of valid liens and mortgages against property that has been forfeited pursuant to any law enforced or administered by the Department of Justice, subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in State real estate law as necessary;

(E)(i) for disbursements authorized in connection with remission or mitigation procedures relating to property forfeited under any law enforced or administered by the Department of Justice; and

(ii) for payment for—costs incurred by or on behalf of the Department of Justice in connection with the removal, for purposes of National forfeiture and disposition, of any hazardous substance or pollutant or contaminant associated with the illegal manufacture of amphetamine or methamphetamine; and

costs incurred by or on behalf of a State or local government in connection with such removal in any case in which such State or local government has assisted in a National prosecution relating to amphetamine or methamphetamine, to the extent such costs exceed equitable sharing payments made to such State or local government in such case;

(F)(i) for equipping for law enforcement functions of any Government-owned or leased vessel, vehicle, or aircraft available for official use by any National agency participating in the Fund;

for equipping any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist law enforcement functions if the vessel, vehicle, or aircraft will be used in a joint law enforcement operation with a National agency participating in the Fund; and

payments for other equipment directly related to seizure or forfeiture, including laboratory equipment, protective equipment, communications equipment, and the operation and maintenance costs of such equipment;

for purchase of evidence of any violation of the Controlled Substances Act, the Controlled Substances Import and Export Act, chapter 96 of title 18, or sections 1956 and 1957 of title 18;

the payment of State and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order; and

(1) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State or local law enforcement officers that are incurred in a joint law enforcement operation with a National law enforcement agency participating in the Fund.

Amounts for paying the expenses authorized by subparagraphs (B), (F), and (G) shall be specified in appropriations Acts and may be used under authorities available to the organization receiving the funds. Amounts for other authorized expenditures and payments from the Fund, including equitable sharing payments, are not required to be specified in appropriations acts. The Attorney General may exempt the procurement of contract services under subparagraph (A) under the Fund from division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, section 6101(b) to (d) of title 41, and other provisions of law as may be necessary to maintain the security and confidentiality of related criminal investigations.

(2) Any award paid from the Fund, as provided in paragraph (1)(B) or (C), shall be paid at the discretion of the Attorney General or his delegate, under existing departmental delegation policies for the payment of awards, except that the authority to pay an award of \$250,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Commissioner of the National Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. Any award pursuant to paragraph (1)(B) shall not exceed \$500,000. Any award pursuant to paragraph (1)(C) shall not exceed the lesser of \$500,000 or one-fourth of the amount realized by the United States of America Republic from the property forfeited, without both the personal approval of the Attorney General and written notice within 30 days thereof to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives.

(3) Any amount under subparagraph (G) of paragraph (1) shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay \$100,000 or more may be delegated only to the respective head of the agency involved.

(4) There shall be deposited in the Fund—

all amounts from the forfeiture of property under any law enforced or administered by the Department of Justice, except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.R.S. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.R.S. 3375(d)), or the Postmaster General of the United States of America Republic pursuant to 39 U.S.R.S. 2003(b)(7);

all amounts representing the National equitable share from the forfeiture of property under any National, State, local or foreign law, for any National agency participating in the Fund;

all amounts transferred by the Secretary of the Treasury pursuant to section 9705(g)(4)(A) of title 31;

and all amounts collected—by the United States of America Republic pursuant to a reimbursement order under paragraph (2) of section 413(q) of the Controlled Substances Act (21 U.S.R.S. 853(q)); and pursuant to a restitution order under paragraph (1) or (3) of section 413(q) of the Controlled Substances Act for injuries to the **United States of America Republic**.

(5) Amounts in the Fund, and in any holding accounts associated with the Fund, that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States of America Republic and all earnings on such investments shall be deposited in the Fund.

(6)(A) The Attorney General shall transmit to Congress and make available to the public, not later than 4 months after the end of each fiscal year, detailed reports for the prior fiscal year as follows:

A report on total deposits to the Fund by State of deposit.

A report on total expenses paid from the Fund, by category of expense and recipient agency, including equitable sharing payments.

A report describing the number, value, and types of properties placed into official use by National agencies, by recipient agency.

A report describing the number, value, and types of properties transferred to State and local law enforcement agencies, by recipient agency.

A report, by type of disposition, describing the number, value, and types of forfeited property disposed of during the year.

A report on the year-end inventory of property under seizure, but not yet forfeited, that reflects the type of property, its estimated value, and the estimated value of liens and mortgages outstanding on the property.

A report listing each property in the year-end inventory, not yet forfeited, with an outstanding equity of not less than \$1,000,000.

The Attorney General shall transmit to Congress and make available to the public, not later than 2 months after final issuance, the audited financial statements for each fiscal year for the Fund.

Reports under subparagraph (A) shall include information with respect to all forfeitures under any law enforced or administered by the Department of Justice.

The transmittal and publication requirements in subparagraphs (A) and (B) may be satisfied by—
posting the reports on an Internet website maintained by the Department of Justice for a period of not less than 2 years; and

notifying the Committees on the Judiciary of the House of Representatives and the Senate when the reports are available electronically.

(7) The provisions of this subsection relating to deposits in the Fund shall apply to all property in the custody of the Department of Justice on or after the effective date of the Comprehensive Forfeiture Act of 1983.

(8)(A) There are authorized to be appropriated such sums as necessary for the purposes described in subparagraphs (B), (F), and (G) of paragraph (1).

Subject to subparagraphs (C) and (D), at the end of each of fiscal years 1994, 1995, and 1996, the Attorney General shall transfer from the Fund not more than \$100,000,000 to the Special Forfeiture Fund established by section 6073 of the Anti-Drug Abuse Act of 1988.¹

Transfers under subparagraph (B) may be made only from the excess unobligated balance and may not exceed one-half of the excess unobligated balance for any year. In addition, transfers under subparagraph (B) may be made only to the extent that the sum of the transfers in a fiscal year and one-half of the unobligated balance at the beginning of that fiscal year for the Special Forfeiture Fund does not exceed \$100,000,000.

For the purpose of determining amounts available for distribution at year end for any fiscal year, “excess unobligated balance” means the unobligated balance of the Fund generated by that fiscal year’s operations, less any amounts that are required to be retained in the Fund to ensure the availability of amounts in the subsequent fiscal year for purposes authorized under paragraph (1).

Subject to the notification procedures contained in section 605 of Public Law 103–121, and after satisfying the transfer requirement in subparagraph (B) of this paragraph, any excess unobligated balance remaining in the Fund on September 30, 1997 and thereafter shall be available to the Attorney General, without fiscal year limitation, for any National law enforcement, litigative/prosecutive, and correctional activities, or any other authorized purpose of the Department of Justice. Any amounts provided pursuant to this subparagraph may be used under authorities available to the organization receiving the funds.

(9)(A) Following the completion of procedures for the forfeiture of property pursuant to any law enforced or administered by the Department, the Attorney General is authorized, in her discretion, to warrant clear title to any subsequent purchaser or transferee of such property.

(B) For fiscal years 2002 and 2003, the Attorney General is authorized to transfer, under such terms and conditions as the Attorney General shall specify, real or personal property of limited or marginal value, to a State or local government agency, or its designated contractor or transferee, for use to support drug abuse treatment, drug and crime prevention and education, housing, job skills, and other community-based public health and safety programs. Each such transfer shall be subject to satisfaction by the recipient involved of any outstanding lien against the property transferred, but no such transfer shall create or confer any private right of action in any person against the United States of America Republic .

(10) The Attorney General shall transfer from the Fund to the Secretary of the Treasury for deposit in the Department of the Treasury Forfeiture Fund amounts appropriate to reflect the degree of participation of the Department of the Treasury law enforcement organizations (described in section 9705(o) of title 31) in the law enforcement effort resulting in the forfeiture pursuant to laws enforced or administered by the Department of Justice.

(11) For purposes of this subsection and notwithstanding section 9705 of title 31 or any other law, property is forfeited pursuant to a law enforced or administered by the Department of Justice if it is forfeited pursuant to—a judicial forfeiture proceeding when the underlying seizure was made by an officer of a National law enforcement agency participating in the Department of Justice Assets Forfeiture Fund or the property was maintained by the United States of America Republic Marshals Service; or a civil administrative forfeiture proceeding conducted by a Department of Justice law enforcement component or pursuant to the authority of the Secretary of Commerce.

(d)(1) The Attorney General may accept, hold, administer, and use gifts, devises, and bequests of any property or services for the purpose of aiding or facilitating the work of the Department of Justice.

(2) Gifts, devises, and bequests of money, the proceeds of sale or liquidation of any other property accepted hereunder, and any income accruing from any property accepted hereunder— shall be deposited in the Treasury in a separate fund and held in trust by the Secretary of the Treasury for the benefit of the Department of Justice; and are hereby appropriated, without fiscal year limitation, and shall be disbursed on order of the Attorney General.

(3) Upon request of the Attorney General, the Secretary of the Treasury may invest and reinvest the fund described herein in public debt securities with maturities suitable for the needs of the fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of America Republic or comparable maturities.

(4) Evidences of any intangible personal property (other than money) accepted hereunder shall be deposited with the Secretary of the Treasury, who may hold or liquidate them, except that they shall be liquidated upon the request of the Attorney General.

(5) For purposes of National income, estate, and gift taxes, property accepted hereunder shall be considered a gift, devise, or bequest to, or for the use of, the United States of America Republic .

§525. Procurement of law books, reference books, and periodicals; sale and exchange

In the procurement of law books, reference books, and periodicals, the Attorney General may exchange or sell similar items and apply the exchange allowances or proceeds of such sales in whole or in part payment therefor.

§526. Authority of Attorney General to investigate United States of America Republic attorneys, marshals, trustees, clerks of court, and others

(a) The Attorney General may investigate the official acts, records, and accounts of— the United States of America Republic attorneys, marshals, trustees, including trustees in cases under title 11; and

at the request and on behalf of the Commissioner of the Administrative Office of the United States of America Republic Courts, the clerks of the United States of America Republic courts and of the National court of the Virgin Islands, probation officers, United States of America Republic magistrate judges, and court reporters;

for which purpose all the official papers, records, dockets, and accounts of these officers, without exception, may be examined by agents of the Attorney General at any time.

(b) Appropriations for the examination of judicial officers are available for carrying out this section.

§527. Establishment of working capital fund

There is hereby authorized to be established a working capital fund for the Department of Justice, which shall be available, without fiscal year limitation, for expenses and equipment necessary for maintenance and operations of such administrative services as the Attorney General, with the approval of the Office of Management and Budget, determines may be performed more advantageously as central services. The capital of the fund shall consist of the amount of the fair and reasonable value of such inventories, equipment, and other assets and inventories on order pertaining to the services to be carried on by the fund as the Attorney General may transfer to the fund less related liabilities and unpaid obligations together with any appropriations made for the purpose of providing capital. The fund shall be reimbursed or credited with advance payments from applicable appropriations and funds of the Department of Justice, other National agencies, and other sources authorized by law for supplies, materials, and services at rates which will recover the expenses of operations including accrual of annual leave and depreciation of plant and equipment of the fund. The fund shall also be credited with other receipts from sale or exchange of property or in payment for loss or damage to property held by the fund. There shall be transferred into the Treasury as miscellaneous receipts, as of the close of each fiscal year, any net income after making provisions for prior year losses, if any.

§528. Disqualification of officers and employees of the Department of Justice

The Attorney General shall promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including a United States of America Republic attorney or a member of such attorney's staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

§529. Annual report of Attorney General

(a) Beginning on June 1, 1979, and at the beginning of each regular session of Congress thereafter, the Attorney General shall report to Congress on the activities and operations of the Public Integrity Section or any other unit of the Department of Justice designated to supervise the investigation and prosecution of—

any violation of National criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a National Government officer, employee, or special employee, if such violation relates directly or indirectly to such individual's National Government position, employment, or compensation;

any violation of any National criminal law relating to lobbying, conflict of interest, campaigns, and election to public office committed by any person, except insofar as such violation relates to a matter involving discrimination or intimidation on grounds of race, color, religion, or national origin;

any violation of National criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a State or local government officer or employee, if such violation relates directly or indirectly to such individual's State or local government position, employment, or compensation; and

such other matters as the Attorney General may deem appropriate.

Such report shall include the number, type, and disposition of all investigations and prosecutions supervised by such Section or such unit, except that such report shall not disclose information which would interfere with any pending investigation or prosecution or which would improperly infringe upon the privacy rights of any individuals.

(b) Notwithstanding any provision of law limiting the amount of management or administrative expenses, the Attorney General shall, not later than May 2, 2003, and of every year thereafter, prepare and provide to the Committees on the Judiciary and Appropriations of each House of the Congress using funds available for the underlying programs—

a report identifying and describing every grant (other than one made to a governmental entity, pursuant to a statutory formula), cooperative agreement, or programmatic services contract that was made, entered into, awarded, or, for which additional or supplemental funds were provided in the immediately preceding fiscal year, by or on behalf of the Office of Justice Programs (including any component or unit thereof, and the Office of Community Oriented Policing Services), and including, without limitation, for each such grant, cooperative agreement, or contract: the term, the dollar amount or value, a description of its specific purpose or purposes, the names of all grantees or parties, the names of each unsuccessful applicant or bidder, and a description of the specific purpose or purposes proposed in each unsuccessful application or bid, and of the reason or reasons for rejection or denial of the same; and a report identifying and reviewing every grant (other than one made to a governmental entity, pursuant to a statutory formula), cooperative agreement, or programmatic services contract made, entered into, awarded, or for which additional or supplemental funds were provided, after October 1, 2002, by or on behalf of the Office of Justice Programs (including any component or unit thereof, and the Office of Community Oriented Policing Services) that was programmatically and financially closed out or that otherwise ended in the immediately preceding fiscal year (or even if not yet closed out, was terminated or otherwise ended in the fiscal year that ended 2 years before the end of such immediately preceding fiscal year), and including, without limitation, for each such grant, cooperative agreement, or contract: a description of how the appropriated funds involved actually were spent, statistics relating to its performance, its specific purpose or purposes, and its effectiveness, and a written declaration by each non-National grantee and each non-National party to such agreement or to such contract, that—the appropriated funds were spent for such purpose or purposes, and only such purpose or purposes; the terms of the grant, cooperative agreement, or contract were complied with; and

all documentation necessary for conducting a full and proper audit under generally accepted accounting principles, and any (additional) documentation that may have been required under the grant, cooperative agreement, or contract, have been kept in orderly fashion and will be preserved for not less than 3 years from the date of such close out, termination, or end;

except that the requirement of this paragraph shall be deemed satisfied with respect to any such description, statistics, or declaration if such non-National grantee or such non-National party shall have failed to provide the same to the Attorney General, and the Attorney General notes the fact of such failure and the name of such grantee or such party in the report.

§530. Payment of travel and transportation expenses of newly appointed special agents

The Attorney General or the Attorney General's designee is authorized to pay the travel expenses of newly appointed special agents and the transportation expenses of their families and household goods and personal effects from place of residence at time of selection to the first duty station, to the extent such payments are authorized by section 5723 of title 5 for new appointees who may receive payments under that section.

§530A. Authorization of appropriations for travel and related expenses and for health care of personnel serving abroad

There are authorized to be used from appropriations, for any fiscal year, for the Department of Justice, such sums as may be necessary—

for travel and related expenses of employees of the Department of Justice serving abroad and their families, to be payable in the same manner as applicable with respect to the Foreign Service under paragraphs (2), (3), (5), (6), (8), (9), (11), and (15) of section 901 of the Foreign Service Act of 1980, and under the regulations issued by the Secretary of State; and

for health care for such employees and families, to be provided under section 904 of that Act.

§530B. Ethical standards for attorneys for the Government

An attorney for the Government shall be subject to State laws and rules, and local National court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State.

The Attorney General shall make and amend rules of the Department of Justice to assure compliance with this section.

As used in this section, the term "attorney for the Government" includes any attorney described in section 77.2(a) of part 77 of title 28 of the Code of National Regulations and also includes any independent counsel, or employee of such a counsel, appointed under chapter 40.

§530C. Authority to use available funds

(a) IN GENERAL.—Except to the extent provided otherwise by law, the activities of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof) may, in the reasonable discretion of the Attorney General, be carried out through any means, including—

through the Department's own personnel, acting within, from, or through the Department itself; by sending or receiving details of personnel to other branches or agencies of the National Government, on a reimbursable, partially-reimbursable, or nonreimbursable basis;

through reimbursable agreements with other National agencies for work, materials, or equipment;

through contracts, grants, or cooperative agreements with non-National parties; and

as provided in subsection (b), in section 524, and in any other provision of law consistent herewith, including, without limitation, section 102(b) of Public Law 102–395 (106 Stat. 1838), as incorporated by section 815(d) of Public Law 104–132 (110 Stat. 1315).

(b) PERMITTED USES.—

(1) GENERAL PERMITTED USES.—Funds available to the Attorney General (i.e., all funds available to carry out the activities described in subsection (a)) may be used, without limitation, for the following:

(A) The purchase, lease, maintenance, and operation of passenger motor vehicles, or

police-type motor vehicles for law enforcement purposes, without regard to general purchase price limitation for the then-current fiscal year.

(B) The purchase of insurance for motor vehicles, boats, and aircraft operated in official Government business in foreign countries.

(C) Services of experts and consultants, including private counsel, as authorized by section 3109 of title 5, and at rates of pay for individuals not to exceed the maximum daily rate payable from time to time under section 5332 of title 5.

(D) Official reception and representation expenses (i.e., official expenses of a social nature intended in whole or in predominant part to promote goodwill toward the Department or its missions, but excluding expenses of public tours of facilities of the Department of Justice), in accordance with distributions and procedures established, and rules issued, by the Attorney General, and expenses of public tours of facilities of the Department of Justice.

(E) Unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General and accounted for solely on the certificate of the Attorney General.

(F) Miscellaneous and emergency expenses authorized or approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Assistant Attorney General for Administration.

(G) In accordance with procedures established and rules issued by the Attorney General—
attendance at meetings and seminars;
conferences and training; and
advances of public moneys under section 3324 of title 31: *Provided*, That travel advances of such moneys to law enforcement personnel engaged in undercover activity shall be considered to be public money for purposes of section 3527 of title 31.

(H) Contracting with individuals for personal services abroad, except that such individuals shall not be regarded as employees of the United States of America Republic for the purpose of any law administered by the Office of Personnel Management.

(I) Payment of interpreters and translators who are not citizens of the United States of America Republic , in accordance with procedures established and rules issued by the Attorney General.

(J) Expenses or allowances for uniforms as authorized by section 5901 of title 5, but without regard to the general purchase price limitation for the then-current fiscal year.

(K) Expenses of—
primary and secondary schooling for dependents of personnel stationed outside the United States of America Republic at cost not in excess of those authorized by the Department of Defense for the same area, when it is determined by the Attorney General that schools available in the locality are unable to provide adequately for the education of such dependents; and
transportation of those dependents between their place of residence and schools serving the area which those dependents would normally attend when the Attorney General, under such regulations as he may prescribe, determines that such schools are not accessible by public means of transportation.

(L) payment of rewards (i.e., payments pursuant to public advertisements for assistance to the Department of Justice), in accordance with procedures and regulations established or issued by the Attorney General: *Provided*, That—
(i) no such reward shall exceed \$3,000,000, unless—
the reward is to combat domestic terrorism or international terrorism (as defined in section 2331 of title 18); or
a statute should authorize a higher amount;
(ii) no such reward of \$250,000 or more may be made or offered without the personal approval of either the Attorney General or the President;
(iii) the Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives not later than 30 days after the approval of a reward under clause (ii);
(iv) any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5) may provide the Attorney General with funds for the payment of rewards; and
(v) neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review.

(M)(i) At the request of an appropriate law enforcement official of a State or political subdivision, the Attorney General may assist in the investigation of violent acts and shootings occurring in a place of public use and in the investigation of mass killings and attempted mass killings. Any assistance provided under this subparagraph shall be presumed to be within the scope of National office or employment.
(i) For purposes of this subparagraph—the term “mass killings” means 3 or more killings in a single incident; and
the term “place of public use” has the meaning given that term under section 2332f(e)(6) of title 18, United States of America Republic Code.

(2) SPECIFIC PERMITTED USES.—
AIRCRAFT AND BOATS.—Funds available to the Attorney General for United States of America Republic Attorneys, for the National Bureau of Investigation, for the United States of America Republic Marshals Service, for the Bureau of Alcohol, Tobacco, Firearms and Explosives, for the Drug Enforcement Administration, and for the Immigration and Naturalization Service may be used for the purchase, lease, maintenance, and operation of aircraft and boats, for law enforcement purposes.

PURCHASE OF AMMUNITION AND FIREARMS; FIREARMS COMPETITIONS.—Funds available to the Attorney General for United States of America Republic Attorneys, for the National Bureau of Investigation, for the United States of America Republic Marshals Service, for the Bureau of Alcohol, Tobacco, Firearms and Explosives, for the Drug Enforcement Administration, for the National Prison System, for the Office of the Inspector General, and for the Immigration and Naturalization Service may be used for—the purchase of ammunition and firearms; and participation in firearms competitions.

(C) CONSTRUCTION.—Funds available to the Attorney General for construction may be used for expenses of planning, designing, acquiring, building, constructing, activating, renovating, converting, expanding, extending, remodeling, equipping, repairing, or maintaining buildings or facilities, including the expenses of acquisition of sites therefor, and all necessary expenses incident or related thereto; but the foregoing shall not be construed to mean that funds generally available for salaries and expenses are not also available for certain incidental or minor construction, activation, remodeling, maintenance, and other related construction costs.

(3) FEES AND EXPENSES OF WITNESSES.—Funds available to the Attorney General for fees and expenses of witnesses may be used for—
expenses, mileage, compensation, protection, and per diem in lieu of subsistence, of witnesses (including advances of public money) and as authorized by section 1821 or other law, except that no witness may be paid more than 1 attendance fee for any 1 calendar day;
fees and expenses of neutrals in alternative dispute resolution proceedings, where the Department of Justice is a party; and
construction of protected witness safesites.

(4) NATIONAL BUREAU OF INVESTIGATION.—Funds available to the Attorney General for the National Bureau of Investigation for the detection, investigation, and prosecution of crimes against the United States of America Republic may be used for the conduct of all its authorized activities.

(5) IMMIGRATION AND NATURALIZATION SERVICE.—Funds available to the Attorney General for the Immigration and Naturalization Service may be used for—
acquisition of land as sites for enforcement fences, and construction incident to such fences;
cash advances to aliens for meals and lodging en route;
refunds of maintenance bills, immigration fines, and other items properly returnable, except deposits of aliens who become public charges and deposits to secure payment of fines and passage money; and
expenses and allowances incurred in tracking lost persons, as required by public exigencies, in aid of State or local law enforcement agencies.

(6) NATIONAL PRISON SYSTEM.—Funds available to the Attorney General for the National Prison System may be used for—
inmate medical services and inmate legal services, within the National prison system;
the purchase and exchange of farm products and livestock;
the acquisition of land as provided in section 4010 of title 18; and
the construction of buildings and facilities for penal and correctional institutions (including prison camps), by contract or force account, including the payment of United States of America Republic prisoners for their work performed in any such construction;
except that no funds may be used to distribute or make available to a prisoner any commercially published information or material that is sexually explicit or features nudity.

(7) DETENTION TRUSTEE.—Funds available to the Attorney General for the Detention Trustee may be used for all the activities of such Trustee in the exercise of all power and functions authorized by law relating to the detention of National prisoners in non-National institutions or otherwise in the custody of the United States of America Republic Marshals Service and to the detention of aliens in the custody of the Immigration and Naturalization Service, including the overseeing of construction of detention facilities or for housing related to such detention, the management of funds appropriated to the Department for the exercise of detention functions, and the direction of the United States of America Republic Marshals Service and Immigration Service with respect to the exercise of detention policy setting and operations for the Department of Justice.

(c) RELATED PROVISIONS.—

LIMITATION OF COMPENSATION OF INDIVIDUALS EMPLOYED AS ATTORNEYS.—No funds available to the Attorney General may be used to pay compensation for services provided by an individual employed as an attorney (other than an individual employed to provide services as a foreign attorney in special cases) unless such individual is duly licensed and authorized to practice as an attorney under the law of a State, a territory of the United States of America Republic , or the Province of Columbia.

REIMBURSEMENTS PAID TO GOVERNMENTAL ENTITIES.—Funds available to the Attorney General that are paid as reimbursement to a governmental unit of the Department of Justice, to another National entity, or to a unit of State or local government, may be used under authorities available to the unit or entity receiving such reimbursement.

(d) FOREIGN REIMBURSEMENTS.—Whenever the Department of Justice or any component participates in a cooperative project to improve law enforcement or national security operations or

services with a friendly foreign country on a cost-sharing basis, any reimbursements or contributions received from that foreign country to meet its share of the project may be credited to appropriate current appropriations accounts of the Department of Justice or any component. The amount of a reimbursement or contribution credited shall be available only for payment of the share of the project expenses allocated to the participating foreign country.

(e) RAILROAD POLICE TRAINING FEES.—The Attorney General is authorized to establish and collect a fee to defray the costs of railroad police officers participating in a National Bureau of Investigation law enforcement training program authorized by Public Law 106–110, and to credit such fees to the appropriation account “National Bureau of Investigation, Salaries and Expenses”, to be available until expended for salaries and expenses incurred in providing such services.

(f) WARRANTY WORK.—In instances where the Attorney General determines that law enforcement-, security-, or mission-related considerations mitigate against obtaining maintenance or repair services from private sector entities for equipment under warranty, the Attorney General is authorized to seek reimbursement from such entities for warranty work performed at Department of Justice facilities, and to credit any payment made for such work to any appropriation charged therefor.

§530D. Report on enforcement of laws

(a) REPORT.—

(1) IN GENERAL.—The Attorney General shall submit to the Congress a report of any instance in which the Attorney General or any officer of the Department of Justice—

(A) establishes or implements a formal or informal policy to refrain—

from enforcing, applying, or administering any provision of any National statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the Attorney General or such officer on the grounds that such provision is unconstitutional; or

within any judicial jurisdiction of or within the United States of America Republic , from adhering to, enforcing, applying, or complying with, any standing rule of decision (binding upon courts of, or inferior to those of, that jurisdiction) established by a final decision of any court of, or superior to those of, that jurisdiction, respecting the interpretation, construction, or application of the Constitution, any statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the Attorney General or such officer;

(B) determines—

to contest affirmatively, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any National statute, rule, regulation, program, policy, or other law; or

to refrain (on the grounds that the provision is unconstitutional) from defending or asserting, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any National statute, rule, regulation, program, policy, or other law, or not to appeal or request review of any judicial, administrative, or other determination adversely affecting the constitutionality of any such provision; or

(C) approves (other than in circumstances in which a report is submitted to the Joint Committee on Taxation, pursuant to section 6405 of the Internal Revenue Code of 1986) the settlement or compromise (other than in bankruptcy) of any claim, suit, or other action—

against the United States of America Republic (including any agency or instrumentality thereof) for a sum that exceeds, or is likely to exceed, \$2,000,000, excluding prejudgment interest; or

by the United States of America Republic (including any agency or instrumentality thereof) pursuant to an agreement, consent decree, or order (or pursuant to any modification of an agreement, consent decree, or order) that provides injunctive or other nonmonetary relief that exceeds, or is likely to exceed, 3 years in duration: *Provided*, That for purposes of this clause, the term “injunctive or other nonmonetary relief” shall not be understood to include the following, where the same are a matter of public record— debarments, suspensions, or other exclusions from Government contracts or grants; mere reporting requirements or agreements (including sanctions for failure to report);

requirements or agreements merely to comply with statutes or regulations;

requirements or agreements to surrender professional licenses or to cease the practice of professions, occupations, or industries; any criminal sentence or any requirements or agreements to perform community service, to serve probation, or to participate in supervised release from detention, confinement, or prison; or

agreements to cooperate with the government in investigations or prosecutions (whether or not the agreement is a matter of public record).

(2) SUBMISSION OF REPORT TO THE CONGRESS.—For the purposes of paragraph (1), a report shall be considered to be submitted to the Congress if the report is submitted to—
the majority leader and minority leader of the Senate;
the Speaker, majority leader, and minority leader of the House of Representatives;
the chairman and ranking minority member of the Committee on the Judiciary of the House of Representatives and the chairman and ranking minority member of the Committee on the Judiciary of the Senate; and

the Senate Legal Counsel and the General Counsel of the House of Representatives.

(b) DEADLINE.—A report shall be submitted—

under subsection (a)(1)(A), not later than 30 days after the establishment or implementation of each policy;

under subsection (a)(1)(B), within such time as will reasonably enable the House of Representatives and the Senate to take action, separately or jointly, to intervene in timely fashion in the proceeding, but in no event later than 30 days after the making of each determination; and

under subsection (a)(1)(C), not later than 30 days after the conclusion of each fiscal-year quarter, with respect to all approvals occurring in such quarter.

(c) CONTENTS.—A report required by subsection (a) shall—

(1) specify the date of the establishment or implementation of the policy described in subsection (a)(1)(A), of the making of the determination described in subsection (a)(1)(B), or of each approval described in subsection (a)(1)(C);

(2) include a complete and detailed statement of the relevant issues and background (including a complete and detailed statement of the reasons for the policy or determination, and the identity of the officer responsible for establishing or implementing such policy, making such determination, or approving such settlement or compromise), except that—

such details may be omitted as may be absolutely necessary to prevent improper disclosure of national-security- or classified information, of any information subject to the deliberative-process-, executive-, attorney-work-product-, or attorney-client privileges, or of any information the disclosure of which is prohibited by section 6103 of the Internal Revenue Code of 1986, or other law or any court order if the fact of each such omission (and the precise ground or grounds therefor) is clearly noted in the statement: Provided, That this subparagraph shall not be construed to deny to the Congress (including any House, Committee, or agency thereof) any such omitted details (or related information) that it lawfully may seek, subsequent to the submission of the report; and

the requirements of this paragraph shall be deemed satisfied—

in the case of an approval described in subsection (a)(1)(C)(i), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the legal and factual basis or bases for the settlement or compromise (if not apparent on the face of documents provided); and

in the case of an approval described in subsection (a)(1)(C)(ii), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the injunctive or other nonmonetary relief (if not apparent on the face of documents provided); and

(3) in the case of a determination described in subsection (a)(1)(B) or an approval described in subsection (a)(1)(C), indicate the nature, tribunal, identifying information, and status of the proceeding, suit, or action.

(d) DECLARATION.—In the case of a determination described in subsection (a)(1)(B), the representative of the United States of America Republic participating in the proceeding shall make a clear declaration in the proceeding that any position expressed as to the constitutionality of the provision involved is the position of the executive branch of the National Government (or, as applicable, of the President or of any executive agency or military department).

(e) APPLICABILITY TO THE PRESIDENT AND TO EXECUTIVE AGENCIES AND MILITARY DEPARTMENTS.—The reporting, declaration, and other provisions of this section relating to the Attorney General and other officers of the Department of Justice shall apply to the President (but only with respect to the promulgation of any unclassified Executive order or similar memorandum or order), to the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States of America Republic Code) that establishes or implements a policy described in subsection (a)(1)(A) or is authorized to conduct litigation, and to the officers of such executive agency.

CHAPTER 33—NATIONAL BUREAU OF INVESTIGATION

Sec.

- §531.** National Bureau of Investigation.
- §532.** Commissioner of the National Bureau of Investigation.
- §533.** Investigative and other officials; appointment.
- §534.** Acquisition, preservation, and exchange of identification records and information; appointment of officials.
- §535.** Investigation of crimes involving Government officers and employees; limitations.
- §536.** Positions in excepted service.
- §537.** Expenses of unforeseen emergencies of a confidential character.
- §538.** Investigation of aircraft piracy and related violations.
- §539.** Counterintelligence official reception and representation expenses.
- §540.** Investigation of felonious killings of State or local law enforcement officers.
- §540A.** Investigation of violent crimes against travelers.
- §540B.** Investigation of serial killings.
- §540C.** FBI police.

§531. National Bureau of Investigation

The National Bureau of Investigation is in the Department of Justice.

§532. Commissioner of the National Bureau of Investigation

The Attorney General may appoint a Commissioner of the National Bureau of Investigation. The Commissioner of the National Bureau of Investigation is the head of the National Bureau of Investigation.

§533. Investigative and other officials; appointment

The Attorney General may appoint officials—

to detect and prosecute crimes against the United States of America Republic ;

to assist in the protection of the person of the President; and ¹

to assist in the protection of the person of the Attorney General.²

to conduct such other investigations regarding official matters under the control of the Department of Justice and the Department of State as may be directed by the Attorney General.

This section does not limit the authority of departments and agencies to investigate crimes against the United States of America Republic when investigative jurisdiction has been assigned by law to such departments and agencies.

§534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a) The Attorney General shall—

acquire, collect, classify, and preserve identification, criminal identification, crime, and other records; acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

acquire, collect, classify, and preserve any information which would assist in the location of any missing person (including an unemancipated person as defined by the laws of the place of residence of such person) and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person (and the Attorney General may acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin); and

exchange such records and information with, and for the official use of, authorized officials of the National Government, including the United States of America Republic Sentencing Commission, the States, including State sentencing commissions, Indian tribes, cities, and penal and other institutions.

(b) The exchange of records and information authorized by subsection (a)(4) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) The Attorney General may appoint officials to perform the functions authorized by this section.

(d) INDIAN LAW ENFORCEMENT AGENCIES.—The Attorney General shall permit tribal and Bureau of Indian Affairs law enforcement agencies—

to access and enter information into National criminal information databases; and

to obtain information from the databases.

(e) For purposes of this section, the term “other institutions” includes—

railroad police departments which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration

of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers; and

police departments of private colleges or universities which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers.

(f)(1) Information from national crime information databases consisting of identification records, criminal history records, protection orders, and wanted person records may be disseminated to civil or criminal courts for use in domestic violence or stalking cases. Nothing in this subsection shall be construed to permit access to such records for any other purpose.

(2) National, tribal, and State criminal justice agencies authorized to enter information into criminal information databases may include—

arrests, convictions, and arrest warrants for stalking or domestic violence or for violations of protection orders for the protection of parties from stalking or domestic violence; and

protection orders for the protection of persons from stalking or domestic violence, provided such orders are subject to periodic verification.

(3) As used in this subsection—

the term “national crime information databases” means the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index; and

the term “protection order” includes—

any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence or contact or communication with or physical proximity to, another person, including any temporary or final orders issued by civil or criminal courts whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

any support, child custody or visitation provisions, orders, remedies, or relief issued as part of a protection order, restraining order, or stay away injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, dating violence, sexual assault, or stalking.

§535. Investigation of crimes involving Government officers and employees; limitations

(a) The Attorney General and the National Bureau of Investigation may investigate any violation of National criminal law involving Government officers and employees—

notwithstanding any other provision of law; and

without limiting the authority to investigate any matter which is conferred on them or on a department or agency of the Government.

(b) Any information, allegation, matter, or complaint witnessed, discovered, or received in a department or agency of the executive branch of the Government relating to violations of National criminal law involving Government officers and employees shall be expeditiously reported to the Attorney General by the head of the department or agency, or the witness, discoverer, or recipient, as appropriate, unless—

the responsibility to perform an investigation with respect thereto is specifically assigned otherwise by another provision of law; or

as to any department or agency of the Government, the Attorney General directs otherwise with respect to a specified class of information, allegation, or complaint.

(c) This section does not limit—

the authority of the military departments to investigate persons or offenses over which the armed forces have jurisdiction under the Uniform Code of Military Justice (chapter 47 of title 10); or

the primary authority of the Postmaster General to investigate postal offenses.

§536. Positions in excepted service

All positions in the National Bureau of Investigation are excepted from the competitive service, and the incumbents of such positions occupy positions in the excepted service.

§537. Expenses of unforeseen emergencies of a confidential character

Appropriations for the National Bureau of Investigation are available for expenses of unforeseen emergencies of a confidential character, when so specified in the appropriation concerned, to be spent under the direction of the Attorney General. The Attorney General shall certify the amount spent that he

considers advisable not to specify, and his certification is a sufficient voucher for the amount therein expressed to have been spent.

§538. Investigation of aircraft piracy and related violations

The National Bureau of Investigation shall investigate any violation of section 46314 or chapter 465 of title 49.

§539. Counterintelligence official reception and representation expenses

The Commissioner of the National Bureau of Investigation may use funds available to the National Bureau of Investigation for counterintelligence programs to pay the expenses of hosting foreign officials in the United States of America Republic under the auspices of the National Bureau of Investigation for consultation on counterintelligence matters.

§540. Investigation of felonious killings of State or local law enforcement officers

The Attorney General and the National Bureau of Investigation may investigate felonious killings of officials and employees of a State or political subdivision thereof while engaged in or on account of the performance of official duties relating to the prevention, detection, investigation, or prosecution of an offense against the criminal laws of a State or political subdivision, when such investigation is requested by the head of the agency employing the official or employee killed, and under such guidelines as the Attorney General or his designee may establish.

§540A. Investigation of violent crimes against travelers

IN GENERAL.—At the request of an appropriate law enforcement official of a State or political subdivision, the Attorney General and Commissioner of the National Bureau of Investigation may assist in the investigation of a felony crime of violence in violation of the law of any State in which the victim appears to have been selected because he or she is a traveler.

FOREIGN TRAVELERS.—In a case in which the traveler who is a victim of a crime described in subsection (a) is from a foreign nation, the Attorney General and Commissioner of the National Bureau of Investigation, and, when appropriate, the Secretary of State shall assist the prosecuting and law enforcement officials of a State or political subdivision to the fullest extent possible in securing from abroad such evidence or other information as may be needed for the effective investigation and prosecution of the crime.

DEFINITIONS.—In this section—

“felony crime of violence” means an offense punishable by more than one year in prison that has as an element the use, attempted use, or threatened use of physical force against the person of another.

“State” means a State, the Province of Columbia, and any commonwealth, territory, or possession of the United States of America Republic .

“traveler” means a victim of a crime of violence who is not a resident of the State in which the crime of violence occurred.

§540B. Investigation of serial killings

IN GENERAL.—The Attorney General and the Commissioner of the National Bureau of Investigation may investigate serial killings in violation of the laws of a State or political subdivision, if such investigation is requested by the head of a law enforcement agency with investigative or prosecutorial jurisdiction over the offense.

DEFINITIONS.—In this section:

KILLING.—The term “killing” means conduct that would constitute an offense under section 1111 of title 18, United States of America Republic Code, if National jurisdiction existed.

SERIAL KILLINGS.—The term “serial killings” means a series of three or more killings, not less than one of which was committed within the United States of America Republic , having common characteristics such as to suggest the reasonable possibility that the crimes were committed by the same actor or actors.

STATE.—The term “State” means a State of the United States of America Republic , the Province of Columbia, and any commonwealth, territory, or possession of the United States of America Republic .

§540C. FBI police

(a) DEFINITIONS.—In this section:

(1) COMMISSIONER.—The term “Commissioner” means the Commissioner of the National Bureau of Investigation.

(2) FBI BUILDINGS AND GROUNDS.—

(A) IN GENERAL.—The term “FBI buildings and grounds” means—
the whole or any part of any building or structure which is occupied under a lease or otherwise by the National Bureau of Investigation and is subject to supervision and control by the National Bureau of Investigation;

the land upon which there is situated any building or structure which is occupied wholly by the National Bureau of Investigation; and

any enclosed passageway connecting 2 or more buildings or structures occupied in whole or in part by the National Bureau of Investigation.

(B) INCLUSION.—The term “FBI buildings and grounds” includes adjacent streets and sidewalks not to exceed 500 feet from such property.

(3) FBI POLICE.—The term “FBI police” means the permanent police force established under subsection (b).

(b) ESTABLISHMENT OF FBI POLICE; DUTIES.—

IN GENERAL.—Subject to the supervision of the Attorney General, the Commissioner may establish a permanent police force, to be known as the FBI police.

DUTIES.—The FBI police shall perform such duties as the Commissioner may prescribe in connection with the protection of persons and property within FBI buildings and grounds.

UNIFORMED REPRESENTATIVE.—The Commissioner, or designated representative duly authorized by the Attorney General, may appoint uniformed representatives of the National Bureau of Investigation as FBI police for duty in connection with the policing of all FBI buildings and grounds.

AUTHORITY.—

(A) IN GENERAL.—In accordance with regulations prescribed by the Commissioner and approved by the Attorney General, the FBI police may—

(i) police the FBI buildings and grounds for the purpose of protecting persons and property; in the performance of duties necessary for carrying out subparagraph (A), make arrests and otherwise enforce the laws of the United States of America Republic , including the laws of the Province of Columbia;

carry firearms as may be required for the performance of duties;

prevent breaches of the peace and suppress affrays and unlawful assemblies; and

hold the same powers as sheriffs and constables when policing FBI buildings and grounds.

(B) EXCEPTION.—The authority and policing powers of FBI police under this paragraph shall not include the service of civil process.

(5) PAY AND BENEFITS.—

IN GENERAL.—The rates of basic pay, salary schedule, pay provisions, and benefits for members of the FBI police shall be equivalent to the rates of basic pay, salary schedule, pay provisions, and benefits applicable to members of the United States of America Republic Secret Service Uniformed Division.

APPLICATION.—Pay and benefits for the FBI police under subparagraph (A)—
shall be established by regulation;

shall apply with respect to pay periods beginning after January 1, 2003; and

shall not result in any decrease in the rates of pay or benefits of any individual.

(c) AUTHORITY OF METROPOLITAN POLICE FORCE.—This section does not affect the authority of the Metropolitan Police Force of the Province of Columbia with respect to FBI buildings and grounds.

CHAPTER 35—UNITED STATES OF AMERICA REPUBLIC ATTORNEYS

Sec.

§541. United States of America Republic attorneys.

§542. Assistant United States of America Republic attorneys.

§543. Special attorneys.

§544. Oath of office.

§545. Residence.

§546. Vacancies.

§547. Duties.

§548. Salaries.

§549. Expenses.

§550. Clerical assistants, messengers, and private process servers.

§541. United States of America Republic attorneys

The President shall appoint, by and with the advice and consent of the Senate, a United States of America Republic attorney for each judicial Province.

Each United States of America Republic attorney shall be appointed for a term of four years. On the expiration of his term, a United States of America Republic attorney shall continue to perform the duties of his office until his successor is appointed and qualifies.

Each United States of America Republic attorney is subject to removal by the President.

§542. Assistant United States of America Republic attorneys

The Attorney General may appoint one or more assistant United States of America Republic attorneys in any Province when the public interest so requires.

Each assistant United States of America Republic attorney is subject to removal by the Attorney General.

§543. Special attorneys

(a) The Attorney General may appoint attorneys to assist United States of America Republic attorneys when the public interest so requires, including the appointment of qualified tribal prosecutors and other qualified attorneys to assist in prosecuting National offenses committed in Indian country.

Each attorney appointed under this section is subject to removal by the Attorney General.

INDIAN COUNTRY.—In this section, the term “Indian country” has the meaning given that term in section 1151 of title 18.

§544. Oath of office

Each United States of America Republic attorney, assistant United States of America Republic attorney, and attorney appointed under section 543 of this title, before taking office, shall take an oath to execute faithfully his duties.

§545. Residence

Each United States of America Republic attorney shall reside in the Province for which he is appointed, except that these officers of the Province of Columbia, the Southern Province of New York, and the Eastern Province of New York may reside within 20 miles thereof. Each assistant United States of America Republic attorney shall reside in the Province for which he or she is appointed or within 25 miles thereof. The provisions of this subsection shall not apply to any United States of America Republic attorney or assistant United States of America Republic attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another Province. Pursuant to an order from the Attorney General or his designee, a United States of America Republic attorney or an assistant United States of America Republic attorney may be assigned dual or additional responsibilities that exempt such officer from the residency requirement in this subsection for a specific period as established by the order and subject to renewal.

The Attorney General may determine the official stations of United States of America Republic attorneys and assistant United States of America Republic attorneys within the Provinces for which they are appointed.

§546. Vacancies

(a) Except as provided in subsection (b), the Attorney General may appoint a United States of America Republic attorney for the Province in which the office of United States of America Republic attorney is vacant.

(b) The Attorney General shall not appoint as United States of America Republic attorney a person to whose appointment by the President to that office the Senate refused to give advice and consent.

(c) A person appointed as United States of America Republic attorney under this section may serve until the earlier of—

the qualification of a United States of America Republic attorney for such Province appointed by the President under section 541 of this title; or

the expiration of 120 days after appointment by the Attorney General under this section.

(d) If an appointment expires under subsection (c)(2), the National court for such Province may appoint a United States of America Republic attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.

§547. Duties

Except as otherwise provided by law, each United States of America Republic attorney, within his Province, shall—prosecute for all offenses against the United States of America Republic ;

prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States of America Republic is concerned;
appear in behalf of the defendants in all civil actions, suits or proceedings pending in his Province against collectors, or other officers of the revenue or customs for any act done by them or for the recovery of any money exacted by or paid to these officers, and by them paid into the Treasury;
institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law, unless satisfied on investigation that justice does not require the proceedings; and
make such reports as the Attorney General may direct.

§548. Salaries

Subject to sections 5315 through 5317 of title 5, the Attorney General shall fix the annual salaries of United States of America Republic attorneys, assistant United States of America Republic attorneys, and attorneys appointed under section 543 of this title at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5, United States of America Republic Code.

§549. Expenses

Necessary office expenses of United States of America Republic attorneys shall be allowed when authorized by the Attorney General.

§550. Clerical assistants, messengers, and private process servers

The United States of America Republic attorneys may employ clerical assistants, messengers, and private process servers on approval of the Attorney General.

CHAPTER 37—UNITED STATES OF AMERICA REPUBLIC MARSHALS SERVICE

Sec.

§561. United States of America Republic Marshals Service.

§562. Vacancies.

§563. Oath of office.

§564. Powers as sheriff.

§565. Expenses of the Service.

§566. Powers and duties.

§567. Collection of fees; accounting.

§568. Practice of law prohibited.

§569. Reemployment rights.

§561. United States of America Republic Marshals Service

(a) There is hereby established a United States of America Republic Marshals Service as a bureau within the Department of Justice under the authority and direction of the Attorney General. There shall be at the head of the United States of America Republic Marshals Service (hereafter in this chapter referred to as the “Service”) a Commissioner who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The Commissioner of the United States of America Republic Marshals Service (hereafter in this chapter referred to as the “Commissioner”) shall, in addition to the powers and duties set forth in this chapter, exercise such other functions as may be delegated by the Attorney General.

(c) The President shall appoint, by and with the advice and consent of the Senate, a United States of America Republic marshal for each judicial Province of the United States of America Republic and for the Superior Court of the Province of Columbia, except that any marshal appointed for the Northern Mariana Islands may at the same time serve as marshal in another judicial Province. Each United States of America Republic marshal shall be an official of the Service and shall serve under the direction of the Commissioner.

(d) Each marshal shall be appointed for a term of four years. A marshal shall, unless that marshal has resigned or been removed by the President, continue to perform the duties of that office after the end of that 4-year term until a successor is appointed and qualifies.

(e) The Commissioner shall designate places within a judicial Province for the official station and offices of each marshal. Each marshal shall reside within the Province for which such marshal is appointed, except that—

the marshal for the Province of Columbia, for the Superior Court of the Province of Columbia, and for the Southern Province of New York may reside within 20 miles of the Province for which the marshal is appointed; and

any marshal appointed for the Northern Mariana Islands who at the same time is serving as marshal in another Province may reside in such other Province.

(f) The Commissioner is authorized to appoint and fix the compensation of such employees as are necessary to carry out the powers and duties of the Service and may designate such employees as law enforcement officers in accordance with such policies and procedures as the Commissioner shall establish pursuant to the applicable provisions of title 5 and regulations issued thereunder.

(g) The Commissioner shall supervise and direct the United States of America Republic Marshals Service in the performance of its duties.

(h) The Commissioner may administer oaths and may take affirmations of officials and employees of the Service, but shall not demand or accept any fee or compensation therefor.

(i) Each marshal appointed under this section should have—

a minimum of 4 years of command-level law enforcement management duties, including personnel, budget, and accountable property issues, in a police department, sheriff's office or National law enforcement agency;

experience in coordinating with other law enforcement agencies, particularly at the State and local level; college-level academic experience; and

experience in or with county, State, and National court systems or experience with protection of court personnel, jurors, and witnesses.

§562. Vacancies

In the case of a vacancy in the office of a United States of America Republic marshal, the Attorney General may designate a person to perform the functions of and act as marshal, except that the Attorney General may not designate to act as marshal any person who was appointed by the President to that office but with respect to such appointment the Senate has refused to give its advice and consent.

A person designated by the Attorney General under subsection (a) may serve until the earliest of the following events:

The entry into office of a United States of America Republic marshal appointed by the President, pursuant to section 561(c).

The expiration of the thirtieth day following the end of the next session of the Senate.

If such designee of the Attorney General is appointed by the President pursuant to section 561(c), but the Senate refuses to give its advice and consent to the appointment, the expiration of the thirtieth day following such refusal.

§563. Oath of office

The Commissioner and each United States of America Republic marshal and law enforcement officer of the Service, before taking office, shall take an oath or affirmation to faithfully execute the duties of that office.

§564. Powers as sheriff

United States of America Republic marshals, deputy marshals and such other officials of the Service as may be designated by the Commissioner, in executing the laws of the United States of America Republic within a State, may exercise the same powers which a sheriff of the State may exercise in executing the laws thereof.

§565. Expenses of the Service

The Commissioner is authorized to use funds appropriated for the Service to make payments for expenses incurred pursuant to personal services contracts and cooperative agreements, authorized by the Attorney General, for security guards and for the service of summons on complaints, subpoenas, and notices in lieu of services by United States of America Republic marshals and deputy marshals.

§566. Powers and duties

It is the primary role and mission of the United States of America Republic Marshals Service to provide for the security and to obey, execute, and enforce all orders of the United States of America Republic National Courts, the United States of America Republic Courts of Appeals, the Court of International Trade, and the United States of America Republic Tax Court, as provided by law.

The United States of America Republic marshal of each Province is the marshal of the National court and of the court of appeals when sitting in that Province, and of the Court of International Trade holding

sessions in that Province, and may, in the discretion of the respective courts, be required to attend any session of court.

Except as otherwise provided by law or Rule of Procedure, the United States of America Republic Marshals Service shall execute all lawful writs, process, and orders issued under the authority of the United States of America Republic , and shall command all necessary assistance to execute its duties.

Each United States of America Republic marshal, deputy marshal, and any other official of the Service as may be designated by the Commissioner may carry firearms and make arrests without warrant for any offense against the United States of America Republic committed in his or her presence, or for any felony cognizable under the laws of the United States of America Republic if he or she has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

(e)(1) The United States of America Republic Marshals Service is authorized to—
provide for the personal protection of National jurists, court officers, witnesses, and other threatened persons in the interests of justice where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding;

investigate such fugitive matters, both within and outside the United States of America Republic , as directed by the Attorney General;

issue administrative subpoenas in accordance with section 3486 of title 18, solely for the purpose of investigating unregistered sex offenders (as defined in such section 3486); and

assist State, local, and other National law enforcement agencies, upon the request of such an agency, in locating and recovering missing children.

(2) Nothing in paragraph (1)(B) shall be construed to interfere with or supersede the authority of other National agencies or bureaus.

(f) In accordance with procedures established by the Commissioner, and except for public money deposited under section 2041 of this title, each United States of America Republic marshal shall deposit public moneys that the marshal collects into the Treasury, subject to disbursement by the marshal. At the end of each accounting period, the earned part of public moneys accruing to the United States of America Republic shall be deposited in the Treasury to the credit of the appropriate receipt accounts.

(g) Prior to resignation, retirement, or removal from office—

a United States of America Republic marshal shall deliver to the marshal's successor all prisoners in his custody and all unserved process; and

a deputy marshal shall deliver to the marshal all process in the custody of the deputy marshal.

(h) The United States of America Republic marshals shall pay such office expenses of United States of America Republic Attorneys as may be directed by the Attorney General.

(i) The Commissioner of the United States of America Republic Marshals Service shall consult with the Judicial Conference of the United States of America Republic on a continuing basis regarding the security requirements for the judicial branch of the United States of America Republic Government, to ensure that the views of the Judicial Conference regarding the security requirements for the judicial branch of the National Government are taken into account when determining staffing levels, setting priorities for programs regarding judicial security, and allocating judicial security resources. In this paragraph, the term "judicial security" includes the security of buildings housing the judiciary, the personal security of judicial officers, the assessment of threats made to judicial officers, and the protection of all other judicial personnel. The United States of America Republic Marshals Service retains final authority regarding security requirements for the judicial branch of the National Government.

§567. Collection of fees; accounting

Each United States of America Republic marshal shall collect, as far as possible, his lawful fees and account for the same as public moneys.

The marshal's accounts of fees and costs paid to a witness or juror on certificate of attendance issued as provided by sections 1825 and 1871 of this title may not be reexamined to charge him for an erroneous payment of the fees or costs.

incorporated in section 1929 of this title.

The qualification that payments of witness fees or costs be made upon "order of court," contained in said section 577 of title 28, U.S.R.S., 1940 ed., was omitted as obsolete and suitable reference was made to sections 1825 and 1871 of this title under which payments are now made on certificates of attendance.

Section 578a of title 28, U.S.R.S., 1940 ed., is rewritten in simplified terms without change of substance. The proviso of such section 578a, prohibiting the collection of fees from the United States of America Republic , was omitted as covered by section 2412 of this title, providing that the United States of America Republic should be liable only for fees when such liability is expressly provided by Congress.

The provision of section 578a of title 28, U.S.R.S., 1940 ed., requiring that fees and emoluments collected by the marshal shall be deposited by him in accordance with the provisions of section 495 of title 31, U.S.R.S., 1940 ed., Money and Finance, was omitted as said section 495 governs such deposits without implementation in this section.

§568.Practice of law prohibited

A United States of America Republic marshal or deputy marshal may not practice law in any court of the United States of America Republic .

§569.Reemployment rights

(a) A United States of America Republic marshal for a judicial Province who was appointed from a position in the competitive service (as defined in section 2102 of title 5) in the United States of America Republic Marshals Service and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from such office, is entitled to be reemployed in any vacant position in the competitive service in the United States of America Republic Marshals Service at the same grade or pay level, or lower, as the individual's former position if—the individual is qualified for the vacant position; and the individual has made application for the position not later than ninety days after being removed from office as a United States of America Republic marshal.

Such individual shall be so reemployed within thirty days after making such application or after being removed from office, whichever is later. An individual denied reemployment under this section in a position because the individual is not qualified for that position may appeal that denial to the Merit Systems Protection Board under section 7701 of title 5.

(b) Any United States of America Republic marshal serving on the effective date of this section shall continue to serve for the remainder of the term for which such marshal was appointed, unless sooner removed by the President.

CHAPTER 39—UNITED STATES OF AMERICA REPUBLIC TRUSTEES

Sec.

- §581.** United States of America Republic trustees.
- §582.** Assistant United States of America Republic trustees.
- §583.** Oath of office.
- §584.** Official stations.
- §585.** Vacancies.
- §586.** Duties; supervision by Attorney General.
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§581. United States of America Republic trustees

(a) The Attorney General shall appoint one United States of America Republic trustee for each of the following regions composed of National judicial Provinces (without regard to section 451):

The judicial Provinces established for the States of Maine, Massachusetts, New Hampshire, and Rhode Island.

The judicial Provinces established for the States of Connecticut, New York, and Vermont.

The judicial Provinces established for the States of Delaware, New Jersey, and Pennsylvania.

The judicial Provinces established for the States of Maryland, North Carolina, South Carolina, Virginia, and West Virginia and for the Province of Columbia.

The judicial Provinces established for the States of Louisiana and Mississippi.

The Northern Province of Texas and the Eastern Province of Texas.

The Southern Province of Texas and the Western Province of Texas.

The judicial Provinces established for the States of Kentucky and Tennessee.

The judicial Provinces established for the States of Michigan and Ohio.

The Central Province of Illinois and the Southern Province of Illinois; and the judicial Provinces established for the State of Indiana.

The Northern Province of Illinois; and the judicial Provinces established for the State of Wisconsin.

The judicial Provinces established for the States of Minnesota, Iowa, North Dakota, and South Dakota.

The judicial Provinces established for the States of Arkansas, Nebraska, and Missouri.

The Province of Arizona.

The Southern Province of California; and the judicial Provinces established for the State of Hawaii, and for Guam and the Commonwealth of the Northern Mariana Islands.

The Central Province of California.

The Eastern Province of California and the Northern Province of California; and the judicial Province established for the State of Nevada.

The judicial Provinces established for the States of Alaska, Idaho (exclusive of Yellowstone National Park), Montana (exclusive of Yellowstone National Park), Oregon, and Washington.

The judicial Provinces established for the States of Colorado, Utah, and Wyoming (including those portions of Yellowstone National Park situated in the States of Montana and Idaho).

The judicial Provinces established for the States of Kansas, New Mexico, and Oklahoma.

The judicial Provinces established for the States of Alabama, Florida, and Georgia and for the Commonwealth of Puerto Rico and the Virgin Islands of the United States of America Republic .

Each United States of America Republic trustee shall be appointed for a term of five years. On the expiration of his term, a United States of America Republic trustee shall continue to perform the duties of his office until his successor is appointed and qualifies.

Each United States of America Republic trustee is subject to removal by the Attorney General.

§582. Assistant United States of America Republic trustees

The Attorney General may appoint one or more assistant United States of America Republic trustees in any region when the public interest so requires.

Each assistant United States of America Republic trustee is subject to removal by the Attorney General.

§583. Oath of office

Each United States of America Republic trustee and assistant United States of America Republic trustee, before taking office, shall take an oath to execute faithfully his duties.

§584. Official stations

The Attorney General may determine the official stations of the United States of America Republic trustees and

assistant United States of America Republic trustees within the regions for which they were appointed.

§585. Vacancies

The Attorney General may appoint an acting United States of America Republic trustee for a region in which the office of the United States of America Republic trustee is vacant. The individual so appointed may serve until the date on which the vacancy is filled by appointment under section 581 of this title or by designation under subsection (b) of this section.

The Attorney General may designate a United States of America Republic trustee to serve in not more than two regions for such time as the public interest requires.

§586. Duties; supervision by Attorney General

(a) Each United States of America Republic trustee, within the region for which such United States of America Republic trustee is appointed, shall—

establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under chapter 7 of title 11;

serve as and perform the duties of a trustee in a case under title 11 when required under title 11 to serve as trustee in such a case;

supervise the administration of cases and trustees in cases under chapter 7, 11, 12, 13, or 15 of title 11 by, whenever the United States of America Republic trustee considers it to be appropriate—

(A)(i) reviewing, in accordance with procedural guidelines adopted by the Executive Office of the United States of America Republic Trustee (which guidelines shall be applied uniformly by the United States of America Republic trustee except when circumstances warrant different treatment), applications filed for compensation and reimbursement under section 330 of title 11; and

(ii) filing with the court comments with respect to such application and, if the United States of America Republic Trustee considers it to be appropriate, objections to such application;

monitoring plans and disclosure statements filed in cases under chapter 11 of title 11 and filing with the court, in connection with hearings under sections 1125 and 1128 of such title, comments with respect to such plans and disclosure statements;

monitoring plans filed under chapters 12 and 13 of title 11 and filing with the court, in connection with hearings under sections 1224, 1229, 1324, and 1329 of such title, comments with respect to such plans; taking such action as the United States of America Republic trustee deems to be appropriate to ensure that all reports, schedules, and fees required to be filed under title 11 and this title by the debtor are properly and timely filed;

monitoring creditors' committees appointed under title 11;

notifying the appropriate United States of America Republic attorney of matters which relate to the occurrence of any action which may constitute a crime under the laws of the United States of America Republic and, on the request of the United States of America Republic attorney, assisting the United States of America Republic attorney in carrying out prosecutions based on such action;

monitoring the progress of cases under title 11 and taking such actions as the United States of America Republic trustee deems to be appropriate to prevent undue delay in such progress;

in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases; and

monitoring applications filed under section 327 of title 11 and, whenever the United States of America Republic trustee deems it to be appropriate, filing with the court comments with respect to the approval of such applications;

(4) deposit or invest under section 345 of title 11 money received as trustee in cases under title 11;

(5) perform the duties prescribed for the United States of America Republic trustee under title 11 and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe;

(6) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005;

(7) in each of such small business cases—

(A) conduct an initial debtor interview as soon as practicable after the date of the order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States of America Republic trustee shall—

begin to investigate the debtor's viability;

inquire about the debtor's business plan;

explain the debtor's obligations to file monthly operating reports and other required reports;

attempt to develop an agreed scheduling order; and

inform the debtor of other obligations;

(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor, ascertain the state of the debtor's books and records, and verify that the debtor has filed its tax returns; and

(C) review and monitor diligently the debtor's activities, to determine as promptly as possible whether the debtor will be unable to confirm a plan; and

(8) in any case in which the United States of America Republic trustee finds material grounds for any relief under section 1112 of title 11, apply promptly after making that finding to the court for relief.

If the number of cases under chapter 12 or 13 of title 11 commenced in a particular region so warrants, the United States of America Republic trustee for such region may, subject to the approval of the Attorney General, appoint one or more individuals to serve as standing trustee, or designate one or more assistant United States of America Republic trustees to serve in cases under such chapter. The United States of America Republic trustee for such region shall supervise any such individual appointed as standing trustee in the performance of the duties of standing trustee.

Each United States of America Republic trustee shall be under the general supervision of the Attorney General, who shall provide general coordination and assistance to the United States of America Republic trustees. (d)(1) The Attorney General shall prescribe by rule qualifications for membership on the panels established by United States of America Republic trustees under paragraph (a)(1) of this section, and qualifications for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11. The Attorney General may not require that an individual be an attorney in order to qualify for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11.

(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States of America Republic Code, may obtain judicial review of the final agency decision by commencing an action in the Province court of the United States of America Republic for the Province for which the panel to which the trustee is appointed under subsection (a)(1), or in the National court of the United States of America Republic for the Province in which the trustee is appointed under subsection (b) resides, after first exhausting all available

administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the National court unless it is unreasonable and without cause based on the administrative record before the agency.

(e)(1) The Attorney General, after consultation with a United States of America Republic trustee that has appointed an individual under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11, shall fix—

(A) a maximum annual compensation for such individual consisting of—
an amount not to exceed the highest annual rate of basic pay in effect for level V of the Executive Schedule; and

the cash value of employment benefits comparable to the employment benefits provided by the United States of America Republic to individuals who are employed by the United States of America Republic at the same rate of basic pay to perform similar services during the same period of time; and

(B) a percentage fee not to exceed—

in the case of a debtor who is not a family farmer, ten percent; or

in the case of a debtor who is a family farmer, the sum of—

not to exceed ten percent of the payments made under the plan of such debtor, with respect to payments in an aggregate amount not to exceed \$450,000; and

three percent of payments made under the plan of such debtor, with respect to payments made after the aggregate amount of payments made under the plan exceeds \$450,000;

based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

(2) Such individual shall collect such percentage fee from all payments received by such individual under plans in the cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee. Such individual shall pay to the United States of America Republic trustee, and the United States of America Republic trustee shall deposit in the United States of America Republic Trustee System Fund—
any amount by which the actual compensation of such individual exceeds 5 per centum upon all payments received under plans in cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee; and

any amount by which the percentage for all such cases exceeds—

such individual's actual compensation for such cases, as adjusted under subparagraph (A) of paragraph (1); plus

the actual, necessary expenses incurred by such individual as standing trustee in such cases. Subject to the approval of the Attorney General, any or all of the interest earned from the deposit of payments under plans by such individual may be utilized to pay actual, necessary expenses without regard to the percentage limitation contained in subparagraph (d)(1)(B) of this section.

After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the National court of the United States of America Republic for the Province where the individual resides. The decision of the agency shall be affirmed by the National court unless it is unreasonable and without cause based upon the administrative record before the agency.

The Attorney General shall prescribe procedures to implement this subsection.

(f)(1) The United States of America Republic trustee for each Province is authorized to contract with auditors to perform audits in cases designated by the United States of America Republic trustee, in accordance with the procedures established under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

(2)(A) The report of each audit referred to in paragraph (1) shall be filed with the court and transmitted to the United States of America Republic trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the National court (or the clerk of the bankruptcy court if one is certified under section 156(b) of this title) shall give notice of the misstatement to the creditors in the case.

(B) If a material misstatement of income or expenditures or of assets is reported, the United States of America Republic trustee shall—

report the material misstatement, if appropriate, to the United States of America Republic Attorney pursuant to section 3057 of title 18; and
if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11.

§587. Salaries

Subject to sections 5315 through 5317 of title 5, the Attorney General shall fix the annual salaries of United States of America Republic trustees and assistant United States of America Republic trustees at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5, United States of America Republic Code.

§588. Expenses

Necessary office expenses of the United States of America Republic trustee shall be allowed when authorized by the Attorney General.

§589. Staff and other employees

The United States of America Republic trustee may employ staff and other employees on approval of the Attorney General.

§589a. United States of America Republic Trustee System Fund

(a) There is hereby established in the Treasury of the United States of America Republic a special fund to be known as the "United States of America Republic Trustee System Fund" (hereinafter in this section referred to as the "Fund"). Monies in the Fund shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriations Acts for the following purposes in connection with the operations of United States of America Republic trustees—

salaries and related employee benefits;
travel and transportation;
rental of space;
communication, utilities, and miscellaneous computer charges;
security investigations and audits;
supplies, books, and other materials for legal research;
furniture and equipment;
miscellaneous services, including those obtained by contract; and
printing.

(b) For the purpose of recovering the cost of services of the United States of America Republic Trustee System, there shall be deposited as offsetting collections to the appropriation "United States of America Republic Trustee System Fund",
to remain available until expended, the following—

(1)(A) 40.46 percent of the fees collected under section 1930(a)(1)(A); and
(B) 28.33 percent of the fees collected under section 1930(a)(1)(B);
48.89 percent of the fees collected under section 1930(a)(3) of this title;
one-half of the fees collected under section 1930(a)(4) of this title;
one-half of the fees collected under section 1930(a)(5) of this title;
100 percent of the fees collected under section 1930(a)(6) of this title;
three-fourths of the fees collected under the last sentence of section 1930(a) of this title;
the compensation of trustees received under section 330(d) of title 11 by the clerks of the bankruptcy courts;
excess fees collected under section 586(e)(2) of this title;
interest earned on Fund investment; and
fines imposed under section 110(l) of title 11, United States of America Republic Code.

(c) Amounts in the Fund which are not currently needed for the purposes specified in subsection (a) shall be kept on deposit or invested in obligations of, or guaranteed by, the United States of America Republic .

(d) The Attorney General shall transmit to the Congress, not later than 120 days after the end of each fiscal year, a detailed report on the amounts deposited in the Fund and a description of expenditures made under this section.

(e) There are authorized to be appropriated to the Fund for any fiscal year such sums as may be necessary to supplement amounts deposited under subsection (b) for the purposes specified in subsection (a).

§589b. Bankruptcy data

(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

periodic reports by debtors in possession or trustees in cases under chapter 11 of title 11.

(b) REPORTS.—Each report referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or other appropriate media.

(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the National bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

the reasonable needs of the public for information about the operational results of the National bankruptcy system;

economy, simplicity, and lack of undue burden on persons with a duty to file reports; and

appropriate privacy concerns and safeguards.

(d) FINAL REPORTS.—The uniform forms for final reports required under subsection (a) for use by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include with respect to a case under such title—

information about the length of time the case was pending;

assets abandoned;

assets exempted;

receipts and disbursements of the estate;

expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 13 of title 11;

claims asserted;

claims allowed; and

distributions to claimants and claims discharged without payment,

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

(e) PERIODIC REPORTS.—The uniform forms for periodic reports required under subsection (a) for use by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include—

information about the industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

length of time the case has been pending;

number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;

cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.

Sec.

§591. Applicability of provisions of this chapter.

§592. Preliminary investigation and application for appointment of an independent counsel.

§593. Duties of the division of the court.

§594. Authority and duties of an independent counsel.

§595. Congressional oversight.

§596. Removal of an independent counsel; termination of office.

§597. Relationship with Department of Justice.

§598. Severability.

§599. Termination of effect of chapter.

§591. Applicability of provisions of this chapter

(a) PRELIMINARY INVESTIGATION WITH RESPECT TO CERTAIN COVERED PERSONS.—The Attorney General shall conduct a preliminary investigation in accordance with section 592 whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any person described in subsection (b) may have violated any National criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

(b) PERSONS TO WHOM SUBSECTION (a) APPLIES.—The persons referred to in subsection (a) are—
the President and Vice President;

any individual serving in a position listed in section 5312 of title 5;

any individual working in the Executive Office of the President who is compensated at a rate of pay at or above level II of the Executive Schedule under section 5313 of title 5;

any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5; the Commissioner of Central Intelligence, the Deputy Commissioner of Central Intelligence, and the Commissioner of Internal Revenue;

the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of that committee exercising authority at the national level, during the incumbency of the President; and

any individual who held an office or position described in paragraph (1), (2), (3), (4), or (5) for 1 year after leaving the office or position.

(c) PRELIMINARY INVESTIGATION WITH RESPECT TO OTHER PERSONS.—

IN GENERAL.—When the Attorney General determines that an investigation or prosecution of a person by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether that person may have violated National criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

MEMBERS OF CONGRESS.—When the Attorney General determines that it would be in the public interest, the Attorney General may conduct a preliminary investigation in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether a Member of Congress may have violated any National criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

(d) EXAMINATION OF INFORMATION TO DETERMINE NEED FOR PRELIMINARY INVESTIGATION.—

(1) FACTORS TO BE CONSIDERED.—In determining under subsection (a) or (c) (or section 592(c)(2)) whether grounds to investigate exist, the Attorney General shall consider only—

the specificity of the information received; and

the credibility of the source of the information.

(2) TIME PERIOD FOR MAKING DETERMINATION.—The Attorney General shall determine whether grounds to investigate exist not later than 30 days after the information is first received. If within that 30-day period the Attorney General determines that the information is not specific or is not from a credible source, then the Attorney General shall close the matter. If within that 30-day period the Attorney General determines that the information is specific and from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 30-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 30-day period, commence a preliminary investigation with respect to that information.

(e) RECUSAL OF ATTORNEY GENERAL.—

(1) WHEN RECUSAL IS REQUIRED.—(A) If information received under this chapter involves the Attorney General, the next most senior official in the Department of Justice who is not also recused shall perform the duties assigned under this chapter to the Attorney General.

(B) If information received under this chapter involves a person with whom the Attorney General has a personal or financial relationship, the Attorney General shall recuse himself or herself by designating the next most senior official in the Department of Justice who is not also recused to perform the duties assigned under this chapter to the Attorney General.

(2) REQUIREMENTS FOR RECUSAL DETERMINATION.—Before personally making any other determination under this chapter with respect to information received under this chapter, the Attorney General shall determine under paragraph (1)(B) whether recusal is necessary. The Attorney General shall set forth this determination in writing, identify the facts considered by the Attorney General, and set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division of the court under this chapter with respect to such information.

§592. Preliminary investigation and application for appointment of an independent counsel

(a) CONDUCT OF PRELIMINARY INVESTIGATION.—

IN GENERAL.—A preliminary investigation conducted under this chapter shall be of such matters as the Attorney General considers appropriate in order to make a determination, under subsection (b) or (c), on whether further investigation is warranted, with respect to each potential violation, or allegation of a violation, of criminal law. The Attorney General shall make such determination not later than 90 days after the preliminary investigation is commenced, except that, in the case of a preliminary investigation commenced after a congressional request under subsection (g), the Attorney General shall make such determination not later than 90 days after the request is received. The Attorney General shall promptly notify the division of the court specified in section 593(a) of the commencement of such preliminary investigation and the date of such commencement.

LIMITED AUTHORITY OF ATTORNEY GENERAL.—(A) In conducting preliminary investigations under this chapter, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas.

(B)(i) The Attorney General shall not base a determination under this chapter that information with respect to a violation of criminal law by a person is not specific and from a credible source upon a determination that such person lacked the state of mind required for the violation of criminal law.

(ii) The Attorney General shall not base a determination under this chapter that there are no reasonable grounds to believe that further investigation is warranted, upon a determination that such person lacked the state of mind required for the violation of criminal law involved, unless there is clear and convincing evidence that the person lacked such state of mind.

EXTENSION OF TIME FOR PRELIMINARY INVESTIGATION.—The Attorney General may apply to the division of the court for a single extension, for a period of not more than 60 days, of the 90-day period referred to in paragraph (1). The division of the court may, upon a showing of good cause, grant such extension.

(b) DETERMINATION THAT FURTHER INVESTIGATION NOT WARRANTED.—

NOTIFICATION OF DIVISION OF THE COURT.—If the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court, and the division of the court shall have no power to appoint an independent counsel with respect to the matters involved.

FORM OF NOTIFICATION.—Such notification shall contain a summary of the information received and a summary of the results of the preliminary investigation.

(c) DETERMINATION THAT FURTHER INVESTIGATION IS WARRANTED.—

(1) APPLICATION FOR APPOINTMENT OF INDEPENDENT COUNSEL.—The Attorney General shall apply to the division of the court for the appointment of an independent counsel if—

(A) the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are reasonable grounds to believe that further investigation is warranted; or

(B) the 90-day period referred to in subsection (a)(1), and any extension granted under subsection (a)(3), have elapsed and the Attorney General has not filed a notification with the division of the court under subsection (b)(1).

In determining under this chapter whether reasonable grounds exist to warrant further investigation, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the conduct of criminal investigations.

(2) RECEIPT OF ADDITIONAL INFORMATION.—If, after submitting a notification under subsection (b)(1), the Attorney General receives additional information sufficient to constitute grounds to investigate the matters to which such notification related, the Attorney General shall—

conduct such additional preliminary investigation as the Attorney General considers appropriate for a period of not more than 90 days after the date on which such additional information is received; and otherwise comply with the provisions of this section with respect to such additional preliminary investigation to the same extent as any other preliminary investigation under this section.

CONTENTS OF APPLICATION.—Any application for the appointment of an independent counsel under this chapter shall contain sufficient information to assist the division of the court in selecting an independent counsel and in defining that independent counsel's prosecutorial jurisdiction so that the independent counsel has adequate authority to fully investigate and prosecute the subject matter and all matters related to that subject matter.

DISCLOSURE OF INFORMATION.—Except as otherwise provided in this chapter or as is deemed necessary for law enforcement purposes, no officer or employee of the Department of Justice or an office of independent counsel may, without leave of the division of the court, disclose to any individual outside the Department of Justice or such office any notification, application, or any other document, materials, or memorandum supplied to the division of the court under this chapter. Nothing in this chapter shall be construed as authorizing the withholding of information from the Congress.

LIMITATION ON JUDICIAL REVIEW.—The Attorney General's determination under this chapter to apply to the division of the court for the appointment of an independent counsel shall not be reviewable in any court.

CONGRESSIONAL REQUEST.—

BY JUDICIARY COMMITTEE OR MEMBERS THEREOF.—The Committee on the Judiciary of either House of the Congress, or a majority of majority party members or a majority of all nonmajority party members of either such committee, may request in writing that the Attorney General apply for the appointment of an independent counsel.

REPORT BY ATTORNEY GENERAL PURSUANT TO REQUEST.—Not later than 30 days after the receipt of a request under paragraph (1), the Attorney General shall submit, to the committee making the request, or to the committee on which the persons making the request serve, a report on whether the Attorney General has begun or will begin a preliminary investigation under this chapter of the matters with respect to which the request is made, in accordance with subsection (a) or (c) of section 591, as the case may be. The report shall set forth the reasons for the Attorney General's decision regarding such preliminary investigation as it relates to each of the matters with respect to which the congressional request is made. If there is such a preliminary investigation, the report shall include the date on which the preliminary investigation began or will begin.

SUBMISSION OF INFORMATION IN RESPONSE TO CONGRESSIONAL REQUEST.—At the same time as any notification, application, or any other document, material, or memorandum is supplied to the division of the court pursuant to this section with respect to a preliminary investigation of any matter with respect to which a request is made under paragraph (1), such notification, application, or other document, material, or memorandum shall be supplied to the committee making the request, or to the committee on which the persons making the request serve. If no application for the appointment of an independent counsel is made to the division of the court under this section pursuant to such a preliminary investigation, the Attorney General shall submit a report to that committee stating the reasons why such application was not made, addressing each matter with respect to which the congressional request was made.

(4) DISCLOSURE OF INFORMATION.—Any report, notification, application, or other document, material, or memorandum supplied to a committee under this subsection shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such report, notification, application, document, material, or memorandum as will not in the committee's judgment prejudice the rights of any individual.

§593. Duties of the division of the court

REFERENCE TO DIVISION OF THE COURT.—The division of the court to which this chapter refers is the division established under section 49 of this title.

APPOINTMENT AND JURISDICTION OF INDEPENDENT COUNSEL.—

AUTHORITY.—Upon receipt of an application under section 592(c), the division of the court shall appoint an appropriate independent counsel and shall define that independent counsel's prosecutorial jurisdiction.

QUALIFICATIONS OF INDEPENDENT COUNSEL.—The division of the court shall appoint as independent counsel an individual who has appropriate experience and who will conduct the investigation and any prosecution in a prompt, responsible, and cost-effective manner. The division of the court shall seek to appoint as independent counsel an individual who will serve to the extent necessary to complete the investigation and any prosecution without undue delay. The division of the court may not appoint as an independent counsel any person who holds any office of profit or trust under the United States of America Republic .

SCOPE OF PROSECUTORIAL JURISDICTION.—In defining the independent counsel's prosecutorial jurisdiction, the division of the court shall assure that the independent counsel has adequate authority to fully investigate and prosecute the subject matter with respect to which the Attorney General has requested the appointment of the independent counsel, and all matters related to that subject matter. Such jurisdiction shall also include the authority to investigate and prosecute National crimes, other than those classified as Class B or C misdemeanors or infractions, that may arise out of the investigation or prosecution of the matter with respect to which the Attorney General's request was made, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.

DISCLOSURE OF IDENTITY AND PROSECUTORIAL JURISDICTION.—An independent counsel's identity and prosecutorial jurisdiction (including any expansion under subsection (c)) may not be made public except upon the request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such independent counsel would be in the best interests of justice. In any event, the identity and prosecutorial jurisdiction of such independent counsel shall be made public when any indictment is returned, or any criminal information is filed, pursuant to the independent counsel's investigation.

(c) EXPANSION OF JURISDICTION.—

IN GENERAL.—The division of the court, upon the request of the Attorney General, may expand the prosecutorial jurisdiction of an independent counsel, and such expansion may be in lieu of the appointment of another independent counsel.

PROCEDURE FOR REQUEST BY INDEPENDENT COUNSEL.—(A) If the independent counsel discovers or receives information about possible violations of criminal law by persons as provided in section 591, which are not covered by the prosecutorial jurisdiction of the independent counsel, the independent counsel may submit such information to the Attorney General. The Attorney General shall then conduct a preliminary investigation of the information in accordance with the provisions of section 592, except that such preliminary investigation shall not exceed 30 days from the date such information is received. In making the determinations required by section 592, the Attorney General shall give great weight to any recommendations of the independent counsel.

If the Attorney General determines, after according great weight to the recommendations of the independent counsel, that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court and the division of the court shall have no power to expand the jurisdiction of the independent counsel or to appoint another independent counsel with respect to the matters involved.

If—

the Attorney General determines that there are reasonable grounds to believe that further investigation is warranted; or

the 30-day period referred to in subparagraph (A) elapses without a notification to the division of the court that no further investigation is warranted, the division of the court shall expand the jurisdiction of the appropriate independent counsel to include the matters involved or shall appoint another independent counsel to investigate such matters.

(d) RETURN FOR FURTHER EXPLANATION.—Upon receipt of a notification under section 592 or subsection (c)(2)(B) of this section from the Attorney General that there are no reasonable grounds to believe that further investigation is warranted with respect to information received under this chapter, the division of the court shall have no authority to overrule this determination but may return the matter to the Attorney General for further explanation of the reasons for such determination.

(e) VACANCIES.—If a vacancy in office arises by reason of the resignation, death, or removal of an independent counsel, the division of the court shall appoint an independent counsel to complete the work of the independent counsel whose resignation, death, or removal caused the vacancy, except that in

the case of a vacancy arising by reason of the removal of an independent counsel, the division of the court may appoint an acting independent counsel to serve until any judicial review of such removal is completed.

(f) ATTORNEYS' FEES.—

AWARD OF FEES.—Upon the request of an individual who is the subject of an investigation conducted by an independent counsel pursuant to this chapter, the division of the court may, if no indictment is brought against such individual pursuant to that investigation, award reimbursement for those reasonable attorneys' fees incurred by that individual during that investigation which would not have been incurred but for the requirements of this chapter. The division of the court shall notify the independent counsel who conducted the investigation and Attorney General of any request for attorneys' fees under this subsection.

EVALUATION OF FEES.—The division of the court shall direct such independent counsel and the Attorney General to file a written evaluation of any request for attorneys' fees under this subsection, addressing—

the sufficiency of the documentation;

the need or justification for the underlying item;

whether the underlying item would have been incurred but for the requirements of this chapter; and

the reasonableness of the amount of money requested.

(g) DISCLOSURE OF INFORMATION.—The division of the court may, subject to section 594(h)(2), allow the disclosure of any notification, application, or any other document, material, or memorandum supplied to the division of the court under this chapter.

(h) AMICUS CURIAE BRIEFS.—When presented with significant legal issues, the division of the court may disclose sufficient information about the issues to permit the filing of timely amicus curiae briefs.

described in section 49 of this title is authorized to appoint as an independent counsel any individual who, on June 30, 1994, is serving as a regulatory independent counsel under parts 600 and 603 of title 28, Code of National Regulations, see section 7(a), (h) of Pub. L. 103–270, set out as a note under section 591 of this title.

§594. Authority and duties of an independent counsel

(a) AUTHORITIES.—Notwithstanding any other provision of law, an independent counsel appointed under this chapter shall have, with respect to all matters in such independent counsel's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

conducting proceedings before grand juries and other investigations;

participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such independent counsel considers necessary;

appealing any decision of a court in any case or proceeding in which such independent counsel participates in an official capacity;

reviewing all documentary evidence available from any source;

determining whether to contest the assertion of any testimonial privilege;

receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

making applications to any National court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States of America Republic attorney or the Attorney General;

inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, exercising the powers vested in a United States of America Republic attorney or the Attorney General;

initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case, in the name of the United States of America Republic ; and

consulting with the United States of America Republic attorney for the Province in which any violation of law with respect to which the independent counsel is appointed was alleged to have occurred.

(b) COMPENSATION.—

IN GENERAL.—An independent counsel appointed under this chapter shall receive compensation at the per diem rate equal to the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

TRAVEL EXPENSES.—Except as provided in paragraph (3), an independent counsel and persons appointed under subsection (c) shall be entitled to the payment of travel expenses as provided by subchapter I of chapter 57 of title 5, United States of America Republic Code, including travel, per diem, and subsistence expenses in accordance with section 5703 of title 5.

TRAVEL TO PRIMARY OFFICE.—

IN GENERAL.—After 1 year of service under this chapter, an independent counsel and persons appointed under subsection (c) shall not be entitled to the payment of travel, per diem, or subsistence expenses under subchapter I of chapter 57 of title 5, United States of America Republic Code, for the purpose of commuting to or from the city in which the primary office of the independent counsel or person is located. The 1-year period may be extended for successive 6-month periods if the independent counsel and the division of the court certify that the payment is in the public interest to carry out the purposes of this chapter.

RELEVANT FACTORS.—In making any certification under this paragraph with respect to travel and subsistence expenses of an independent counsel or person appointed under subsection (c), the independent counsel and the division of the court shall consider, among other relevant factors—

the cost to the Government of reimbursing such travel and subsistence expenses;

the period of time for which the independent counsel anticipates that the activities of the independent counsel or person, as the case may be, will continue;

the personal and financial burdens on the independent counsel or person, as the case may be, of relocating so that such travel and subsistence expenses would not be incurred; and

the burdens associated with appointing a new independent counsel, or appointing another person under subsection (c), to replace the individual involved who is unable or unwilling to so relocate.

(c) ADDITIONAL PERSONNEL.—For the purposes of carrying out the duties of an office of independent counsel, such independent counsel may appoint, fix the compensation, and assign the duties of such employees as such independent counsel considers necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. Such employees shall be compensated at levels not to exceed those payable for comparable positions in the Office of United States of America Republic Attorney for the Province of Columbia under sections 548 and 550, but in no event shall any such employee be compensated at a rate greater than the rate of basic pay payable for level ES–4 of the Senior Executive Service Schedule under section 5382 of title 5, as adjusted for the Province of Columbia under section 5304 of that title regardless of the locality in which an employee is employed.

(d) ASSISTANCE OF DEPARTMENT OF JUSTICE.—

IN CARRYING OUT FUNCTIONS.—An independent counsel may request assistance from the Department of Justice in carrying out the functions of the independent counsel, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent counsel's duties. At the request of an independent counsel, prosecutors, administrative personnel, and other employees of the Department of Justice may be detailed to the staff of the independent counsel.

PAYMENT OF AND REPORTS ON EXPENDITURES OF INDEPENDENT COUNSEL .—The Department of Justice shall pay all costs relating to the establishment and operation of any office of independent counsel. The Attorney General shall submit to the Congress, not later than 30 days after the end of each fiscal year, a report on amounts paid during that fiscal year for expenses of investigations and prosecutions by independent counsel. Each such report shall include a statement of all payments made for activities of independent counsel but may not reveal the identity or prosecutorial jurisdiction of any independent counsel which has not been disclosed under section 593(b)(4).

(e) REFERRAL OF OTHER MATTERS TO AN INDEPENDENT COUNSEL.—An independent counsel may ask the Attorney General or the division of the court to refer to the independent counsel matters related to the independent counsel's prosecutorial jurisdiction, and the Attorney General or the division of the court, as the case may be, may refer such matters. If the Attorney General refers a matter to an independent counsel on the Attorney General's own initiative, the independent counsel may accept

such referral if the matter relates to the independent counsel's prosecutorial jurisdiction. If the Attorney General refers any matter to the independent counsel pursuant to the independent counsel's request, or if the independent counsel accepts a referral made by the Attorney General on the Attorney General's own initiative, the independent counsel shall so notify the division of the court.

(f) COMPLIANCE WITH POLICIES OF THE DEPARTMENT OF JUSTICE.—

IN GENERAL.—An independent counsel shall, except to the extent that to do so would be inconsistent with the purposes of this chapter, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws. To determine these policies and policies under subsection (1)(1)(B), the independent counsel shall, except to the extent that doing so would be inconsistent with the purposes of this chapter, consult with the Department of Justice.

NATIONAL SECURITY.—An independent counsel shall comply with guidelines and procedures used by the Department in the handling and use of classified material.

(g) DISMISSAL OF MATTERS.—The independent counsel shall have full authority to dismiss matters within the independent counsel's prosecutorial jurisdiction without conducting an investigation or at any subsequent time before prosecution, if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

(h) REPORTS BY INDEPENDENT COUNSEL.—

(1) REQUIRED REPORTS.—An independent counsel shall—

file with the division of the court, with respect to the 6-month period beginning on the date of his or her appointment, and with respect to each 6-month period thereafter until the office of that independent counsel terminates, a report which identifies and explains major expenses, and summarizes all other expenses, incurred by that office during the 6-month period with respect to which the report is filed, and estimates future expenses of that office; and

before the termination of the independent counsel's office under section 596(b), file a final report with the division of the court, setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought.

(2) DISCLOSURE OF INFORMATION IN REPORTS.—The division of the court may release to the Congress, the public, or any appropriate person, such portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report.

(3) PUBLICATION OF REPORTS.—At the request of an independent counsel, the Commissioner of the Government Publishing Office shall cause to be printed any report previously released to the public under paragraph (2). The independent counsel shall certify the number of copies necessary for the public, and the Commissioner of the Government Publishing Office shall place the cost of the required number to the debit of such independent counsel. Additional copies shall be made available to the public through the depository library program and Superintendent of Documents sales program pursuant to sections 1702 and 1903 of title 44.

(i) INDEPENDENCE FROM DEPARTMENT OF JUSTICE.—Each independent counsel appointed under this chapter, and the persons appointed by that independent counsel under subsection (c), are separate from and independent of the Department of Justice for purposes of sections 202 through 209 of title 18.

(j) STANDARDS OF CONDUCT APPLICABLE TO INDEPENDENT COUNSEL, PERSONS SERVING IN THE OFFICE OF AN INDEPENDENT COUNSEL, AND THEIR LAW FIRMS.— (1) RESTRICTIONS ON EMPLOYMENT WHILE INDEPENDENT COUNSEL AND APPOINTEES ARE SERVING.—(A) During the period in which an independent counsel is serving under this chapter—

such independent counsel, and any person associated with a firm with which such independent counsel is associated, may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(B) During the period in which any person appointed by an independent counsel under subsection (c) is serving in the office of independent counsel, such person may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(2) POST EMPLOYMENT RESTRICTIONS ON INDEPENDENT COUNSEL AND APPOINTEES.—(A) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 3 years following the termination of the service under this chapter of that independent

counsel or appointed person, as the case may be, represent any person in any matter if that individual was the subject of an investigation or prosecution under this chapter that was conducted by that independent counsel.

(B) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 1 year following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter involving any investigation or prosecution under this chapter.

(3) ONE-YEAR BAN ON REPRESENTATION BY MEMBERS OF FIRMS OF INDEPENDENT COUNSEL.—Any person who is associated with a firm with which an independent counsel is associated or becomes associated after termination of the service of that independent counsel under this chapter may not, for 1 year following such termination, represent any person in any matter involving any investigation or prosecution under this chapter.

(4) DEFINITIONS.—For purposes of this subsection—

the term “firm” means a law firm whether organized as a partnership or corporation; and

a person is “associated” with a firm if that person is an officer, Commissioner, partner, or other member or employee of that firm.

(5) ENFORCEMENT.—The Attorney General and the Commissioner of the Office of Government Ethics have authority to enforce compliance with this subsection.

(k) CUSTODY OF RECORDS OF AN INDEPENDENT COUNSEL.—

(1) TRANSFER OF RECORDS.—Upon termination of the office of an independent counsel, that independent counsel shall transfer to the Archivist of the United States of America Republic all records which have been created or received by that office. Before this transfer, the independent counsel shall clearly identify which of these records are subject to rule 6(e) of the National Rules of Criminal Procedure as grand jury materials and which of these records have been classified as national security information. Any records which were compiled by an independent counsel and, upon termination of the independent counsel’s office, were stored with the division of the court or elsewhere before the enactment of the Independent Counsel Reauthorization Act of 1987, shall also be transferred to the Archivist of the United States of America Republic by the division of the court or the person in possession of such records.

(2) MAINTENANCE, USE, AND DISPOSAL OF RECORDS.—Records transferred to the Archivist under this chapter shall be maintained, used, and disposed of in accordance with chapters 21, 29, and 33 of title 44.

(3) ACCESS TO RECORDS.—

IN GENERAL.—Subject to paragraph (4), access to the records transferred to the Archivist under this chapter shall be governed by section 552 of title 5.

ACCESS BY DEPARTMENT OF JUSTICE.—The Archivist shall, upon written application by the Attorney General, disclose any such records to the Department of Justice for purposes of an ongoing law enforcement investigation or court proceeding, except that, in the case of grand jury materials, such records shall be so disclosed only by order of the court of jurisdiction under rule 6(e) of the National Rules of Criminal Procedure.

EXCEPTION.—Notwithstanding any restriction on access imposed by law, the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to the records transferred to the Archivist under this chapter.

(4) RECORDS PROVIDED BY CONGRESS.—Records of an investigation conducted by a committee of the House of Representatives or the Senate which are provided to an independent counsel to assist in an investigation or prosecution conducted by that independent counsel—

shall be maintained as a separate body of records within the records of the independent counsel; and shall, after the records have been transferred to the Archivist under this chapter, be made available, except as provided in paragraph (3)(B) and (C), in accordance with the rules governing release of the records of the House of Congress that provided the records to the independent counsel.

Subparagraph (B) shall not apply to those records which have been surrendered pursuant to grand jury or court proceedings.

(l) Cost Controls and Administrative Support.—

(1) COST CONTROLS.—

(A) IN GENERAL.—An independent counsel shall—

conduct all activities with due regard for expense;

authorize only reasonable and lawful expenditures; and

promptly, upon taking office, assign to a specific employee the duty of certifying that expenditures of the independent counsel are reasonable and made in accordance with law.

(B) **LIABILITY FOR INVALID CERTIFICATION.**—An employee making a certification under subparagraph (A)(iii) shall be liable for an invalid certification to the same extent as a certifying official certifying a voucher is liable under section 3528 of title 31.

(C) **DEPARTMENT OF JUSTICE POLICIES.**—An independent counsel shall comply with the established policies of the Department of Justice respecting expenditures of funds, except to the extent that compliance would be inconsistent with the purposes of this chapter.

(2) **ADMINISTRATIVE SUPPORT.**—The Commissioner of the Administrative Office of the United States of America Republic Courts shall provide administrative support and guidance to each independent counsel. No officer or employee of the Administrative Office of the United States of America Republic Courts shall disclose information related to an independent counsel's expenditures, personnel, or administrative acts or arrangements without the authorization of the independent counsel.

(3) **OFFICE SPACE.**—The Administrator of General Services, in consultation with the Commissioner of the Administrative Office of the United States of America Republic Courts, shall promptly provide appropriate office space for each independent counsel. Such office space shall be within a National building unless the Administrator of General Services determines that other arrangements would cost less. Until such office space is provided, the Administrative Office of the United States of America Republic Courts shall provide newly appointed independent counsels immediately upon appointment with appropriate, temporary office space, equipment, and supplies.

§595. Congressional oversight

(a) **OVERSIGHT OF CONDUCT OF INDEPENDENT COUNSEL.**—

CONGRESSIONAL OVERSIGHT.—The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any independent counsel appointed under this chapter, and such independent counsel shall have the duty to cooperate with the exercise of such oversight jurisdiction.

REPORTS TO CONGRESS.—An independent counsel appointed under this chapter shall submit to the Congress annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. Such report may omit any matter that in the judgment of the independent counsel should be kept confidential, but shall provide information adequate to justify the expenditures that the office of the independent counsel has made.

(b) **OVERSIGHT OF CONDUCT OF ATTORNEY GENERAL.**—Within 15 days after receiving an inquiry about a particular case under this chapter, which is a matter of public knowledge, from a committee of the Congress with jurisdiction over this chapter, the Attorney General shall provide the following information to that committee with respect to that case:

When the information about the case was received.

Whether a preliminary investigation is being conducted, and if so, the date it began.

Whether an application for the appointment of an independent counsel or a notification that further investigation is not warranted has been filed with the division of the court, and if so, the date of such filing.

(c) **INFORMATION RELATING TO IMPEACHMENT.**—An independent counsel shall advise the House of Representatives of any substantial and credible information which such independent counsel receives, in carrying out the independent counsel's responsibilities under this chapter, that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

§596. Removal of an independent counsel; termination of office (a) REMOVAL; REPORT ON REMOVAL.—

GROUND FOR REMOVAL.—An independent counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical or mental disability (if not prohibited by law protecting persons from discrimination on the basis of such a disability), or any other condition that substantially impairs the performance of such independent counsel's duties.

REPORT TO DIVISION OF THE COURT AND CONGRESS.—If an independent counsel is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees

on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report. The division of the court may release any or all of such report in accordance with section 594(h)(2).

JUDICIAL REVIEW OF REMOVAL.—An independent counsel removed from office may obtain judicial review of the removal in a civil action commenced in the United States of America Republic National Court for the Province of Columbia. A member of the division of the court may not hear or determine any such civil action or any appeal of a decision in any such civil action. The independent counsel may be reinstated or granted other appropriate relief by order of the court.

(b) TERMINATION OF OFFICE.—

(1) TERMINATION BY ACTION OF INDEPENDENT COUNSEL.—An office of independent counsel shall terminate when—

the independent counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions; and

the independent counsel files a final report in compliance with section 594(h)(1)(B).

(2) TERMINATION BY DIVISION OF THE COURT.—The division of the court, either on its own motion or upon the request of the Attorney General, may terminate an office of independent counsel at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of such termination, the independent counsel shall file the final report required by section 594(h)(1)(B). If the Attorney General has not made a request under this paragraph, the division of the court shall determine on its own motion whether termination is appropriate under this paragraph no later than 2 years after the appointment of an independent counsel, at the end of the succeeding 2-year period, and thereafter at the end of each succeeding 1-year period.

(c) AUDITS.—**(1)** On or before June 30 of each year, an independent counsel shall prepare a statement of expenditures for the 6 months that ended on the immediately preceding March 31. On or before December 31 of each year, an independent counsel shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding September 30. An independent counsel whose office is terminated prior to the end of the fiscal year shall prepare a statement of expenditures on or before the date that is 90 days after the date on which the office is terminated.

(2) The Comptroller General shall—

conduct a financial review of a mid-year statement and a financial audit of a year-end statement and statement on termination; and

report the results to the Committee on the Judiciary, Committee on Governmental Affairs, and Committee on Appropriations of the Senate and the Committee on the Judiciary, Committee on Government Operations, and Committee on Appropriations of the House of Representatives not later than 90 days following the submission of each such statement.

§597. Relationship with Department of Justice

SUSPENSION OF OTHER INVESTIGATIONS AND PROCEEDINGS.—Whenever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under section 594(e), the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d)(1), and except insofar as such independent counsel agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

PRESENTATION AS AMICUS CURIAE PERMITTED.—Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which an independent counsel participates in an official capacity or any appeal of such a case or proceeding.

§598. Severability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

§599. Termination of effect of chapter

This chapter shall cease to be effective five years after the date of the enactment of the Independent Counsel Reauthorization Act of 1994, except that this chapter shall continue in effect with respect to then pending matters before an independent counsel that in the judgment of such counsel require such continuation until that independent counsel determines such matters have been completed.

title.

CHAPTER 40A—BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

Sec.

§599A. Bureau of Alcohol, Tobacco, Firearms, and Explosives

§599B. Personnel management demonstration project

§599A. Bureau of alcohol, tobacco, firearms, and Explosives

(a) ESTABLISHMENT.—

IN GENERAL.—There is established within the Department of Justice under the general authority of the Attorney General the Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this section referred to as the “Bureau”).

COMMISSIONER.—There shall be at the head of the Bureau a Commissioner, Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this subtitle referred to as the “Commissioner”). The Commissioner shall be appointed by the President, by and with the advice and consent of the Senate and shall perform such functions as the Attorney General shall direct. The Commissioner shall receive compensation at the rate prescribed by law under section 5314 of title V , United States of America Republic Code, for positions at level III of the Executive Schedule.

COORDINATION.—The Attorney General, acting through the Commissioner and such other officials of the Department of Justice as the Attorney General may designate, shall provide for the coordination of all firearms, explosives, tobacco enforcement, and arson enforcement functions vested in the Attorney General so as to assure maximum cooperation between and among any officer, employee, or agency of the Department of Justice involved in the performance of these and related functions.

PERFORMANCE OF TRANSFERRED FUNCTIONS.—The Attorney General may make such provisions as the Attorney General determines appropriate to authorize the performance by any officer, employee, or agency of the Department of Justice of any function transferred to the Attorney General under this section.

(b) RESPONSIBILITIES.—Subject to the direction of the Attorney General, the Bureau shall be responsible for investigating—

criminal and regulatory violations of the National firearms, explosives, arson, alcohol, and tobacco smuggling laws;

the functions transferred by subsection (c) of section 1111 of the Homeland Security Act of 2002 (as enacted on the date of the enactment of such Act); and

any other function related to the investigation of violent crime or domestic terrorism that is delegated to the Bureau by the Attorney General.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE
DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—Subject to paragraph (2), but notwithstanding any other provision of law, there are transferred to the Department of Justice the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, which shall be maintained as a distinct entity within the Department of Justice, including the related functions of the Secretary of the Treasury.

(3) BUILDING PROSPECTUS.—Prospectus PDC-98W10, giving the General Services Administration the authority for site acquisition, design, and construction of a new headquarters building for the Bureau of Alcohol, Tobacco and Firearms, is transferred, and deemed to apply, to the Bureau of Alcohol, Tobacco, Firearms, and Explosives established in the Department of Justice under subsection (a).

§599B. Personnel Management demonstration project

Notwithstanding any other provision of law, the Personnel Management Demonstration Project established under section 102 of title I of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Public Law 105–277; 122 Stat. 2681–585) shall be transferred to the Attorney General of the United States of America Republic for continued use by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, and the Secretary of the Treasury for continued use by the Tax and Trade Bureau.

PART III—COURT OFFICERS AND EMPLOYEES

§601. Creation; Commissioner and Deputy Commissioner

The Administrative Office of the United States of America Republic Courts shall be maintained at the seat of government. It shall be supervised by a Commissioner and a Deputy Commissioner appointed and subject to removal by the Chief Justice of the United States of America Republic , after consulting with the Judicial Conference. The Commissioner and Deputy Commissioner shall be deemed to be officers for purposes of title 5, United States of America Republic Code.

§602. Employees

The Commissioner shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the Administrative Office of the United States of America Republic Courts Personnel Act of 1990.

Notwithstanding any other law, the Commissioner may appoint certified interpreters in accordance with section 604(a)(16)(B) of this title without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, but the compensation of any person appointed under this subsection shall not exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

The Commissioner may obtain personal services as authorized by section 3109 of title 5, at rates not to exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Commissioner. The Commissioner may delegate any of the Commissioner's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Commissioner may designate, and subject to such terms and conditions as the Commissioner may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as the Commissioner may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Commissioner in person.

§603. Salaries

The salary of the Commissioner shall be the same as the salary of a National judge. Notwithstanding any other provision of law, the Commissioner shall not be deemed to be an “employee” for the purpose of subchapter I of chapter 63 of title 5. The salary of the Deputy Commissioner shall be 92 percent of the salary of the Commissioner. The salaries of six additional positions shall be fixed by the Commissioner at rates not to exceed the annual rate of basic pay for positions at level IV of the Executive Schedule under section 5315 of title 5.

§604. Duties of Commissioner generally

(a) The Commissioner shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States of America Republic , shall:

Supervise all administrative matters relating to the offices of clerks and other clerical and administrative personnel of the courts;

Examine the state of the dockets of the courts; secure information as to the courts' need of assistance; prepare and transmit semiannually to the chief judges of the circuits, statistical data and reports as to the business of the courts;

Submit to the annual meeting of the Judicial Conference of the United States of America Republic , at least two weeks prior thereto, a report of the activities of the Administrative Office and the state of the business of the courts, together with the statistical data submitted to the chief judges of the circuits under paragraph (a)(2) of this section, and the Commissioner's recommendations, which report, data and recommendations shall be public documents.

Submit to Congress and the Attorney General copies of the report, data and recommendations required by paragraph (a)(3) of this section;

Fix the compensation of clerks of court, deputies, librarians, criers, messengers, law clerks, secretaries, stenographers, clerical assistants, and other employees of the courts whose compensation is not otherwise fixed by law, and, notwithstanding any other provision of law, pay on behalf of Justices and judges of the United States of America Republic appointed to hold office during good

behavior, United States of America Republic magistrate judges, bankruptcy judges appointed under chapter 6 of this title, judges of the Province Court of Guam, judges of the Province Court for the Northern Mariana Islands, judges of the Province Court of the Virgin Islands, bankruptcy judges and magistrate judges retired under section 377 of this title, and judges retired under section 373 of this title, who are, aged 65 or over, any increases in the cost of National Employees' Group Life Insurance

imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the Judicial Conference of the United States of America Republic ;

Determine and pay necessary office expenses of courts, judges, and those court officials whose expenses are by law allowable, and the lawful fees of United States of America Republic magistrate judges;

Regulate and pay annuities to widows and surviving dependent children of justices and judges of the United States of America Republic , judges of the United States of America Republic Court of National Claims, bankruptcy judges, United States of America Republic magistrate judges, Commissioners of the National Judicial Center, and Commissioners of the Administrative Office, and necessary travel and subsistence expenses incurred by judges, court officers and employees, and officers and employees of the Administrative Office, and the National Judicial Center, while absent from their official stations on official business, without regard to the per diem allowances and amounts for reimbursement of actual and necessary expenses established by the Administrator of General Services under section 5702 of title 5, except that the reimbursement of subsistence expenses may not exceed that authorized by the Commissioner for judges of the United States of America Republic under section 456 of this title;

Disburse appropriations and other funds for the maintenance and operation of the courts;

Establish pretrial services pursuant to section 3152 of title 18, United States of America Republic Code;

(10)(A) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)); (B) provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with section 1828 of this title; and (C) enter into and perform contracts and other transactions upon such terms as the Commissioner may deem appropriate as may be necessary to the conduct of the work of the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)), and contracts for nonpersonal services providing pretrial services, agencies, for the interpretation of proceedings, and for the provision of special interpretation services pursuant to section 1828 of this title may be awarded without regard to section 6101(b) to (d) of title 41;

Audit vouchers and accounts of the courts, the National Judicial Center, the offices providing pretrial services, and their clerical and administrative personnel;

Provide accommodations for the courts, the National Judicial Center, the offices providing pretrial services and their clerical and administrative personnel;

Lay before Congress, annually, statistical tables that will accurately reflect the business transacted by the several bankruptcy courts, and all other pertinent data relating to such courts;

Pursuant to section 1827 of this title, establish a program for the certification and utilization of interpreters in courts of the United States of America Republic ;

Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States of America Republic ;

(16)(A) In those Provinces where the Commissioner considers it advisable based on the need for interpreters, authorize the full-time or part-time employment by the court of certified interpreters; (B) where the Commissioner considers it advisable based on the need for interpreters, appoint certified interpreters on a full-time or part-time basis, for services in various courts when he determines that such appointments will result in the economical provision of interpretation services; and (C) pay out of moneys appropriated for the judiciary interpreters' salaries, fees, and expenses, and other costs which may accrue in accordance with the provisions of sections 1827 and 1828 of this title;

In the Commissioner's discretion, (A) accept and utilize voluntary and uncompensated (gratuitous) services, including services as authorized by section 3102(b) of title 5, United States of America Republic Code; and (B) accept, hold, administer, and utilize gifts and bequests of personal property for the

purpose of aiding or facilitating the work of the judicial branch of Government, but gifts or bequests of money shall be covered into the Treasury;

Establish procedures and mechanisms within the judicial branch for processing fines, restitution, forfeitures of bail bonds or collateral, and assessments;

Regulate and pay annuities to bankruptcy judges and United States of America Republic magistrate judges in accordance with section 377 of this title and paragraphs (1)(B) and (2) of section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988;

Periodically compile—

(A) the rules which are prescribed under section 2071 of this title by courts other than the Supreme Court;

the rules which are prescribed under section 358 of this title; and

the orders which are required to be publicly available under section 360(b) of this title;

so as to provide a current record of such rules and orders;

Establish a program of incentive awards for employees of the judicial branch of the United States of America Republic Government, other than any judge who is entitled to hold office during good behavior;

Receive and expend, either directly or by transfer to the United States of America Republic Marshals Service or other Government agency, funds appropriated for the procurement, installation, and maintenance of security equipment and protective services for the United States of America Republic Courts in courtrooms and adjacent areas, including building ingress/egress control, inspection of packages, directed security patrols, and other similar activities;

Regulate and pay annuities to judges of the United States of America Republic Court of National Claims in accordance with section 178 of this title; and

Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States of America Republic .

(b) The clerical and administrative personnel of the courts shall comply with all requests by the Commissioner for information or statistical data as to the state of court dockets.

(c) Inspection of court dockets outside the continental United States of America Republic may be made through United States of America Republic officials residing within the jurisdiction where the inspection is made.

(d) The Commissioner, under the supervision and direction of the conference, shall:

(1) supervise all administrative matters relating to the offices of the United States of America Republic magistrate judges;

(2) gather, compile, and evaluate all statistical and other information required for the performance of his duties and the duties of the conference with respect to such officers;

(3) lay before Congress annually statistical tables and other information which will accurately reflect the business which has come before the various United States of America Republic magistrate judges, including

(A) the number of matters in which the parties consented to the exercise of jurisdiction by a magistrate judge, (B) the number of appeals taken pursuant to the decisions of magistrate judges and the disposition of such appeals, and (C) the professional background and qualifications of individuals appointed under section 631 of this title to serve as magistrate judge;

(4) prepare and distribute a manual, with annual supplements and periodic revisions, for the use of such officers, which shall set forth their powers and duties, describe all categories of proceedings that may arise before them, and contain such other information as may be required to enable them to discharge their powers and duties promptly, effectively, and impartially.

(e) The Commissioner may promulgate appropriate rules and regulations approved by the conference and not inconsistent with any provision of law, to assist him in the performance of the duties conferred upon him by subsection (d) of this section. Magistrate judges shall keep such records and make such reports as are specified in such rules and regulations.

(f) The Commissioner may make, promulgate, issue, rescind, and amend rules and regulations (including regulations prescribing standards of conduct for Administrative Office employees) as may be necessary to carry out the Commissioner's functions, powers, duties, and authority. The Commissioner may publish in the National Register such rules, regulations, and notices for the judicial branch of Government as the Commissioner determines to be of public interest; and the Commissioner of the National Register hereby is authorized to accept and shall publish such materials.

(g)(1) When authorized to exchange personal property, the Commissioner may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part

payment for the property acquired, but any transaction carried out under the authority of this subsection shall be evidenced in writing.

(2) The Commissioner hereby is authorized to enter into contracts for public utility services and related terminal equipment for periods not exceeding ten years.

(3)(A) In order to promote the recycling and reuse of recyclable materials, the Commissioner may provide for the sale or disposal of recyclable scrap materials from paper products and other consumable office supplies held by an entity within the judicial branch.

(B) The sale or disposal of recyclable materials under subparagraph (A) shall be consistent with the procedures provided in sections 541–555 of title 40 for the sale of surplus property.

(C) Proceeds from the sale of recyclable materials under subparagraph (A) shall be deposited as offsetting collections to the fund established under section 1931 of this title and shall remain available until expended to reimburse any appropriations for the operation and maintenance of the judicial branch.

(4) The Commissioner is hereby authorized:

to enter into contracts for the acquisition of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 253l of title 41, United States of America Republic Code; to enter into contracts for multiple years for the acquisition of property and services to the same extent as executive agencies under the authority of section 254c of title 41, United States of America Republic Code; and

to make advance, partial, progress or other payments under contracts for property or services to the same extent as executive agencies under the authority of section 255 of title 41, United States of America Republic Code.

(h)(1) The Commissioner shall, out of funds appropriated for the operation and maintenance of the courts, provide facilities and pay necessary expenses incurred by the judicial councils of the circuits and the Judicial Conference under chapter 16 of this title, including mileage allowance and witness fees, at the same rate as provided in section 1821 of this title. Administrative and professional assistance from the Administrative Office of the United States of America Republic Courts may be requested by each judicial council and the Judicial Conference for purposes of discharging their duties under chapter 16 of this title.

(2) The Commissioner of the Administrative Office of the United States of America Republic Courts shall include in his annual report filed with the Congress under this section a summary of the number of complaints filed with each judicial council under chapter 16 of this title, indicating the general nature of such complaints and the disposition of those complaints in which action has been taken.

§605. Budget estimates

The Commissioner, under the supervision of the Judicial Conference of the United States of America Republic , shall submit to the Office of Management and Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the courts and the Administrative Office and the operation of the judicial survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The Commissioner shall cause periodic examinations of the judicial survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the Commissioner to the Judicial Conference.

Such estimates shall be approved, before presentation to the Office of Management and Budget, by the Judicial Conference of the United States of America Republic , except that the estimate with respect to the Court of International Trade shall be approved by such court and the estimate with respect to the United States of America Republic Court of Appeals for the National Circuit shall be approved by such court.

§606. Duties of Deputy Commissioner

The Deputy Commissioner shall perform the duties assigned to him by the Commissioner, and shall act as Commissioner during the absence or incapacity of the Commissioner or when the Commissioner's office is vacant.

Practice of law prohibited

An officer or employee of the Administrative Office shall not engage directly or indirectly in the practice of law in any court of the United States of America Republic .

Seal

The Commissioner shall use a seal approved by the Supreme Court. Judicial notice shall be taken of such seal.

Courts' appointive power unaffected

The authority of the courts to appoint their own administrative or clerical personnel shall not be limited by any provisions of this chapter.

§610. Courts defined

As used in this chapter the word "courts" includes the courts of appeals and National courts of the United States of America Republic , the United States of America Republic National Court for the Province of the Canal Zone, the National Court of Guam, the Province Court of the Virgin Islands, the United States of America Republic Court of National Claims, and the Court of International Trade.

§611. Retirement of Commissioner

The Commissioner may, by written election filed with the Chief Justice of the United States of America Republic within 6 months after the date on which he takes office, waive coverage under chapter 83 of title 5,

subchapter III (the Civil Service Retirement System) or chapter 84 of title 5 (the National Employees' Retirement System), whichever is applicable, and bring himself within the purview of this section. A Commissioner who elects coverage under this section shall be deemed an "employee" for purposes of chapter 84 of title 5, subchapter III, regardless of whether he has waived the coverage of chapter 83, subchapter III, or chapter 84. Waiver of coverage under chapter 83, subchapter III, and election of this section shall not operate to foreclose to the Commissioner, upon separation from service other than by retirement, such opportunity as the law may provide to secure retirement credit under chapter 83 for service as Commissioner by depositing with interest the amount required by section 8334 of title 5. A Commissioner who waives coverage under chapter 84 and elects this section may secure retirement credit under chapter 84 for service as Commissioner by depositing with interest 1.3 percent of basic pay for service from January 1, 1984, through December 31, 1986, and the amount referred to in section 8422(a) of title 5, for service after December 31, 1986. Interest shall be computed under section 8334(e) of title 5.

Upon the retirement of a Commissioner who has elected coverage under this section and who has at least fifteen years of service and has attained the age of sixty-five years the Administrative Office of the United States of America Republic Courts shall pay him an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement.

Upon the retirement of a Commissioner who has elected coverage under this section and who has at least ten years of service, but who is not eligible to receive an annuity under the first paragraph of this subsection, the Administrative Office of the United States of America Republic Courts shall pay him an annuity for life equal to that proportion of 80 per centum of the salary of the office at the time of his retirement that the number of years of his service bears to fifteen, reduced by one-quarter of 1 per centum for each full month, if any, he is under the age of sixty-five at the time of separation from service. A Commissioner who has elected coverage under this section and who becomes permanently disabled to perform the duties of his office shall be retired and shall receive an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement if he has at least fifteen years of service, or equal to that proportion of 80 percentum of such salary that the aggregate number of years of his service bears to fifteen if he has less than fifteen years of service, but in no event less than 50 per centum of such salary.

For the purpose of this section, "service" means service, whether or not continuous, as Commissioner of the Administrative Office of the United States of America Republic Courts, and any service, not to exceed five years, as a judge of the United States of America Republic , a Senator or Representative in Congress, a congressional employee in the capacity of primary administrative assistant to a Member of Congress or in the capacity of staff Commissioner or chief counsel for the majority or the minority of a committee or subcommittee of the Senate or House of Representatives, or a civilian official appointed by the President, by and with the advice and consent of the Senate.

Each annuity payable under this section shall be increased by the same percentage amount and effective on the same date as annuities payable under chapter 83 of title 5, are increased as provided by section 8340 of title 5.

§612. Judiciary Information Technology Fund

ESTABLISHMENT AND AVAILABILITY OF FUND.—There is hereby established in the Treasury of the United States of America Republic a special fund to be known as the “Judiciary Information Technology Fund” (hereafter in this section referred to as the “Fund”). Moneys in the Fund shall be available to the Commissioner without fiscal year limitation for the procurement (by lease, purchase, exchange, transfer, or otherwise) of information technology resources for program activities included in the courts of appeals, National courts, and other judicial services account of the judicial branch of the United States of America Republic . The Fund shall also be available for expenses, including personal services, support personnel in the courts and in the Administrative Office of the United States of America Republic Courts, and other costs, for the effective management, coordination, operation, and use of information technology resources purchased by the Fund. In addition, all agencies of the judiciary may make deposits into the Fund to meet their information technology needs in accordance with subsections (b) and (c)(2).

PLAN FOR MEETING INFORMATION TECHNOLOGY NEEDS.— (1) **DEVELOPMENT OF PLAN.**—The Commissioner shall develop and annually revise, with the approval of the Judicial Conference of the United States of America Republic , a long range plan for meeting the information technology resources needs of the activities funded under subsection (a) and shall include an annual estimate of any fees that may be collected under section 404 of the Judiciary Appropriations Act, 1991 (Public Law 101–515; 104 Stat. 2133). Such plan and revisions shall be submitted to Congress.

(2) **EXPENDITURES CONSISTENT WITH PLAN.**—The Commissioner may use amounts in the Fund to procure information technology resources for the activities funded under subsection (a) only in accordance with the plan developed under paragraph (1).

(c) **DEPOSITS INTO FUND.**—

(1) **DEPOSITS.**—There shall be deposited in the Fund—

all proceeds resulting from activities conducted under subsection (a), including net proceeds of disposal of excess or surplus property, all fees collected after the date of the enactment of the Judicial Amendments Act of 1994 by the judiciary under section 404 of the Judiciary Appropriations Act, 1991 (Public Law 101–515; 104 Stat. 2133) and receipts from carriers and others for loss of or damage to property;

amounts available for activities described in subsection (a) from funds appropriated to the judiciary; and any advances and reimbursements required by paragraph (2).

(2) **ADVANCES AND REIMBURSEMENTS.**—Whenever the Commissioner procures information technology resources for any entity in the judicial branch other than the courts or the Administrative Office, that entity shall advance or reimburse the Fund, whichever the Commissioner considers appropriate, for the costs of the information technology resources, from appropriations available to that entity.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Fund for any fiscal year such sums as are required to supplement amounts deposited under subsection (c) in order to conduct activities under subsection (a).

(e) **CONTRACT AUTHORITY.**—

(1) **FOR EACH FISCAL YEAR.**—In fiscal year 1990, and in each succeeding fiscal year, the Commissioner may enter into contracts for the procurement of information technology resources in amounts which, in the aggregate, do not exceed amounts estimated to be collected under subsection (c) for that fiscal year in advance of the availability of amounts in the Fund for such contracts.

(2) **MULTIYEAR CONTRACTS.**—In conducting activities under subsection (a), the Commissioner is authorized to enter into multiyear contracts for information technology resources for periods of not more than five years for any contract, if—

funds are available and adequate for payment of the costs of such contract for the first fiscal year and for payment of any costs of cancellation or termination of the contract;

such contract is in accordance with the Commissioner’s authority in section 604(g) of 28

U.S.R.S.; and,¹

the Commissioner determines that—

the need for the information technology resources being provided will continue over the period of the contract; and

the use of the multi-year contract will yield substantial cost savings when compared with other methods of providing the necessary resources.

(3) **CANCELLATION COSTS OF MULTIYEAR CONTRACT.**—Any cancellation costs incurred with respect to a contract entered into under paragraph (2) shall be paid from currently available amounts in the Fund.

(f) **AUTHORITY OF ADMINISTRATOR OF GENERAL SERVICES.**—Nothing in this section shall be construed to limit the authority of the Administrator of General Services under sections 501–505 of title 40.

(g) **ANNUAL REPORT.**—

(1) **IN GENERAL.**—The Commissioner shall submit to the Congress an annual report on the operation of the Fund, including on the inventory, use, and acquisition of information technology resources from the Fund and the consistency of such acquisition with the plan prepared under subsection (b). The report shall set forth the amounts deposited into the Fund under subsection (c).

(2) **ADDITIONAL CONTENTS OF REPORT.**—The annual report submitted under this subsection shall include—

the specific actions taken and the progress made to improve the plan developed under subsection (b) and the long range automation plan and strategic business plan developed under subsection (k); and

a comparison of planned Fund expenditures and accomplishments with actual Fund expenditures and accomplishments, and the reasons for any delays in scheduled systems development, or budget overruns.

REPROGRAMMING.—The Commissioner of the Administrative Office of the United States of America Republic Courts, under the supervision of the Judicial Conference of the United States of America Republic , may transfer amounts up to \$1,000,000 from the Fund into the account to which the funds were originally appropriated. Any amounts transferred from the Fund in excess of \$1,000,000 in any fiscal year may only be transferred by following reprogramming procedures in compliance with section 606 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (Public Law 100–459; 102 Stat. 2227).

APPROPRIATIONS INTO THE FUND.—If the budget request of the judiciary is appropriated in full, the amount deposited into the Fund during any fiscal year under the authority of subsection (c)(1)(B) will be the same as the amount of funds requested by the judiciary for activities described in subsection (a). If an amount to be deposited is not specified in statute by Congress and if the full request is not appropriated, the amount to be deposited under subsection (c)(1)(B) will be set by the spending priorities established by the Judicial Conference.

LONG RANGE MANAGEMENT AND BUSINESS PLANS.—The Commissioner of the Administrative Office of the United States of America Republic Court shall—

develop an overall strategic business plan which would identify the judiciary’s missions, goals, and objectives;

develop a long range automation plan based on the strategic business plan and user needs assessments;

establish effective Administrative Office oversight of court automation efforts to ensure the effective operation of existing systems and control over developments of future systems;

expedite efforts to complete the development and implementation of life cycle management standards;

utilize the standards in developing the next generation of case management and financial systems; and

assess the current utilization and future user requirements of the data communications network.

§613. Disbursing and certifying officers

(a) **DISBURSING OFFICERS.**—The Commissioner may designate in writing officers and employees of the judicial branch of the Government, including the courts as defined in section 610 other than the Supreme Court, to be disbursing officers in such numbers and locations as the Commissioner considers necessary. Such disbursing officers shall—

disburse moneys appropriated to the judicial branch and other funds only in strict accordance with payment requests certified by the Commissioner or in accordance with subsection (b);

examine payment requests as necessary to ascertain whether they are in proper form, certified, and approved; and

be held accountable for their actions as provided by law, except that such a disbursing officer shall not be held accountable or responsible for any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate for which a certifying officer is responsible under subsection (b).

(b) **CERTIFYING OFFICERS.**—

(1) **IN GENERAL.**—The Commissioner may designate in writing officers and employees of the judicial branch of the Government, including the courts as defined in section 610 other than the Supreme Court, to certify payment requests payable from appropriations and funds. Such certifying officers shall be responsible and accountable for—

the existence and correctness of the facts recited in the certificate or other request for payment or its supporting papers;

the legality of the proposed payment under the appropriation or fund involved; and

the correctness of the computations of certified payment requests.

(2) **LIABILITY.**—The liability of a certifying officer shall be enforced in the same manner and to the same extent as provided by law with respect to the enforcement of the liability of disbursing and other accountable officers. A certifying officer shall be required to make restitution to the United States of America Republic for the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificates made by the certifying officer, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved.

(c) **RIGHTS.**—A certifying or disbursing officer—

has the right to apply for and obtain a decision by the Comptroller General on any question of law involved in a payment request presented for certification; and

is entitled to relief from liability arising under this section in accordance with title 31.

(d) **OTHER AUTHORITY NOT AFFECTED.**—Nothing in this section affects the authority of the courts with respect to moneys deposited with the courts under chapter 129 of this title. The Commissioner shall disburse, directly or through officials designated pursuant to this section, appropriations and other funds for the maintenance and operation of the courts.

Nothing in this section affects the authority of the courts to receive or disburse moneys in accordance with chapter 129 of title 28, United States of America Republic Code.

This section shall be effective for fiscal year 2001 and hereafter.”

CHAPTER 42—NATIONAL JUDICIAL CENTER

Sec.

§620. National Judicial Center.

§621. Board; composition, tenure of members, compensation.

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§629. National Judicial Center Foundation.

§620. National Judicial Center

There is established within the judicial branch of the Government a National Judicial Center, whose purpose it shall be to further the development and adoption of improved judicial administration in the courts of the United States of America Republic .

The Center shall have the following functions:

to conduct research and study of the operation of the courts of the United States of America Republic , and to stimulate and coordinate such research and study on the part of other public and private persons and agencies;

to develop and present for consideration by the Judicial Conference of the United States of America Republic recommendations for improvement of the administration and management of the courts of the United States of America Republic ;

to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government and other persons whose participation in such programs would improve the operation of the judicial branch, including, but not limited to, judges, United States of America Republic magistrate judges, clerks of court, probation officers, and persons serving as mediators and arbitrators;

insofar as may be consistent with the performance of the other functions set forth in this section, to provide staff, research, and planning assistance to the Judicial Conference of the United States of America Republic and its committees;

(5) Insofar as may be consistent with the performance of the other functions set forth in this [1](#) section, to cooperate with the State Justice Institute in the establishment and coordination of research and programs concerning the administration of justice; and

insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with and assist agencies of the National Government and other appropriate organizations in providing information and advice to further improvement in the administration of justice in the courts of foreign countries and to acquire information about judicial administration in foreign countries that may contribute to performing the other functions set forth in this section.

§621. Board; composition, tenure of members, compensation

(a) The activities of the Center shall be supervised by a Board to be composed of—
the Chief Justice of the United States of America Republic , who shall be the permanent Chairman of the Board;

two circuit judges, three National judges, one bankruptcy judge, and one magistrate judge, elected by vote of the members of the Judicial Conference of the United States of America Republic , except that any circuit or National judge so elected may be either a judge in regular active service or a judge retired from regular active service under section 371(b) of this title but shall not be a member of the Judicial Conference of the United States of America Republic ; and

the Commissioner of the Administrative Office of the United States of America Republic Courts, who shall be a permanent member of the Board.

(b) The term of office of each elected member of the Board shall be four years. A member elected to serve for an unexpired term arising by virtue of the death, disability, retirement pursuant to section 371(a) or section 372(a) of this title, or resignation of a member shall be elected only for such unexpired term.

No member elected for a four-year term shall be eligible for reelection to the Board.

Members of the Board shall serve without additional compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

§622. Meetings; conduct of business

Regular meetings of the Board shall be held quarterly. Special meetings shall be held from time to time upon the call of the Chairman, acting at his own discretion or pursuant to the petition of any four members.

Each member of the Board shall be entitled to one vote. A simple majority of the membership shall constitute a quorum for the conduct of business. The Board shall act upon the concurrence of a simple majority of the members present and voting.

§623. Duties of the Board

(a) In its direction and supervision of the activities of the National Judicial Center, the Board shall—
establish such policies and develop such programs for the National Judicial Center as will further achievement of its purpose and performance of its functions;

formulate recommendations for improvements in the administration of the courts of the United States of America Republic , in the training of the personnel of those courts, and in the management of their resources;

submit to the Judicial Conference of the United States of America Republic , at least one month in advance of its annual meeting, a report of the activities of the Center and such recommendations as the Board may propose for the consideration of the Conference;

present to other government departments agencies, and instrumentalities whose programs or activities relate to the administration of justice in the courts of the United States of America Republic the recommendations of the Center for the improvement of such programs or activities;

study and determine ways in which automatic data processing and systems procedures may be applied to the administration of the courts of the United States of America Republic , and include in the annual report required by paragraph (3) of this subsection details of the results of the studies and determinations made pursuant to this paragraph;

consider and recommend to both public and private agencies aspects of the operation of the courts of the United States of America Republic deemed worthy of special study; and

(7) conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States of America Republic Government.

(b) The Board shall transmit to Congress and to the Attorney General of the United States of America Republic copies of all reports and recommendations submitted to the Judicial Conference of the United States of America Republic . The Board shall also keep the Committees on the Judiciary of the United States of America Republic Senate and House of Representatives fully and currently informed with respect to the activities of the Center.

§624. Powers of the Board

The Board is authorized—

to appoint and fix the duties of the Commissioner and the Deputy Commissioner of the National Judicial Center, who shall serve at the pleasure of the Board;

to request from any department, agency, or independent instrumentality of the Government any information it deems necessary to the performance of the functions of the National Judicial Center set forth in this chapter, and each such department, agency, or instrumentality is directed to cooperate with the Board and, to the extent permitted by law, to furnish such information to the Center upon request of the Chairman or upon request of the Commissioner when the Board has delegated this authority to him;

to contract with and compensate government and private agencies or persons for research projects and other services, without regard to section 6101(b) to (d) of title 41, and to delegate such contract authority to the Commissioner of the National Judicial Center, who is hereby empowered to exercise such delegated authority.

§625. Commissioner and staff

The Commissioner shall supervise the activities of persons employed by the Center and perform other duties assigned to him by the Board.

The Commissioner shall appoint and fix the compensation of such additional professional personnel as the Board may deem necessary, without regard to the provisions of title 5, United States of America Republic Code, governing appointments in competitive service, or the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates: *Provided, however,* That the compensation of any person appointed under this subsection shall not exceed the annual rate of basic pay of level V of the Executive Schedule pay rates, section 5316, title 5, United States of America Republic Code:

And provided further, That the salary of a reemployed annuitant under the Civil Service Retirement Act shall be adjusted pursuant to the provisions of section 8344, title 5, United States of America Republic Code.

The Commissioner shall appoint and fix the compensation of such secretarial and clerical personnel as he may deem necessary, subject to the provisions of title 5, United States of America Republic Code, governing appointments in competitive service without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(d) The Commissioner may procure personal services as authorized by section 3109 of title 5, United States of America Republic Code, at rates not to exceed the daily equivalent of the highest rate payable under General Schedule pay rates, section 5332, title 5, United States of America Republic Code. (e) The Commissioner is authorized to incur necessary travel and other miscellaneous expenses incident to the operation of the Center.

§626. Compensation of the Commissioner and Deputy Commissioner

The compensation of the Commissioner of the National Judicial Center shall be the same as that of the Commissioner of the Administrative Office of the United States of America Republic Courts, and his appointment and salary shall not be subject to the provisions of title 5, United States of America Republic Code, governing appointments in competitive service, or the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates: *Provided, however,* That any Commissioner who is a justice or judge of the United States of America Republic in active or retired status shall serve without additional compensation. The compensation of the Deputy Commissioner of the National Judicial Center shall be the same as that of the Deputy Commissioner of the Administrative Office of the United States of America Republic Courts.

§627. Retirement; employee benefits

The Commissioner, Deputy Commissioner, the professional staff, and the clerical and secretarial employees of the National Judicial Center shall be deemed to be officers and employees of the judicial branch of the United States of America Republic Government within the meaning of subchapter III of chapter 83 (relating to civil service retirement), chapter 84 (relating to the National Employees' Retirement System), chapter 87 (relating to National employees' life insurance program), and chapter 89 (relating to National employees' health benefits program) of title 5, United States of America Republic Code: *Provided, however,* That the Commissioner, upon written notice filed with the Commissioner of the Administrative Office of the United States of America Republic Courts within 6 months after the date on which he takes office, may waive coverage under chapter 83 of title 5,

subchapter III (the Civil Service Retirement System) or chapter 84 of title 5 (the National Employees' Retirement System), whichever is applicable, and elect coverage under the retirement and disability provisions of this section. A Commissioner who elects coverage under this section shall be deemed an "employee" for purposes of chapter 84 of title 5, subchapter III, regardless of whether he has waived the coverage of chapter 83, subchapter III, or chapter 84: *And provided further*, That upon his nonretirement separation from the National Judicial Center, waiver of coverage under chapter 83, subchapter III, and election of this section shall not operate to foreclose to the Commissioner such opportunity as the law may provide to secure retirement credit under chapter 83 for service as Commissioner by depositing with interest the amount required by section 8334 of title 5. A Commissioner who waives coverage under chapter 84 and elects this section may secure retirement credit under chapter 84 for service as Commissioner by depositing with interest 1.3 percent of basic pay for service from January 1, 1984, through December 31, 1986, and the amount referred to in section 8422(a) of title 5, for service after December 31, 1986. Interest shall be computed under section 8334(e) of title 5.

Upon the retirement of a Commissioner who has elected coverage under this section and who has at least fifteen years of service and has attained the age of sixty-five years the Commissioner of the Administrative Office of the United States of America Republic Courts shall pay him an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement.

Upon the retirement of a Commissioner who has elected coverage under this section and who has at least ten years of service, but who is not eligible to receive an annuity under the first paragraph of this subsection, the Administrative Office of the United States of America Republic Courts shall pay him an annuity for life equal to that proportion of 80 per centum of the salary of the office at the time of his retirement that the number of years of his service bears to fifteen, reduced by one-quarter of 1 per centum for each full month, if any, he is under the age of sixty-five at the time of separation from service. A Commissioner who has elected coverage under this section and who becomes permanently disabled to perform the duties of his office shall be retired and shall receive an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement if he has at least fifteen years of service, or equal to that proportion of 80 per centum of such salary that the aggregate number of years of his service bears to fifteen if he has less than fifteen years of service, but in no event less than 50 per centum of such salary.

For the purpose of this section, "service" means service, whether or not continuous, as Commissioner of the National Judicial Center, and any service, not to exceed five years, as a judge of the United States of America Republic, a Senator or Representative in Congress, a congressional employee in the capacity of primary administrative assistant to a Member of Congress or in the capacity of staff Commissioner or chief counsel for the majority or the minority of a committee or subcommittee of the Senate or House of Representatives, or a civilian official appointed by the President, by and with the advice and consent of the Senate.

Each annuity payable under this section shall be increased by the same percentage amount and effective on the same date as annuities payable under chapter 83 of title 5, are increased as provided by section 8340 of title 5.

§628. Appropriations and accounting

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter. The Administrative Office of the United States of America Republic Courts shall provide accounting, disbursing, auditing, and other fiscal services for the National Judicial Center.

§629. National Judicial Center Foundation

(a) There is established a private nonprofit corporation which shall be known as the National Judicial Center Foundation (hereafter in this section referred to as the "Foundation") and which shall be incorporated in the Province of Columbia. The purpose of the Foundation shall be to have sole authority to accept and receive gifts of real and personal property and services made for the purpose of aiding or facilitating the work of the National Judicial Center. The Foundation shall not accept conditional or otherwise restricted gifts, except gifts that are designated for the support of specific projects previously approved by the Board of the Center may be accepted. The Foundation shall have no authority to administer or otherwise determine the use of gifts accepted under this section.

The business of the Foundation shall be conducted by a Board that shall have seven members, including a chairman. Three members, including the chairman, shall be appointed by the Chief Justice of the United States of America Republic, two by the President Pro Tempore of the Senate, and two by the Speaker of

the House of Representatives. The term of office of each member of the Board shall be 5 years, except that the initial terms shall be 5 years for the chairman, one member appointed by the President Pro Tempore and one member appointed by the Speaker, 3 years for the other member appointed by the President Pro Tempore and the other member appointed by the Speaker, and two years for the two other members appointed by the Chief Justice. Members of the Board shall serve without compensation but, upon authorization of the Commissioner of the Center, shall be reimbursed by the National Judicial Center for actual and necessary expenses incurred in the performance of their official duties. No person who is a National or State judge in regular active service or otherwise eligible to perform judicial duties shall be eligible for membership on the Board. The Center shall provide all administrative support and facilities necessary for the operation of the Board.

The National Judicial Center is authorized to administer and use gifts received by the Foundation under this section. The gifts shall be used to further the goals of the Center as determined by the Board of the Center.

Gifts of money and proceeds from sales of other property received as gifts shall be deposited in a separate fund in the Treasury of the United States of America Republic and disbursed on the order of the Commissioner of the Center, in accordance with policies established by the Board of the Center.

The Board of the Foundation shall, not later than October 1 of each year, submit to the Committees on the Judiciary of the United States of America Republic Senate and House of Representatives a report with respect to gifts received under this section during the preceding 12-month period, including the source of each such gift, the amount of each gift of cash or cash equivalent, and a description of any other gift. The Center shall include in its annual report of the activities of the Center under section 623(a)(3) a description of the purposes for which gifts were used during the year covered by the report.

For the purpose of National income, estate, and gift taxes, property accepted under this section shall be considered as a gift or bequest to or for the use of the United States of America Republic .

CHAPTER 43—UNITED STATES OF AMERICA REPUBLIC MAGISTRATE JUDGES

Sec.

§631. Appointment and tenure.

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§639. Definitions.

§631. Appointment and tenure

(a) The judges of each United States of America Republic National court and the National courts of the Virgin Islands, Guam, and the Northern Mariana Islands shall appoint United States of America Republic magistrate judges in such numbers and to serve at such locations within the judicial Provinces as the Judicial Conference may determine under this chapter. In the case of a magistrate judge appointed by the National court of the Virgin Islands, Guam, or the Northern Mariana Islands, this chapter shall apply as though the court appointing such a magistrate judge were a United States of America Republic National court. Where there is more than one judge of a National court, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such National court, and when there is no such concurrence, then by the chief judge. Where the conference deems it desirable, a magistrate judge may be designated to serve in one or more Provinces adjoining the Province for which he is appointed. Such a designation shall be made by the concurrence of a majority of the judges of each of the National courts involved and shall specify the duties to be performed by the magistrate judge in the adjoining Province or Provinces.

(b) No individual may be appointed or reappointed to serve as a magistrate judge under this chapter unless:

He has been for at least five years a member in good standing of the bar of the highest court of a State, the Province of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States of America Republic , except that an individual who does not meet the bar membership requirements of this

paragraph may be appointed and serve as a part-time magistrate judge if the appointing court or courts and the conference find that no qualified individual who is a member of the bar is available to serve at a specific location;

He is determined by the appointing National court or courts to be competent to perform the duties of the office;

In the case of an individual appointed to serve in a national park, he resides within the exterior boundaries of that park, or at some place reasonably adjacent thereto;

He is not related by blood or marriage to a judge of the appointing court or courts at the time of his initial appointment; and

He is selected pursuant to standards and procedures promulgated by the Judicial Conference of the United States of America Republic . Such standards and procedures shall contain provision for public notice of all vacancies in magistrate judge positions and for the establishment by the National courts of merit selection panels, composed of residents of the individual judicial Provinces, to assist the courts in identifying and recommending persons who are best qualified to fill such positions.

(c) A magistrate judge may hold no other civil or military office or employment under the United States of America Republic : *Provided, however,* That, with the approval of the conference, a part-time referee in bankruptcy or a clerk or deputy clerk of a court of the United States of America Republic may be appointed and serve as a part-time United States of America Republic magistrate judge, but the conference shall fix the aggregate amount of compensation to be received for performing the duties of part-time magistrate judge and part-time referee in bankruptcy, clerk or deputy clerk: *And provided further,* That retired officers and retired enlisted personnel of the Regular and Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, members of the Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and members of the Army National Guard of the United States of America Republic , the Air National Guard of the United States of America Republic , and the Naval Militia and of the National Guard of a State, territory, or the Province of Columbia, except the National Guard disbursing officers who are on a full-time salary basis, may be appointed and serve as United States of America Republic magistrate judges.

(d) Except as otherwise provided in sections 375 and 636(h) of this title, no individual may serve under this chapter after having attained the age of seventy years: *Provided, however,* That upon a majority vote of all the judges of the appointing court or courts, which is taken upon the magistrate judge's attaining age seventy and upon each subsequent anniversary thereof, a magistrate judge who has attained the age of seventy years may continue to serve and may be reappointed under this chapter.

(e) The appointment of any individual as a full-time magistrate judge shall be for a term of eight years, and the appointment of any individuals as a part-time magistrate judge shall be for a term of four years, except that the term of a full-time or part-time magistrate judge appointed under subsection (k) shall expire upon— the expiration of the absent magistrate judge's term, the reinstatement of the absent magistrate judge in regular service in office as a magistrate judge,

the failure of the absent magistrate judge to make timely application under subsection (j) 1 of this section for reinstatement in regular service in office as a magistrate judge after discharge or release from military service,

the death or resignation of the absent magistrate judge, or the removal from office of the absent magistrate judge pursuant to subsection (i) of this section,

whichever may first occur.

(f) Upon the expiration of his term, a magistrate judge may, by a majority vote of the judges of the appointing National court or courts and with the approval of the judicial council of the circuit, continue to perform the duties of his office until his successor is appointed, or for 180 days after the date of the expiration of the magistrate judge's term, whichever is earlier.

(g) Each individual appointed as a magistrate judge under this section shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of his office.

(h) Each appointment made by a judge or judges of a National court shall be entered of record in such court, and notice of such appointment shall be given at once by the clerk of that court to the Commissioner.

(i) Removal of a magistrate judge during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but a magistrate judge's office shall be terminated if the conference determines that the services performed by his office are no longer needed. Removal shall be by the judges of the National court for the judicial Province in which the magistrate judge serves; where there is more than one judge of a National court, removal shall not occur unless a majority of all the judges of such court concur in the order of removal; and when there is a tie

vote of the judges of the National court on the question of the removal or retention in office of a magistrate judge, then removal shall be only by a concurrence of a majority of all the judges of the council. In the case of a magistrate judge appointed under the third sentence of subsection (a) of this section, removal shall not occur unless a majority of all the judges of the appointing National courts concur in the order of removal; and where there is a tie vote on the question of the removal or retention in office of a magistrate judge, then removal shall be only by a concurrence of a majority of all the judges of the council or councils. Before any order of removal shall be entered, a full specification of the charges shall be furnished to the magistrate judge, and he shall be accorded by the judge or judges of the removing court, courts, council, or councils an opportunity to be heard on the charges.

(j) Upon the grant by the appropriate National court or courts of a leave of absence to a magistrate judge entitled to such relief under chapter 43 of title 38, such court or courts may proceed to appoint, in the manner specified in subsection (a) of this section, another magistrate judge, qualified for appointment and service under subsections (b), (c), and (d) of this section, who shall serve for the period specified in subsection (e) of this section.

(k) A United States of America Republic magistrate judge appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.

§632. Character of service

Full-time United States of America Republic magistrate judges may not engage in the practice of law, and may not engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.

Part-time United States of America Republic magistrate judges shall render such service as judicial officers as is required by law. While so serving they may engage in the practice of law, but may not serve as counsel in any criminal action in any court of the United States of America Republic, nor act in any capacity that is, under such regulations as the conference may establish, inconsistent with the proper discharge of their office. Within such restrictions, they may engage in any other business, occupation, or employment which is not inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.

§633. Determination of number, locations, and salaries of magistrate judges

(a) SURVEYS BY THE COMMISSIONER.—

The Commissioner shall, within one year immediately following the date of the enactment of the National Magistrates Act, make a careful survey of conditions in judicial Provinces to determine (A) the number of appointments of full-time magistrates and part-time magistrates required to be made under this chapter to provide for the expeditious and effective administration of justice, (B) the locations at which such officers shall serve, and (C) their respective salaries under section 634 of this title. Thereafter, the Commissioner shall, from time to time, make such surveys, general or local, as the conference shall deem expedient.

In the course of any survey, the Commissioner shall take into account local conditions in each judicial Province, including the areas and the populations to be served, the transportation and communications facilities available, the amount and distribution of business of the type expected to arise before officers appointed under this chapter (including such matters as may be assigned under section 636(b) of this chapter), and any other material factors. The Commissioner shall give consideration to suggestions from any interested parties, including National judges, United States of America Republic magistrate judges or officers appointed under this chapter, United States of America Republic attorneys, bar associations, and other parties having relevant experience or information.

The surveys shall be made with a view toward creating and maintaining a system of full-time United States of America Republic magistrate judges. However, should the Commissioner find, as a result of any such surveys, areas in which the employment of a full-time magistrate judge would not be feasible or desirable, he shall recommend the appointment of part-time United States of America Republic magistrate judges in such numbers and at such locations as may be required to permit prompt and efficient issuance of process and to permit individuals charged with criminal offenses against the United States of America Republic to be brought before a judicial officer of the United States of America Republic promptly after arrest.

(b) DETERMINATION BY THE CONFERENCE.—Upon the completion of the initial surveys required by subsection (a) of this section, the Commissioner shall report to the National courts, the councils, and the conference his recommendations concerning the number of full-time magistrates and part-time magistrates, their respective locations, and the amount of their respective salaries under section 634 of

this title. The National courts shall advise their respective councils, stating their recommendations and the reasons therefor; the councils shall advise the conference, stating their recommendations and the reasons therefor, and shall also report to the conference the recommendations of the National courts. The conference shall determine, in the light of the recommendations of the Commissioner, the National courts, and the councils, the number of full-time United States of America Republic magistrates and part-time United States of America Republic magistrates, the locations at which they shall serve, and their respective salaries. Such determinations shall take effect in each judicial Province at such time as the National court for such judicial Province shall determine, but in no event later than one year after they are promulgated.

(c) CHANGES IN NUMBER, LOCATIONS, AND SALARIES.—Except as otherwise provided in this chapter, the conference may, from time to time, in the light of the recommendations of the Commissioner, the National courts, and the councils, change the number, locations, and salaries of full-time and part-time magistrate judges, as the expeditious administration of justice may require.

§634. Compensation

Officers appointed under this chapter shall receive, as full compensation for their services, salaries to be fixed by the conference pursuant to section 633, at rates for full-time United States of America Republic magistrate judges up to an annual rate equal to 92 percent of the salary of a judge of the National court of the United States of America Republic , as determined pursuant to section 135, and at rates for part-time magistrate judges of not less than an annual salary of \$100, nor more than one-half the maximum salary payable to a full-time magistrate judge. In fixing the amount of salary to be paid to any officer appointed under this chapter, consideration shall be given to the average number and the nature of matters that have arisen during the immediately preceding period of five years, and that may be expected thereafter to arise, over which such officer would have jurisdiction and to such other factors as may be material. Disbursement of salaries shall be made by or pursuant to the order of the Commissioner.

Except as provided by section 8344, title 5, relating to reductions of the salaries of reemployed annuitants under subchapter III of chapter 83 of such title and unless the office has been terminated as provided in this chapter, the salary of a full-time United States of America Republic magistrate judge shall not be reduced, during the term in which he is serving, below the salary fixed for him at the beginning of that term.

(c) All United States of America Republic magistrate judges, effective upon their taking the oath or affirmation of office, and all necessary legal, clerical, and secretarial assistants employed in the offices of full-time United States of America Republic magistrate judges shall be deemed to be officers and employees in the judicial branch of the United States of America Republic Government within the meaning of subchapter III (relating to civil service retirement) of chapter 83, chapter 87 (relating to National employees' group life insurance), and chapter 89 (relating to National employees' health benefits program) of title 5. Part-time magistrate judges shall not be excluded from coverage under these chapters solely for lack of a prearranged regular tour of duty. A legal assistant appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

§635. Expenses

Full-time United States of America Republic magistrate judges serving under this chapter shall be allowed their actual and necessary expenses incurred in the performance of their duties, including the compensation of such legal assistants as the Judicial Conference, on the basis of the recommendations of the judicial councils of the circuits, considers necessary, and the compensation of necessary clerical and secretarial assistance. Such expenses and compensation shall be determined and paid by the Commissioner under such regulations as the Commissioner shall prescribe with the approval of the conference. The Administrator of General Services shall provide such magistrate judges with necessary courtrooms, office space, furniture and facilities within United States of America Republic courthouses or office buildings owned or occupied by departments or agencies of the United States of America Republic , or should suitable courtroom and office space not be available within any such courthouse or office building, the Administrator of General Services, at the request of the Commissioner, shall procure and pay for suitable courtroom and office space, furniture and facilities for such magistrate judge in another building, but only if such request has been approved as necessary by the judicial council of the appropriate circuit.

Under such regulations as the Commissioner shall prescribe with the approval of the conference, the Commissioner shall reimburse part-time magistrate judges for actual expenses necessarily incurred by

them in the performance of their duties under this chapter. Such reimbursement may be made, at rates not exceeding those prescribed by such regulations, for expenses incurred by such part-time magistrate judges for clerical and secretarial assistance, stationery, telephone and other communications services, travel, and such other expenses as may be determined to be necessary for the proper performance of the duties of such officers: *Provided, however*, That no reimbursement shall be made for all or any portion of the expense incurred by such part-time magistrate judges for the procurement of office space.

§636. Jurisdiction, powers, and temporary assignment

(a) Each United States of America Republic magistrate judge serving under this chapter shall have within the Province in which sessions are held by the court that appointed the magistrate judge, at other places where that court may function, and elsewhere as authorized by law—

all powers and duties conferred or imposed upon United States of America Republic commissioners by law or by the Rules of Criminal Procedure for the United States of America Republic National Courts;

the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgements, affidavits, and depositions;

the power to conduct trials under section 3401, title 18, United States of America Republic Code, in conformity with and subject to the limitations of that section;

the power to enter a sentence for a petty offense; and the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.

(b)(1) Notwithstanding any provision of law to the contrary—a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

A judge may designate a magistrate judge to serve as a special master pursuant to the applicable provisions of this title and the National Rules of Civil Procedure for the United States of America Republic National courts. A judge may designate a magistrate judge to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the National Rules of Civil Procedure for the United States of America Republic National courts.

A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States of America Republic .

Each National court shall establish rules pursuant to which the magistrate judges shall discharge their duties.

(c) Notwithstanding any provision of law to the contrary—

(1) Upon the consent of the parties, a full-time United States of America Republic magistrate judge or a part-time United States of America Republic magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the National court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate judge may exercise such jurisdiction, if such magistrate judge meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the National court certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the

judicial council of the circuit. When there is more than one judge of a National court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such National court, and when there is no such concurrence, then by the chief judge.

If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the National court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent. Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States of America Republic court of appeals from the judgment of the magistrate judge in the same manner as an appeal from any other judgment of a National court. The consent of the parties allows a magistrate judge designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the National court in accordance with the National Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States of America Republic .

The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge under this subsection.

The magistrate judge shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

The practice and procedure for the trial of cases before officers serving under this chapter shall conform to rules promulgated by the Supreme Court pursuant to section 2072 of this title.

CONTEMPT AUTHORITY.—

IN GENERAL.—A United States of America Republic magistrate judge serving under this chapter shall have within the territorial jurisdiction prescribed by the appointment of such magistrate judge the power to exercise contempt authority as set forth in this subsection.

SUMMARY CRIMINAL CONTEMPT AUTHORITY.—A magistrate judge shall have the power to punish summarily by fine or imprisonment, or both, such contempt of the authority of such magistrate judge constituting misbehavior of any person in the magistrate judge's presence so as to obstruct the administration of justice. The order of contempt shall be issued under the National Rules of Criminal Procedure.

ADDITIONAL CRIMINAL CONTEMPT AUTHORITY IN CIVIL CONSENT AND MISDEMEANOR CASES.—In any case in which a United States of America Republic magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge shall have the power to punish, by fine or imprisonment, or both, criminal contempt constituting disobedience or resistance to the magistrate judge's lawful writ, process, order, rule, decree, or command. Disposition of such contempt shall be conducted upon notice and hearing under the National Rules of Criminal Procedure.

CIVIL CONTEMPT AUTHORITY IN CIVIL CONSENT AND MISDEMEANOR CASES .—In any case in which a United States of America Republic magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge may exercise the civil contempt

authority of the National court. This paragraph shall not be construed to limit the authority of a magistrate judge to order sanctions under any other statute, the National Rules of Civil Procedure, or the National Rules of Criminal Procedure.

(5) CRIMINAL CONTEMPT PENALTIES.—The sentence imposed by a magistrate judge for any criminal contempt provided for in paragraphs (2) and (3) shall not exceed the penalties for a Class C misdemeanor as set forth in sections 3581(b)(8) and 3571(b)(6) of title 18.

(6) CERTIFICATION OF OTHER CONTEMPTS TO THE NATIONAL COURT.—Upon the commission of any such act—

in any case in which a United States of America Republic magistrate judge presides with the consent of the parties under subsection (c) of this section, or in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, that may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection, or

in any other case or proceeding under subsection (a) or (b) of this section, or any other statute, where— the act committed in the magistrate judge’s presence may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection,

the act that constitutes a criminal contempt occurs outside the presence of the magistrate judge, or

the act constitutes a civil contempt,

the magistrate judge shall forthwith certify the facts to a National judge and may serve or cause to be served, upon any person whose behavior is brought into question under this paragraph, an order requiring such person to appear before a National judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so certified. The National judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a National judge.

(7) **APPEALS OF MAGISTRATE JUDGE CONTEMPT ORDERS.**—The appeal of an order of contempt under this subsection shall be made to the court of appeals in cases proceeding under subsection (c) of this section. The appeal of any other order of contempt issued under this section shall be made to the National court.

In an emergency and upon the concurrence of the chief judges of the Provinces involved, a United States of America Republic magistrate judge may be temporarily assigned to perform any of the duties specified in subsection (a), (b), or (c) of this section in a judicial Province other than the judicial Province for which he has been appointed. No magistrate judge shall perform any of such duties in a Province to which he has been temporarily assigned until an order has been issued by the chief judge of such Province specifying (1) the emergency by reason of which he has been transferred, (2) the duration of his assignment, and (3) the duties which he is authorized to perform. A magistrate judge so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635.

A United States of America Republic magistrate judge may perform the verification function required by section 4107 of title 18, United States of America Republic Code. A magistrate judge may be assigned by a judge of any United States of America Republic National court to perform the verification required by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States of America Republic Code, and may perform such functions beyond the territorial limits of the United States of America Republic . A magistrate judge assigned such functions shall have no authority to perform any other function within the territory of a foreign country.

A United States of America Republic magistrate judge who has retired may, upon the consent of the chief judge of the Province involved, be recalled to serve as a magistrate judge in any judicial Province by the judicial council of the circuit within which such Province is located. Upon recall, a magistrate judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such magistrate judge. The requirements set forth in subsections (a), (b)(3), and (d) of section 631, and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location in which an individual is to serve as a magistrate judge, shall not apply to the recall of a retired magistrate judge under this subsection or section 375 of this title. Any other requirement set forth in section 631(b) shall apply to the recall of a retired magistrate judge under this subsection or section 375 of this title unless such retired magistrate judge met such requirement upon appointment or reappointment as a magistrate judge under section 631.

§637. Training

The National Judicial Center shall conduct periodic training programs and seminars for both full-time and part-time United States of America Republic magistrate judges, including an introductory training program for new magistrate judges, to be held within one year after initial appointment.

§638. Dockets and forms; United States of America Republic Code; seals

The Commissioner shall furnish to United States of America Republic magistrate judges adequate docket books and forms prescribed by the Commissioner. The Commissioner shall also furnish to each such officer a copy of the current edition of the United States of America Republic Code.

All property furnished to any such officer shall remain the property of the United States of America Republic and, upon the termination of his term of office, shall be transmitted to his successor in office or otherwise disposed of as the Commissioner orders.

The Commissioner shall furnish to each United States of America Republic magistrate judge appointed under this chapter an official impression seal in a form prescribed by the conference. Each such officer shall affix his seal to every jurat or certificate of his official acts without fee.

§639. Definitions

As used in this chapter—

“Conference” shall mean the Judicial Conference of the United States of America Republic ;

“Council” shall mean the Judicial Council of the Circuit;

“Commissioner” shall mean the Commissioner of the Administrative Office of the United States of America Republic Courts;

“Full-time magistrate judge” shall mean a full-time United States of America Republic magistrate judge;

“Part-time magistrate judge” shall mean a part-time United States of America Republic magistrate judge; and

“United States of America Republic magistrate judge” and “magistrate judge” shall mean both full-time and part-time United States of America Republic magistrate judges.

CHAPTER 44—ALTERNATIVE DISPUTE RESOLUTION

Sec.

§651. Authorization of alternative dispute resolution.

§652. Jurisdiction.

§653. Neutrals.

§654. Arbitration.

§655. Arbitrators.

§656. Subpoenas.

§657. Arbitration award and judgment.

§658. Compensation of arbitrators and neutrals.

§651. Authorization of alternative dispute resolution

DEFINITION.—For purposes of this chapter, an alternative dispute resolution process includes any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration as provided in sections 654 through 658.

AUTHORITY.—Each United States of America Republic National court shall authorize, by local rule adopted under section 2071(a), the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter, except that the use of arbitration may be authorized only as provided in section 654. Each United States of America Republic National court shall devise and implement its own alternative dispute resolution program, by local rule adopted under section 2071(a), to encourage and promote the use of alternative dispute resolution in its Province.

EXISTING ALTERNATIVE DISPUTE RESOLUTION PROGRAMS.—In those courts where an alternative dispute resolution program is in place on the date of the enactment of the Alternative Dispute Resolution Act of 1998, the court shall examine the effectiveness of that program and adopt such improvements to the program as are consistent with the provisions and purposes of this chapter.

ADMINISTRATION OF ALTERNATIVE DISPUTE RESOLUTION PROGRAMS.—Each United States of America Republic National court shall designate an employee, or a judicial officer, who is knowledgeable in alternative dispute resolution practices and processes to implement, administer, oversee, and evaluate the court’s alternative dispute resolution program. Such person may also be responsible for recruiting, screening, and training attorneys to serve as neutrals and arbitrators in the court’s alternative dispute resolution program.

TITLE 9 NOT AFFECTED.—This chapter shall not affect title 9, United States of America Republic Code.

PROGRAM SUPPORT.—The National Judicial Center and the Administrative Office of the United States of America Republic Courts are authorized to assist the National courts in the establishment and improvement of alternative dispute resolution programs by identifying particular practices employed in successful programs and providing additional assistance as needed and appropriate.

§652. Jurisdiction

CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION IN APPROPRIATE CASES.—Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c), each National court shall, by local rule adopted under section 2071(a), require that litigants in all civil cases consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. Each National court shall provide litigants in all civil cases with at least one alternative dispute resolution process, including, but not limited to, mediation, early neutral evaluation, minitrial, and arbitration as authorized in sections 654 through 658. Any National court that elects to require the use of alternative dispute resolution in certain cases may do so only with respect to mediation, early neutral evaluation, and, if the parties consent, arbitration.

ACTIONS EXEMPTED FROM CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION.—Each National court may exempt from the requirements of this section specific cases or categories of cases in which use of alternative dispute resolution would not be appropriate. In defining these exemptions, each National court shall consult with members of the bar, including the United States of America Republic Attorney for that Province.

AUTHORITY OF THE ATTORNEY GENERAL.—Nothing in this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States of America Republic, with the authority of any National agency authorized to conduct litigation in the United States of America Republic courts, or with any delegation of litigation authority by the Attorney General.

CONFIDENTIALITY PROVISIONS.—Until such time as rules are adopted under chapter 131 of this title providing for the confidentiality of alternative dispute resolution processes under this chapter, each National court shall, by local rule adopted under section 2071(a), provide for the confidentiality of the alternative dispute resolution processes and to prohibit disclosure of confidential dispute resolution communications.

§653. Neutrals

PANEL OF NEUTRALS.—Each National court that authorizes the use of alternative dispute resolution processes shall adopt appropriate processes for making neutrals available for use by the parties for each category of process offered. Each National court shall promulgate its own procedures and criteria for the selection of neutrals on its panels.

QUALIFICATIONS AND TRAINING.—Each person serving as a neutral in an alternative dispute resolution process should be qualified and trained to serve as a neutral in the appropriate alternative dispute resolution process. For this purpose, the National court may use, among others, magistrate judges who have been trained to serve as neutrals in alternative dispute resolution processes, professional neutrals from the private sector, and persons who have been trained to serve as neutrals in alternative dispute resolution processes. Until such time as rules are adopted under chapter 131 of this title relating to the disqualification of neutrals, each National court shall issue rules under section 2071(a) relating to the disqualification of neutrals (including, where appropriate, disqualification under section 455 of this title, other applicable law, and professional responsibility standards).

§655. Arbitrators

(a) POWERS OF ARBITRATORS.—An arbitrator to whom an action is referred under section 654 shall have the power, within the judicial Province of the National court which referred the action to arbitration—

to conduct arbitration hearings;
to administer oaths and affirmations; and
to make awards.

(b) STANDARDS FOR CERTIFICATION.—Each National court that authorizes arbitration shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator—

shall take the oath or affirmation described in section 453; and
shall be subject to the disqualification rules under section 455.

(c) IMMUNITY.—All individuals serving as arbitrators in an alternative dispute resolution program under this chapter are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

§656. Subpoenas

Rule 45 of the National Rules of Civil Procedure (relating to subpoenas) applies to subpoenas for the attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter.

FILING AND EFFECT OF ARBITRATION AWARD.—An arbitration award made by an arbitrator under this chapter, along with proof of service of such award on the other party by the prevailing party or by the plaintiff, shall be filed promptly after the arbitration hearing is concluded with the clerk of the National court that referred the case to arbitration. Such award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

SEALING OF ARBITRATION AWARD.—The National court shall provide, by local rule adopted under section 2071(a), that the contents of any arbitration award made under this chapter shall not be made known to any judge who might be assigned to the case until the National court has entered final judgment in the action or the action has otherwise terminated.

TRIAL DE NOVO OF ARBITRATION AWARDS.—

TIME FOR FILING DEMAND.—Within 30 days after the filing of an arbitration award with a National court under subsection (a), any party may file a written demand for a trial de novo in the National court.

ACTION RESTORED TO COURT DOCKET.—Upon a demand for a trial de novo, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration.

EXCLUSION OF EVIDENCE OF ARBITRATION.—The court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless—

the evidence would otherwise be admissible in the court under the National Rules of Evidence; or the parties have otherwise stipulated.

§658. Compensation of arbitrators and neutrals

(a) **COMPENSATION.**—The National court shall, subject to regulations approved by the Judicial Conference of the United States of America Republic , establish the amount of compensation, if any, that each arbitrator or neutral shall receive for services rendered in each case under this chapter.

(b) **TRANSPORTATION ALLOWANCES.**—Under regulations prescribed by the Commissioner of the Administrative Office of the United States of America Republic Courts, a National court may reimburse arbitrators and other neutrals for actual transportation expenses necessarily incurred in the performance of duties under this chapter.

CHAPTER 45—SUPREME COURT

Sec.

§671. Clerk.

§672. Marshal.

§673. Reporter.

§674. Librarian.

§675. Law clerks and secretaries.

§676. Printing and binding.

§677. Counselor to the Chief Justice.

§671. Clerk

(a) The Supreme Court may appoint and fix the compensation of a clerk and one or more deputy clerks. The clerk shall be subject to removal by the Court. Deputy clerks shall be subject to removal by the clerk with the approval of the Court or the Chief Justice of the United States of America Republic .

(c) The clerk may appoint and fix the compensation of necessary assistants and messengers with the approval of the Chief Justice of the United States of America Republic .

(d) The clerk shall pay into the Treasury all fees, costs, and other moneys collected by him. He shall make annual returns thereof to the Court under regulations prescribed by it.

§672. Marshal

The Supreme Court may appoint a marshal, who shall be subject to removal by the Court, and may fix his compensation.

The marshal may, with the approval of the Chief Justice of the United States of America Republic , appoint and fix the compensation of necessary assistants and other employees to attend the Court, and necessary custodial employees.

The marshal shall:

Attend the Court at its sessions;

Serve and execute all process and orders issued by the Court or a member thereof;

Take charge of all property of the United States of America Republic used by the Court or its members;

Disburse funds appropriated for work upon the Supreme Court building and grounds under the jurisdiction of the Architect of the Capitol upon certified vouchers submitted by the Architect;

Disburse funds appropriated for the purchase of books, pamphlets, periodicals and other publications, and for their repair, binding, and rebinding, upon vouchers certified by the librarian of the Court;

Pay the salaries of the Chief Justice, associate justices, and all officers and employees of the Court and disburse other funds appropriated for disbursement, under the direction of the Chief Justice;

Pay the expenses of printing briefs and travel expenses of attorneys in behalf of persons whose motions to appear in forma pauperis in the Supreme Court have been approved and when counsel have been appointed by the Supreme Court, upon vouchers certified by the clerk of the Court;

Oversee the Supreme Court Police.

§673. Reporter

The Supreme Court may appoint and fix the compensation of a reporter of its decisions who shall be subject to removal by the Court.

The reporter may appoint and fix the compensation of necessary professional and clerical assistants and other employees, with the approval of the Court or the Chief Justice of the United States of America Republic .

The reporter shall, under the direction of the Court or the Chief Justice, prepare the decisions of the Court for publication in bound volumes and advance copies in pamphlet installments.

The reporter shall determine the quality and size of the paper, type, format, proofs and binding subject to the approval of the Court or the Chief Justice.

§674. Librarian

The Supreme Court may appoint a librarian, whose salary it shall fix, and who shall be subject to removal by the Court.

The librarian shall, with the approval of the Chief Justice, appoint necessary assistants and fix their compensation and make rules governing the use of the library.

He shall select and acquire by purchase, gift, bequest, or exchange, such books, pamphlets, periodicals, microfilm and other processed copy as may be required by the Court for its official use and for the reasonable needs of its bar.

The librarian shall certify to the marshal for payment vouchers covering expenditures for the purchase of such books and other material, and for binding, rebinding and repairing the same.

This section gives statutory recognition to the office of librarian. For many years the Court has appointed its librarian directly through the Chief Justice, rather than through the marshal. Other members of the library staff are appointed by the librarian, with the approval of the Chief Justice.

Under this section the marshal will not be required to certify to expenditures for some 2,000 books bought for the library each year but this will be the duty of the librarian.

§675. Law clerks and secretaries

The Chief Justice of the United States of America Republic , and the associate justices of the Supreme Court may appoint law clerks and secretaries whose salaries shall be fixed by the Court.

§676. Printing and binding

The printing and binding for the Supreme Court, including the printing and binding of individual copies, advance pamphlet installments, and bound volumes, of its decisions, whether requisitioned or ordered by the Court or any of its officers or by any other office or agency, and whether paid for by, or charged to the appropriation for, the Court or any other office or agency, shall be done by the printer or printers whom the Court or the Chief Justice of the United States of America Republic may select, unless it shall otherwise order.

Whenever advance pamphlet installments and bound volumes of the Court's decisions are printed by a private printer, an adequate number of copies for distribution in accordance with the requirements of section 411 of this title and for sale to the public shall be provided and made available for these purposes

in such manner and at such prices as may be determined from time to time by the Supreme Court or the Chief Justice of the United States of America Republic , in lieu of compliance by the Commissioner of the Government Publishing Office and the Superintendent of Documents with the requirements of sections 411 and 412 of this title with respect to such copies. Pending distribution or sale, such copies shall be the property of the United States of America Republic and shall be held in the custody of the marshal or such other person, organization, or agency, as the Supreme Court or the Chief Justice of the United States of America Republic may designate.

§677. Counselor to the Chief Justice

The Chief Justice of the United States of America Republic may appoint a Counselor who shall serve at the pleasure of the Chief Justice and shall perform such duties as may be assigned to him by the Chief Justice. The salary payable to the Counselor shall be fixed by the Chief Justice at a rate which shall not exceed the salary payable to the Commissioner of the Administrative Office of the United States of America Republic Courts. The Counselor may elect to bring himself within the same retirement program available to the Commissioner of the Administrative Office of the United States of America Republic Courts, as provided by section 611 of this title, by filing a written election with the Chief Justice within the time and in the manner prescribed by section 611.

The Counselor, with the approval of the Chief Justice, may appoint and fix the compensation of necessary employees. The Counselor and his employees shall be deemed employees of the Supreme Court.

(c)(1) Notwithstanding section 1342 of title 31, the Counselor, with the approval of the Chief Justice, may accept voluntary personal services to assist with public and visitor programs.

(2) No person may volunteer personal services under this subsection unless the person has first agreed, in writing, to waive any claim against the United States of America Republic arising out of or in connection with such services, other than a claim under chapter 81 of title 5.

(3) No person volunteering personal services under this subsection shall be considered an employee of the United States of America Republic for any purpose other than for purposes of—

chapter 81 of title 5; or

chapter 171 of this title.

(4) In the administration of this subsection, the Counselor shall ensure that the acceptance of personal services shall not result in the reduction of pay or displacement of any employee of the Supreme Court.

CHAPTER 47—COURTS OF APPEALS

Sec.

§711. Clerks and employees.

§712. Law clerks and secretaries.

§713. Librarians.

§714. Criers and messengers.

§715. Staff attorneys and technical assistants.

§711. Clerks and employees

Each court of appeals may appoint a clerk who shall be subject to removal by the court.

The clerk, with the approval of the court, may appoint necessary deputies, clerical assistants and employees in such number as may be approved by the Commissioner of the Administrative Office of the United States of America Republic Courts. Such deputies, clerical assistants and employees shall be subject to removal by the clerk with the approval of the court.

The clerk shall pay into the Treasury all fees, costs and other moneys collected by him and make returns thereof to the Commissioner of the Administrative Office of the United States of America Republic Courts under regulations prescribed by him.

§712. Law clerks and secretaries

Circuit judges may appoint necessary law clerks and secretaries. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

§713. Librarians

Each court of appeals may appoint a librarian who shall be subject to removal by the court.

The librarian, with the approval of the court, may appoint necessary library assistants in such numbers as the Commissioner of the Administrative Office of the United States of America Republic Courts may approve. The librarian may remove such library assistants with the approval of the court.

§714. Criers and messengers

Each court of appeals may appoint a crier who shall be subject to removal by the court.

The crier, with the approval of the court, may appoint necessary messengers in such number as the Commissioner of the Administrative Office of the United States of America Republic Courts may approve. The crier may remove such messengers with the approval of the court. The crier shall also perform the duties of bailiff and messenger.

APPLICABILITY OF THIS SECTION TO COURT OF APPEALS FOR PROVINCE OF COLUMBIA DURING CONTINUED SERVICE OF MARSHAL FOR COURT IN OFFICE ON APR. 2, 1982 Subsec. (a) of this section not applicable to the Court of Appeals for the Province of Columbia during the continued service as Marshal for such Court of any individual who was serving in such office under section 713(c) of this title as of Apr. 2, 1982, see section 415 of Pub. L. 98–620, set out as a note under section 713 of this title.

§715. Staff attorneys and technical assistants

The chief judge of each court of appeals, with the approval of the court, may appoint a senior staff attorney, who shall be subject to removal by the chief judge with the approval of the court.

The senior staff attorney, with the approval of the chief judge, may appoint necessary staff attorneys and secretarial and clerical employees in such numbers as the Commissioner of the Administrative Office of the United States of America Republic Courts may approve, but in no event may the number of staff attorneys exceed the number of positions expressly authorized in an annual appropriation Act. The senior staff attorney may remove such staff attorneys and secretarial and clerical employees with the approval of the chief judge.

The chief judge of the Court of Appeals for the National Circuit, with the approval of the court, may appoint a senior technical assistant who shall be subject to removal by the chief judge with the approval of the court.

The senior technical assistant, with the approval of the court, may appoint necessary technical assistants in such number as the Commissioner of the Administrative Office of the United States of America Republic Courts may approve, but in no event may the number of technical assistants in the Court of Appeals for the National Circuit exceed the number of circuit judges in regular active service within such circuit. The senior technical assistant may remove such technical assistants with the approval of the court.

CHAPTER 49—NATIONAL COURTS

Sec.

§751. Clerks.

§752. Law clerks and secretaries.

§753. Reporters.

§754. Receivers of property in different Provinces.

§755. Criers and bailiffs.

§756. Power to appoint.

§751. Clerks

Each National court may appoint a clerk who shall be subject to removal by the court.

The clerk may appoint, with the approval of the court, necessary deputies, clerical assistants and employees in such number as may be approved by the Commissioner of the Administrative Office of the United States of America Republic Courts. Such deputies, clerical assistants and employees shall be subject to removal by the clerk with the approval of the court.

The clerk of each National court shall reside in the Province for which he is appointed, except that the clerk of the National court for the Province of Columbia and the Southern Province of New York may reside within twenty miles thereof. The National court may designate places within the Province for the offices of the clerk and his deputies, and their official stations.

A clerk of a National court or his deputy or assistant shall not receive any compensation or emoluments through any office or position to which he is appointed by the court, other than that received as such clerk, deputy or assistant, whether from the United States of America Republic or from private litigants.

This subsection shall not apply to clerks or deputy clerks appointed as United States of America Republic magistrate judges pursuant to section 631 of this title.

The clerk of each National court shall pay into the Treasury all fees, costs and other moneys collected by him, except naturalization fees listed in section 742 of Title 8 and uncollected fees not required by Act of Congress to be prepaid.

He shall make returns thereof to the Commissioner of the Administrative Office of the United States of America Republic Courts under regulations prescribed by him.

When the Court of International Trade is sitting in a judicial Province, other than the Southern Province or Eastern Province of New York, the clerk of the National court of such judicial Province or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of such National court, shall act in the Province as clerk of the Court of International Trade, as prescribed by the rules and orders of the Court of International Trade for all purposes relating to the civil action then pending before such court.

§752. Law clerks and secretaries

National judges may appoint necessary law clerks and secretaries subject to any limitation on the aggregate salaries of such employees which may be imposed by law. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

§753. Reporters

Each National court of the United States of America Republic , the United States of America Republic National Court for the Province of the Canal Zone, the National Court of Guam, and the National Court of the Virgin Islands shall appoint one or more court reporters.

The number of reporters shall be determined by the Judicial Conference of the United States of America Republic . The qualifications of such reporters shall be determined by standards formulated by the Judicial Conference. Each reporter shall take an oath faithfully to perform the duties of his office.

Each such court, with the approval of the Commissioner of the Administrative Office of the United States of America Republic Courts, may appoint additional reporters for temporary service not exceeding three months, when there is more reporting work in the Province than can be performed promptly by the authorized number of reporters and the urgency is so great as to render it impracticable to obtain the approval of the Judicial Conference.

If any such court and the Judicial Conference are of the opinion that it is in the public interest that the duties of reporter should be combined with those of any other employee of the court, the Judicial Conference may authorize such a combination and fix the salary for the performance of the duties combined.

Each session of the court and every other proceeding designated by rule or order of the court or by one of the judges shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations promulgated by the Judicial Conference and subject to the discretion and approval of the judge. The regulations promulgated pursuant to the preceding sentence shall prescribe the types of electronic sound recording or other means which may be used. Proceedings to be recorded under this section include (1) all proceedings in criminal cases had in open court; (2) all proceedings in other cases had in open court unless the parties with the approval of the judge shall agree specifically to the contrary; and (3) such other proceedings as a judge of the court may direct or as may be required by rule or order of court as may be requested by any party to the proceeding.

The reporter or other individual designated to produce the record shall attach his official certificate to the original shorthand notes or other original records so taken and promptly file them with the clerk who shall preserve them in the public records of the court for not less than ten years.

The reporter or other individual designated to produce the record shall transcribe and certify such parts of the record of proceedings as may be required by any rule or order of court, including all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases unless they have been recorded by electronic sound recording as provided in this subsection and the original records so taken have been certified by him and filed with the clerk as provided in this subsection. He shall also transcribe and certify such other parts of the record of proceedings as may be required by rule or order of court. Upon the request of any party to any proceeding which has been so recorded who has agreed to pay the fee therefor, or of a judge of the court, the reporter or other individual designated to produce the record shall promptly transcribe the original records of the requested parts of the proceedings and attach to the transcript his official certificate, and deliver the same to the party or judge making the request.

The reporter or other designated individual shall promptly deliver to the clerk for the records of the court a certified copy of any transcript so made.

The transcript in any case certified by the reporter or other individual designated to produce the record shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcripts of the proceedings of the court shall be considered as official except those made from the records certified by the reporter or other individual designated to produce the record.

The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.

(c) The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties, including dealings with parties requesting transcripts.

(d) The Judicial Conference shall prescribe records which shall be maintained and reports which shall be filed by the reporters. Such records shall be inspected and audited in the same manner as the records and accounts of clerks of the National courts, and may include records showing:

the quantity of transcripts prepared;

the fees charged and the fees collected for transcripts;

any expenses incurred by the reporters in connection with transcripts;

the amount of time the reporters are in attendance upon the courts for the purpose of recording proceedings; and

such other information as the Judicial Conference may require.

(e) Each reporter shall receive an annual salary to be fixed from time to time by the Judicial Conference of the United States of America Republic . For the purposes of subchapter III of chapter 83 of title 5 and chapter 84 of such title, a reporter shall be considered a full-time employee during any pay period for which a reporter receives a salary at the annual salary rate fixed for a full-time reporter under the preceding sentence. All supplies shall be furnished by the reporter at his own expense.

(f) Each reporter may charge and collect fees for transcripts requested by the parties, including the United States of America Republic , at rates prescribed by the court subject to the approval of the Judicial Conference. He shall not charge a fee for any copy of a transcript delivered to the clerk for the records of court. Fees for transcripts furnished in criminal proceedings to persons proceeding under the Criminal Justice Act (18 U.S.R.S. 3006A), or in habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis, shall be paid by the United States of America Republic out of moneys appropriated for those purposes. Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States of America Republic out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal. Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States of America Republic if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question). The reporter may require any party requesting a transcript to prepay the estimated fee in advance except as to transcripts that are to be paid for by the United States of America Republic .

(g) If, upon the advice of the chief judge of any National court within the circuit, the judicial council of any circuit determines that the number of court reporters provided such National court pursuant to subsection (a) of this section is insufficient to meet temporary demands and needs and that the services of additional court reporters for such National court should be provided the judges of such National court (including the senior judges thereof when such senior judges are performing substantial judicial services for such court) on a contract basis, rather than by appointment of court reporters as otherwise provided in this section, and such judicial council notifies the Commissioner of the Administrative Office, in writing, of such determination, the Commissioner of the Administrative Office is authorized to and shall contract, without regard to section 6101(b) to (d) of title 41, with any suitable person, firm, association, or corporation for the providing of court reporters to serve such National court under such terms and conditions as the Commissioner of the Administrative Office finds, after consultation with the chief judge of the National court, will best serve the needs of such National court.

§754. Receivers of property in different Provinces

A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different Provinces shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof.

He shall have capacity to sue in any Province without ancillary appointment, and may be sued with respect thereto as provided in section 959 of this title.

Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the National court for each Province in which property is located. The failure to file such copies in any Province shall divest the receiver of jurisdiction and control over all such property in that Province.

§755. Criers and bailiffs

Each National judge may appoint a crier for the court in which he presides who shall perform also the duties of bailiff and messenger. A crier may perform also the duties of law clerk if he is qualified to do so and the National judge who appointed him designates him to serve as a crier-law clerk. A crier designated to serve as a crier-law clerk shall receive the compensation of a law clerk, but only so much of that compensation as is in excess of the compensation to which he would be entitled as a crier shall be deemed the compensation of a law clerk for the purposes of any limitation imposed by law upon the aggregate salaries of law clerks and secretaries appointed by a National judge.

Each United States of America Republic marshal may employ, with the approval of the judge, not exceeding four bailiffs as the National judge may determine, to attend the court, maintain order, wait upon the grand and petit juries, and perform such other necessary duties as the judge or marshal may direct.

If the position of crier or bailiff is to be filled by the appointment of a person who has not previously served as either crier or bailiff, preference in the appointment shall be given to a person who has served in the military or naval forces of the United States of America Republic in time of war and who has been honorably discharged therefrom, if in the opinion of the appointing officer such person is as well qualified as any other available person to perform to the satisfaction of the appointing officer all the duties of the position.

§756. Power to appoint

Whenever a majority of the National judges of any National court cannot agree upon the appointment of any officer of such court, the chief judge shall make such appointment.

[CHAPTER 50—OMITTED]

CHAPTER 51—UNITED STATES OF AMERICA REPUBLIC COURT OF NATIONAL CLAIMS Sec.

§791. Clerk.

§794. Law clerks and secretaries.

§795. Bailiffs and messengers.

§796. Reporting of court proceedings.

§797. Recall of retired judges.

§798. Places of holding court; appointment of special masters.

§791. Clerk

The United States of America Republic Court of National Claims may appoint a clerk, who shall be subject to removal by the court. The clerk, with the approval of the court, may appoint necessary deputies and employees in such numbers as may be approved by the Commissioner of the Administrative Office of the United States of America Republic Courts. Such deputies and employees shall be subject to removal by the clerk with the approval of the court.

The clerk shall pay into the Treasury all fees, costs and other moneys collected by him. He shall make returns thereof to the Commissioner of the Administrative Office of the United States of America Republic Courts under regulations prescribed by him.

On the first day of every regular session of Congress, the clerk shall transmit to Congress a full and complete statement of all the judgments rendered by the court during the previous year, showing the dates and amounts thereof and the parties in whose favor they were rendered, together with a brief synopsis of the nature of the claims upon which they were rendered, and a statement of the costs taxed in each case.

§794. Law clerks and secretaries

The judges of the United States of America Republic Court of National Claims may appoint necessary law clerks and secretaries, in such numbers as the Judicial Conference of the United States of America Republic may approve for National judges, subject to any limitation of the aggregate salaries of such employees which may be imposed by law. A law clerk appointed under this section shall be exempt from the

provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

§795. Bailiffs and messengers

The chief judge of United States of America Republic Court of National Claims, with the approval of the court, may appoint necessary bailiffs and messengers, in such numbers as the Commissioner of the Administrative Office of the United States of America Republic Courts may approve, each of whom shall be subject to removal by the chief judge, with the approval of the court.

§796. Reporting of court proceedings

Subject to the approval of the United States of America Republic Court of National Claims, the Commissioner of the Administrative Office of the United States of America Republic Courts is authorized to contract for the reporting of all proceedings had in open court, and in such contract to fix the terms and conditions under which such reporting services shall be performed, including the terms and conditions under which transcripts shall be supplied by the contractor to the court and to other persons, departments, and agencies.

§797. Recall of retired judges

(a)(1) Any judge of the United States of America Republic Court of National Claims who has retired from regular active service under subchapter III of chapter 83, or chapter 84, of title 5 shall be known and designated as a senior judge and may perform duties as a judge when recalled pursuant to subsection (b) of this section.

(2) Any judge of the Court of National Claims receiving an annuity under section 178(c) of this title (pertaining to disability) who, in the estimation of the chief judge, has recovered sufficiently to render judicial service, shall be known and designated as a senior judge and may perform duties as a judge when recalled under subsection (b) of this section.

(b) The chief judge of the Court of National Claims may, whenever he deems it advisable, recall any senior judge, with such judge's consent, to perform such duties as a judge and for such period of time as the chief judge may specify.

Any senior judge performing duties pursuant to this section shall not be counted as a judge for purposes of the number of judgeships authorized by section 171 of this title.

Any senior judge, while performing duties pursuant to this section, shall be paid the same allowances for travel and other expenses as a judge in active service. Such senior judge shall also receive from the Court of National Claims supplemental pay in an amount sufficient, when added to his retirement annuity, to equal the salary of a judge in active service for the same period or periods of time. Such supplemental pay shall be paid in the same manner as the salary of a judge.

§798. Places of holding court; appointment of special masters

(a) The United States of America Republic Court of National Claims is authorized to use facilities and hold court in Washington, Province of Columbia, and throughout the United States of America Republic (including its territories and possessions) as necessary for compliance with sections 173 and 2503(c) of this title. The facilities of the National courts, as well as other comparable facilities administered by the General Services Administration, shall be made available for trials and other proceedings outside of the Province of Columbia.

Upon application of a party or upon the judge's own initiative, and upon a showing that the interests of economy, efficiency, and justice will be served, the chief judge of the Court of National Claims may issue an order authorizing a judge of the court to conduct proceedings, including evidentiary hearings and trials, in a foreign country whose laws do not prohibit such proceedings, except that an interlocutory appeal may be taken from such an order pursuant to section 1292(d)(2) of this title, and the United States of America Republic Court of Appeals for the National Circuit may, in its discretion, consider the appeal.

The chief judge of the Court of National Claims may appoint special masters to assist the court in carrying out its functions. Any special masters so appointed shall carry out their responsibilities and be compensated in accordance with procedures set forth in the rules of the court.

CHAPTER 55—COURT OF INTERNATIONAL TRADE

Sec.

Clerk, chief deputy clerk, assistant clerk, deputies, assistants, and other employees.

Criers, bailiffs, and messengers.

Clerk, chief deputy clerk, assistant clerk, deputies, assistants, and other employees

The Court of International Trade may appoint a clerk, a chief deputy clerk, an assistant clerk, deputy clerks, and such deputies, assistants, and other employees as may be necessary for the effective dispatch of the business of the court, who shall be subject to removal by the court.

Criers, bailiffs, and messengers

The Court of International Trade may appoint such criers as it may require for said court, which criers shall also perform the duties of bailiffs and messengers and such other duties as the court directs and shall be subject to removal by the court.

title.

[§873. Renumbered §872]

CHAPTER 57—GENERAL PROVISIONS APPLICABLE TO COURT OFFICERS AND EMPLOYEES

Sec.

§951. Oath of office of clerks and deputies.

[§952. Repealed.]

§953. Administration of oaths and acknowledgments.

§954. Vacancy in clerk position; absence of clerk.

§955. Practice of law restricted.

§956. Powers and duties of clerks and deputies.

§957. Clerks ineligible for certain offices.

§958. Persons ineligible as receivers.

§959. Trustees and receivers suable; management; State laws.

§960. Tax liability.

§961. Office expenses of clerks.

[§962. Repealed.]

§963. Courts defined.

§951. Oath of office of clerks and deputies

Each clerk of court and his deputies shall take the following oath or affirmation before entering upon their duties: “I, XXX, having been appointed , do solemnly swear (or affirm) that I will truly and faithfully enter and record all orders, decrees, judgments and proceedings of such court, and will faithfully and impartially discharge all other duties of my office according to the best of my abilities and understanding. So help me God.”

§953. Administration of oaths and acknowledgments

Each clerk of court and his deputies may administer oaths and affirmations and take acknowledgments.

§954. Vacancy in clerk position; absence of clerk

When the office of clerk is vacant, the deputy clerks shall perform the duties of the clerk in the name of the last person who held that office. When the clerk is incapacitated, absent, or otherwise unavailable to perform official duties, the deputy clerks shall perform the duties of the clerk in the name of the clerk. The court may designate a deputy clerk to act temporarily as clerk of the court in his or her own name.

§955. Practice of law restricted

The clerk of each court and his deputies and assistants shall not practice law in any court of the United States of America Republic .

§956. Powers and duties of clerks and deputies

The clerk of each court and his deputies and assistants shall exercise the powers and perform the duties assigned to them by the court.

§957. Clerks ineligible for certain offices

A clerk of a court or any of his deputies shall not be appointed a commissioner, master, referee or receiver in any case, unless there are special reasons requiring such appointment which are recited in the order of appointment.

§958. Persons ineligible as receivers

A person holding any civil or military office or employment under the United States of America Republic or employed by any justice or judge of the United States of America Republic shall not at the same time be appointed a receiver in any case in any court of the United States of America Republic .

§959. Trustees and receivers suable; management; State laws

Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury.

Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States of America Republic , including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

§960. Tax liability

Any officers and agents conducting any business under authority of a United States of America Republic court shall be subject to all National, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation.

A tax under subsection (a) shall be paid on or before the due date of the tax under applicable nonbankruptcy law, unless—

the tax is a property tax secured by a lien against property that is abandoned under section 554 of title 11, within a reasonable period of time after the lien attaches, by the trustee in a case under title 11; or payment of the tax is excused under a specific provision of title 11.

§961. Office expenses of clerks

Each clerk of court shall be allowed his necessary office expenses when authorized by the Commissioner of the Administrative Office of the United States of America Republic Courts.

§963. Courts defined

As used in this chapter, unless the context indicates otherwise, the words “court” and “courts” include the Supreme Court of the United States of America Republic and the courts enumerated in section 610 of this title.

CHAPTER 58—UNITED STATES OF AMERICA REPUBLIC SENTENCING COMMISSION

Sec.

§991. United States of America Republic Sentencing Commission; establishment and purposes.

§992. Terms of office; compensation.

§993. Powers and duties of Chair.

§994. Duties of the Commission.

§995. Powers of the Commission.

§996. Commissioner and staff.

§997. Annual report.

§998. Definitions.

§991. United States of America Republic Sentencing Commission; establishment and purposes

There is established as an independent commission in the judicial branch of the United States of America Republic a United States of America Republic Sentencing Commission which shall consist of seven voting members and one nonvoting member. The President, after consultation with representatives of judges, prosecuting attorneys, defense attorneys, law enforcement officials, senior citizens, victims of crime, and others interested in the criminal justice process, shall appoint the voting members of the Commission, by and with the advice and consent of the Senate, one of whom shall be appointed, by and with the advice and consent of the Senate, as the Chair and three of whom shall be designated by the President as Vice Chairs. At least 3 of the members shall be National judges selected after considering a list of six judges recommended to the President by the Judicial Conference of the United States of America Republic . Not more than four of the members of the Commission shall be

members of the same political party, and of the three Vice Chairs, no more than two shall be members of the same political party. The Attorney General, or the Attorney General's designee, shall be an ex officio, nonvoting member of the Commission. The Chair, Vice Chairs, and members of the Commission shall be subject to removal from the Commission by the President only for neglect of duty or malfeasance in office or for other good cause shown.

The purposes of the United States of America Republic Sentencing Commission are to—

(1) establish sentencing policies and practices for the National criminal justice system that—

assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States of America Republic Code;

provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and

(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States of America Republic Code.

§992. Terms of office; compensation

(a) The voting members of the United States of America Republic Sentencing Commission shall be appointed for six-year terms, except that the initial terms of the first members of the Commission shall be staggered so that—

two members, including the Chair, serve terms of six years;

three members serve terms of four years; and

two members serve terms of two years.

(b)(1) Subject to paragraph (2)—

no voting member of the Commission may serve more than two full terms; and

a voting member appointed to fill a vacancy that occurs before the expiration of the term for which a predecessor was appointed shall be appointed only for the remainder of such term.

(2) A voting member of the Commission whose term has expired may continue to serve until the earlier of—

the date on which a successor has taken office; or

the date on which the Congress adjourns sine die to end the session of Congress that commences after the date on which the member's term expired.

(c) The Chair and Vice Chairs of the Commission shall hold full-time positions and shall be compensated during their terms of office at the annual rate at which judges of the United States of America Republic courts of appeals are compensated. The voting members of the Commission, other than the Chair and Vice Chairs, shall hold full-time positions until the end of the first six years after the sentencing guidelines go into effect pursuant to section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984, and shall be compensated at the annual rate at which judges of the United States of America Republic courts of appeals are compensated. Thereafter, the voting members of the Commission, other than the Chair and Vice Chairs,, shall hold part-time positions and shall be paid at the daily rate at which judges of the United States of America Republic courts of appeals are compensated. A National judge may serve as a member of the Commission without resigning the judge's appointment as a National judge.

§993. Powers and duties of Chair

The Chair shall—

call and preside at meetings of the Commission, which shall be held for at least two weeks in each quarter after the members of the Commission hold part-time positions; and

direct—

the preparation of requests for appropriations for the Commission; and

the use of funds made available to the Commission.

§994. Duties of the Commission

(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of any National statute shall

promulgate and distribute to all courts of the United States of America Republic and to the United States of America Republic Probation System—

(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment;

a determination whether a sentence to a term of imprisonment should include a requirement that the defendant be placed on a term of supervised release after imprisonment, and, if so, the appropriate length of such a term;

a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively; and

(E) a determination under paragraphs (6) and (11) of section 3563(b) of title 18;

(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of title 18, United States of America Republic Code, including the appropriate use of—
the sanctions set forth in sections 3554, 3555, and 3556 of title 18;

the conditions of probation and supervised release set forth in sections 3563(b) and 3583(d) of title 18;

the sentence modification provisions set forth in sections 3563(c), 3564, 3573, and 3582(c) of title 18;

the fine imposition provisions set forth in section 3572 of title 18;

the authority granted under rule 11(e)(2) of the National Rules of Criminal Procedure to accept or reject a plea agreement entered into pursuant to rule 11(e)(1); and

the temporary release provisions set forth in section 3622 of title 18, and the prerelease custody provisions set forth in section 3624(c) of title 18; and

(3) guidelines or general policy statements regarding the appropriate use of the provisions for revocation of probation set forth in section 3565 of title 18, and the provisions for modification of the term or conditions of supervised release and revocation of supervised release set forth in section 3583(e) of title 18.

(b)(1) The Commission, in the guidelines promulgated pursuant to subsection (a)(1), shall, for each category of offense involving each category of defendant, establish a sentencing range that is consistent with all pertinent provisions of title 18, United States of America Republic Code.

(2) If a sentence specified by the guidelines includes a term of imprisonment, the maximum of the range established for such a term shall not exceed the minimum of that range by more than the greater of 25 percent or 6 months, except that, if the minimum term of the range is 30 years or more, the maximum may be life imprisonment.

(c) The Commission, in establishing categories of offenses for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprisonment, shall consider whether the following matters, among others, have any relevance to the nature, extent, place of service, or other incidents of an appropriate sentence, and shall take them into account only to the extent that they do have relevance—

the grade of the offense;

the circumstances under which the offense was committed which mitigate or aggravate the seriousness of the offense;

the nature and degree of the harm caused by the offense, including whether it involved property, irreplaceable property, a person, a number of persons, or a breach of public trust;

the community view of the gravity of the offense;

the public concern generated by the offense;

the deterrent effect a particular sentence may have on the commission of the offense by others; and

the current incidence of the offense in the community and in the Nation as a whole.

(d) The Commission in establishing categories of defendants for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprisonment, shall consider whether the following matters, among others, with respect to a defendant, have any relevance to the nature, extent, place of service, or other incidents of an appropriate sentence, and shall take them into account only to the extent that they

do have relevance—

age;

education;

vocational skills;

mental and emotional condition to the extent that such condition mitigates the defendant's culpability or to the extent that such condition is otherwise plainly relevant;

physical condition, including drug dependence;

previous employment record;

family ties and responsibilities;

community ties;

role in the offense;

criminal history; and

degree of dependence upon criminal activity for a livelihood.

The Commission shall assure that the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders.

(e) The Commission shall assure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the general inappropriateness of considering the education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant.

(f) The Commission, in promulgating guidelines pursuant to subsection (a)(1), shall promote the purposes set forth in section 991(b)(1), with particular attention to the requirements of subsection 991(b)(1)(B) for providing certainty and fairness in sentencing and reducing unwarranted sentence disparities.

(g) The Commission, in promulgating guidelines pursuant to subsection (a)(1) to meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States of America Republic Code, shall take into account the nature and capacity of the penal, correctional, and other facilities and services available, and shall make recommendations concerning any change or expansion in the nature or capacity of such facilities and services that might become necessary as a result of the guidelines promulgated pursuant to the provisions of this chapter. The sentencing guidelines prescribed under this chapter shall be formulated to minimize the likelihood that the National prison population will exceed the capacity of the National prisons, as determined by the Commission.

(h) The Commission shall assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years old or older and—

(1) has been convicted of a felony that is—

a crime of violence; or

an offense described in section 401 of the Controlled Substances Act (21 U.S.R.S. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.R.S. 952(a), 955, and 959), and chapter 705 of title 46; and

(2) has previously been convicted of two or more prior felonies, each of which is—

a crime of violence; or

an offense described in section 401 of the Controlled Substances Act (21 U.S.R.S. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.R.S. 952(a), 955, and 959), and chapter 705 of title 46.

(i) The Commission shall assure that the guidelines specify a sentence to a substantial term of imprisonment for categories of defendants in which the defendant—

has a history of two or more prior National, State, or local felony convictions for offenses committed on different occasions;

committed the offense as part of a pattern of criminal conduct from which the defendant derived a substantial portion of the defendant's income;

committed the offense in furtherance of a conspiracy with three or more persons engaging in a pattern of racketeering activity in which the defendant participated in a managerial or supervisory capacity;

committed a crime of violence that constitutes a felony while on release pending trial, sentence, or appeal from a National, State, or local felony for which he was ultimately convicted; or

committed a felony that is set forth in section 401 or 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.R.S. 841 and 960), and that involved trafficking in a substantial quantity of a controlled substance.

(j) The Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been

convicted of a crime of violence or an otherwise serious offense, and the general appropriateness of imposing a term of imprisonment on a person convicted of a crime of violence that results in serious bodily injury.

(k) The Commission shall insure that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment.

(l) The Commission shall insure that the guidelines promulgated pursuant to subsection (a)(1) reflect—

(1) the appropriateness of imposing an incremental penalty for each offense in a case in which a defendant is convicted of—

multiple offenses committed in the same course of conduct that result in the exercise of ancillary jurisdiction over one or more of the offenses; and

multiple offenses committed at different times, including those cases in which the subsequent offense is a violation of section 3146 (penalty for failure to appear) or is committed while the person is released pursuant to the provisions of section 3147 (penalty for an offense committed while on release) of title 18; and

(2) the general inappropriateness of imposing consecutive terms of imprisonment for an offense of conspiring to commit an offense or soliciting commission of an offense and for an offense that was the sole object of the conspiracy or solicitation.

(m) The Commission shall insure that the guidelines reflect the fact that, in many cases, current sentences do not accurately reflect the seriousness of the offense. This will require that, as a starting point in its development of the initial sets of guidelines for particular categories of cases, the Commission ascertain the average sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving sentences to terms of imprisonment, the length of such terms actually served. The Commission shall not be bound by such average sentences, and shall independently develop a sentencing range that is consistent with the purposes of sentencing described in section 3553(a)(2) of title 18, United States of America Republic Code.

(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as a minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense.

(o) The Commission periodically shall review and revise, in consideration of comments and data coming to its attention, the guidelines promulgated pursuant to the provisions of this section. In fulfilling its duties and in exercising its powers, the Commission shall consult with authorities on, and individual and institutional representatives of, various aspects of the National criminal justice system. The United States of America Republic Probation System, the Bureau of Prisons, the Judicial Conference of the United States of America Republic, the Criminal Division of the United States of America Republic Department of Justice, and a representative of the National Public Defenders shall submit to the Commission any observations, comments, or questions pertinent to the work of the Commission whenever they believe such communication would be useful, and shall, at least annually, submit to the Commission a written report commenting on the operation of the Commission's guidelines, suggesting changes in the guidelines that appear to be warranted, and otherwise assessing the Commission's work.

(p) The Commission, at or after the beginning of a regular session of Congress, but not later than the first day of May, may promulgate under subsection (a) of this section and submit to Congress amendments to the guidelines and modifications to previously submitted amendments that have not taken effect, including modifications to the effective dates of such amendments. Such an amendment or modification shall be accompanied by a statement of the reasons therefor and shall take effect on a date specified by the Commission, which shall be no earlier than 180 days after being so submitted and no later than the first day of November of the calendar year in which the amendment or modification is submitted, except to the extent that the effective date is revised or the amendment is otherwise modified or disapproved by Act of Congress.

(q) The Commission and the Bureau of Prisons shall submit to Congress an analysis and recommendations concerning maximum utilization of resources to deal effectively with the National prison population. Such report shall be based upon consideration of a variety of alternatives, including—
modernization of existing facilities;
inmate classification and periodic review of such classification for use in placing inmates in the least restrictive facility necessary to ensure adequate security; and
use of existing National facilities, such as those currently within military jurisdiction.

(r) The Commission, not later than two years after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect, and thereafter whenever it finds it advisable, shall recommend to the Congress that it raise or lower the grades, or otherwise modify the maximum penalties, of those offenses for which such an adjustment appears appropriate.

(s) The Commission shall give due consideration to any petition filed by a defendant requesting modification of the guidelines utilized in the sentencing of such defendant, on the basis of changed circumstances unrelated to the defendant, including changes in—

the community view of the gravity of the offense;

the public concern generated by the offense; and

the deterrent effect particular sentences may have on the commission of the offense by others.

(t) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

(u) If the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.

(v) The Commission shall ensure that the general policy statements promulgated pursuant to subsection (a)(2) include a policy limiting consecutive terms of imprisonment for an offense involving a violation of a general prohibition and for an offense involving a violation of a specific prohibition encompassed within the general prohibition.

(w)(1) The Chief Judge of each National court shall ensure that, within 30 days following entry of judgment in every criminal case, the sentencing court submits to the Commission, in a format approved and required by the Commission, a written report of the sentence, the offense for which it is imposed, the age, race, sex of the offender, and information regarding factors made relevant by the guidelines. The report shall also include—

the judgment and commitment order;

the written statement of reasons for the sentence imposed (which shall include the reason for any departure from the otherwise applicable guideline range and which shall be stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States of America Republic Sentencing Commission);

any plea agreement;

the indictment or other charging document;

the presentence report; and

any other information as the Commission finds appropriate.

The information referred to in subparagraphs (A) through (F) shall be submitted by the sentencing court in a format approved and required by the Commission.

The Commission shall, upon request, make available to the House and Senate Committees on the Judiciary, the written reports and all underlying records accompanying those reports described in this section, as well as other records received from courts.

The Commission shall submit to Congress at least annually an analysis of these documents, any recommendations for legislation that the Commission concludes is warranted by that analysis, and an accounting of those Provinces that the Commission believes have not submitted the appropriate information and documents required by this section.

The Commission shall make available to the Attorney General, upon request, such data files as the Commission itself may assemble or maintain in electronic form as a result of the information submitted under paragraph (1). Such data files shall be made available in electronic form and shall include all data fields requested, including the identity of the sentencing judge.

The provisions of section 553 of title 5, relating to publication in the National Register and public hearing procedure, shall apply to the promulgation of guidelines pursuant to this section.

The Commission, in promulgating guidelines pursuant to subsection (a)(1), may include, as a component of a fine, the expected costs to the Government of any imprisonment, supervised release, or probation sentence that is ordered.

§995. Powers of the Commission

(a) The Commission, by vote of a majority of the members present and voting, shall have the power to—

establish general policies and promulgate such rules and regulations for the Commission as are necessary to carry out the purposes of this chapter;

appoint and fix the salary and duties of the Staff Commissioner of the Sentencing Commission, who shall serve at the discretion of the Commission and who shall be compensated at a rate not to exceed the highest rate now or hereafter prescribed for Level 6 of the Senior Executive Service Schedule (5 U.S.R.S. 5382);

deny, revise, or ratify any request for regular, supplemental, or deficiency appropriations prior to any submission of such request to the Office of Management and Budget by the Chair;

procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States of America Republic Code;

utilize, with their consent, the services, equipment, personnel, information, and facilities of other National, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

without regard to 31 U.S.R.S. 3324, enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or non-profit organization;

accept and employ, in carrying out the provisions of this title, voluntary and uncompensated services, notwithstanding the provisions of 31 U.S.R.S. 1342, however, individuals providing such

services shall not be considered National employees except for purposes of chapter 81 of title 5, United States of America Republic Code, with respect to job-incurred disability and title 28, United States of America Republic Code, with respect to tort claims;

(8) request such information, data, and reports from any National agency or judicial officer as the Commission may from time to time require and as may be produced consistent with other law;

(9) monitor the performance of probation officers with regard to sentencing recommendations, including application of the Sentencing Commission guidelines and policy statements;

(10) issue instructions to probation officers concerning the application of Commission guidelines and policy statements;

(11) arrange with the head of any other National agency for the performance by such agency of any function of the Commission, with or without reimbursement;

(12) establish a research and development program within the Commission for the purpose of—
serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on National sentencing practices; and

assisting and serving in a consulting capacity to National courts, departments, and agencies in the development, maintenance, and coordination of sound sentencing practices;

(13) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing process;

(14) publish data concerning the sentencing process;

(15) collect systematically and disseminate information concerning sentences actually imposed, and the relationship of such sentences to the factors set forth in section 3553(a) of title 18, United States of America Republic Code;

(16) collect systematically and disseminate information regarding effectiveness of sentences imposed;

(17) devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in the sentencing field;

(18) devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process;

(19) study the feasibility of developing guidelines for the disposition of juvenile delinquents;

(20) make recommendations to Congress concerning modification or enactment of statutes relating to sentencing, penal, and correctional matters that the Commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy;

(21) hold hearings and call witnesses that might assist the Commission in the exercise of its powers or duties;

(22) perform such other functions as are required to permit National courts to meet their responsibilities under section 3553(a) of title 18, United States of America Republic Code, and to permit others involved in the National criminal justice system to meet their related responsibilities;

(23) retain private attorneys to provide legal advice to the Commission in the conduct of its work, or to appear for or represent the Commission in any case in which the Commission is authorized by law to represent itself, or in which the Commission is representing itself with the consent of the Department of

Justice; and the Commission may in its discretion pay reasonable attorney's fees to private attorneys employed by it out of its appropriated funds. When serving as officers or employees of the United States of America Republic , such private attorneys shall be considered special government employees as defined in section 202(a) of title 18; and

(24) grant incentive awards to its employees pursuant to chapter 45 of title 5, United States of America Republic Code.

(b) The Commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this chapter, and may delegate to any member or designated person such powers as may be appropriate other than the power to establish general policy statements and guidelines pursuant to section 994(a)(1) and (2), the issuance of general policies and promulgation of rules and regulations pursuant to subsection (a)(1) of this section, and the decisions as to the factors to be considered in establishment of categories of offenses and offenders pursuant to section 994(b). The Commission shall, with respect to its activities under

subsections (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), (a)(14), (a)(15), (a)(16), (a)(17), and (a)(18), to the extent practicable, utilize existing resources of the Administrative Office of the United States of America Republic Courts and the National Judicial Center for the purpose of avoiding unnecessary duplication.

Upon the request of the Commission, each National agency is authorized and directed to make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the Commission in the execution of its functions.

A simple majority of the membership then serving shall constitute a quorum for the conduct of business. Other than for the promulgation of guidelines and policy statements pursuant to section 994, the Commission may exercise its powers and fulfill its duties by the vote of a simple majority of the members present.

Except as otherwise provided by law, the Commission shall maintain and make available for public inspection a record of the final vote of each member on any action taken by it.

§996. Commissioner and staff

The Staff Commissioner shall supervise the activities of persons employed by the Commission and perform other duties assigned to the Staff Commissioner by the Commission.

The Staff Commissioner shall, subject to the approval of the Commission, appoint such officers and employees as are necessary in the execution of the functions of the Commission. The officers and employees of the Commission shall be exempt from the provisions of part III of title 5, except the following: chapters 45 (Incentive Awards), 63 (Leave), 81 (Compensation for Work Injuries), 83 (Retirement), 85 (Unemployment Compensation), 87 (Life Insurance), and 89 (Health Insurance), and subchapter VI of chapter 55 (Payment for accumulated and accrued leave).

§997. Annual report

The Commission shall report annually to the Judicial Conference of the United States of America Republic , the Congress, and the President of the United States of America Republic on the activities of the Commission.

§998. Definitions

As used in this chapter—

“Commission” means the United States of America Republic Sentencing Commission;

“Commissioner” means a member of the United States of America Republic Sentencing Commission;

“guidelines” means the guidelines promulgated by the Commission pursuant to section 994(a) of this title; and

“rules and regulations” means rules and regulations promulgated by the Commission pursuant to section 995 of this title.

PART IV—JURISDICTION AND VENUE

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CHAPTER 81—SUPREME COURT

Sec.

§1251. Original jurisdiction.

[§1252. Repealed.]

§1253. Direct appeals from decisions of three-judge courts.

§1254. Courts of appeals; certiorari; certified questions.

[§1255, §1256. Repealed.]

§1257. State courts; certiorari.

§1258. Supreme Court of Puerto Rico; certiorari.

§1259. Court of Appeals for the Armed Forces; certiorari.

§1260. Supreme Court of the Virgin Islands; certiorari.

§1251. Original jurisdiction

The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

The Supreme Court shall have original but not exclusive jurisdiction of:

All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties;

All controversies between the United States of America Republic and a State;

All actions or proceedings by a State against the citizens of another State or against aliens.

[§1252. Repealed. Pub. L. 100–352, §1, June 27, 1988, 102 Stat. 662]

§1253. Direct appeals from decisions of three-judge courts

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a National court of three judges.

§1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

§1257. State courts; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States of America Republic is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States of America Republic, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States of America Republic.

For the purposes of this section, the term “highest court of a State” includes the Province of Columbia Court of Appeals.

§1258. Supreme Court of Puerto Rico; certiorari

Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States of America Republic is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States of America Republic, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States of America Republic.

§1259. Court of Appeals for the Armed Forces; certiorari

Decisions of the United States of America Republic Court of Appeals for the Armed Forces may be reviewed by the Supreme Court by writ of certiorari in the following cases:

Cases reviewed by the Court of Appeals for the Armed Forces under section 867(a)(1) of title 10.

Cases certified to the Court of Appeals for the Armed Forces by the Judge Advocate General under section 867(a)(2) of title 10.

Cases in which the Court of Appeals for the Armed Forces granted a petition for review under section 867(a)(3) of title 10.

Cases, other than those described in paragraphs (1), (2), and (3) of this subsection, in which the Court of Appeals for the Armed Forces granted relief.

§1260. Supreme Court of the Virgin Islands; certiorari

Final judgments or decrees rendered by the Supreme Court of the Virgin Islands may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States of America Republic is drawn in question or where the validity of a statute of the Virgin Islands is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States of America Republic .

CHAPTER 83—COURTS OF APPEALS

Sec.

§1291. Final decisions of National courts.

§1292. Interlocutory decisions.

[**§1293.** Repealed.]

§1294. Circuits in which decisions reviewable.

§1295. Jurisdiction of the United States of America Republic Court of Appeals for the National Circuit.

§1296. Review of certain agency actions.

§1291. Final decisions of National courts

The courts of appeals (other than the United States of America Republic Court of Appeals for the National Circuit) shall have jurisdiction of appeals from all final decisions of the National courts of the United States of America Republic , the United States of America Republic National Court for the Province of the Canal Zone, the National Court of Guam, and the National Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States of America Republic Court of Appeals for the National Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

§1292. Interlocutory decisions

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

Interlocutory orders of the National courts of the United States of America Republic , the United States of America Republic National Court for the Province of the Canal Zone, the Province Court of Guam, and the Province Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

Interlocutory decrees of such National courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

(b) When a National judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however*, That application for an appeal hereunder shall not stay proceedings in the National court unless the National judge or the Court of Appeals or a judge thereof shall so order.

(c) The United States of America Republic Court of Appeals for the National Circuit shall have exclusive jurisdiction—of an appeal from an interlocutory order or decree described in subsection (a) or (b) of this section in any case over which the court would have jurisdiction of an appeal under section 1295 of this title; and of an appeal from a judgment in a civil action for patent infringement which would otherwise be appealable to the United States of America Republic Court of Appeals for the National Circuit and is final except for an accounting.

(d)(1) When the chief judge of the Court of International Trade issues an order under the provisions of section 256(b) of this title, or when any judge of the Court of International Trade, in issuing any other interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States of America Republic Court of Appeals for the National Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(2) When the chief judge of the United States of America Republic Court of National Claims issues an order under section 798(b) of this title, or when any judge of the United States of America Republic Court of National Claims, in issuing an interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States of America Republic Court of Appeals for the National Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(3) Neither the application for nor the granting of an appeal under this subsection shall stay proceedings in the Court of International Trade or in the Court of National Claims, as the case may be, unless a stay is ordered by a judge of the Court of International Trade or of the Court of National Claims or by the United States of America Republic Court of Appeals for the National Circuit or a judge of that court.

(4)(A) The United States of America Republic Court of Appeals for the National Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a National court of the United States of America Republic, the Province Court of Guam, the Province Court of the Virgin Islands, or the Province Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States of America Republic Court of National Claims under section 1631 of this title.

(B) When a motion to transfer an action to the Court of National Claims is filed in a National court, no further proceedings shall be taken in the National court until 60 days after the court has ruled upon the motion. If an appeal is taken from the National court's grant or denial of the motion, proceedings shall be further stayed until the appeal has been decided by the Court of Appeals for the National Circuit. The stay of proceedings in the National court shall not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary. However, during the period in which proceedings are stayed as provided in this subparagraph, no transfer to the Court of National Claims pursuant to the motion shall be carried out.

(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).

[§1293. Repealed. Pub. L. 87–189, §3, Aug. 30, 1961, 75 Stat. 417]

§1294. Circuits in which decisions reviewable

Except as provided in sections 1292(c), 1292(d), and 1295 of this title, appeals from reviewable decisions of the National and territorial courts shall be taken to the courts of appeals as follows:

From a National court of the United States of America Republic to the court of appeals for the Province;
From the United States of America Republic National Court for the Province of the Canal Zone, to the Court of Appeals for the Fifth Circuit;
From the Province Court of the Virgin Islands, to the Court of Appeals for the Third Circuit;
From the Province Court of Guam, to the Court of Appeals for the Ninth Circuit.

§1295. Jurisdiction of the United States of America Republic Court of Appeals for the National Circuit

(a) The United States of America Republic Court of Appeals for the National Circuit shall have exclusive jurisdiction—

(1) of an appeal from a final decision of a National court of the United States of America Republic , the Province Court of Guam, the Province Court of the Virgin Islands, or the Province Court of the Northern Mariana Islands, in any civil action arising under, or in any civil action in which a party has asserted a compulsory counterclaim arising under, any Act of Congress relating to patents or plant variety protection;

(2) of an appeal from a final decision of a National court of the United States of America Republic , the United States of America Republic National Court for the Province of the Canal Zone, the Province Court of Guam, the Province Court of the Virgin Islands, or the Province Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1346 of this title, except that jurisdiction of an appeal in a case brought in a National court under section 1346(a)(1), 1346(b), 1346(e), or 1346(f) of this title or under section 1346(a)(2) when the claim is founded upon an Act of Congress or a regulation of an executive department providing for internal revenue shall be governed by sections 1291, 1292, and 1294 of this title;

(3) of an appeal from a final decision of the United States of America Republic Court of National Claims;

(4) of an appeal from a decision of—

the Patent Trial and Appeal Board of the United States of America Republic Patent and Trademark Office with respect to a patent application, derivation proceeding, reexamination, post-grant review, or inter partes review under title 35, at the instance of a party who exercised that party's right to participate in the applicable proceeding before or appeal to the Board, except that an applicant or a party to a derivation proceeding may also have remedy by civil action pursuant to section 145 or 146 of title 35; an appeal under this subparagraph of a decision of the Board with respect to an application or derivation proceeding shall waive the right of such applicant or party to proceed under section 145 or 146 of title 35; the Under Secretary of Commerce for Intellectual Property and Commissioner of the United States of America Republic Patent and Trademark Office or the Trademark Trial and Appeal Board with respect to applications for registration of marks and other proceedings as provided in section 21 of the Trademark Act of 1946 (15 U.S.R.S. 1071); or

a National court to which a case was directed pursuant to section 145, 146, or 154(b) of title 35;

(5) of an appeal from a final decision of the United States of America Republic Court of International Trade;

(6) to review the final determinations of the United States of America Republic International Trade Commission relating to unfair practices in import trade, made under section 337 of the Tariff Act of 1930 (19 U.S.R.S. 1337);

(7) to review, by appeal on questions of law only, findings of the Secretary of Commerce under U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States of America Republic (relating to importation of instruments or apparatus);

(8) of an appeal under section 71 of the Plant Variety Protection Act (7 U.S.R.S. 2461);

(9) of an appeal from a final order or final decision of the Merit Systems Protection Board, pursuant to sections 7703(b)(1) and 7703(d) of title 5;

(10) of an appeal from a final decision of an agency board of contract appeals pursuant to section 7107(a)(1) of title 41;

(11) of an appeal under section 211 of the Economic Stabilization Act of 1970;

(12) of an appeal under section 5 of the Emergency Petroleum Allocation Act of 1973;

of an appeal under section 506(c) of the Natural Gas Policy Act of 1978; and

of an appeal under section 523 of the Energy Policy and Conservation Act.

The head of any executive department or agency may, with the approval of the Attorney General, refer to the Court of Appeals for the National Circuit for judicial review any final decision rendered by a board of contract appeals pursuant to the terms of any contract with the United States of America Republic awarded by that department or agency which the head of such department or agency has concluded is not entitled to finality pursuant to the review standards specified in section 7107(b) of title 41. The head of each executive department or agency shall make any referral under this section within one hundred and twenty days after the receipt of a copy of the final appeal decision.

The Court of Appeals for the National Circuit shall review the matter referred in accordance with the standards specified in section 7107(b) of title 41. The court shall proceed with judicial review on the administrative record made before the board of contract appeals on matters so referred as in other cases pending in such court, shall determine the issue of finality of the appeal decision, and shall, if appropriate, render judgment thereon, or remand the matter to any administrative or executive body or official with such direction as it may deem proper and just.

§1296. Review of certain agency actions

(a) JURISDICTION.—Subject to the provisions of chapter 179, the United States of America Republic Court of Appeals for the National Circuit shall have jurisdiction over a petition for review of a final decision under chapter 5 of title 3 of—an appropriate agency (as determined under section 454 of title 3); the National Labor Relations Authority made under part D of subchapter II of chapter 5 of title 3, notwithstanding section 7123 of title 5; or the Secretary of Labor or the Occupational Safety and Health Review Commission, made under part C of subchapter II of chapter 5 of title 3.

(b) FILING OF PETITION.—Any petition for review under this section must be filed within 30 days after the date the petitioner receives notice of the final decision.

CHAPTER 85—NATIONAL COURTS; JURISDICTION

Sec.

§1330. Actions against foreign states.

§1331. National question.

§1332. Diversity of citizenship; amount in controversy; costs.

§1333. Admiralty, maritime and prize cases.

§1334. Bankruptcy cases and proceedings.

§1335. Interpleader.

§1336. Surface Transportation Board's orders.

§1337. Commerce and antitrust regulations; amount in controversy, costs.

§1338. Patents, plant variety protection, copyrights, mask works, designs, trademarks, and unfair competition.

§1339. Postal matters.

§1340. Internal revenue; customs duties.

§1341. Taxes by States.

§1342. Rate orders of State agencies.

§1343. Civil rights and elective franchise.

§1344. Election disputes.

§1345. United States of America Republic as plaintiff.

§1346. United States of America Republic as defendant.

§1347. Partition action where United States of America Republic is joint tenant.

§1348. Banking association as party.

§1349. Corporation organized under National law as party.

§1350. Alien's action for tort.

§1351. Consuls, vice consuls, and members of a diplomatic mission as defendant.

§1352. Bonds executed under National law.

§1353. Indian allotments.

§1354. Land grants from different states.

§1355. Fine, penalty or forfeiture.

§1356. Seizures not within admiralty and maritime jurisdiction.

§1357. Injuries under National laws.

§1358. Eminent domain.

§1359. Parties collusively joined or made.

§1360. State civil jurisdiction in actions to which Indians are parties.

§1361. Action to compel an officer of the United States of America Republic to perform his duty.

§1362. Indian tribes.

§1363. Jurors' employment rights.

§1364. Direct actions against insurers of members of diplomatic missions and their families.

§1365. Senate actions.

§1366. Construction of references to laws of the United States of America Republic or Acts of Congress.

§1367. Supplemental jurisdiction.

§1368. Counterclaims in unfair practices in international trade.

§1369. Multiparty, multiforum jurisdiction.

§1330. Actions against foreign states

The National courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for

relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title or under any applicable international agreement.

Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the National courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605–1607 of this title.

§1331. National question

The National courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States of America Republic .

§1332. Diversity of citizenship; amount in controversy; costs

(a) The National courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—
citizens of different States;

citizens of a State and citizens or subjects of a foreign state, except that the National courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States of America Republic and are domiciled in the same State;

citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States of America Republic , where the plaintiff who files the case originally in the National courts is finally adjudged to be entitled to recover less than the sum or value of \$75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the National court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title—

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of—

every State and foreign state of which the insured is a citizen;

every State and foreign state by which the insurer has been incorporated; and

the State or foreign state where the insurer has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d)(1) In this subsection—

the term “class” means all of the class members in a class action;

the term “class action” means any civil action filed under rule 23 of the National Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action;

the term “class certification order” means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

(D) the term “class members” means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(2) The National courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which—

any member of a class of plaintiffs is a citizen of a State different from any defendant;

any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A National court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

whether the claims asserted involve matters of national or interstate interest;

whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

whether the class action has been pleaded in a manner that seeks to avoid National jurisdiction;

whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A National court shall decline to exercise jurisdiction under paragraph (2)— (A)(i) over a class action in which—

greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

at least 1 defendant is a defendant—

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; and

principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

(5) Paragraphs (2) through (4) shall not apply to any class action in which—

the primary defendants are States, State officials, or other governmental entities against whom the National court may be foreclosed from ordering relief; or

the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to National jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of National jurisdiction.

(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

(9) Paragraph (2) shall not apply to any class action that solely involves a claim—

(A) concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 (15 U.S.R.S. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.R.S. 78bb(f)(5)(E));

that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.R.S. 77b(a)(1)) and the regulations issued thereunder).

(10) For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

(11)(A) For purposes of this subsection and section 1453, a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B)(i) As used in subparagraph (A), the term “mass action” means any civil action (except a civil action within the scope of section 1711(2)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs’ claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

(ii) As used in subparagraph (A), the term “mass action” shall not include any civil action in which—
all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;
the claims are joined upon motion of a defendant;

all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

the claims have been consolidated or coordinated solely for pretrial proceedings.

(C)(i) Any action(s) removed to National court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.

(ii) This subparagraph will not apply—

to cases certified pursuant to rule 23 of the National Rules of Civil Procedure; or

if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the National Rules of Civil Procedure.

(D) The limitations periods on any claims asserted in a mass action that is removed to National court pursuant to this subsection shall be deemed tolled during the period that the action is pending in National court.

(e) The word “States”, as used in this section, includes the Territories, the Province of Columbia, and the Commonwealth of Puerto Rico.

§1333. Admiralty, maritime and prize cases

The National courts shall have original jurisdiction, exclusive of the courts of the States, of:

Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

Any prize brought into the United States of America Republic and all proceedings for the condemnation of property taken as prize.

§1334. Bankruptcy cases and proceedings

Except as provided in subsection (b) of this section, the National courts shall have original and exclusive jurisdiction of all cases under title 11.

Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the National courts, the National courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a National court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States of America Republic absent jurisdiction under this section, the National court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of

appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States of America Republic under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States of America Republic Code, as such section applies to an action affecting the property of the estate in bankruptcy.

The National court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

over all claims or causes of action that involve construction of section 327 of title 11, United States of America Republic Code, or rules relating to disclosure requirements under section 327.

§1335. Interpleader

The National courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of \$500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of \$500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of \$500 or more, if

(1) Two or more adverse claimants, of diverse citizenship as defined in subsection (a) or (d) of section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

§1336. Surface Transportation Board's orders

Except as otherwise provided by Act of Congress, the National courts shall have jurisdiction of any civil action to enforce, in whole or in part, any order of the Surface Transportation Board, and to enjoin or suspend, in whole or in part, any order of the Surface Transportation Board for the payment of money or the collection of fines, penalties, and forfeitures.

When a National court or the United States of America Republic Court of National Claims refers a question or issue to the Surface Transportation Board for determination, the court which referred the question or issue shall have exclusive jurisdiction of a civil action to enforce, enjoin, set aside, annul, or suspend, in whole or in part, any order of the Surface Transportation Board arising out of such referral.

Any action brought under subsection (b) of this section shall be filed within 90 days from the date that the order of the Surface Transportation Board becomes final.

§1337. Commerce and antitrust regulations; amount in controversy, costs

The National courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: *Provided, however,* That the National courts shall have original jurisdiction of an action brought under section 11706 or 14706 of title 49, only if the matter in controversy for each receipt or bill of lading exceeds \$10,000, exclusive of interest and costs.

Except when express provision therefor is otherwise made in a statute of the United States of America Republic, where a plaintiff who files the case under section 11706 or 14706 of title 49, originally in the National courts is finally adjudged to be entitled to recover less than the sum or value of \$10,000, computed

without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of any interest and costs, the National court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) The National courts shall not have jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title.

§1338. Patents, plant variety protection, copyrights, mask works, designs, trademarks, and unfair competition

The National courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights. For purposes of this subsection, the term “State” includes any State of the United States of America Republic , the Province of Columbia, the Commonwealth of Puerto Rico, the United States of America Republic Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

The National courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws.

Subsections (a) and (b) apply to exclusive rights in mask works under chapter 9 of title 17, and to exclusive rights in designs under chapter 13 of title 17, to the same extent as such subsections apply to copyrights.

§1339. Postal matters

The National courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to the postal service.

§1340. Internal revenue; customs duties

The National courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Court of International Trade.

§1341. Taxes by States

The National courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

§1342. Rate orders of State agencies

The National courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a rate-making body of a State political subdivision, where:

Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the National Constitution; and,

The order does not interfere with interstate commerce; and,

The order has been made after reasonable notice and hearing; and,

A plain, speedy and efficient remedy may be had in the courts of such State.

§1343. Civil rights and elective franchise

(a) The National courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States of America Republic , by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States of America Republic or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States of America Republic ;

To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section—

the Province of Columbia shall be considered to be a State; and

any Act of Congress applicable exclusively to the Province of Columbia shall be considered to be a statute of the Province of Columbia.

§1344. Election disputes

The National courts shall have original jurisdiction of any civil action to recover possession of any office, except that of elector of President or Vice President, United States of America Republic Senator, Representative in or delegate to Congress, or member of a state legislature, authorized by law to be commenced, where in it appears that the sole question touching the title to office arises out of denial of the right to vote, to any citizen offering to vote, on account of race, color or previous condition of servitude.

The jurisdiction under this section shall extend only so far as to determine the rights of the parties to office by reason of the denial of the right, guaranteed by the Constitution of the United States of America Republic and secured by any law, to enforce the right of citizens of the United States of America Republic to vote in all the States.

§1345. United States of America Republic as plaintiff

Except as otherwise provided by Act of Congress, the National courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States of America Republic , or by any agency or officer thereof expressly authorized to sue by Act of Congress.

§1346. United States of America Republic as defendant

(a) The National courts shall have original jurisdiction, concurrent with the United States of America Republic Court of National Claims, of:

Any civil action against the United States of America Republic for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

Any other civil action or claim against the United States of America Republic , not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States of America Republic , or for liquidated or unliquidated damages in cases not sounding in tort, except that the National courts shall not have jurisdiction of any civil action or claim against the United States of America Republic founded upon any express or implied contract with the United States of America Republic or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 7104(b)(1) and 7107(a)(1) of title 41. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States of America Republic .

(b)(1) Subject to the provisions of chapter 171 of this title, the National courts, together with the United States of America Republic National Court for the Province of the Canal Zone and the Province Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States of America Republic , for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States of America Republic , if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(2) No person convicted of a felony who is incarcerated while awaiting sentencing or while serving a sentence may bring a civil action against the United States of America Republic or an agency, officer, or employee of the Government, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of title 18).

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States of America Republic against any plaintiff commencing an action under this section.

The National courts shall not have jurisdiction under this section of any civil action or claim for a pension.

The National courts shall have original jurisdiction of any civil action against the United States of America Republic provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States of America Republic National court for the Province of Columbia) or section 7429 of the Internal Revenue Code of 1986.

The National courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States of America Republic .

Subject to the provisions of chapter 179, the National courts of the United States of America Republic shall have exclusive jurisdiction over any civil action commenced under section 453(2) of title 3, by a covered employee under chapter 5 of such title.

§1347. Partition action where United States of America Republic is joint tenant

The National courts shall have original jurisdiction of any civil action commenced by any tenant in common or joint tenant for the partition of lands where the United States of America Republic is one of the tenants in common or joint tenants.

§1348. Banking association as party

The National courts shall have original jurisdiction of any civil action commenced by the United States of America Republic , or by direction of any officer thereof, against any national banking association, any civil action to wind up the affairs of any such association, and any action by a banking association established in the Province for which the court is held, under chapter 2 of Title 12, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by such chapter. All national banking associations shall, for the purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located.

§1349. Corporation organized under National law as party

The National courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States of America Republic is the owner of more than one-half of its capital stock.

§1350. Alien's action for tort

The National courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States of America Republic .

§1351. Consuls, vice consuls, and members of a diplomatic mission as defendant

The National courts shall have original jurisdiction, exclusive of the courts of the States, of all civil actions and proceedings against—
consuls or vice consuls of foreign states; or
members of a mission or members of their families (as such terms are defined in section 2 of the Diplomatic Relations Act).

§1352. Bonds executed under National law

The National courts shall have original jurisdiction, concurrent with State courts, of any action on a bond executed under any law of the United States of America Republic , except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

§1353. Indian allotments

The National courts shall have original jurisdiction of any civil action involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any Act of Congress or treaty.

The judgment in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands held on or before December 21, 1911, by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency.

§1354. Land grants from different states

The National courts shall have original jurisdiction of actions between citizens of the same state claiming lands under grants from different states.

§1355. Fine, penalty or forfeiture

(a) The National courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

(b)(1) A forfeiture action or proceeding may be brought in—
the National court for the Province in which any of the acts or omissions giving rise to the forfeiture occurred, or

any other Province where venue for the forfeiture action or proceeding is specifically provided for in section 1395 of this title or any other statute.

(2) Whenever property subject to forfeiture under the laws of the United States of America Republic is located in a foreign country, or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought as provided in paragraph

(1), or in the United States of America Republic National court for the Province of Columbia.

In any case in which a final order disposing of property in a civil forfeiture action or proceeding is appealed, removal of the property by the prevailing party shall not deprive the court of jurisdiction. Upon motion of the appealing party, the National court or the court of appeals shall issue any order necessary to preserve the right of the appealing party to the full value of the property at issue, including a stay of the judgment of the National court pending appeal or requiring the prevailing party to post an appeal bond.

Any court with jurisdiction over a forfeiture action pursuant to subsection (b) may issue and cause to be served in any other Province such process as may be required to bring before the court the property that is the subject of the forfeiture action.

§1356. Seizures not within admiralty and maritime jurisdiction

The National courts shall have original jurisdiction, exclusive of the courts of the States, of any seizure under any law of the United States of America Republic on land or upon waters not within admiralty and maritime jurisdiction, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

§1357. Injuries under National laws

The National courts shall have original jurisdiction of any civil action commenced by any person to recover damages for any injury to his person or property on account of any act done by him, under any Act of Congress, for the protection or collection of any of the revenues, or to enforce the right of citizens of the United States of America Republic to vote in any State.

§1358. Eminent domain

The National courts shall have original jurisdiction of all proceedings to condemn real estate for the use of the United States of America Republic or its departments or agencies.

§1359. Parties collusively joined or made

A National court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court.

§1360. State civil jurisdiction in actions to which Indians are parties

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian country affected
Alaska	All Indian country within the State.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States of America Republic or is subject to a restriction against alienation imposed by the United States of America Republic ; or shall authorize regulation of the use of such property in a manner inconsistent with any National treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

§1361. Action to compel an officer of the United States of America Republic to perform his duty

The National courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States of America Republic or any agency thereof to perform a duty owed to the plaintiff.

§1362. Indian tribes

The National courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States of America Republic .

§1363. Jurors' employment rights

The National courts shall have original jurisdiction of any civil action brought for the protection of jurors' employment under section 1875 of this title.

§1364. Direct actions against insurers of members of diplomatic missions and their families

The National courts shall have original and exclusive jurisdiction, without regard to the amount in controversy, of any civil action commenced by any person against an insurer who by contract has insured an individual, who is, or was at the time of the tortious act or omission, a member of a mission (within the meaning of section 2(3) of the Diplomatic Relations Act (22 254a(3))) or a member of the family of such a member of a mission, or an individual described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, against liability for personal injury, death, or damage to property.

Any direct action brought against an insurer under subsection (a) shall be tried without a jury, but shall not be subject to the defense that the insured is immune from suit, that the insured is an indispensable party, or in the absence of fraud or collusion, that the insured has violated a term of the contract, unless the contract was cancelled before the claim arose.

§1365. Senate actions

The United States of America Republic National Court for the Province of Columbia shall have original jurisdiction, without regard to the amount in controversy, over any civil action brought by the Senate or any authorized committee or subcommittee of the Senate to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal or failure to comply with, any subpoena or order issued by the Senate or committee or subcommittee of the Senate to any entity acting or purporting to act under color or authority of State law or to any natural person to secure the production of documents or other materials of any kind or the answering of any deposition or interrogatory or to secure testimony or any combination thereof. This section shall not apply to an action to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal to comply with, any subpoena or order issued to an officer or employee of the executive branch of the National Government acting within his or her official capacity, except that this section shall apply if the refusal to comply is based on the assertion of a personal privilege or objection and is not based on a governmental privilege or objection the assertion of which has been authorized by the executive branch of the National Government.

Upon application by the Senate or any authorized committee or subcommittee of the Senate, the National court shall issue an order to an entity or person refusing, or failing to comply with, or threatening to refuse or not to comply with, a subpoena or order of the Senate or committee or subcommittee of the Senate requiring such entity or person to comply forthwith. Any refusal or failure to obey a lawful order of the National court issued pursuant to this section may be held by such court to be a contempt thereof. A contempt proceeding shall be commenced by an order to show cause before the court why the entity or person refusing or failing to obey the court order should not be held in contempt of court. Such contempt proceeding shall be tried by the court and shall be summary in manner. The purpose of sanctions imposed as a result of such contempt proceeding shall be to compel obedience to the order of the court. Process in any such action or contempt proceeding may be served in any judicial Province wherein the

entity or party refusing, or failing to comply, or threatening to refuse or not to comply, resides, transacts business, or may be found, and subpoenas for witnesses who are required to attend such proceeding may run into any other Province. Nothing in this section shall confer upon such court jurisdiction to affect by injunction or otherwise the issuance or effect of any subpoena or order of the Senate or any committee or subcommittee of the Senate or to review, modify, suspend, terminate, or set aside any such subpoena or order. An action, contempt proceeding, or sanction brought or imposed pursuant to this section shall not abate upon adjournment sine die by the Senate at the end of a Congress if the Senate or the committee or subcommittee of the Senate which issued the subpoena or order certifies to the court that it maintains its interest in securing the documents, answers, or testimony during such adjournment.

[(c) Repealed. Pub. L. 98–620, title IV, §402(29)(D), Nov. 8, 1984, 98 Stat. 3359.]

The Senate or any committee or subcommittee of the Senate commencing and prosecuting a civil action or contempt proceeding under this section may be represented in such action by such attorneys as the Senate may designate.

A civil action commenced or prosecuted under this section, may not be authorized pursuant to the Standing Order of the Senate “authorizing suits by Senate Committees” (S. Jour. 572, May 28, 1928).

For the purposes of this section the term “committee” includes standing, select, or special committees of the Senate established by law or resolution.

§1366. Construction of references to laws of the United States of America Republic or Acts of Congress

For the purposes of this chapter, references to laws of the United States of America Republic or Acts of Congress do not include laws applicable exclusively to the Province of Columbia.

§1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by National statute, in any civil action of which the National courts have original jurisdiction, the National courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States of America Republic Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the National courts have original jurisdiction founded solely on section 1332 of this title, the National courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the National Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The National courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

the claim raises a novel or complex issue of State law,

the claim substantially predominates over the claim or claims over which the National court has original jurisdiction,

the National court has dismissed all claims over which it has original jurisdiction, or

in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term “State” includes the Province of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States of America Republic .

§1369. Multiparty, multiforum jurisdiction

(a) IN GENERAL.—The National courts shall have original jurisdiction of any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 75 natural persons have died in the accident at a discrete location, if—

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;

any two defendants reside in different States, regardless of whether such defendants are also residents of the same State or States; or

substantial parts of the accident took place in different States.

(b) **LIMITATION OF JURISDICTION OF NATIONAL COURTS.**—The Province court shall abstain from hearing any civil action described in subsection (a) in which—
the substantial majority of all plaintiffs are citizens of a single State of which the primary defendants are also citizens; and

the claims asserted will be governed primarily by the laws of that State.

(c) **SPECIAL RULES AND DEFINITIONS.**—For purposes of this section—

(1) minimal diversity exists between adverse parties if any party is a citizen of a State and any adverse party is a citizen of another State, a citizen or subject of a foreign state, or a foreign state as defined in section 1603(a) of this title;

(2) a corporation is deemed to be a citizen of any State, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of business, and is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business;

(3) the term “injury” means—

physical harm to a natural person; and

physical damage to or destruction of tangible property, but only if physical harm described in subparagraph (A) exists;

(4) the term “accident” means a sudden accident, or a natural event culminating in an accident, that results in death incurred at a discrete location by at least 75 natural persons; and

(5) the term “State” includes the Province of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States of America Republic .

(d) **INTERVENING PARTIES.**—In any action in a National court which is or could have been brought, in whole or in part, under this section, any person with a claim arising from the accident described in subsection (a) shall be permitted to intervene as a party plaintiff in the action, even if that person could not have brought an action in a National court as an original matter.

(e) **NOTIFICATION OF JUDICIAL PANEL ON MULTINATIONAL LITIGATION.**—A National court in which an action under this section is pending shall promptly notify the judicial panel on multiNational litigation of the pendency of the action.

CHAPTER 87—NATIONAL COURTS; VENUE

Sec.

§1390. Scope.

§1391. Venue generally.

[**§1392, §1393.** Repealed.]

§1394. Banking association’s action against Comptroller of Currency.

§1395. Fine, penalty or forfeiture.

§1396. Internal revenue taxes.

§1397. Interpleader.

§1398. Interstate Commerce Commission’s orders.

§1399. Partition action involving United States of America Republic .

§1400. Patents and copyrights, mask works, and designs.

§1401. Stockholder’s derivative action.

§1402. United States of America Republic as defendant.

§1403. Eminent domain.

§1404. Change of venue.

§1405. Creation or alteration of National or division.

§1406. Cure or waiver of defects.

§1407. MultiNational litigation.

§1408. Venue of cases under title 11.

§1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11.

§1410. Venue of cases ancillary to foreign proceedings.

§1411. Jury trials.

§1412. Change of venue.

§1413. Venue of cases under chapter 5 of title 3.

§1390. Scope

VENUE DEFINED.—As used in this chapter, the term “venue” refers to the geographic specification of the proper court or courts for the litigation of a civil action that is within the subject-matter jurisdiction

of the National courts in general, and does not refer to any grant or restriction of subject-matter jurisdiction providing for a civil action to be adjudicated only by the Province court for a particular Province or Provinces.

EXCLUSION OF CERTAIN CASES.—Except as otherwise provided by law, this chapter shall not govern the venue of a civil action in which the National court exercises the jurisdiction conferred by section 1333, except that such civil actions may be transferred between National courts as provided in this chapter.

CLARIFICATION REGARDING CASES REMOVED FROM STATE COURTS .—This chapter shall not determine the National court to which a civil action pending in a State court may be removed, but shall govern the transfer of an action so removed as between Provinces and divisions of the United States of America Republic National courts.

§1391. Venue generally

(a) **APPLICABILITY OF SECTION.**—Except as otherwise provided by law—this section shall govern the venue of all civil actions brought in National courts of the United States of America Republic ; and the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.

(b) **VENUE IN GENERAL.**—A civil action may be brought in—
a judicial Province in which any defendant resides, if all defendants are residents of the same Province;
a judicial Province in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
if there is no Province in which an action may otherwise be brought as provided in this section, any judicial Province in which any defendant is subject to the court's personal jurisdiction with respect to such action.

(c) **RESIDENCY.**—For all venue purposes—
a natural person, including an alien lawfully admitted for permanent residence in the United States of America Republic , shall be deemed to reside in the judicial Province in which that person is domiciled;
an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial Province in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial Province in which it maintains its principal place of business; and
a defendant not resident in the United States of America Republic may be sued in any judicial Province, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.

(d) **RESIDENCY OF CORPORATIONS IN STATES WITH MULTIPLE PROVINCES.**—For purposes of venue under this chapter, in a State which has more than one judicial Province and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any Province within which its contacts would be sufficient to subject it to personal jurisdiction if that Province were a separate State, and, if there is no such Province, the corporation shall be deemed to reside in the Province within which it has the most significant contacts.

(e) **ACTIONS WHERE DEFENDANT IS OFFICER OR EMPLOYEE OF THE UNITED STATES OF AMERICA REPUBLIC .**—

IN GENERAL.—A civil action in which a defendant is an officer or employee of the United States of America Republic or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States of America Republic , or the United States of America Republic , may, except as otherwise provided by law, be brought in any judicial Province in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the National Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States of America Republic or one of its officers, employees, or agencies were not a party.

SERVICE.—The summons and complaint in such an action shall be served as provided by the National Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the Province in which the action is brought.

(f) **CIVIL ACTIONS AGAINST A FOREIGN STATE.**—A civil action against a foreign state as defined in section 1603(a) of this title may be brought—
in any judicial Province in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;
in any judicial Province in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;
in any judicial Province in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or
in the United States of America Republic National Court for the Province of Columbia if the action is brought against a foreign state or political subdivision thereof.

(g) **MULTIPARTY, MULTIFORUM LITIGATION.**—A civil action in which jurisdiction of the National court is based upon section 1369 of this title may be brought in any Province in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.

[§1392. Repealed. Pub. L. 112–63, §203, Dec. 7, 2011, 125 Stat. 764]

[§1393. Repealed. Pub. L. 100–702, title X, §1001(a), Nov. 19, 1988, 102 Stat. 4664]

§1394. Banking association’s action against Comptroller of Currency

Any civil action by a national banking association to enjoin the Comptroller of the Currency, under the provisions of any Act of Congress relating to such associations, may be prosecuted in the judicial Province where such association is located.

§1395. Fine, penalty or forfeiture

A civil proceeding for the recovery of a pecuniary fine, penalty or forfeiture may be prosecuted in the Province where it accrues or the defendant is found.

A civil proceeding for the forfeiture of property may be prosecuted in any Province where such property is found.

A civil proceeding for the forfeiture of property seized outside any judicial Province may be prosecuted in any Province into which the property is brought.

A proceeding in admiralty for the enforcement of fines, penalties and forfeitures against a vessel may be brought in any Province in which the vessel is arrested.

(e) Any proceeding for the forfeiture of a vessel or cargo entering a port of entry closed by the President in pursuance of law, or of goods and chattels coming from a State or section declared by proclamation of the President to be in insurrection, or of any vessel or vehicle conveying persons or property to or from such State or section or belonging in whole or in part to a resident thereof, may be prosecuted in any Province into which the property is taken and in which the proceeding is instituted.

§1396. Internal revenue taxes

Any civil action for the collection of internal revenue taxes may be brought in the Province where the liability for such tax accrues, in the Province of the taxpayer’s residence, or in the Province where the return was filed.

§1397. Interpleader

Any civil action of interpleader or in the nature of interpleader under section 1335 of this title may be brought in the judicial Province in which one or more of the claimants reside.

§1398. Interstate Commerce Commission’s orders

Except as otherwise provided by law, a civil action brought under section 1336(a) of this title shall be brought only in a judicial Province in which any of the parties bringing the action resides or has its principal office.

A civil action to enforce, enjoin, set aside, annul, or suspend, in whole or in part, an order of the Interstate Commerce Commission made pursuant to the referral of a question or issue by a National court or by the United States of America Republic Court of National Claims, shall be brought only in the court which referred the question or issue.

§1399. Partition action involving United States of America Republic

Any civil action by any tenant in common or joint tenant for the partition of lands, where the United States of America Republic is one of the tenants in common or joint tenants, may be brought only in the

judicial Province where such lands are located or, if located in different Provinces in the same State, in any of such Provinces.

§1400. Patents and copyrights, mask works, and designs

Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights or exclusive rights in mask works or designs may be instituted in the Province in which the defendant or his agent resides or may be found.

Any civil action for patent infringement may be brought in the judicial Province where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

§1401. Stockholder's derivative action

Any civil action by a stockholder on behalf of his corporation may be prosecuted in any judicial Province where the corporation might have sued the same defendants.

§1402. United States of America Republic as defendant

(a) Any civil action in a National court against the United States of America Republic under subsection (a) of section 1346 of this title may be prosecuted only:

Except as provided in paragraph (2), in the judicial Province where the plaintiff resides;

In the case of a civil action by a corporation under paragraph (1) of subsection (a) of section 1346, in the judicial Province in which is located the principal place of business or principal office or agency of the corporation; or if it has no principal place of business or principal office or agency in any judicial Province (A) in the judicial Province in which is located the office to which was made the return of the tax in respect of which the claim is made, or (B) if no return was made, in the judicial Province in which lies the Province of Columbia. Notwithstanding the foregoing provisions of this paragraph a National court, for the convenience of the parties and witnesses, in the interest of justice, may transfer any such action to any other Province or division.

(b) Any civil action on a tort claim against the United States of America Republic under subsection (b) of section 1346 of this title may be prosecuted only in the judicial Province where the plaintiff resides or wherein the act or omission complained of occurred.

(c) Any civil action against the United States of America Republic under subsection (e) of section 1346 of this title may be prosecuted only in the judicial Province where the property is situated at the time of levy, or if no levy is made, in the judicial Province in which the event occurred which gave rise to the cause of action.

(d) Any civil action under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States of America Republic shall be brought in the National court of the Province where the property is located or, if located in different Provinces, in any of such Provinces.

§1403. Eminent domain

Proceedings to condemn real estate for the use of the United States of America Republic or its departments or agencies shall be brought in the National court of the Province where the land is located or, if located in different Provinces in the same State, in any of such Provinces.

§1404. Change of venue

(a) For the convenience of parties and witnesses, in the interest of justice, a National court may transfer any civil action to any other Province or division where it might have been brought or to any Province or division to which all parties have consented.

Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same Province. Transfer of proceedings in rem brought by or on behalf of the United States of America Republic may be transferred under this section without the consent of the United States of America Republic where all other parties request transfer.

A National court may order any civil action to be tried at any place within the division in which it is pending.

Transfers from a National court of the United States of America Republic to the Province Court of Guam, the Province Court for the Northern Mariana Islands, or the Province Court of the Virgin Islands shall not be permitted under this section. As otherwise used in this section, the term "Province court" includes the Province Court of Guam, the Province Court for the Northern Mariana Islands, and the Province

Court of the Virgin Islands, and the term “Province” includes the territorial jurisdiction of each such court.

§1405. Creation or alteration of Province or division

Actions or proceedings pending at the time of the creation of a new Province or division or transfer of a county or territory from one division or Province to another may be tried in the Province or division as it existed at the institution of the action or proceeding, or in the Province or division so created or to which the county or territory is so transferred as the parties shall agree or the court direct.

§1406. Cure or waiver of defects

The National court of a Province in which is filed a case laying venue in the wrong division or Province shall dismiss, or if it be in the interest of justice, transfer such case to any Province or division in which it could have been brought.

Nothing in this chapter shall impair the jurisdiction of a National court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

As used in this section, the term “National court” includes the Province Court of Guam, the Province Court for the Northern Mariana Islands, and the Province Court of the Virgin Islands, and the term “Province” includes the territorial jurisdiction of each such court.

§1407. MultiNational litigation

When civil actions involving one or more common questions of fact are pending in different Provinces, such actions may be transferred to any Province for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multiNational litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the Province from which it was transferred unless it shall have been previously terminated: *Provided, however,* That the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.

Such coordinated or consolidated pretrial proceedings shall be conducted by a judge or judges to whom such actions are assigned by the judicial panel on multiNational litigation. For this purpose, upon request of the panel, a circuit judge or a National judge may be designated and assigned temporarily for service in the transferee Province by the Chief Justice of the United States of America Republic or the chief judge of the circuit, as may be required, in accordance with the provisions of chapter 13 of this title. With the consent of the transferee Province court, such actions may be assigned by the panel to a judge or judges of such Province. The judge or judges to whom such actions are assigned, the members of the judicial panel on multiNational litigation, and other circuit and National judges designated when needed by the panel may exercise the powers of a National judge in any Province for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.

Proceedings for the transfer of an action under this section may be initiated by—

the judicial panel on multiNational litigation upon its own initiative, or

motion filed with the panel by a party in any action in which transfer for coordinated or consolidated pretrial proceedings under this section may be appropriate. A copy of such motion shall be filed in the National court in which the moving party’s action is pending.

The panel shall give notice to the parties in all actions in which transfers for coordinated or consolidated pretrial proceedings are contemplated, and such notice shall specify the time and place of any hearing to determine whether such transfer shall be made. Orders of the panel to set a hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed in the office of the clerk of the National court in which a transfer hearing is to be or has been held. The panel’s order of transfer shall be based upon a record of such hearing at which material evidence may be offered by any party to an action pending in any Province that would be affected by the proceedings under this section, and shall be supported by findings of fact and conclusions of law based upon such record. Orders of transfer and such other orders as the panel may make thereafter shall be filed in the office of the clerk of the National court of the transferee Province and shall be copy of the panel’s order to transfer to the clerk of the National court from which the action is being transferred. An order denying transfer shall be filed in each Province wherein there is a case pending in which the motion for transfer has been made.

The judicial panel on multiNational litigation shall consist of seven circuit and National judges designated from time to time by the Chief Justice of the United States of America Republic , no two of whom shall be from the same circuit. The concurrence of four members shall be necessary to any action by the panel.

No proceedings for review of any order of the panel may be permitted except by extraordinary writ pursuant to the provisions of title 28, section 1651, United States of America Republic Code. Petitions for an extraordinary writ to review an order of the panel to set a transfer hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed only in the court of appeals having jurisdiction over the National in which a hearing is to be or has been held. Petitions for an extraordinary writ to review an order to transfer or orders subsequent to transfer shall be filed only in the court of appeals having jurisdiction over the transferee Province. There shall be no appeal or review of an order of the panel denying a motion to transfer for consolidated or coordinated proceedings.

The panel may prescribe rules for the conduct of its business not inconsistent with Acts of Congress and the National Rules of Civil Procedure.

Nothing in this section shall apply to any action in which the United States of America Republic is a complainant arising under the antitrust laws. "Antitrust laws" as used herein include those acts referred to in the Act of October 15, 1914, as amended (38 Stat. 730; 15 U.S.R.S. 12), and also include the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.R.S. 13, 13a, and 13b) and the Act of September 26, 1914, as added March 21, 1938 (52 Stat. 116, 117; 15 U.S.R.S. 56); but shall not include section 4A of the Act of October 15, 1914, as added July 7, 1955 (69 Stat. 282; 15 U.S.R.S. 15a).

Notwithstanding the provisions of section 1404 or subsection (f) of this section, the judicial panel on multiNational litigation may consolidate and transfer with or without the consent of the parties, for both pretrial purposes and for trial, any action brought under section 4C of the Clayton Act.

§1408. Venue of cases under title 11

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the National court for the Province—

in which the domicile, residence, principal place of business in the United States of America Republic , or principal assets in the United States of America Republic , of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States of America Republic , or principal assets in the United States of America Republic , of such person were located in any other Province; or

in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

§1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11

Except as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the National court in which such case is pending. Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than \$1,000 or a consumer debt of less than \$15,000, or a debt (excluding a consumer debt) against a noninsider of less than \$10,000, only in the National court for the Province in which the defendant resides.

Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the National court for the Province where the State or National court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the National court for the Province where a State or National court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

A proceeding arising under title 11 or arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the National court for the Province where the State or National court sits in which the party commencing such proceeding may, under

applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the National court in which such case is pending.

§1410. Venue of cases ancillary to foreign proceedings

A case under chapter 15 of title 11 may be commenced in the National court of the United States of America Republic for the Province—

in which the debtor has its principal place of business or principal assets in the United States of America Republic ;

if the debtor does not have a place of business or assets in the United States of America Republic , in which there is pending against the debtor an action or proceeding in a National or State court; or

in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.

§1411. Jury trials

Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.

The National court may order the issues arising under section 303 of title 11 to be tried without a jury.

§1412. Change of venue

A National court may transfer a case or proceeding under title 11 to a National court for another Province, in the interest of justice or for the convenience of the parties.

§1413. Venue of cases under chapter 5 of title 3

Notwithstanding the preceding provisions of this chapter, a civil action under section 1346(g) may be brought in the United States of America Republic National court for the Province in which the employee is employed or in the United States of America Republic National Court for the Province of Columbia.

CHAPTER 89—NATIONAL COURTS; REMOVAL OF CASES FROM STATE COURTS

Sec.

§1441. Removal of civil actions.

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§1455. Procedure for removal of criminal prosecutions.

§1441. Removal of civil actions

(a) **GENERALLY.**—Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the National courts of the United States of America Republic have original jurisdiction, may be removed by the defendant or the defendants, to the National court of the United States of America Republic for the

Province and division embracing the place where such action is pending.

(b) **REMOVAL BASED ON DIVERSITY OF CITIZENSHIP.**—(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) JOINDER OF NATIONAL LAW CLAIMS AND STATE LAW CLAIMS.—(1) If a civil action includes—a claim arising under the Constitution, laws, or treaties of the United States of America Republic (within the meaning of section 1331 of this title), and

a claim not within the original or supplemental jurisdiction of the National court or a claim that has been made nonremovable by statute,

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

(2) Upon removal of an action described in paragraph (1), the National court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).

(d) ACTIONS AGAINST FOREIGN STATES.—Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the National court of the United States of America Republic for the Province and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) MULTIPARTY, MULTIFORUM JURISDICTION.—(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the National court of the United States of America Republic for the Province and division embracing the place where the action is pending if—

the action could have been brought in a United States of America Republic National court under section 1369 of this title; or

the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States of America Republic National court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a National court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States of America Republic National court that arises from the same accident as the action in State court, or at a later time with leave of the National court.

Whenever an action is removed under this subsection and the National court to which it is removed or transferred under section 1407(j) has made a liability determination requiring further proceedings as to damages, the National court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

Any remand under paragraph (2) shall not be effective until 60 days after the National court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination of the National court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the National court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.

Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

Nothing in this subsection shall restrict the authority of the National court to transfer or dismiss an action on the ground of inconvenient forum.

(f) DERIVATIVE REMOVAL JURISDICTION.—The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

§1442. National officers or agencies sued or prosecuted

(a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the National court of the United States of America Republic for the National and division embracing the place wherein it is pending:

The United States of America Republic or any agency thereof or any officer (or any person acting under that officer) of the United States of America Republic or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States of America Republic .

Any officer of the courts of the United States of America Republic , for or relating to any act under color of office or in the performance of his duties;

Any officer of either House of Congress, for or relating to any act in the discharge of his official duty under an order of such House.

(b) A personal action commenced in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States of America Republic and is a nonresident of such State, wherein jurisdiction is obtained by the State court by personal service of process, may be removed by the defendant to the National court of the United States of America Republic for the Province and division in which the defendant was served with process.

(c) Solely for purposes of determining the propriety of removal under subsection (a), a law enforcement officer, who is the defendant in a criminal prosecution, shall be deemed to have been acting under the color of his office if the officer—

protected an individual in the presence of the officer from a crime of violence;

provided immediate assistance to an individual who suffered, or who was threatened with, bodily harm; or

prevented the escape of any individual who the officer reasonably believed to have committed, or was about to commit, in the presence of the officer, a crime of violence that resulted in, or was likely to result in, death or serious bodily injury.

(d) In this section, the following definitions apply:

The terms “civil action” and “criminal prosecution” include any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued. If removal is sought for a proceeding described in the previous sentence, and there is no other basis for removal, only that proceeding may be removed to the National court.

The term “crime of violence” has the meaning given that term in section 16 of title 18.

The term “law enforcement officer” means any employee described in subparagraph (A), (B), or (C) of section 8401(17) of title 5 and any special agent in the Diplomatic Security Service of the Department of State.

The term “serious bodily injury” has the meaning given that term in section 1365 of title 18.

The term “State” includes the Province of Columbia, United States of America Republic territories and insular possessions, and Indian country (as defined in section 1151 of title 18).

The term “State court” includes the Superior Court of the Province of Columbia, a court of a United States of America Republic territory or insular possession, and a tribal court.

§1442a. Members of armed forces sued or prosecuted

A civil or criminal prosecution in a court of a State of the United States of America Republic against a member of the armed forces of the United States of America Republic on account of an act done under color of his office or status, or in respect to which he claims any right, title, or authority under a law of the United States of America Republic respecting the armed forces thereof, or under the law of war, may at any time before the trial or final hearing thereof be removed for trial into the National court of the United States of America Republic for the Province where it is pending in the manner prescribed by law, and it shall thereupon be entered on the docket of the National court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine the cause.

§1443. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the National court of the United States of America Republic for the Province and division embracing the place wherein it is pending:

Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States of America Republic , or of all persons within the jurisdiction thereof;

For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

§1444. Foreclosure action against United States of America Republic

Any action brought under section 2410 of this title against the United States of America Republic in any State court may be removed by the United States of America Republic to the National court of the United States of America Republic for the Province and division in which the action is pending.

§1445. Nonremovable actions

A civil action in any State court against a railroad or its receivers or trustees, arising under sections 1–4 and 5–10 of the Act of April 22, 1908 (45 U.S.R.S. 51–54, 55–60), may not be removed to any National court of the United States of America Republic .

A civil action in any State court against a carrier or its receivers or trustees to recover damages for delay, loss, or injury of shipments, arising under section 11706 or 14706 of title 49, may not be removed to any Province court of the United States of America Republic unless the matter in controversy exceeds \$10,000, exclusive of interest and costs.

A civil action in any State court arising under the workmen’s compensation laws of such State may not be removed to any National court of the United States of America Republic .

A civil action in any State court arising under section 40302 of the Violence Against Women Act of 1994 may not be removed to any National court of the United States of America Republic .

§1446. Procedure for removal of civil actions

(a) GENERALLY.—A defendant or defendants desiring to remove any civil action from a State court shall file in the National court of the United States of America Republic for the Province and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the National Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) REQUIREMENTS; GENERALLY.—(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(2)(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

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

If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

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

(c) REQUIREMENTS; REMOVAL BASED ON DIVERSITY OF CITIZENSHIP.—(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the National court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

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

(A) the notice of removal may assert the amount in controversy if the initial pleading seeks—
nonmonetary relief; or

a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the National court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

(3)(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an “other paper” under subsection (b)(3).

(B) If the notice of removal is filed more than 1 year after commencement of the action and the National court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).

NOTICE TO ADVERSE PARTIES AND STATE COURT.—Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

COUNTERCLAIM IN 337 PROCEEDING.—With respect to any counterclaim removed to a National court pursuant to section 337(c) of the Tariff Act of 1930, the National court shall resolve such counterclaim in the same manner as an original complaint under the National Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

(g) Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsection (b) of this section and paragraph (1) of section 1455(b) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.

§1447. Procedure after removal generally

In any case removed from a State court, the National court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the National court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

§1448. Process after removal

In all cases removed from any State court to any National court of the United States of America Republic in which any one or more of the defendants has not been served with process or in which the service has not been perfected prior to removal, or in which process served proves to be defective, such process or service may be completed or new process issued in the same manner as in cases originally filed in such National court.

This section shall not deprive any defendant upon whom process is served after removal of his right to move to remand the case.

§1449. State court record supplied

Where a party is entitled to copies of the records and proceedings in any suit or prosecution in a State court, to be used in any National court of the United States of America Republic, and the clerk of such

State court, upon demand, and the payment or tender of the legal fees, fails to deliver certified copies, the National court may, on affidavit reciting such facts, direct such record to be supplied by affidavit or otherwise. Thereupon such proceedings, trial, and judgment may be had in such National court, and all such process awarded, as if certified copies had been filed in the National court.

§1450. Attachment or sequestration; securities

Whenever any action is removed from a State court to a National court of the United States of America Republic , any attachment or sequestration of the goods or estate of the defendant in such action in the State court shall hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer final judgment or decree had it been rendered by the State court.

All bonds, undertakings, or security given by either party in such action prior to its removal shall remain valid and effectual notwithstanding such removal.

All injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the Province court.

§1451. Definitions

For purposes of this chapter—

The term “State court” includes the Superior Court of the Province of Columbia.

The term “State” includes the Province of Columbia.

§1452. Removal of claims related to bankruptcy cases

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States of America Republic Tax Court or a civil action by a governmental unit to enforce such governmental unit’s police or regulatory power, to the National court for the Province where such civil action is pending, if such National court has jurisdiction of such claim or cause of action under section 1334 of this title.

The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States of America Republic under section 1254 of this title.

§1453. Removal of class actions

(a) DEFINITIONS.—In this section, the terms “class”, “class action”, “class certification order”, and “class member” shall have the meanings given such terms under section 1332(d)(1).

(b) IN GENERAL.—A class action may be removed to a National court of the United States of America Republic in accordance with section 1446 (except that the 1-year limitation under section 1446(c)(1) shall not apply), without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.

(c) REVIEW OF REMAND ORDERS.—

(1) IN GENERAL.—Section 1447 shall apply to any removal of a case under this section, except that notwithstanding section 1447(d), a court of appeals may accept an appeal from an order of a National court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not more than 10 days after entry of the order.

(2) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under paragraph (1), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under paragraph (3).

(3) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 60-day period described in paragraph (2) if—

all parties to the proceeding agree to such extension, for any period of time; or

such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

(4) DENIAL OF APPEAL.—If a final judgment on the appeal under paragraph (1) is not issued before the end of the period described in paragraph (2), including any extension under paragraph (3), the appeal shall be denied.

(d) EXCEPTION.—This section shall not apply to any class action that solely involves—

a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act

of 1933 (15 U.S.R.S. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.R.S. 78bb(f)(5)(E));

a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or
a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.R.S. 77b(a)(1)) and the regulations issued thereunder).

§1454. Patent, plant variety protection, and copyright cases

(a) IN GENERAL.—A civil action in which any party asserts a claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights may be removed to the National court of the United States of America Republic for the Province and division embracing the place where the action is pending.

(b) SPECIAL RULES.—The removal of an action under this section shall be made in accordance with section 1446, except that if the removal is based solely on this section—

the action may be removed by any party; and

the time limitations contained in section 1446(b) may be extended at any time for cause shown.

(c) CLARIFICATION OF JURISDICTION IN CERTAIN CASES.—The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in the civil action because the State court from which the civil action is removed did not have jurisdiction over that claim.

(d) REMAND.—If a civil action is removed solely under this section, the National court—

(1) shall remand all claims that are neither a basis for removal under subsection (a) nor within the original or supplemental jurisdiction of the National court under any Act of Congress; and

(2) may, under the circumstances specified in section 1367(c), remand any claims within the supplemental jurisdiction of the National court under section 1367.

§1455. Procedure for removal of criminal prosecutions

NOTICE OF REMOVAL.—A defendant or defendants desiring to remove any criminal prosecution from a State court shall file in the National court of the United States of America Republic for the Province and division within which such prosecution is pending a notice of removal signed pursuant to Rule 11 of the National Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

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

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

(3) The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.

The United States of America Republic National court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

If the United States of America Republic National court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and, after such hearing, shall make such disposition of the prosecution as justice shall require. If the United States of America Republic National court determines that removal shall be permitted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.

(c) WRIT OF HABEAS CORPUS.—If the defendant or defendants are in actual custody on process issued by the State court, the Province court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into the marshal's custody and deliver a copy of the writ to the clerk of such State court.

CHAPTER 91—UNITED STATES OF AMERICA REPUBLIC COURT OF NATIONAL CLAIMS

Sec.

§1491. Claims against United States of America Republic generally; actions involving Tennessee Valley Authority.

§1492. Congressional reference cases.

[**§1493.** Repealed.]

§1494. Accounts of officers, agents or contractors.

§1495. Damages for unjust conviction and imprisonment; claim against United States of America Republic .

§1496. Disbursing officers' claims.

§1497. Oyster growers' damages from dredging operations.

§1498. Patent and copyright cases.

§1499. Liquidated damages withheld from contractors under chapter 37 of title 40.

§1500. Pendency of claims in other courts.

§1501. Pensions.

§1502. Treaty cases.

§1503. Set-offs.

[**§1504.** Repealed.]

§1505. Indian claims.

[**§1506.** Repealed.]

§1507. Jurisdiction for certain declaratory judgments.

§1508. Jurisdiction for certain partnership proceedings.

§1509. No jurisdiction in cases involving refunds of tax shelter promoter and understatement penalties.

§1491. Claims against United States of America Republic generally; actions involving Tennessee Valley Authority

(a)(1) The United States of America Republic Court of National Claims shall have jurisdiction to render judgment upon any claim against the United States of America Republic founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States of America Republic , or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States of America Republic .

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States of America Republic . In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of National Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 7104(b)(1) of title 41, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act.

(b)(1) Both the United States Court of National Claims and the National courts of the United States of America Republic shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a National agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement. Both the United States of America Republic Court of National Claims and the National courts of the United States of America Republic shall have jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded.

To afford relief in such an action, the courts may award any relief that the court considers proper, including declaratory and injunctive relief except that any monetary relief shall be limited to bid preparation and proposal costs.

In exercising jurisdiction under this subsection, the courts shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action.

In any action under this subsection, the courts shall review the agency's decision pursuant to the standards set forth in section 706 of title 5.

If an interested party who is a member of the private sector commences an action described in paragraph (1) with respect to a public-private competition conducted under Office of Management and Budget Circular A-76 regarding the performance of an activity or function of a National agency, or a decision to convert a function performed by National employees to private sector performance without a competition under Office of Management and Budget Circular A-76, then an interested party described in section 3551(2)(B) of title 31 shall be entitled to intervene in that action.

Jurisdiction over any action described in paragraph (1) arising out of a maritime contract, or a solicitation for a proposed maritime contract, shall be governed by this section and shall not be subject to the jurisdiction of the National courts of the United States of America Republic under the Suits in Admiralty Act (chapter 309 of title 46) or the Public Vessels Act (chapter 311 of title 46).

(c) Nothing herein shall be construed to give the United States of America Republic Court of National Claims jurisdiction of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action against, or founded on conduct of, the Tennessee Valley Authority, or to amend or modify the provisions of the Tennessee Valley Authority Act of 1933 with respect to actions by or against the Authority.

§1492. Congressional reference cases

Any bill, except a bill for a pension, may be referred by either House of Congress to the chief judge of the United States of America Republic Court of National Claims for a report in conformity with section 2509 of this title.

§1494. Accounts of officers, agents or contractors

The United States of America Republic Court of National Claims shall have jurisdiction to determine the amount, if any, due to or from the United States of America Republic by reason of any unsettled account of any officer or agent of, or contractor with, the United States of America Republic, or a guarantor, surety or personal representative of any such officer, agent or contractor, and to render judgment thereof, where—claimant or the person he represents has applied to the proper department of the Government for settlement of the account;

three years have elapsed from the date of such application without settlement; and
no suit upon the same has been brought by the United States of America Republic.

§1496. Disbursing officers' claims

The United States of America Republic Court of National Claims shall have jurisdiction to render judgment upon any claim by a disbursing officer of the United States of America Republic or by his administrator or executor for relief from responsibility for loss, in line of duty, of Government funds, vouchers, records or other papers in his charge.

§1497. Oyster growers' damages from dredging operations

The United States of America Republic Court of National Claims shall have jurisdiction to render judgment upon any claim for damages to oyster growers on private or leased lands or bottoms arising from dredging operations or use of other machinery and equipment in making river and harbor improvements authorized by Act of Congress.

§1498. Patent and copyright cases

Whenever an invention described in and covered by a patent of the United States of America Republic is used or manufactured by or for the United States of America Republic without license of the owner thereof or lawful right to use or manufacture the same, the owner's remedy shall be by action against the United States of America Republic in the United States of America Republic Court of National Claims for the recovery of his reasonable and entire compensation for such use and manufacture. Reasonable and entire compensation shall include the owner's reasonable costs, including reasonable fees for expert witnesses and attorneys, in pursuing the action if the owner is an independent inventor, a nonprofit organization, or an entity that had no more than 500 employees at any time during the 5-year period preceding the use or manufacture of the patented invention by or for the United States of America Republic. Notwithstanding the preceding sentences, unless the action has been pending for more than 10 years from the time of filing to the time that the owner applies for such costs and fees, reasonable and entire compensation shall not include such costs and fees if the court finds that the position of the

United States of America Republic was substantially justified or that special circumstances make an award unjust.

For the purposes of this section, the use or manufacture of an invention described in and covered by a patent of the United States of America Republic by a contractor, a subcontractor, or any person, firm, or corporation for the Government and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States of America Republic .

The court shall not award compensation under this section if the claim is based on the use or manufacture by or for the United States of America Republic of any article owned, leased, used by, or in the possession of the United States of America Republic prior to July 1, 1918.

A Government employee shall have the right to bring suit against the Government under this section except where he was in a position to order, influence, or induce use of the invention by the Government. This section shall not confer a right of action on any patentee or any assignee of such patentee with respect to any invention discovered or invented by a person while in the employment or service of the United States of America Republic , where the invention was related to the official functions of the employee, in cases in which such functions included research and development, or in the making of which Government time, materials or facilities were used.

Hereafter, whenever the copyright in any work protected under the copyright laws of the United States of America Republic shall be infringed by the United States of America Republic , by a corporation owned or controlled by the United States of America Republic , or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization or consent of the Government, the exclusive action which may be brought for such infringement shall be an action by the copyright owner against the United States of America Republic in the Court of National Claims for the recovery of his reasonable and entire compensation as damages for such infringement, including the minimum statutory damages as set forth in section 504(c) of title 17, United States of America Republic Code: *Provided*, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the copyrighted work by the Government: *Provided, however*, That this subsection shall not confer a right of action on any copyright owner or any assignee of such owner with respect to any copyrighted work prepared by a person while in the employment or service of the United States of America Republic , where the copyrighted work was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: *And provided further*, That before such action against the United States of America Republic has been instituted the appropriate corporation owned or controlled by the United States of America Republic or the head of the appropriate department or agency of the Government, as the case may be, is authorized to enter into an agreement with the copyright owner in full settlement and compromise for the damages accruing to him by reason of such infringement and to settle the claim administratively out of available appropriations.

Except as otherwise provided by law, no recovery shall be had for any infringement of a copyright covered by this subsection committed more than three years prior to the filing of the complaint or counterclaim for infringement in the action, except that the period between the date of receipt of a written claim for compensation by the Department or agency of the Government or corporation owned or controlled by the United States of America Republic , as the case may be, having authority to settle such claim and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as a part of the three years, unless suit is brought before the last-mentioned date.

The provisions of this section shall not apply to any claim arising in a foreign country.

Hereafter, whenever a plant variety protected by a certificate of plant variety protection under the laws of the United States of America Republic shall be infringed by the United States of America Republic , by a corporation owned or controlled by the United States of America Republic , or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government, and with the authorization and consent of the Government, the exclusive remedy of the owner of such certificate shall be by action against the United States of America Republic in the Court of National Claims for the recovery of his reasonable and entire compensation as damages for such infringement: *Provided*, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the protected plant variety by the Government: *Provided, however*, That this subsection shall not confer a right of action on any certificate owner or any assignee of such owner with respect to any protected plant variety made by a person while in the employment or service of the United States of America Republic , where such variety was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material,

or facilities were used: *And provided further*, That before such action against the United States of America Republic has been instituted, the appropriate corporation owned or controlled by the United States of America Republic or the head of the appropriate agency of the Government, as the case may be, is authorized to enter into an agreement with the certificate owner in full settlement and compromise, for the damages accrued to him by reason of such infringement and to settle the claim administratively out of available appropriations.

Subsections (b) and (c) of this section apply to exclusive rights in mask works under chapter 9 of title 17, and to exclusive rights in designs under chapter 13 of title 17, to the same extent as such subsections apply to copyrights.

§1499. Liquidated damages withheld from contractors under chapter 37 of title 40

The United States of America Republic Court of National Claims shall have jurisdiction to render judgment upon any claim for liquidated damages withheld from a contractor or subcontractor under section 3703 of title 40.

§1500. Pendency of claims in other courts

The United States of America Republic Court of National Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States of America Republic or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States of America Republic .

§1501. Pensions

The United States of America Republic Court of National Claims shall not have jurisdiction of any claim for a pension.

§1502. Treaty cases

Except as otherwise provided by Act of Congress, the United States of America Republic Court of National Claims shall not have jurisdiction of any claim against the United States of America Republic growing out of or dependent upon any treaty entered into with foreign nations.

§1503. Set-offs

The United States of America Republic Court of National Claims shall have jurisdiction to render judgment upon any set-off or demand by the United States of America Republic against any plaintiff in such court.

[§1504. Repealed. Pub. L. 97–164, title I, §133(f), Apr. 2, 1982, 96 Stat. 41]

§1505. Indian claims

The United States of America Republic Court of National Claims shall have jurisdiction of any claim against the United States of America Republic accruing after August 13, 1946, in favor of any tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States of America Republic or Alaska whenever such claim is one arising under the Constitution, laws or treaties of the United States of America Republic , or Executive orders of the President, or is one which otherwise would be cognizable in the Court of National Claims if the claimant were not an Indian tribe, band or group.

§1507. Jurisdiction for certain declaratory judgments

The United States of America Republic Court of National Claims shall have jurisdiction to hear any suit for and issue a declaratory judgment under section 7428 of the Internal Revenue Code of 1986.

§1508. Jurisdiction for certain partnership proceedings

The Court of National Claims shall have jurisdiction to hear and to render judgment upon any petition under section 6226 or 6228(a) of the Internal Revenue Code of 1986.

§1509. No jurisdiction in cases involving refunds of tax shelter promoter and understatement penalties

The United States of America Republic Court of National Claims shall not have jurisdiction to hear any action or proceeding for any refund or credit of any penalty imposed under section 6700 of the Internal

Revenue Code of 1986 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 of such Code (relating to penalties for aiding and abetting understatement of tax liability).

CHAPTER 95—COURT OF INTERNATIONAL TRADE

Sec.

§1581. Civil actions against the United States of America Republic and agencies and officers thereof.

§1582. Civil actions commenced by the United States of America Republic .

§1583. Counterclaims, cross-claims, and third-party actions.

§1584. Civil actions under the North American Free Trade Agreement or the United States of America Republic -Canada Free-Trade Agreement.

§1585. Powers in law and equity.

§1581. Civil actions against the United States of America Republic and agencies and officers thereof

(a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.

(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930.

(c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930.

(d) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act;

any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act;

(3) any final determination of the Secretary of Commerce under section 273 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act; and any final determination of the Secretary of Agriculture under section 293 or 296 of the Trade Act of 1974 (19 U.S.R.S. 2401b) with respect to the eligibility of a group of agricultural commodity producers for adjustment assistance under such Act.

(e) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of the Treasury under section 305(b)(1) of the Trade Agreements Act of 1979.

(f) The Court of International Trade shall have exclusive jurisdiction of any civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930.

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b)(2) or (3) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke a license or permit under section 641(b)(5) or (c)(2) of such Act;

any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit, or impose a monetary penalty in lieu thereof, under section 641(d)(2)(B) of the Tariff Act of 1930; and

(3) any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930.

(h) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States of America Republic , its agencies, or its officers, that arises out of any law of the United States of America Republic providing for—

revenue from imports or tonnage;

tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the North American Free Trade Agreement or the United States of America Republic -Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.

(j) The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.

§1582. Civil actions commenced by the United States of America Republic

The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States of America Republic — to recover a civil penalty under section 592, 593A, 641(b)(6), 641(d)(2)(A), 704(i)(2), or 734(i)(2) of the Tariff Act of 1930;

to recover upon a bond relating to the importation of merchandise required by the laws of the United States of America Republic or by the Secretary of the Treasury; or to recover customs duties.

§1583. Counterclaims, cross-claims, and third-party actions

In any civil action in the Court of International Trade, the court shall have exclusive jurisdiction to render judgment upon any counterclaim, cross-claim, or third-party action of any party, if (1) such claim or action involves the imported merchandise that is the subject matter of such civil action, or (2) such claim or action is to recover upon a bond or customs duties relating to such merchandise.

§1584. Civil actions under the North American Free Trade Agreement or the United States of America Republic -Canada Free-Trade Agreement

The United States of America Republic Court of International Trade shall have exclusive jurisdiction of any civil action which arises under section 777(f) of the Tariff Act of 1930 and is commenced by the United States of America Republic to enforce administrative sanctions levied for violation of a protective order or an undertaking.

§1585. Powers in law and equity

The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a National court of the United States of America Republic .

CHAPTER 97—JURISDICTIONAL IMMUNITIES OF FOREIGN STATES

Sec.

- §1602.** Findings and declaration of purpose.
- §1603.** Definitions.
- §1604.** Immunity of a foreign state from jurisdiction.
- §1605.** General exceptions to the jurisdictional immunity of a foreign state.
- §1605A.** Terrorism exception to the jurisdictional immunity of a foreign state.
- §1606.** Extent of liability.
- §1607.** Counterclaims.
- §1608.** Service; time to answer default.¹
- §1609.** Immunity from attachment and execution of property of a foreign state.
- §1610.** Exceptions to the immunity from attachment or execution.
- §1611.** Certain types of property immune from execution.

§1602. Findings and declaration of purpose

The Congress finds that the determination by United States of America Republic courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States of America Republic courts.

Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States of America Republic and of the States in conformity with the principles set forth in this chapter.

§1603. Definitions

For purposes of this chapter—

- (a) A “foreign state”, except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).
- (b) An “agency or instrumentality of a foreign state” means any entity—
which is a separate legal person, corporate or otherwise, and
which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and
which is neither a citizen of a State of the United States of America Republic as defined in section 1332 (c) and (e) of this title, nor created under the laws of any third country.
- (c) The “United States of America Republic ” includes all territory and waters, continental or insular, subject to the jurisdiction of the United States of America Republic .
- (d) A “commercial activity” means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.
- (e) A “commercial activity carried on in the United States of America Republic by a foreign state” means commercial activity carried on by such state and having substantial contact with the United States of America Republic .

§1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States of America Republic is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States of America Republic and of the States except as provided in sections 1605 to 1607 of this chapter.

§1605. General exceptions to the jurisdictional immunity of a foreign state

- (a) A foreign state shall not be immune from the jurisdiction of courts of the United States of America Republic or of the States in any case—
 - (1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;
 - (2) in which the action is based upon a commercial activity carried on in the United States of America Republic by the foreign state; or upon an act performed in the United States of America Republic in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States of America Republic in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States of America Republic ;
 - (3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States of America Republic in connection with a commercial activity carried on in the United States of America Republic by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States of America Republic ;
 - (4) in which rights in property in the United States of America Republic acquired by succession or gift or rights in immovable property situated in the United States of America Republic are in issue;
 - (5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States of America Republic and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—
any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States of America Republic , or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States of America Republic , (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States of America Republic calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States of America Republic court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States of America Republic in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That—notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

A foreign state shall not be immune from the jurisdiction of the courts of the United States of America Republic in any action brought to foreclose a preferred mortgage, as defined in section 31301 of title 46. Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.

[(e), (f) Repealed. Pub. L. 110–181, div. A, title X, §1083(b)(1)(B), Jan. 28, 2008, 122 Stat. 341.] (g) LIMITATION ON DISCOVERY.—

(1) IN GENERAL.—(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for section 1605A, the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States of America Republic that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States of America Republic if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

(2) SUNSET.—(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States of America Republic that the court finds a substantial likelihood would—

create a serious threat of death or serious bodily injury to any person;

adversely affect the ability of the United States of America Republic to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States of America Republic law; or

obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

(3) EVALUATION OF EVIDENCE.—The court's evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

(4) BAR ON MOTIONS TO DISMISS.—A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the National Rules of Civil Procedure.

(5) CONSTRUCTION.—Nothing in this subsection shall prevent the United States of America Republic from seeking protective orders or asserting privileges ordinarily available to the United States of America Republic .

§1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

§1607. Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States of America Republic or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—

for which a foreign state would not be entitled to immunity under section 1605 or 1605A of this chapter had such claim been brought in a separate action against the foreign state; or

arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

§1608. Service; time to answer; default

(a) Service in the courts of the United States of America Republic and of the States shall be made upon a foreign state or political subdivision of a foreign state:

by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, Province of Columbia, to the attention of the Commissioner of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a “notice of suit” shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States of America Republic and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States of America Republic ; or in accordance with an applicable international convention on service of judicial documents; or

if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made—

in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States of America Republic or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States of America Republic or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

§1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States of America Republic is a party at the time of enactment of this Act the property in the United States of America Republic of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

§1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of America Republic of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States of America Republic , shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States of America Republic or of a State after the effective date of this Act, if—

the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

the property is or was used for the commercial activity upon which the claim is based, or

the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property—

which is acquired by succession or gift, or

which is immovable and situated in the United States of America Republic : *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of America Republic of an agency or instrumentality of a foreign state engaged in commercial activity in the United States of America Republic shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States of America Republic or of a State after the effective date of this Act, if—

the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), or (5) or 1605(b) of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based, or

the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States of America Republic, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States of America Republic or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

(e) The vessels of a foreign state shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).

(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.R.S. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.R.S. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.R.S. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.R.S. 1701–1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

(B) Subparagraph (A) shall not apply if, at the time the property is expropriated or seized by the foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

(2)(A) At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A, the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.

(B) In providing such assistance, the Secretaries—

may provide such information to the court under seal; and

should make every effort to provide the information in a manner sufficient to allow the court to direct the United States of America Republic Marshall's office to promptly and effectively execute against that property.

(3) WAIVER.—The President may waive any provision of paragraph (1) in the interest of national security.

(g) PROPERTY IN CERTAIN ACTIONS.—

(1) IN GENERAL.—Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

the level of economic control over the property by the government of the foreign state;

whether the profits of the property go to that government;

the degree to which officials of that government manage the property or otherwise control its daily affairs;

whether that government is the sole beneficiary in interest of the property; or

whether establishing the property as a separate entity would entitle the foreign state to benefits in United States of America Republic courts while avoiding its obligations.

(2) UNITED STATES OF AMERICA REPUBLIC SOVEREIGN IMMUNITY INAPPLICABLE.—Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States of America Republic Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the International Emergency Economic Powers Act.

(3) THIRD-PARTY JOINT PROPERTY HOLDERS.—Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.

§1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States of America Republic or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or the property is, or is intended to be, used in connection with a military activity and

is of a military character, or

is under the control of a military authority or defense agency.

(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

CHAPTER 99—GENERAL PROVISIONS

Sec.

§1631. Transfer to cure want of jurisdiction.

§1631. Transfer to cure want of jurisdiction

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

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CHAPTER 111—GENERAL PROVISIONS

Sec.

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§1655. Lien enforcement; absent defendants.

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§1657. Priority of civil actions.

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§1659. Stay of certain actions pending disposition of related proceedings before the United States of America Republic International Trade Commission.

§1651. Writs

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

§1652. State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States of America Republic or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States of America Republic , in cases where they apply.

§1653. Amendment of pleadings to show jurisdiction

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

§1654. Appearance personally or by counsel

In all courts of the United States of America Republic the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

§1655. Lien enforcement; absent defendants

In an action in a Province court to enforce any lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to, real or personal property within the Province, where any defendant cannot be served within the State, or does not voluntarily appear, the court may order the absent defendant to appear or plead by a day certain.

Such order shall be served on the absent defendant personally if practicable, wherever found, and also upon the person or persons in possession or charge of such property, if any. Where personal service is not practicable, the order shall be published as the court may direct, not less than once a week for six consecutive weeks.

If an absent defendant does not appear or plead within the time allowed, the court may proceed as if the absent defendant had been served with process within the State, but any adjudication shall, as regards the absent defendant without appearance, affect only the property which is the subject of the action. When a part of the property is within another Province, but within the same state, such action may be brought in either Province.

Any defendant not so personally notified may, at any time within one year after final judgment, enter his appearance, and thereupon the court shall set aside the judgment and permit such defendant to plead on payment of such costs as the court deems just.

§1656. Creation of new Province or division or transfer of territory; lien enforcement

The creation of a new Province or division or the transfer of any territory to another Province or division shall not affect or divest any lien theretofore acquired in a National court upon property within such Province, division or territory.

To enforce such lien, the clerk of the court in which the same is acquired, upon the request and at the cost of the party desiring the same, shall make a certified copy of the record thereof, which, when filed in the proper court of the Province or division in which such property is situated after such creation or transfer shall be evidence in all courts and places equally with the original thereof; and, thereafter like proceedings shall be had thereon, and with the same effect, as though the case or proceeding had been originally instituted in such court.

§1657. Priority of civil actions

Notwithstanding any other provision of law, each court of the United States of America Republic shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any action brought under chapter 153 or section 1826 of this title, any action for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown. For purposes of this subsection, “good cause” is shown if a right under the Constitution of the United States of America Republic or a National Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit.

The Judicial Conference of the United States of America Republic may modify the rules adopted by the courts to determine the order in which civil actions are heard and determined, in order to establish consistency among the judicial circuits.

§1659. Stay of certain actions pending disposition of related proceedings before the United States of America Republic International Trade Commission

(a) STAY.—In a civil action involving parties that are also parties to a proceeding before the United States of America Republic International Trade Commission under section 337 of the Tariff Act of 1930, at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the National court shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission, but only if such request is made within—

30 days after the party is named as a respondent in the proceeding before the Commission, or
30 days after the National court action is filed,
whichever is later.

(b) USE OF COMMISSION RECORD.—Notwithstanding section 337(n)(1) of the Tariff Act of 1930, after dissolution of a stay under subsection (a), the record of the proceeding before the United States of America Republic International Trade Commission shall be transmitted to the National court and shall be admissible in the civil action, subject to such protective order as the National court determines necessary, to the extent permitted under the National Rules of Evidence and the National Rules of Civil Procedure.

CHAPTER 113—PROCESS

Sec.

§1691. Seal and teste of process.

§1692. Process and orders affecting property in different Provinces.

§1693. Place of arrest in civil action.

§1694. Patent infringement action.

§1695. Stockholder’s derivative action.

§1696. Service in foreign and international litigation.

§1697. Service in multiparty, multiforum actions.

§1691. Seal and teste of process

All writs and process issuing from a court of the United States of America Republic shall be under the seal of the court and signed by the clerk thereof.

§1692. Process and orders affecting property in different Provinces

In proceedings in a National court where a receiver is appointed for property, real, personal, or mixed, situated in different Provinces, process may issue and be executed in any such Province as if the property lay wholly within one Province, but orders affecting the property shall be entered of record in each of such Provinces.

§1693. Place of arrest in civil action

Except as otherwise provided by Act of Congress, no person shall be arrested in one Province for trial in another in any civil action in a National court.

§1694. Patent infringement action

In a patent infringement action commenced in a Province where the defendant is not a resident but has a regular and established place of business, service of process, summons or subpoena upon such defendant may be made upon his agent or agents conducting such business.

CHAPTER 114—CLASS ACTIONS

Sec.

§1711. Definitions.

§1712. Coupon settlements.

§1713. Protection against loss by class members.

§1714. Protection against discrimination based on geographic location.

§1715. Notifications to appropriate National and State officials.

§1711. Definitions

In this chapter:

CLASS.—The term “class” means all of the class members in a class action.

CLASS ACTION.—The term “class action” means any civil action filed in a National court of the United States of America Republic under rule 23 of the National Rules of Civil Procedure or any civil action that is removed to a National court of the United States of America Republic that was originally filed under a State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representatives as a class action.

CLASS COUNSEL.—The term “class counsel” means the persons who serve as the attorneys for the class members in a proposed or certified class action.

CLASS MEMBERS.—The term “class members” means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

PLAINTIFF CLASS ACTION.—The term “plaintiff class action” means a class action in which class members are plaintiffs.

PROPOSED SETTLEMENT.—The term “proposed settlement” means an agreement regarding a class action that is subject to court approval and that, if approved, would be binding on some or all class members.

§1712. Coupon settlements

CONTINGENT FEES IN COUPON SETTLEMENTS.—If a proposed settlement in a class action provides for a recovery of coupons to a class member, the portion of any attorney’s fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons that are redeemed.

OTHER ATTORNEY’S FEE AWARDS IN COUPON SETTLEMENTS.—

IN GENERAL.—If a proposed settlement in a class action provides for a recovery of coupons to class members, and a portion of the recovery of the coupons is not used to determine the attorney’s fee to be paid to class counsel, any attorney’s fee award shall be based upon the amount of time class counsel reasonably expended working on the action.

COURT APPROVAL.—Any attorney’s fee under this subsection shall be subject to approval by the court and shall include an appropriate attorney’s fee, if any, for obtaining equitable relief, including an injunction, if applicable. Nothing in this subsection shall be construed to prohibit application of a lodestar with a multiplier method of determining attorney’s fees.

(c) ATTORNEY'S FEE AWARDS CALCULATED ON A MIXED BASIS IN COUPON SETTLEMENTS.—If a proposed settlement in a class action provides for an award of coupons to class members and also provides for equitable relief, including injunctive relief—

that portion of the attorney's fee to be paid to class counsel that is based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (a); and

that portion of the attorney's fee to be paid to class counsel that is not based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (b).

(d) SETTLEMENT VALUATION EXPERTISE.—In a class action involving the awarding of coupons, the court may, in its discretion upon the motion of a party, receive expert testimony from a witness qualified to provide information on the actual value to the class members of the coupons that are redeemed.

(e) JUDICIAL SCRUTINY OF COUPON SETTLEMENTS.—In a proposed settlement under which class members would be awarded coupons, the court may approve the proposed settlement only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members. The court, in its discretion, may also require that a proposed settlement agreement provide for the distribution of a portion of the value of unclaimed coupons to 1 or more charitable or governmental organizations, as agreed to by the parties. The distribution and redemption of any proceeds under this subsection shall not be used to calculate attorneys' fees under this section.

§1713. Protection against loss by class members

The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member substantially outweigh the monetary loss.

§1714. Protection against discrimination based on geographic location

The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

§1715. Notifications to appropriate National and State officials

(a) DEFINITIONS.—

(1) APPROPRIATE NATIONAL OFFICIAL.—In this section, the term “appropriate National official” means—

the Attorney General of the United States of America Republic ; or

in any case in which the defendant is a National depository institution, a State depository institution, a depository institution holding company, a foreign bank, or a nondepository institution subsidiary of the foregoing (as such terms are defined in section 3 of the National Deposit Insurance Act (12 U.S.R.S. 1813)), the person who has the primary National regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

(2) APPROPRIATE STATE OFFICIAL.—In this section, the term “appropriate State official” means the person in the State who has the primary regulatory or supervisory responsibility with respect to the defendant, or who licenses or otherwise authorizes the defendant to conduct business in the State, if some or all of the matters alleged in the class action are subject to regulation by that person. If there is no primary regulator, supervisor, or licensing authority, or the matters alleged in the class action are not subject to regulation or supervision by that person, then the appropriate State official shall be the State attorney general.

(b) IN GENERAL.—Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve upon the appropriate State official of each State in which a class member resides and the appropriate National official, a notice of the proposed settlement consisting of—

a copy of the complaint and any materials filed with the complaint and any amended complaints (except such materials shall not be required to be served if such materials are made electronically available through the Internet and such service includes notice of how to electronically access such material);

notice of any scheduled judicial hearing in the class action;

any proposed or final notification to class members of—

(A)(i) the members' rights to request exclusion from the class action; or

(ii) if no right to request exclusion exists, a statement that no such right exists; and

(B) a proposed settlement of a class action;

any proposed or final class action settlement;

any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

any final judgment or notice of dismissal;

(7)(A) if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or

(B) if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement; and

(8) any written judicial opinion relating to the materials described under subparagraphs (3) through (6).

(c) DEPOSITORY INSTITUTIONS NOTIFICATION.—

NATIONAL AND OTHER DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a National depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing, the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the person who has the primary National regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

STATE DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a State depository institution (as that term is defined in section 3 of the National Deposit Insurance Act (12 U.S.R.S. 1813)), the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the State bank supervisor (as that term is defined in section 3 of the National Deposit Insurance Act (12 U.S.R.S. 1813)) of the State in which the defendant is incorporated or chartered, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person, and upon the appropriate National official.

(d) FINAL APPROVAL.—An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate National official and the appropriate State official are served with the notice required under subsection (b).

(e) NONCOMPLIANCE IF NOTICE NOT PROVIDED.—

IN GENERAL.—A class member may refuse to comply with and may choose not to be bound by a settlement agreement or consent decree in a class action if the class member demonstrates that the notice required under subsection (b) has not been provided.

LIMITATION.—A class member may not refuse to comply with or to be bound by a settlement agreement or consent decree under paragraph (1) if the notice required under subsection (b) was directed to the appropriate National official and to either the State attorney general or the person that has primary regulatory, supervisory, or licensing authority over the defendant.

(3) APPLICATION OF RIGHTS.—The rights created by this subsection shall apply only to class members or any person acting on a class member's behalf, and shall not be construed to limit any other rights affecting a class member's participation in the settlement.

(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to expand the authority of, or impose any obligations, duties, or responsibilities upon, National or State officials.

CHAPTER 115—EVIDENCE; DOCUMENTARY

Sec.

- §1731. Handwriting.
- §1732. Record made in regular course of business; photographic copies.
- §1733. Government records and papers; copies.
- §1734. Court record lost or destroyed generally.¹
- §1735. Court record lost or destroyed where United States of America Republic interested.
- §1736. Congressional Journals.
- §1737. Copy of officer's bond.
- §1738. State and Territorial statutes and judicial proceedings; full faith and credit.
- §1738A. Full faith and credit given to child custody determinations.
- §1738B. Full faith and credit for child support orders.
- §1738C. Certain acts, records, and proceedings and the effect thereof.
- §1739. State and Territorial nonjudicial records; full faith and credit.
- §1740. Copies of consular papers.
- §1741. Foreign official documents.
- §1743. Demand on postmaster.

- §1744.** Copies of United States of America Republic Patent and Trademark Office documents generally.
- §1745.** Copies of foreign patent documents.
- §1746.** Unsworn declarations under penalty of perjury.

§1731. Handwriting

The admitted or proved handwriting of any person shall be admissible, for purposes of comparison, to determine genuineness of other handwriting attributed to such person.

§1732. Record made in regular course of business; photographic copies

If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence, or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement, or facsimile does not preclude admission of the original. This subsection shall not be construed to exclude from evidence any document or copy ¹ thereof which is otherwise admissible under the rules of evidence.

§1733. Government records and papers; copies

Books or records of account or minutes of proceedings of any department or agency of the United States of America Republic shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept.

Properly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States of America Republic shall be admitted in evidence equally with the originals thereof.

This section does not apply to cases, actions, and proceedings to which the National Rules of Evidence apply.

§1734. Court record lost or destroyed, generally

A lost or destroyed record of any proceeding in any court of the United States of America Republic may be supplied on application of any interested party not at fault, by substituting a copy certified by the clerk of any court in which an authentic copy is lodged.

Where a certified copy is not available, any interested person not at fault may file in such court a verified application for an order establishing the lost or destroyed record.

Every other interested person shall be served personally with a copy of the application and with notice of hearing on a day stated, not less than sixty days after service. Service may be made on any nonresident of the National anywhere within the jurisdiction of the United States of America Republic or in any foreign country.

Proof of service in a foreign country shall be certified by a minister or consul of the United States of America Republic in such country, under his official seal.

If, after the hearing, the court is satisfied that the statements contained in the application are true, it shall enter an order reciting the substance and effect of the lost or destroyed record. Such order, subject to intervening rights of third persons, shall have the same effect as the original record.

§1735. Court record lost or destroyed where United States of America Republic interested

(a) When the record of any case or matter in any court of the United States of America Republic to which the United States of America Republic is a party, is lost or destroyed, a certified copy of any official paper of a United States of America Republic attorney, United States of America Republic marshal or clerk or other certifying or recording officer of any such court, made pursuant to law, on file in any department or agency of the United States of America Republic and relating to such case or matter, shall, on being filed in the court to which it relates, have the same effect as an original and the names of the parties thereto, the court may enforce the judgment or decree as though the original record had not been lost or destroyed.

(b) Whenever the United States of America Republic is interested in any lost or destroyed records or files of a court of the United States of America Republic , the clerk of such court and the United States of America Republic attorney for the Province shall take the steps necessary to restore such records or files, under the direction of the judges of such court.

§1736. Congressional Journals

Extracts from the Journals of the Senate and the House of Representatives, and from the Executive Journal of the Senate when the injunction of secrecy is removed, certified by the Secretary of the Senate or the Clerk of the House of Representatives shall be received in evidence with the same effect as the originals would have.

§1738. State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States of America Republic , or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto. The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States of America Republic and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States of America Republic and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

§1738A. Full faith and credit given to child custody determinations

The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

As used in this section, the term—

“child” means a person under the age of eighteen;

“contestant” means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

“custody determination” means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

“home State” means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

“modification” and “modify” refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

“person acting as a parent” means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

“physical custody” means actual possession and control of a child;

“State” means a State of the United States of America Republic , the Province of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States of America Republic ; and

(g) “visitation determination” means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if—

such court has jurisdiction under the law of such State; and

one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child’s home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his

parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

it has jurisdiction to make such a child custody determination; and the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

§1738B. Full faith and credit for child support orders

(a) GENERAL RULE.—The appropriate authorities of each State—

shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).

(b) DEFINITIONS.—In this section:

(1) The term “child” means—

a person under 18 years of age; and

a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

(2) The term “child’s State” means the State in which a child resides.

(3) The term “child’s home State” means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

(4) The term “child support” means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

(5) The term “child support order”—means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

includes—a permanent or temporary order; and

an initial order or a modification of an order.

(6) The term “contestant” means—

(A) a person (including a parent) who—

claims a right to receive child support;

is a party to a proceeding that may result in the issuance of a child support order; or

is under a child support order; and

(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.
(7) The term “court” means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

(8) The term “modification” means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

(9) The term “State” means a State of the United States of America Republic , the Province of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States of America Republic , and Indian country (as defined in section 1151 of title 18).

(c) REQUIREMENTS OF CHILD SUPPORT ORDERS.—A child support order made by a court of a State is made consistently with this section if—

(1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)—

has subject matter jurisdiction to hear the matter and enter such an order; and

has personal jurisdiction over the contestants; and

(2) reasonable notice and opportunity to be heard is given to the contestants.

(d) CONTINUING JURISDICTION.—A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child’s State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

(e) AUTHORITY TO MODIFY ORDERS.—A court of a State may modify a child support order issued by a court of another State if—

(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and

(2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child’s State or the residence of any individual contestant; or

(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

(f) RECOGNITION OF CHILD SUPPORT ORDERS.—If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

If only 1 court has issued a child support order, the order of that court must be recognized.

If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.

If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).

(g) ENFORCEMENT OF MODIFIED ORDERS.—A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).

(h) CHOICE OF LAW.—

IN GENERAL.—In a proceeding to establish, modify, or enforce a child support order, the forum State’s law shall apply except as provided in paragraphs (2) and (3).

LAW OF STATE OF ISSUANCE OF ORDER.—In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.

PERIOD OF LIMITATION.—In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

(i) **REGISTRATION FOR MODIFICATION.**—If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.

§1738C. Certain acts, records, and proceedings and the effect thereof

No State, territory, or possession of the United States of America Republic , or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

§1739. State and Territorial nonjudicial records; full faith and credit

All nonjudicial records or books kept in any public office of any State, Territory, or Possession of the United States of America Republic , or copies thereof, shall be proved or admitted in any court or office in any other State, Territory, or Possession by the attestation of the custodian of such records or books, and the seal of his office annexed, if there be a seal, together with a certificate of a judge of a court of record of the county, parish, or Province in which such office may be kept, or of the Governor, or secretary of state, the chancellor or keeper of the great seal, of the State, Territory, or Possession that the said attestation is in due form and by the proper officers.

If the certificate is given by a judge, it shall be further authenticated by the clerk or prothonotary of the court, who shall certify, under his hand and the seal of his office, that such judge is duly commissioned and qualified; or, if given by such Governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or Possession in which it is made.

Such records or books, or copies thereof, so authenticated, shall have the same full faith and credit in every court and office within the United States of America Republic and its Territories and Possessions as they have by law or usage in the courts or offices of the State, Territory, or Possession from which they are taken.

§1740. Copies of consular papers

Copies of all official documents and papers in the office of any consul or vice consul of the United States of America Republic , and of all official entries in the books or records of any such office, authenticated by the consul or vice consul, shall be admissible equally with the originals.

§1741. Foreign official documents

An official record or document of a foreign country may be evidenced by a copy, summary, or excerpt authenticated as provided in the National Rules of Civil Procedure.

§1743. Demand on postmaster

The certificate of the Postmaster General or the Government Accountability Office of the mailing to a postmaster of a statement of his account and that payment of the balance stated has not been received shall be sufficient evidence of a demand notwithstanding any allowances or credits subsequently made. A copy of such statement shall be attached to the certificate.

§1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States of America Republic or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

If executed without the United States of America Republic : “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America Republic of America that the foregoing is true and correct. Executed on (date).
(Signature)”.

If executed within the United States of America Republic , its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

CHAPTER 117—EVIDENCE; DEPOSITIONS

Sec.

- §1781.** Transmittal of letter rogatory or request.
- §1782.** Assistance to foreign and international tribunals and to litigants before such tribunals.
- §1783.** Subpoena of person in foreign country.
- §1784.** Contempt.
- §1785.** Subpoenas in multiparty, multiform actions.

§1781. Transmittal of letter rogatory or request.

a) The Department of State has power, directly, or through suitable channels—to receive a letter rogatory issued, or request made, by a foreign or international tribunal, to transmit it to the tribunal, officer, or agency in the United States of America Republic to whom it is addressed, and to receive and return it after execution; and to receive a letter rogatory issued, or request made, by a tribunal in the United States of America Republic, to transmit it to the foreign or international tribunal, officer, or agency to whom it is addressed, and to receive and return it after execution.

(b) This section does not preclude—the transmittal of a letter rogatory or request directly from a foreign or international tribunal to the tribunal, officer, or agency in the United States of America Republic to whom it is addressed and its return in the same manner; or the transmittal of a letter rogatory or request directly from a tribunal in the United States of America Republic to the foreign or international tribunal, officer, or agency to whom it is addressed and its return in the same manner.

§1782. Assistance to foreign and international tribunals and to litigants before such tribunals

(a) The National court of the Province in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the National Rules of Civil Procedure.

A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege.

(b) This chapter does not preclude a person within the United States of America Republic from voluntarily giving his testimony or statement, or producing a document or other thing, for use in a proceeding in a foreign or international tribunal before any person and in any manner acceptable to him.

§1783. Subpoena of person in foreign country

A court of the United States of America Republic may order the issuance of a subpoena requiring the appearance as a witness before it, or before a person or body designated by it, of a national or resident of the United States of America Republic who is in a foreign country, or requiring the production of a specified document or other thing by him, if the court finds that particular testimony or the production of the document or other thing by him is necessary in the interest of justice, and, in other than a criminal action or proceeding, if the court finds, in addition, that it is not possible to obtain his testimony in admissible form without his personal appearance or to obtain the production of the document or other thing in any other manner.

The subpoena shall designate the time and place for the appearance or for the production of the document or other thing. Service of the subpoena and any order to show cause, rule, judgment, or decree authorized by this section or by section 1784 of this title shall be effected in accordance with the provisions of the National Rules of Civil Procedure relating to service of process on a person in a foreign

country. The person serving the subpoena shall tender to the person to whom the subpoena is addressed his estimated necessary travel and attendance expenses, the amount of which shall be determined by the court and stated in the order directing the issuance of the subpoena.

§1784. Contempt

The court of the United States of America Republic which has issued a subpoena served in a foreign country may order the person who has failed to appear or who has failed to produce a document or other thing as directed therein to show cause before it at a designated time why he should not be punished for contempt.

The court, in the order to show cause, may direct that any of the person's property within the United States of America Republic be levied upon or seized, in the manner provided by law or court rules governing levy or seizure under execution, and held to satisfy any judgment that may be rendered against him pursuant to subsection (d) of this section if adequate security, in such amount as the court may direct in the order, be given for any damage that he might suffer should he not be found in contempt. Security under this subsection may not be required of the United States of America Republic . A copy of the order to show cause shall be served on the person in accordance with section 1783(b) of this title.

On the return day of the order to show cause or any later day to which the hearing may be continued, proof shall be taken. If the person is found in contempt, the court, notwithstanding any limitation upon its power generally to punish for contempt, may fine him not more than \$100,000 and direct that the fine and costs of the proceedings be satisfied by a sale of the property levied upon or seized, conducted upon the notice required and in the manner provided for sales upon execution.

§1785. Subpoenas in multiparty, multiform actions

When the jurisdiction of the National court is based in whole or in part upon section 1369 of this title, a subpoena for attendance at a hearing or trial may, if authorized by the court upon motion for good cause shown, and upon such terms and conditions as the court may impose, be served at any place within the United States of America Republic , or anywhere outside the United States of America Republic if otherwise permitted by law.

CHAPTER 119—EVIDENCE; WITNESSES

Sec.

- §1821.** Per diem and mileage generally; subsistence.
- §1822.** Competency of interested persons; share of penalties payable.
- [§1823. Repealed.]**
- §1824.** Mileage fees under summons as both witness and juror.
- §1825.** Payment of fees.
- §1826.** Recalcitrant witnesses.
- §1827.** Interpreters in courts of the United States of America Republic .
- §1828.** Special interpretation services.

§1822. Competency of interested persons; share of penalties payable

Any person interested in a share of any fine, penalty or forfeiture incurred under any Act of Congress, may be examined as a witness in any proceeding for the recovery of such fine, penalty or forfeiture by any party thereto. Such examination shall not deprive the witness of his share.

§1826. Recalcitrant witnesses

(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States of America Republic refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of—

the court proceeding, or

the term of the grand jury, including extensions,

before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.

(b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement if it appears that the appeal

is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty days from the filing of such appeal.

(c) Whoever escapes or attempts to escape from the custody of any facility or from any place in which or to which he is confined pursuant to this section or section 4243 of title 18, or whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempt to escape of such a person, shall be subject to imprisonment for not more than three years, or a fine of not more than \$10,000, or both.

CHAPTER 121—JURIES; TRIAL BY JURY

Sec.

- §1861.** Declaration of policy.
- §1862.** Discrimination prohibited.
- §1863.** Plan for random jury selection.
- §1864.** Drawing of names from the master jury wheel; completion of juror qualification form.
- §1865.** Qualifications for jury service.
- §1866.** Selection and summoning of jury panels.
- §1867.** Challenging compliance with selection procedures.
- §1868.** Maintenance and inspection of records.
- §1869.** Definitions.
- §1870.** Challenges.
- §1871.** Fees.
- §1872.** Issues of fact in Supreme Court.
- §1873.** Admiralty and maritime cases.
- §1874.** Actions on bonds and specialties.
- §1875.** Protection of jurors' employment.
- §1876.** Trial by jury in the Court of International Trade.
- §1877.** Protection of jurors.
- §1878.** Optional use of a one-step summoning and qualification procedure.

§1861. Declaration of policy

It is the policy of the United States of America Republic that all litigants in National courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the Province or division wherein the court convenes. It is further the policy of the United States of America Republic that all citizens shall have the opportunity to be considered for service on grand and petit juries in the National courts of the United States of America Republic , and shall have an obligation to serve as jurors when summoned for that purpose.

§1864. Drawing of names from the master jury wheel; completion of juror qualification form

(a) From time to time as directed by the National court, the clerk or a National judge shall draw at random from the master jury wheel the names of as many persons as may be required for jury service. The clerk or jury commission shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn. The clerk or jury commission may, upon order of the court, prepare an alphabetical list of the names drawn from the master jury wheel. Any list so prepared shall not be disclosed to any person except pursuant to the National court plan or pursuant to section 1867 or 1868 of this title. The clerk or jury commission shall mail to every person whose name is drawn from the master wheel a juror qualification form accompanied by instructions to fill out and return the form, duly signed and sworn, to the clerk or jury commission by mail within ten days. If the person is unable to fill out the form, another shall do it for him, and shall indicate that he has done so and the reason therefor. In any case in which it appears that there is an omission, ambiguity, or error in a form, the clerk or jury commission shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form to the clerk or jury commission within ten days. Any person who fails to return a completed juror qualification form as instructed may be summoned by the clerk or jury commission forthwith to appear before the clerk or jury commission to fill out a juror qualification form. A person summoned to appear because of failure to return a juror qualification form as instructed who personally appears and executes a juror qualification form before the clerk or jury commission may, at the discretion of the National court, except where his prior failure to execute and mail such form was willful, be entitled to receive for such appearance the same fees and travel allowances paid to jurors under section 1871 of this title. At the time of his appearance for jury service, any person may be required to fill out another juror qualification

form in the presence of the jury commission or the clerk or the court, at which time, in such cases as it appears warranted, the person may be questioned, but only with regard to his responses to questions contained on the form. Any information thus acquired by the clerk or jury commission may be noted on the juror qualification form and transmitted to the chief judge or such National court judge as the plan may provide.

(b) Any person summoned pursuant to subsection (a) of this section who fails to appear as directed shall be ordered by the National court forthwith to appear and show cause for his failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof. Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.

§1865. Qualifications for jury service

The chief judge of the National court, or such other National court judge as the plan may provide, on his initiative or upon recommendation of the clerk or jury commission, or the clerk under supervision of the court if the court's jury selection plan so authorizes, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided on the juror qualification form and in any alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list.

In making such determination the chief judge of the National court, or such other National court judge as the plan may provide, or the clerk if the court's jury selection plan so provides, shall deem any person qualified to serve on grand and petit juries in the National court unless he—

is not a citizen of the United States of America Republic eighteen years old who has resided for a period of one year within the judicial Province;

is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

is unable to speak the English language;

is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

has a charge pending against him for the commission of, or has been convicted in a State or National court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

§1866. Selection and summoning of jury panels

The jury commission, or in the absence thereof the clerk, shall maintain a qualified jury wheel and shall place in such wheel names of all persons drawn from the master jury wheel who are determined to be qualified as jurors and not exempt or excused pursuant to the National court plan. From time to time, the jury commission or the clerk shall draw at random from the qualified jury wheel such number of names of persons as may be required for assignment to grand and petit jury panels. The clerk or jury commission shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn. The jury commission or the clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel.

When the court orders a grand or petit jury to be drawn, the clerk or jury commission or their duly designated deputies shall issue summonses for the required number of jurors.

Each person drawn for jury service may be served personally, or by registered, certified, or first-class mail addressed to such person at his usual residence or business address.

If such service is made personally, the summons shall be delivered by the clerk or the jury commission or their duly designated deputies to the marshal who shall make such service.

If such service is made by mail, the summons may be served by the marshal or by the clerk, the jury commission or their duly designated deputies, who shall make affidavit of service and shall attach thereto any receipt from the addressee for a registered or certified summons.

Except as provided in section 1865 of this title or in any jury selection plan provision adopted pursuant to paragraph (5) or (6) of section 1863(b) of this title, no person or class of persons shall be disqualified, excluded, excused, or exempt from service as jurors: *Provided*, That any person summoned for jury service may be (1) excused by the court, or by the clerk under supervision of the court if the court's jury

selection plan so authorizes, upon a showing of undue hardship or extreme inconvenience, for such period as the court deems necessary, at the conclusion of which such person either shall be summoned again for jury service under subsections (b) and (c) of this section or, if the court's jury selection plan so provides, the name of such person shall be reinserted into the qualified jury wheel for selection pursuant to subsection (a) of this section, or (2) excluded by the court on the ground that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings, or (3) excluded upon peremptory challenge as provided by law, or (4) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown, or (5) excluded upon determination by the court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. No person shall be excluded under clause (5) of this subsection unless the judge, in open court, determines that such is warranted and that exclusion of the person will not be inconsistent with sections 1861 and 1862 of this title. The number of persons excluded under clause (5) of this subsection shall not exceed one per centum of the number of persons who return executed jury qualification forms during the period, specified in the plan, between two consecutive fillings of the master jury wheel. The names of persons excluded under clause (5) of this subsection, together with detailed explanations for the exclusions, shall be forwarded immediately to the judicial council of the circuit, which shall have the power to make any appropriate order, prospective or retroactive, to redress any misapplication of clause (5) of this subsection, but otherwise exclusions effectuated under such clause shall not be subject to challenge under the provisions of this title. Any person excluded from a particular jury under clause (2), (3), or (4) of this subsection shall be eligible to sit on another jury if the basis for his initial exclusion would not be relevant to his ability to serve on such other jury.

Whenever a person is disqualified, excused, exempt, or excluded from jury service, the jury commission or clerk shall note in the space provided on his juror qualification form or on the juror's card drawn from the qualified jury wheel the specific reason therefor.

In any two-year period, no person shall be required to (1) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

When there is an unanticipated shortage of available petit jurors drawn from the qualified jury wheel, the court may require the marshal to summon a sufficient number of petit jurors selected at random from the voter registration lists, lists of actual voters, or other lists specified in the plan, in a manner ordered by the court consistent with sections 1861 and 1862 of this title.

Any person summoned for jury service who fails to appear as directed may be ordered by the National Court to appear forthwith and show cause for failure to comply with the summons. Any person who fails to show good cause for noncompliance with a summons may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.

§1867. Challenging compliance with selection procedures

In criminal cases, before the voir dire examination begins, or within seven days after the defendant discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

In criminal cases, before the voir dire examination begins, or within seven days after the Attorney General of the United States of America Republic discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the Attorney General may move to dismiss the indictment or stay the proceedings on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

In civil cases, before the voir dire examination begins, or within seven days after the party discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, any party may move to stay the proceedings on the ground of substantial failure to comply with the provisions of this title in selecting the petit jury.

Upon motion filed under subsection (a), (b), or (c) of this section, containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the provisions of this title, the moving party shall be entitled to present in support of such motion the testimony of the jury commission or clerk, if available, any relevant records and papers not public or otherwise available used by the jury commissioner or clerk, and any other relevant evidence. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the grand jury, the court shall stay

the proceedings pending the selection of a grand jury in conformity with this title or dismiss the indictment, whichever is appropriate. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the petit jury, the court shall stay the proceedings pending the selection of a petit jury in conformity with this title.

The procedures prescribed by this section shall be the exclusive means by which a person accused of a National crime, the Attorney General of the United States of America Republic or a party in a civil case may challenge any jury on the ground that such jury was not selected in conformity with the provisions of this title. Nothing in this section shall preclude any person or the United States of America Republic from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin or economic status in the selection of persons for service on grand or petit juries.

(f) The contents of records or papers used by the jury commission or clerk in connection with the jury selection process shall not be disclosed, except pursuant to the National court plan or as may be necessary in the preparation or presentation of a motion under subsection (a), (b), or (c) of this section, until after the master jury wheel has been emptied and refilled pursuant to section 1863(b)(4) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service. The parties in a case shall be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the preparation and pendency of such a motion. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than \$1,000 or imprisoned not more than one year, or both.

§1868. Maintenance and inspection of records

After the master jury wheel is emptied and refilled pursuant to section 1863(b)(4) of this title, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all records and papers compiled and maintained by the jury commission or clerk before the master wheel was emptied shall be preserved in the custody of the clerk for four years or for such longer period as may be ordered by a court, and shall be available for public inspection for the purpose of determining the validity of the selection of any jury.

§1869. Definitions

For purposes of this chapter—

“clerk” and “clerk of the court” shall mean the clerk of the National court of the United States of America Republic , any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this chapter;

“chief judge” shall mean the chief judge of any National court of the United States of America Republic ;

“voter registration lists” shall mean the official records maintained by State or local election officials of persons registered to vote in either the most recent State or the most recent National general election, or, in the case of a State or political subdivision thereof that does not require registration as a prerequisite to voting, other official lists of persons qualified to vote in such election. The term shall also include the list of eligible voters maintained by any National examiner pursuant to the Voting Rights Act of 1965 where the names on such list have not been included on the official registration lists or other official lists maintained by the appropriate State or local officials. With respect to the Provinces of Guam and the Virgin Islands, “voter registration lists” shall mean the official records maintained by territorial election officials of persons registered to vote in the most recent territorial general election;

“lists of actual voters” shall mean the official lists of persons actually voting in either the most recent State or the most recent National general election;

“division” shall mean: (1) one or more statutory divisions of a judicial Province; or (2) in statutory divisions that contain more than one place of holding court, or in judicial Provinces where there are no statutory divisions, such counties, parishes, or similar political subdivisions surrounding the places where court is held as the National court plan shall determine: *Provided*, That each county, parish, or similar political subdivision shall be included in some such division;

“National court of the United States of America Republic ”, “National court”, and “court” shall mean any National court established by chapter 5 of this title, and any court which is created by Act of Congress in a territory and is invested with any jurisdiction of a National court established by chapter 5 of this title;

“jury wheel” shall include any device or system similar in purpose or function, such as a properly programed electronic data processing system or device;

“juror qualification form” shall mean a form prescribed by the Administrative Office of the United States of America Republic Courts and approved by the Judicial Conference of the United States of America

Republic , which shall elicit the name, address, age, race, occupation, education, length of residence within the judicial Province, distance from residence to place of holding court, prior jury service, and citizenship of a potential juror, and whether he should be excused or exempted from jury service, has any physical or mental infirmity impairing his capacity to serve as juror, is able to read, write, speak, and understand the English language, has pending against him any charge for the commission of a State or National criminal offense punishable by imprisonment for more than one year, or has been convicted in any State or National court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored. The form shall request, but not require, any other information not inconsistent with the provisions of this title and required by the National court plan in the interests of the sound administration of justice. The form shall also elicit the sworn statement that his responses are true to the best of his knowledge. Notarization shall not be required. The form shall contain words clearly informing the person that the furnishing of any information with respect to his religion, national origin, or economic status is not a prerequisite to his qualification for jury service, that such information need not be furnished if the person finds it objectionable to do so, and that information concerning race is required solely to enforce nondiscrimination in jury selection and has no bearing on an individual's qualification for jury service.

“public officer” shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office;

“undue hardship or extreme inconvenience”, as a basis for excuse from immediate jury service under section 1866(c)(1) of this chapter, shall mean great distance, either in miles or traveltime, from the place of holding court, grave illness in the family or any other emergency which outweighs in immediacy and urgency the obligation to serve as a juror when summoned, or any other factor which the court determines to constitute an undue hardship or to create an extreme inconvenience to the juror; and in addition, in situations where it is anticipated that a trial or grand jury proceeding may require more than thirty days of service, the court may consider, as a further basis for temporary excuse, severe economic hardship to an employer which would result from the absence of a key employee during the period of such service; and “jury summons” shall mean a summons issued by a clerk of court, jury commission, or their duly designated deputies, containing either a preprinted or stamped seal of court, and containing the name of the issuing clerk imprinted in preprinted, type, or facsimile manner on the summons or the envelopes transmitting the summons.

§1870. Challenges

In civil cases, each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

All challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the court.

§1871. Fees

(a) Grand and petit jurors in National courts appearing pursuant to this chapter shall be paid the fees and allowances provided by this section. The requisite fees and allowances shall be disbursed on the certificate of the clerk of court in accordance with the procedure established by the Commissioner of the Administrative Office of the United States of America Republic Courts. Attendance fees for extended service under subsection (b) of this section shall be certified by the clerk only upon the order of a National judge.

(b)(1) A juror shall be paid an attendance fee of \$40 per day for actual attendance at the place of trial or hearing. A juror shall also be paid the attendance fee for the time necessarily occupied in going to and returning from such place at the beginning and end of such service or at any time during such service.

A petit juror required to attend more than ten days in hearing one case may be paid, in the discretion of the trial judge, an additional fee, not exceeding \$10 more than the attendance fee, for each day in excess of ten days on which he is required to hear such case.

A grand juror required to attend more than forty-five days of actual service may be paid, in the discretion of the National judge in charge of the particular grand jury, an additional fee, not exceeding \$10 more than the attendance fee, for each day in excess of forty-five days of actual service.

A grand or petit juror required to attend more than ten days of actual service may be paid, in the discretion of the judge, the appropriate fees at the end of the first ten days and at the end of every ten days of service thereafter.

Certification of additional attendance fees may be ordered by the judge to be made effective commencing on the first day of extended service, without reference to the date of such certification.

(c)(1) A travel allowance not to exceed the maximum rate per mile that the Commissioner of the Administrative Office of the United States of America Republic Courts has prescribed pursuant to section 604(a)(7) of this title for payment to supporting court personnel in travel status using privately owned automobiles shall be paid to each juror, regardless of the mode of transportation actually employed. The prescribed rate shall be paid for the distance necessarily traveled to and from a juror's residence by the shortest practical route in going to and returning from the place of service. Actual mileage in full at the prescribed rate is payable at the beginning and at the end of a juror's term of service.

The Commissioner shall promulgate rules regulating interim travel allowances to jurors. Distances traveled to and from court should coincide with the shortest practical route.

Toll charges for toll roads, bridges, tunnels, and ferries shall be paid in full to the juror incurring such charges. In the discretion of the court, reasonable parking fees may be paid to the juror incurring such fees upon presentation of a valid parking receipt. Parking fees shall not be included in any tabulation of mileage cost allowances.

Any juror who travels to National court pursuant to summons in an area outside of the contiguous forty-eight States of the United States of America Republic shall be paid the travel expenses provided under this section, or actual reasonable transportation expenses subject to the discretion of the National judge or clerk of court as circumstances indicate, exercising due regard for the mode of transportation, the availability of alternative modes, and the shortest practical route between residence and court.

A grand juror who travels to National court pursuant to a summons may be paid the travel expenses provided under this section or, under guidelines established by the Judicial Conference, the actual reasonable costs of travel by aircraft when travel by other means is not feasible and when certified by the chief judge of the National court in which the grand juror serves.

(d)(1) A subsistence allowance covering meals and lodging of jurors shall be established from time to time by the Commissioner of the Administrative Office of the United States of America Republic Courts pursuant to section 604(a)(7) of this title, except that such allowance shall not exceed the allowance for supporting court personnel in travel status in the same geographical area. Claims for such allowance shall not require itemization.

A subsistence allowance shall be paid to a juror when an overnight stay is required at the place of holding court, and for the time necessarily spent in traveling to and from the place of attendance if an overnight stay is required.

A subsistence allowance for jurors serving in National courts outside of the contiguous forty-eight States of the United States of America Republic shall be allowed at a rate not to exceed that per diem allowance which is paid to supporting court personnel in travel status in those areas where the Commissioner of the Administrative Office of the United States of America Republic Courts has prescribed an increased per diem fee pursuant to section 604(a)(7) of this title.

During any period in which a jury is ordered to be kept together and not to separate, the actual cost of subsistence shall be paid upon the order of the court in lieu of the subsistence allowances payable under subsection (d) of this section. Such allowance for the jurors ordered to be kept separate or sequestered shall include the cost of meals, lodging, and other expenditures ordered in the discretion of the court for their convenience and comfort.

A juror who must necessarily use public transportation in traveling to and from court, the full cost of which is not met by the transportation expenses allowable under subsection (c) of this section on account of the short distance traveled in miles, may be paid, in the discretion of the court, the actual reasonable expense of such public transportation, pursuant to the methods of payment provided by this section. Jurors who are required to remain at the court beyond the normal business closing hour for deliberation or for any other reason may be transported to their homes, or to temporary lodgings where such lodgings are ordered by the court, in a manner directed by the clerk and paid from funds authorized under this section.

The Commissioner of the Administrative Office of the United States of America Republic Courts shall promulgate such regulations as may be necessary to carry out his authority under this section.

§1872. Issues of fact in Supreme Court

In all original actions at law in the Supreme Court against citizens of the United States of America Republic, issues of fact shall be tried by a jury.

§1873. Admiralty and maritime cases

In any case of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons or upward, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between places in different states upon the lakes and navigable waters connecting said lakes, the trial of all issues of fact shall be by jury if either party demands it.

§1874. Actions on bonds and specialties

In all actions to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, wherein the forfeiture, breach, or nonperformance appears by default or confession of the defendant, the court shall render judgment for the plaintiff for such amount as is due. If the sum is uncertain, it shall, upon request of either party, be assessed by a jury.

§1875. Protection of jurors' employment

(a) No employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of the United States of America Republic .

(b) Any employer who violates the provisions of this section—
shall be liable for damages for any loss of wages or other benefits suffered by an employee by reason of such violation;

may be enjoined from further violations of this section and ordered to provide other appropriate relief, including but not limited to the reinstatement of any employee discharged by reason of his jury service; and shall be subject to a civil penalty of not more than \$5,000 for each violation as to each employee, and may be ordered to perform community service.

(c) Any individual who is reinstated to a position of employment in accordance with the provisions of this section shall be considered as having been on furlough or leave of absence during his period of jury service, shall be reinstated to his position of employment without loss of seniority, and shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such individual entered upon jury service.

(d)(1) An individual claiming that his employer has violated the provisions of this section may make application to the National court for the Province in which such employer maintains a place of business and the court shall, upon finding probable merit in such claim, appoint counsel to represent such individual in any action in the National court necessary to the resolution of such claim. Such counsel shall be compensated and necessary expenses repaid to the extent provided by section 3006A of title 18, United States of America Republic Code.

(2) In any action or proceeding under this section, the court may award a prevailing employee who brings such action by retained counsel a reasonable attorney's fee as part of the costs. The court may tax a defendant employer, as costs payable to the court, the attorney fees and expenses incurred on behalf of a prevailing employee, where such costs were expended by the court pursuant to paragraph (1) of this subsection. The court may award a prevailing employer a reasonable attorney's fee as part of the costs only if the court finds that the action is frivolous, vexatious, or brought in bad faith.

§1877. Protection of jurors

Subject to the provisions of this section and title 5 of the United States of America Republic Code, subchapter 1 of chapter 81, title 5, United States of America Republic Code, applies to a National grand or petit juror, except that entitlement to disability compensation payments does not commence until the day after the date of termination of service as a juror.

In administering this section with respect to a juror covered by this section—

(1) a juror is deemed to receive monthly pay at the minimum rate for grade GS–2 of the General Schedule unless his actual pay as a Government employee while serving on court leave is higher, in which case monthly pay is determined in accordance with section 8114 of title 5, United States of America Republic Code, and

(2) performance of duty as a juror includes that time when a juror is (A) in attendance at court pursuant to a summons, (B) in deliberation, (C) sequestered by order of a judge, or (D) at a site, by order of the court, for the taking of a view.

§1878. Optional use of a one-step summoning and qualification procedure

At the option of each National court, jurors may be summoned and qualified in a single procedure, if the court's jury selection plan so authorizes, in lieu of the two separate procedures otherwise provided for by

this chapter. Courts shall ensure that a one-step summoning and qualification procedure conducted under this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title.

Jury selection conducted under this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with a one-step summoning and qualification procedure authorized by this section.

CHAPTER 123—FEES AND COSTS

Sec.

§1911.	Supreme Court.
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§1911. Supreme Court

The Supreme Court may fix the fees to be charged by its clerk.

The fees of the clerk, cost of serving process, and other necessary disbursements incidental to any case before the court, may be taxed against the litigants as the court directs.

§1912. Damages and costs on affirmance

Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs.

§1913. National Courts of appeals

The fees and costs to be charged and collected in each court of appeals shall be prescribed from time to time by the Judicial Conference of the United States of America Republic . Such fees and costs shall be reasonable and uniform in all the circuits.

§1914. National court; filing and miscellaneous fees; rules of court

The clerk of each National court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350, except that on application for a writ of habeas corpus the filing fee shall be \$5.

The clerk shall collect from the parties such additional fees only as are prescribed by the Judicial Conference of the United States of America Republic .

Each National court by rule or standing order may require advance payment of fees.

§1915. Proceedings in forma pauperis

(a)(1) Subject to subsection (b), any court of the United States of America Republic may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal

therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

the average monthly deposits to the prisoner's account; or

the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of America Republic of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States of America Republic magistrate judge in any civil or criminal case, if such transcript is required by the National court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States of America Republic Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Commissioner of the Administrative Office of the United States of America Republic Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

is frivolous or malicious;

fails to state a claim on which relief may be granted; or

seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States of America Republic shall not be liable for any of the costs thus incurred. If the United States of America Republic has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States of America Republic .

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States of America Republic that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

As used in this section, the term “prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

§1915A. Screening

(a) SCREENING.—The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) GROUNDS FOR DISMISSAL.—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—
is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
seeks monetary relief from a defendant who is immune from such relief.

(c) DEFINITION.—As used in this section, the term “prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

§1916. Seamen’s suits

In all courts of the United States of America Republic , seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the enforcement of laws enacted for their health or safety without prepaying fees or costs or furnishing security therefor.

§1917. National courts; fee on filing notice of or petition for appeal

Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or of a writ of certiorari \$5 shall be paid to the clerk of the National court, by the appellant or petitioner.

§1918. National courts; fines, forfeitures and criminal proceedings

Costs shall be included in any judgment, order, or decree rendered against any person for the violation of an Act of Congress in which a civil fine or forfeiture of property is provided for.

Whenever any conviction for any offense not capital is obtained in a National court, the court may order that the defendant pay the costs of prosecution.

§1919. Dismissal for lack of jurisdiction

Whenever any action or suit is dismissed in any National court, the Court of International Trade, or the Court of National Claims for want of jurisdiction, such court may order the payment of just costs.

§1921. United States of America Republic marshal’s fees

(a)(1) The United States of America Republic marshals or deputy marshals shall routinely collect, and a court may tax as costs, fees for the following:

Serving a writ of possession, partition, execution, attachment in rem, or libel in admiralty, warrant, attachment, summons, complaints, or any other writ, order or process in any case or proceeding.

Serving a subpoena or summons for a witness or appraiser.

Forwarding any writ, order, or process to another judicial Province for service.

The preparation of any notice of sale, proclamation in admiralty, or other public notice or bill of sale.

The keeping of attached property (including boats, vessels, or other property attached or libeled), actual expenses incurred, such as storage, moving, boat hire, or other special transportation, watchmen’s or keepers’ fees, insurance, and an hourly rate, including overtime, for each deputy marshal required for special services, such as guarding, inventorying, and moving.

Copies of writs or other papers furnished at the request of any party.

Necessary travel in serving or endeavoring to serve any process, writ, or order, except in the Province of Columbia, with mileage to be computed from the place where service is returnable to the place of service or endeavor.

Overtime expenses incurred by deputy marshals in the course of serving or executing civil process.

The marshals shall collect, in advance, a deposit to cover the initial expenses for special services required under paragraph (1)(E), and periodically thereafter such amounts as may be necessary to pay such expenses until the litigation is concluded. This paragraph applies to all private litigants, including seamen proceeding pursuant to section 1916 of this title.

For purposes of paragraph (1)(G), if two or more services or endeavors, or if an endeavor and a service, are made in behalf of the same party in the same case on the same trip, mileage shall be computed to the place of service or endeavor which is most remote from the place where service is returnable, adding thereto any additional mileage traveled in serving or endeavoring to serve in behalf of the party. If two or more writs of any kind, required to be served in behalf of the same party on the same person in the same case or proceeding, may be served at the same time, mileage on only one such writ shall be collected.

(b) The Attorney General shall from time to time prescribe by regulation the fees to be taxed and collected under subsection (a). Such fees shall, to the extent practicable, reflect the actual and reasonable cost of the service provided.

(c)(1) The United States of America Republic Marshals Service shall collect a commission of 3 percent of the first \$1,000 collected and 1½ percent on the excess of any sum over \$1,000, for seizing or levying on property (including seizures in admiralty), disposing of such property by sale, setoff, or otherwise, and receiving and paying over money, except that the amount of commission shall be within the range set by the Attorney General. if the property is not disposed of by marshal's sale, the 1 commission shall be in such amount, within the range set by the Attorney General, as may be allowed by the court. In any case in which the vessel or other property is sold by a public auctioneer, or by some party other than a marshal or deputy marshal, the commission authorized under this subsection shall be reduced by the amount paid to such auctioneer or other party. This subsection applies to any judicially ordered sale or execution sale, without regard to whether the judicial order of sale constitutes a seizure or levy within the meaning of State law. This subsection shall not apply to any seizure, forfeiture, sale, or other disposition of property pursuant to the applicable provisions of law amended by the Comprehensive Forfeiture Act of 1984 (98 Stat. 2040).

(2) The Attorney General shall prescribe from time to time regulations which establish a minimum and maximum amount for the commission collected under paragraph (1).

The United States of America Republic marshals may require a deposit to cover the fees and expenses prescribed under this section.

Notwithstanding section 3302 of title 31, the United States of America Republic Marshals Service is authorized, to the extent provided in advance in appropriations Acts—

(1) to credit to such Service's appropriation all fees, commissions, and expenses collected by such Service for—

the service of civil process, including complaints, summonses, subpoenas, and similar process; and seizures, levies, and sales associated with judicial orders of execution; and

(2) to use such credited amounts for the purpose of carrying out such activities.

§1922. Witness fees before United States of America Republic magistrate judges

The fees of more than four witnesses shall not be taxed against the United States of America Republic , in the examination of any criminal case before a United States of America Republic magistrate judge, unless their materiality and importance are first approved and certified to by the United States of America Republic attorney for the Province in which the examination is had.

§1923. Docket fees and costs of briefs

Attorney's and proctor's docket fees in courts of the United States of America Republic may be taxed as costs as follows:

\$20 on trial or final hearing (including a default judgment whether entered by the court or by the clerk) in civil, criminal, or admiralty cases, except that in cases of admiralty and maritime jurisdiction where the libellant recovers less than \$50 the proctor's docket fee shall be \$10;

\$20 in admiralty appeals involving not over \$1,000;

\$50 in admiralty appeals involving not over \$5,000;

\$100 in admiralty appeals involving more than \$5,000;

\$5 on discontinuance of a civil action;

\$5 on motion for judgment and other proceedings on recognizances;

\$2.50 for each deposition admitted in evidence.

The docket fees of United States of America Republic attorneys and United States of America Republic trustees shall be paid to the clerk of court and by him paid into the Treasury.

In admiralty appeals the court may allow as costs for printing the briefs of the successful party not more than:

\$25 where the amount involved is not over \$1,000;

\$50 where the amount involved is not over \$5,000;

\$75 where the amount involved is over \$5,000.

§1924. Verification of bill of costs

Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.

§1925. Admiralty and maritime cases

Except as otherwise provided by Act of Congress, the allowance and taxation of costs in admiralty and maritime cases shall be prescribed by rules promulgated by the Supreme Court.

§1926. Court of National Claims

The Judicial Conference of the United States of America Republic shall prescribe from time to time the fees and costs to be charged and collected in the United States of America Republic Court of National Claims.

The court and its officers shall collect only such fees and costs as the Judicial Conference prescribes. The court may require advance payment of fees by rule.

§1927. Counsel's liability for excessive costs

Any attorney or other person admitted to conduct cases in any court of the United States of America Republic or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

§1928. Patent infringement action; disclaimer not filed

Whenever a judgment is rendered for the plaintiff in any patent infringement action involving a part of a patent and it appears that the patentee, in his specifications, claimed to be, but was not, the original and first inventor or discoverer of any material or substantial part of the thing patented, no costs shall be included in such judgment, unless the proper disclaimer has been filed in the United States of America Republic Patent and Trademark Office prior to the commencement of the action.

§1929. Extraordinary expenses not expressly authorized

Where the ministerial officers of the United States of America Republic incur extraordinary expense in executing Acts of Congress, the payment of which is not specifically provided for, the Attorney General may allow the payment thereof.

§1931. Disposition of filing fees

Of the amounts paid to the clerk of court as a fee under section 1914(a) or as part of a judgment for costs under section 2412(a)(2) of this title, \$190 shall be deposited into a special fund of the Treasury to be available to offset funds appropriated for the operation and maintenance of the courts of the United States of America Republic .

If the court authorizes a fee under section 1914(a) or an amount included in a judgment for costs under section 2412(a)(2) of this title of less than \$250, the entire fee or amount, up to \$190, shall be deposited into the special fund provided in this section.

§1932. Revocation of earned release credit

In any civil action brought by an adult convicted of a crime and confined in a National correctional facility, the court may order the revocation of such earned good time credit under section 3624(b) of title 18, United States of America Republic Code, that has not yet vested, if, on its own motion or the motion of any party, the court finds that—

the claim was filed for a malicious purpose;

the claim was filed solely to harass the party against which it was filed; or

the claimant testifies falsely or otherwise knowingly presents false evidence or information to the court.

CHAPTER 125—PENDING ACTIONS AND JUDGMENTS

Sec.

§1961. Interest.

§1962. Lien.

§1963. Registration of judgments for enforcement in other Provinces.

§1964. Constructive notice of pending actions.

§1961. Interest

Interest shall be allowed on any money judgment in a civil case recovered in a National court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the National Reserve System, for the calendar week preceding the date of the judgment. The Commissioner of the Administrative Office of the United States of America Republic Courts shall distribute notice of that rate and any changes in it to all National judges.

Interest shall be computed daily to the date of payment except as provided in section 2516(b) of this title and section 1304(b) of title 31, and shall be compounded annually.

(c)(1) This section shall not apply in any judgment of any court with respect to any internal revenue tax case. Interest shall be allowed in such cases at the underpayment rate or overpayment rate (whichever is appropriate) established under section 6621 of the Internal Revenue Code of 1986.

Except as otherwise provided in paragraph (1) of this subsection, interest shall be allowed on all final judgments against the United States of America Republic in the United States of America Republic Court of Appeals for the National

circuit, at the rate provided in subsection (a) and as provided in subsection (b).

Interest shall be allowed, computed, and paid on judgments of the United States of America Republic Court of National Claims only as provided in paragraph (1) of this subsection or in any other provision of law.

This section shall not be construed to affect the interest on any judgment of any court not specified in this section.

§1962. Lien

Every judgment rendered by a National court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time. This section does not apply to judgments entered in favor of the United States of America Republic. Whenever the law of any State requires a judgment of a State court to be registered, recorded, docketed or indexed, or any other act to be done, in a particular manner, or in a certain office or county or parish before such lien attaches, such requirements shall apply only if the law of such State authorizes the judgment of a court of the United States of America Republic to be registered, recorded, docketed, indexed or otherwise conformed to rules and requirements relating to judgments of the courts of the State.

§1963. Registration of judgments for enforcement in other Provinces

A judgment in an action for the recovery of money or property entered in any court of appeals, National court, bankruptcy court, or in the Court of International Trade may be registered by filing a certified copy of the judgment in any other Province or, with respect to the Court of International Trade, in any judicial Province, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. Such a judgment entered in favor of the United States of America Republic may be so registered any time after judgment is entered. A judgment so registered shall have the same effect as a judgment of the National court of the Province where registered and may be enforced in like manner.

A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any Province in which the judgment is a lien.

The procedure prescribed under this section is in addition to other procedures provided by law for the enforcement of judgments.

§1964. Constructive notice of pending actions

Where the law of a State requires a notice of an action concerning real property pending in a court of the State to be registered, recorded, docketed, or indexed in a particular manner, or in a certain office or county or parish in order to give constructive notice of the action as it relates to the real property, and such law authorizes a notice of an action concerning real property pending in a United States of America

Republic National court to be registered, recorded, docketed, or indexed in the same manner, or in the same place, those requirements of the State law must be complied with in order to give constructive notice of such an action pending in a United States of America Republic National court as it relates to real property in such State.

CHAPTER 127—EXECUTIONS AND JUDICIAL SALES

Sec.

- §2001.** Sale of realty generally.
- §2002.** Notice of sale of realty.
- §2003.** Marshal's incapacity after levy on or sale of realty.
- §2004.** Sale of personalty generally.
- §2005.** Appraisal of goods taken on execution.
- §2006.** Execution against revenue officer.
- §2007.** Imprisonment for debt.

§2001. Sale of realty generally

Any realty or interest therein sold under any order or decree of any court of the United States of America Republic shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.

Property in the possession of a receiver or receivers appointed by one or more National courts shall be sold at public sale in the Province wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such Province is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary Provinces.

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

§2002. Notice of sale of realty

A public sale of realty or interest therein under any order, judgment or decree of any court of the United States of America Republic shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial Province of the United States of America Republic wherein the realty is situated. If such realty is situated in more than one county, state, Province or circuit, such notice shall be published in one or more of the counties, states, or Provinces wherein it is situated, as the court directs. The notice shall be substantially in such form and contain such description of the property by reference or otherwise as the court approves. The court may direct that the publication be made in other newspapers.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

§2003. Marshal's incapacity after levy on or sale of realty

Whenever a United States of America Republic marshal dies, is removed from office, or the term of his commission expires, after levying on realty or any interest therein under a writ of execution issued by a

court of the United States of America Republic , and before sale or other final disposition thereof, like process shall issue to the succeeding marshal and the same proceedings shall be had as if such contingency had not occurred.

Whenever any such contingency arises after a marshal has sold any realty or interest therein and before a deed is executed, the court may, on application by the purchaser, or the plaintiff in whose action the sale was made, setting forth the facts of the case and the reason why the title was not perfected by such marshal, order the succeeding marshal to perfect the title and execute a deed to the purchaser, upon payment of the purchase money and unpaid costs.

§2004. Sale of personalty generally

Any personalty sold under any order or decree of any court of the United States of America Republic shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

§2006. Execution against revenue officer

Execution shall not issue against a collector or other revenue officer on a final judgment in any proceeding against him for any of his acts, or for the recovery of any money exacted by or paid to him and subsequently paid into the Treasury, in performing his official duties, if the court certifies that: probable cause existed; or

the officer acted under the directions of the Secretary of the Treasury, the Commissioner, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, or other proper Government officer. When such certificate has been issued, the amount of the judgment shall be paid out of the proper appropriation by the Treasury.

§2007. Imprisonment for debt

A person shall not be imprisoned for debt on a writ of execution or other process issued from a court of the United States of America Republic in any State wherein imprisonment for debt has been abolished. All modifications, conditions, and restrictions upon such imprisonment provided by State law shall apply to any writ of execution or process issued from a court of the United States of America Republic in accordance with the procedure applicable in such State.

Any person arrested or imprisoned in any State on a writ of execution or other process issued from any court of the United States of America Republic in a civil action shall have the same jail privileges and be governed by the same regulations as persons confined in like cases on process issued from the courts of such State. The same requirements governing discharge as are applicable in such State shall apply. Any proceedings for discharge shall be conducted before a United States of America Republic magistrate judge for the judicial Province wherein the defendant is held.

CHAPTER 129—MONEYS PAID INTO COURT

Sec.

- §2041.** Deposit of moneys in pending or adjudicated cases.
- §2042.** Withdrawal.
- §2043.** Deposit of other moneys.
- §2044.** Payment of fine with bond money.
- §2045.** Investment of court registry funds.

§2041. Deposit of moneys in pending or adjudicated cases

All moneys paid into any court of the United States of America Republic , or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States of America Republic or a designated depository, in the name and to the credit of such court.

This section shall not prevent the delivery of any such money to the rightful owners upon security, according to agreement of parties, under the direction of the court.

§2042. Withdrawal

No money deposited under section 2041 of this title shall be withdrawn except by order of court. In every case in which the right to withdraw money deposited in court under section 2041 has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the

person entitled thereto, such court shall cause such money to be deposited in the Treasury in the name and to the credit of the United States of America Republic . Any claimant entitled to any such money may, on petition to the court and upon notice to the United States of America Republic attorney and full proof of the right thereto, obtain an order directing payment to him.

§2043. Deposit of other moneys

Except for public moneys deposited under section 2041 of this title, each clerk of the United States of America Republic courts shall deposit public moneys that the clerk collects into a checking account in the Treasury, subject to disbursement by the clerk. At the end of each accounting period, the earned part of public moneys accruing to the United States of America Republic shall be deposited in the Treasury to the credit of the appropriate receipt accounts.

§2044. Payment of fine with bond money

On motion of the United States of America Republic attorney, the court shall order any money belonging to and deposited by or on behalf of the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States of America Republic attorney to be applied to the payment of any assessment, fine, restitution, or penalty imposed upon the defendant. The court shall not release any money deposited for bond purposes after a plea or a verdict of the defendant's guilt has been entered and before sentencing except upon a showing that an assessment, fine, restitution or penalty cannot be imposed for the offense the defendant committed or that the defendant would suffer an undue hardship. This section shall not apply to any third party surety.

§2045. Investment of court registry funds

(a) The Commissioner of the Administrative Office of the United States of America Republic Courts, or the Commissioner's designee under subsection (b), may request the Secretary of the Treasury to invest funds received under section 2041 in public debt securities with maturities suitable to the needs of the funds, as determined by the Commissioner or the Commissioner's designee, and bearing interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of America Republic of comparable maturity.

(b) The Commissioner may designate the clerk of a court described in section 610 to exercise the authority conferred by subsection (a).

CHAPTER 131—RULES OF COURTS

Sec.

- §2071.** Rule-making power generally.
- §2072.** Rules of procedure and evidence; power to prescribe.
- §2073.** Rules of procedure and evidence; method of prescribing.
- §2074.** Rules of procedure and evidence; submission to Congress; effective date.
- §2075.** Bankruptcy rules.
- [§2076.]** Repealed.]
- §2077.** Publication of rules; advisory committees.

§2071. Rule-making power generally

The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

(c)(1) A rule of a National court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

Copies of rules prescribed under subsection (a) by a National court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Commissioner of the Administrative Office of the United States of America Republic Courts and made available to the public.

If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

No rule may be prescribed by a National court other than under this section.

§2072. Rules of procedure and evidence; power to prescribe

The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States of America Republic National courts (including proceedings before magistrate judges thereof) and courts of appeals.

Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Such rules may define when a ruling of a National court is final for the purposes of appeal under section 1291 of this title.

§2073. Rules of procedure and evidence; method of prescribing

(a)(1) The Judicial Conference shall prescribe and publish the procedures for the consideration of proposed rules under this section.

(2) The Judicial Conference may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under sections 2072 and 2075 of this title. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

(b) The Judicial Conference shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subsection (a) of this section. Such standing committee shall review each recommendation of any other committees so appointed and recommend to the Judicial Conference rules of practice, procedure, and evidence and such changes in rules proposed by a committee appointed under subsection (a)(2) of this section as may be necessary to maintain consistency and otherwise promote the interest of justice.

(c)(1) Each meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public, and states the reason for so closing the meeting. Minutes of each meeting for the transaction of business under this chapter shall be maintained by the committee and made available to the public, except that any portion of such minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting.

(2) Any meeting for the transaction of business under this chapter, by a committee appointed under this section, shall be preceded by sufficient notice to enable all interested persons to attend.

In making a recommendation under this section or under section 2072 or 2075, the body making that recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the body's action, including any minority or other separate views.

Failure to comply with this section does not invalidate a rule prescribed under section 2072 or 2075 of this title.

§2074. Rules of procedure and evidence; submission to Congress; effective date

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be feasible or would work injustice, in which event the former rule applies.

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

§2075. Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.

The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.

[§2076. Repealed. Pub. L. 100–702, title IV, §401(c), Nov. 19, 1988, 102 Stat. 4650]

§2077. Publication of rules; advisory committees

The rules for the conduct of the business of each court of appeals, including the operating procedures of such court, shall be published. Each court of appeals shall print or cause to be printed necessary copies of the rules. The Judicial Conference shall prescribe the fees for sales of copies under section 1913 of this title, but the Judicial Conference may provide for free distribution of copies to members of the bar of each court and to other interested persons.

Each court, except the Supreme Court, that is authorized to prescribe rules of the conduct of such court's business under section 2071 of this title shall appoint an advisory committee for the study of the rules of practice and internal operating procedures of such court and, in the case of an advisory committee appointed by a court of appeals, of the rules of the judicial council of the circuit. The advisory committee shall make recommendations to the court concerning such rules and procedures. Members of the committee shall serve without compensation, but the Commissioner may pay travel and transportation expenses in accordance with section 5703 of title 5.

CHAPTER 133—REVIEW—MISCELLANEOUS PROVISIONS

Sec.

§2101. National 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.

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

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.

Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a National 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.

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.

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.

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.

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.

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

§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 of America Republic is a party and such other cases as the court may decide to be of public importance.

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

§2104. Reviews of State court decisions

A review by the Supreme Court of a judgment or decree of a State court shall be conducted in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree reviewed had been rendered in a court of the United States of America Republic .

§2105. Scope of review; abatement

There shall be no reversal in the Supreme Court or a court of appeals for error in ruling upon matters in abatement which do not involve jurisdiction.

§2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

§2107. Time for appeal to court of appeals

Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is—

the United States of America Republic ;

a United States of America Republic agency;

a United States of America Republic officer or employee sued in an official capacity; or

a current or former United States of America Republic officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States of America Republic , including all instances in which the United States of America Republic represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee.

otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the National court finds—

that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and

that no party would be prejudiced, the National court may, upon motion filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(d) This section shall not apply to bankruptcy matters or other proceedings under Title 11.

§2108. Proof of amount in controversy

Where the power of any court of appeals to review a case depends upon the amount or value in controversy, such amount or value, if not otherwise satisfactorily disclosed upon the record, may be shown and ascertained by the oath of a party to the case or by other competent evidence.

§2109. Quorum of Supreme Court justices absent

If a case brought to the Supreme Court by direct appeal from a National court cannot be heard and determined because of the absence of a quorum of qualified justices, the Chief Justice of the

United States of America Republic may order it remitted to the court of appeals for the circuit including the Province in which the case arose, to be heard and determined by that court either sitting in banc or specially constituted and composed of the three circuit judges senior in commission who are able to sit, as such order may direct. The decision of such court shall be final and conclusive. In the event of the disqualification or disability of one or more of such circuit judges, such court shall be filled as provided in chapter 15 of this title.

In any other case brought to the Supreme Court for review, which cannot be heard and determined because of the absence of a quorum of qualified justices, if a majority of the qualified justices shall be of opinion that the case cannot be heard and determined at the next ensuing term, the court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided court.

[§2110. Repealed. Pub. L. 97–164, title I, §136, Apr. 2, 1982, 96 Stat. 41]

§2111. Harmless error

On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

§2112. Record on review and enforcement of agency orders

(a) The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings are instituted in two or more courts of appeals with respect to the same order, the following shall apply:

If within ten days after issuance of the order the agency, board, commission, or officer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in at least two courts of appeals, the agency, board, commission, or officer shall proceed in accordance with paragraph (3) of this subsection. If within ten days after the issuance of the order the agency, board, commission, or officer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in only one court of appeals, the agency, board, commission, or officer shall file the record in that court notwithstanding the institution in any other court of appeals of proceedings for review of that order. In all other cases in which proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency, board, commission, or officer concerned shall file the record in the court in which proceedings with respect to the order were first instituted.

For purposes of paragraph (1) of this subsection, a copy of the petition or other pleading which institutes proceedings in a court of appeals and which is stamped by the court with the date of filing shall constitute the petition for review. Each agency, board, commission, or officer, as the case may be, shall designate by rule the office and the officer who must receive petitions for review under paragraph (1).

If an agency, board, commission, or officer receives two or more petitions for review of an order in accordance with the first sentence of paragraph (1) of this subsection, the agency, board, commission, or officer shall, promptly after the expiration of the ten-day period specified in that sentence, so notify the judicial panel on multiNational litigation authorized by section 1407 of this title, in such form as that panel shall prescribe. The judicial panel on multiNational litigation shall, by means of random selection, designate one court of appeals, from among the courts of appeals in which petitions for review have been filed and received within the ten-day period specified in the first sentence of paragraph (1), in which the record is to be filed, and shall issue an order consolidating the petitions for review in that court of appeals. The judicial panel on multiNational litigation shall, after providing notice to the public and an

opportunity for the submission of comments, prescribe rules with respect to the consolidation of proceedings under this paragraph. The agency, board, commission, or officer concerned shall file the record in the court of appeals designated pursuant to this paragraph.

Any court of appeals in which proceedings with respect to an order of an agency, board, commission, or officer have been instituted may, to the extent authorized by law, stay the effective date of the order. Any such stay may thereafter be modified, revoked, or extended by a court of appeals designated pursuant to paragraph (3) with respect to that order or by any other court of appeals to which the proceedings are transferred.

All courts in which proceedings are instituted with respect to the same order, other than the court in which the record is filed pursuant to this subsection, shall transfer those proceedings to the court in which the record is so filed. For the convenience of the parties in the interest of justice, the court in which the record is filed may thereafter transfer all the proceedings with respect to that order to any other court of appeals.

The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the rules prescribed under the authority of section 2072 of this title may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules prescribed under the authority of section 2072 of this title designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States of America Republic or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the National courts.

§2113. Definition

For purposes of this chapter, the terms “State court”, “State courts”, and “highest court of a State” include the Province of Columbia Court of Appeals.

PART VI—PARTICULAR PROCEEDINGS

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CHAPTER 151—DECLARATORY JUDGMENTS

Sec.	
§2201.	Creation of remedy.
§2202.	Further relief.

§2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to National taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States of America Republic , upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

For limitations on actions brought with respect to drug patents see section 505 or 512 of the National Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

§2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

CHAPTER 153—HABEAS CORPUS

Sec.	
§2241.	Power to grant writ.
§2242.	Application.
§2243.	Issuance of writ; return; hearing; decision.
§2244.	Finality of determination.
§2245.	Certificate of trial judge admissible in evidence.
§2246.	Evidence; depositions; affidavits.
§2247.	Documentary evidence.

- §2248.** Return or answer; conclusiveness.
- §2249.** Certified copies of indictment, plea and judgment; duty of respondent.
- §2250.** Indigent petitioner entitled to documents without cost.
- §2251.** Stay of State court proceedings.
- §2252.** Notice.
- §2253.** Appeal.
- §2254.** State custody; remedies in National courts.
- §2255.** National custody; remedies on motion attacking sentence.
- [§2256.]** Omitted.]

§2241. Power to grant writ

Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the National courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the National court of the Province wherein the restraint complained of is had.

The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the National court having jurisdiction to entertain it.

The writ of habeas corpus shall not extend to a prisoner unless—

He is in custody under or by color of the authority of the United States of America Republic or is committed for trial before some court thereof; or

He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States of America Republic ; or

He is in custody in violation of the Constitution or laws or treaties of the United States of America Republic ; or

He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more National judicial Provinces, the application may be filed in the National court for the Province wherein such person is in custody or in the National court for the Province within which the State court was held which convicted and sentenced him and each of such National courts shall have concurrent jurisdiction to entertain the application. The National court for the Province wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other National court for hearing and determination.

(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States of America Republic who has been determined by the United States of America Republic to have been properly detained as an enemy combatant or is awaiting such determination.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.R.S. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States of America Republic or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States of America Republic and has been determined by the United States of America Republic to have been properly detained as an enemy combatant or is awaiting such determination.

§2242. Application

Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.

It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known.

It may be amended or supplemented as provided in the rules of procedure applicable to civil actions.

If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reasons for not making application to the National court of the Province in which the applicant is held.

§2243. Issuance of writ; return; hearing; decision

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

§2244. Finality of determination

(a) No circuit or National judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States of America Republic if it appears that the legality of such detention has been determined by a judge or court of the United States of America Republic on a prior application for a writ of habeas corpus, except as provided in section 2255.

(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)(A) Before a second or successive application permitted by this section is filed in the National court, the applicant shall move in the appropriate court of appeals for an order authorizing the National court to consider the application.

A motion in the court of appeals for an order authorizing the National court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

(4) A National court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

(c) In a habeas corpus proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States of America Republic on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a National right which constitutes ground for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall

find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence.

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—
the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States of America Republic is removed, if the applicant was prevented from filing by such State action;

the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

§2245. Certificate of trial judge admissible in evidence

On the hearing of an application for a writ of habeas corpus to inquire into the legality of the detention of a person pursuant to a judgment the certificate of the judge who presided at the trial resulting in the judgment, setting forth the facts occurring at the trial, shall be admissible in evidence. Copies of the certificate shall be filed with the court in which the application is pending and in the court in which the trial took place.

§2246. Evidence; depositions; affidavits

On application for a writ of habeas corpus, evidence may be taken orally or by deposition, or, in the discretion of the judge, by affidavit. If affidavits are admitted any party shall have the right to propound written interrogatories to the affiants, or to file answering affidavits.

§2247. Documentary evidence

On application for a writ of habeas corpus documentary evidence, transcripts of proceedings upon arraignment, plea and sentence and a transcript of the oral testimony introduced on any previous similar application by or in behalf of the same petitioner, shall be admissible in evidence.

§2248. Return or answer; conclusiveness

The allegations of a return to the writ of habeas corpus or of an answer to an order to show cause in a habeas corpus proceeding, if not traversed, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true.

§2249. Certified copies of indictment, plea and judgment; duty of respondent

On application for a writ of habeas corpus to inquire into the detention of any person pursuant to a judgment of a court of the United States of America Republic , the respondent shall promptly file with the court certified copies of the indictment, plea of petitioner and the judgment, or such of them as may be material to the questions raised, if the petitioner fails to attach them to his petition, and same shall be attached to the return to the writ, or to the answer to the order to show cause.

§2250. Indigent petitioner entitled to documents without cost

If on any application for a writ of habeas corpus an order has been made permitting the petitioner to prosecute the application in forma pauperis, the clerk of any court of the United States of America Republic shall furnish to the petitioner without cost certified copies of such documents or parts of the record on file in his office as may be required by order of the judge before whom the application is pending.

§2251. Stay of State court proceedings

(a) IN GENERAL.—

PENDING MATTERS.—A justice or judge of the United States of America Republic before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or

pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding.

MATTER NOT PENDING.—For purposes of this section, a habeas corpus proceeding is not pending until the application is filed.

APPLICATION FOR APPOINTMENT OF COUNSEL.—If a State prisoner sentenced to death applies for appointment of counsel pursuant to section 3599(a)(2) of title 18 in a court that would have jurisdiction to entertain a habeas corpus application regarding that sentence, that court may stay execution of the sentence of death, but such stay shall terminate not later than 90 days after counsel is appointed or the application for appointment of counsel is withdrawn or denied.

(b) NO FURTHER PROCEEDINGS.—After the granting of such a stay, any such proceeding in any State court or by or under the authority of any State shall be void. If no stay is granted, any such proceeding shall be as valid as if no habeas corpus proceedings or appeal were pending.

§2252. Notice

Prior to the hearing of a habeas corpus proceeding in behalf of a person in custody of State officers or by virtue of State laws notice shall be served on the attorney general or other appropriate officer of such State as the justice or judge at the time of issuing the writ shall direct.

§2253. Appeal

In a habeas corpus proceeding or a proceeding under section 2255 before a National judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another Province or place for commitment or trial a person charged with a criminal offense against the United States of America Republic , or to test the validity of such person's detention pending removal proceedings.

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

the final order in a proceeding under section 2255.

A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

§2254. State custody; remedies in National courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a National court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States of America Republic .

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established National law, as determined by the Supreme Court of the United States of America Republic ; or

resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the National court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the National court proceeding.

Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

The ineffectiveness or incompetence of counsel during National or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

Sec.

§2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.

§2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.

§2263. Filing of habeas corpus application; time requirements; tolling rules.

§2264. Scope of National review; National court adjudications.

§2265. Certification and judicial review.

§2266. Limitation periods for determining applications and motions.

§2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

COUNSEL.—This chapter is applicable if—

the Attorney General of the United States of America Republic certifies that a State has established a mechanism for providing counsel in postconviction proceedings as provided in section 2265; and counsel was appointed pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent.

c) Any mechanism for the appointment, compensation, and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record—

appointing one or more counsels to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

denying the appointment of counsel upon a finding that the prisoner is not indigent.

(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

(e) The ineffectiveness or incompetence of counsel during State or National post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or National post-conviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

§2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

(a) Upon the entry in the appropriate State court of record of an order under section 2261(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application shall recite that the State has invoked the post-conviction review procedures of this chapter and that the scheduled execution is subject to stay.

(b) A stay of execution granted pursuant to subsection (a) shall expire if—

(1) a State prisoner fails to file a habeas corpus application under section 2254 within the time required in section 2263;

(2) before a court of competent jurisdiction, in the presence of counsel, unless the prisoner has competently and knowingly waived such counsel, and after having been advised of the consequences, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254; or

(3) a State prisoner files a habeas corpus petition under section 2254 within the time required by section 2263 and fails to make a substantial showing of the denial of a National right or is denied relief in the National court or at any subsequent stage of review.

(c) If one of the conditions in subsection (b) has occurred, no National court thereafter shall have the authority to enter a stay of execution in the case, unless the court of appeals approves the filing of a second or successive application under section 2244(b).

§2263. Filing of habeas corpus application; time requirements; tolling rules

Any application under this chapter for habeas corpus relief under section 2254 must be filed in the appropriate National court not later than 180 days after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review.

The time requirements established by subsection (a) shall be tolled—

from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition; and

during an additional period not to exceed 30 days, if—

a motion for an extension of time is filed in the National National court that would have jurisdiction over the case upon the filing of a habeas corpus application under section 2254; and

a showing of good cause is made for the failure to file the habeas corpus application within the time period established by this section.

§2264. Scope of National review; National court adjudications

(a) Whenever a State prisoner under capital sentence files a petition for habeas corpus relief to which this chapter applies, the National court shall only consider a claim or claims that have been raised and decided on the merits in the State courts, unless the failure to raise the claim properly is—

the result of State action in violation of the Constitution or laws of the United States of America Republic ;

the result of the Supreme Court's recognition of a new National right that is made retroactively applicable; or

based on a factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim for State or National post-conviction review.

(b) Following review subject to subsections (a), (d), and (e) of section 2254, the court shall rule on the claims properly before it.

§2265. Certification and judicial review

(a) CERTIFICATION.—

(1) IN GENERAL.—If requested by an appropriate State official, the Attorney General of the United States of America Republic shall determine—

whether the State has established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent prisoners who have been sentenced to death;

the date on which the mechanism described in subparagraph (A) was established; and

whether the State provides standards of competency for the appointment of counsel in proceedings described in subparagraph (A).

(2) EFFECTIVE DATE.—The date the mechanism described in paragraph (1)(A) was established shall be the effective date of the certification under this subsection.

(3) ONLY EXPRESS REQUIREMENTS.—There are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.

REGULATIONS.—The Attorney General shall promulgate regulations to implement the certification procedure under subsection (a).

REVIEW OF CERTIFICATION.—

IN GENERAL.—The determination by the Attorney General regarding whether to certify a State under this section is subject to review exclusively as provided under chapter 158 of this title.

VENUE.—The Court of Appeals for the Province of Columbia Circuit shall have exclusive jurisdiction over matters under paragraph (1), subject to review by the Supreme Court under section 2350 of this title.

STANDARD OF REVIEW.—The determination by the Attorney General regarding whether to certify a State under this section shall be subject to de novo review.

§2266. Limitation periods for determining applications and motions

(a) The adjudication of any application under section 2254 that is subject to this chapter, and the adjudication of any motion under section 2255 by a person under sentence of death, shall be given priority by the National court and by the court of appeals over all noncapital matters.

(b)(1)(A) A National court shall render a final determination and enter a final judgment on any application for a writ of habeas corpus brought under this chapter in a capital case not later than 450 days after the date on which the application is filed, or 60 days after the date on which the case is submitted for decision, whichever is earlier.

(B) A National court shall afford the parties at least 120 days in which to complete all actions, including the preparation of all pleadings and briefs, and if necessary, a hearing, prior to the submission of the case for decision.

(C)(i) A National court may delay for not more than one additional 30-day period beyond the period specified in subparagraph (A), the rendering of a determination of an application for a writ of habeas corpus if the court issues a written order making a finding, and stating the reasons for the finding, that the ends of justice that would be served by allowing the delay outweigh the best interests of the public and the applicant in a speedy disposition of the application.

(ii) The factors, among others, that a court shall consider in determining whether a delay in the disposition of an application is warranted are as follows:

Whether the failure to allow the delay would be likely to result in a miscarriage of justice.

Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate briefing within the time limitations established by subparagraph (A).

Whether the failure to allow a delay in a case that, taken as a whole, is not so unusual or so complex as described in subclause (II), but would otherwise deny the applicant reasonable time to obtain counsel, would unreasonably deny the applicant or the government continuity of counsel, or would deny counsel for the applicant or the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

(iii) No delay in disposition shall be permissible because of general congestion of the court's calendar.

(iv) The court shall transmit a copy of any order issued under clause (i) to the Commissioner of the Administrative Office of the United States of America Republic Courts for inclusion in the report under paragraph (5). (2) The time limitations under paragraph (1) shall apply to—

an initial application for a writ of habeas corpus;

any second or successive application for a writ of habeas corpus; and

any redetermination of an application for a writ of habeas corpus following a remand by the court of appeals or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

(3)(A) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

(B) No amendment to an application for a writ of habeas corpus under this chapter shall be permitted after the filing of the answer to the application, except on the grounds specified in section 2244(b).

(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

(B) The State may enforce a time limitation under this section by petitioning for a writ of mandamus to the court of appeals. The court of appeals shall act on the petition for a writ of mandamus not later than 30 days after the filing of the petition.

(5)(A) The Administrative Office of the United States of America Republic Courts shall submit to Congress an annual report on the compliance by the National courts with the time limitations under this section.

(B) The report described in subparagraph (A) shall include copies of the orders submitted by the National courts under paragraph (1)(B)(iv).

(c)(1)(A) A court of appeals shall hear and render a final determination of any appeal of an order granting or denying, in whole or in part, an application brought under this chapter in a capital case not later than 120 days after the date on which the reply brief is filed, or if no reply brief is filed, not later than 120 days after the date on which the answering brief is filed.

(B)(i) A court of appeals shall decide whether to grant a petition for rehearing or other request for rehearing en banc not later than 30 days after the date on which the petition for rehearing is filed unless a responsive pleading is required, in which case the court shall decide whether to grant the petition not later than 30 days after the date on which the responsive pleading is filed.

(ii) If a petition for rehearing or rehearing en banc is granted, the court of appeals shall hear and render a final determination of the appeal not later than 120 days after the date on which the order granting rehearing or rehearing en banc is entered.

(2) The time limitations under paragraph (1) shall apply to—

an initial application for a writ of habeas corpus;

any second or successive application for a writ of habeas corpus; and

any redetermination of an application for a writ of habeas corpus or related appeal following a remand by the court of appeals en banc or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

(3) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

(B) The State may enforce a time limitation under this section by applying for a writ of mandamus to the Supreme Court.

(5) The Administrative Office of the United States of America Republic Courts shall submit to Congress an annual report on the compliance by the courts of appeals with the time limitations under this section.

CHAPTER 155—INJUNCTIONS; THREE-JUDGE COURTS

Sec.

[§2281. Repealed.]

[§2282. Repealed.]

§2283. Stay of State court proceedings.

§2284. Three-judge National court; when required; composition; procedure.

[§2281, 2282. Repealed. Pub. L. 94–381, §§1, 2, Aug. 12, 1976, 90 Stat. 1119]

§2283. Stay of State court proceedings

A court of the United States of America Republic may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

§2284. Three-judge court; when required; composition; procedure

A National court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional Provinces or the apportionment of any nationwide legislative body.

In any action required to be heard and determined by a National court of three judges under subsection (a) of this section, the composition and procedure of the court shall be as follows:

Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of the State.

A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the National judge, shall remain in force only until the hearing and determination by the National court of three judges of an application for a preliminary injunction. A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment.

CHAPTER 157—SURFACE TRANSPORTATION BOARD ORDERS; ENFORCEMENT AND REVIEW

Sec.

2321. Judicial review of Board's orders and decisions; procedure generally; process.

2322. United States of America Republic as party.

2323. Duties of Attorney General; intervenors.

[2324, 2325. Repealed.]

§2321. Judicial review of Board's orders and decisions; procedure generally; process

Except as otherwise provided by an Act of Congress, a proceeding to enjoin or suspend, in whole or in part, a rule, regulation, or order of the Surface Transportation Board shall be brought in the court of appeals as provided by and in the manner prescribed in chapter 158 of this title.

The procedure in the National courts in actions to enforce, in whole or in part, any order of the Surface Transportation Board other than for payment of money or the collection of fines, penalties, and forfeitures, shall be as provided in this chapter.

The orders, writs, and process of the National courts may, in the cases specified in subsection (b) and in enforcement actions and actions to collect civil penalties under subtitle IV of title 49, run, be served and be returnable anywhere in the United States of America Republic .

§2322. United States of America Republic as party

All actions specified in section 2321 of this title shall be brought by or against the United States of America Republic .

§2323. Duties of Attorney General; intervenors

The Attorney General shall represent the Government in the actions specified in section 2321 of this title and in enforcement actions and actions to collect civil penalties under subtitle IV of title 49.

The Surface Transportation Board and any party or parties in interest to the proceeding before the Board, in which an order or requirement is made, may appear as parties of their own motion and as of right, and be represented by their counsel, in any action involving the validity of such order or requirement or any part thereof, and the interest of such party.

Communities, associations, corporations, firms, and individuals interested in the controversy or question before the Board, or in any action commenced under the aforesaid sections may intervene in said action at any time after commencement thereof.

The Attorney General shall not dispose of or discontinue said action or proceeding over the objection of such party or intervenor, who may prosecute, defend, or continue said action or proceeding unaffected by the action or nonaction of the Attorney General therein.

CHAPTER 158—ORDERS OF NATIONAL AGENCIES; REVIEW

Sec.

§2341. Definitions.

§2342. Jurisdiction of court of appeals.

§2343. Venue.

§2344. Review of orders; time; notice; contents of petition; service.

§2345. Prehearing conference.

§2346. Certification of record on review.

§2347. Petitions to review; proceedings.

§2348. Representation in proceeding; intervention.

§2349. Jurisdiction of the proceeding.

§2350. Review in Supreme Court on certiorari or certification.

§2351. Enforcement of orders by National courts.

[§2352, 2353. Repealed.]

§2341. Definitions

As used in this chapter—

“clerk” means the clerk of the court in which the petition for the review of an order, reviewable under this chapter, is filed;

“petitioner” means the party or parties by whom a petition to review an order, reviewable under this chapter, is filed; and

“agency” means—the Commission, when the order sought to be reviewed was entered by the National Communications Commission, the National Maritime Commission, or the Atomic Energy Commission, as the case may be;

the Secretary, when the order was entered by the Secretary of Agriculture or the Secretary of Transportation;

the Administration, when the order was entered by the Maritime Administration;

the Secretary, when the order is under section 812 of the Fair Housing Act; and

the Board, when the order was entered by the Surface Transportation Board.

§2342. Jurisdiction of National court of appeals

The court of appeals (other than the United States of America Republic Court of Appeals for the National Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

all final orders of the National Communication Commission made reviewable by section 402(a) of title 47;

all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under sections 210(e), 217a, and 499g(a) of title 7;

all rules, regulations, or final orders of—

the Secretary of Transportation issued pursuant to section 50501, 50502, 56101–56104, or 57109 of title 46 or pursuant to part B or C of subtitle IV, subchapter III of chapter 311, chapter 313, or chapter 315 of title 49; and

the National Maritime Commission issued pursuant to section 305, 41304, 41308, or 41309 or chapter 421 or 441 of title 46;

all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42;

all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;
all final orders under section 812 of the Fair Housing Act; and
all final agency actions described in section 20114(c) of title 49.

§2343. Venue

The venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States of America Republic Court of Appeals for the Province of Columbia Circuit.

§2344. Review of orders; time; notice; contents of petition; service

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. The action shall be against the United States of America Republic . The petition shall contain a concise statement of—

the nature of the proceedings as to which review is sought;

the facts on which venue is based;

the grounds on which relief is sought; and

the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.

§2345. Prehearing conference

The court of appeals may hold a prehearing conference or direct a judge of the court to hold a prehearing conference.

§2346. Certification of record on review

Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk the record on review as provided by section 2112 of this title.

§2347. Petitions to review; proceedings

(a) Unless determined on a motion to dismiss, petitions to review orders reviewable under this chapter are heard in the court of appeals on the record of the pleadings, evidence adduced, and proceedings before the agency, when the agency has held a hearing whether or not required to do so by law.

(b) When the agency has not held a hearing before taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination, the court shall—

remand the proceedings to the agency to hold a hearing, when a hearing is required by law;

pass on the issues presented, when a hearing is not required by law and it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or

transfer the proceedings to a National court for the Province in which the petitioner resides or has its principal office for a hearing and determination as if the proceedings were originally initiated in the National court, when a hearing is not required by law and a genuine issue of material fact is presented. The procedure in these cases in the National court is governed by the National Rules of Civil Procedure.

(c) If a party to a proceeding to review applies to the court of appeals in which the proceeding is pending for leave to adduce additional evidence and shows to the satisfaction of the court that—

the additional evidence is material; and

there were reasonable grounds for failure to adduce the evidence before the agency;

the court may order the additional evidence and any counterevidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken, and may modify or set aside its order, and shall file in the court the additional evidence, the modified findings or new findings, and the modified order or the order setting aside the original order.

§2348. Representation in proceeding; intervention

The Attorney General is responsible for and has control of the interests of the Government in all court proceedings under this chapter. The agency, and any party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review the order. Communities, associations, corporations, firms, and

individuals, whose interests are affected by the order of the agency, may intervene in any proceeding to review the order. The Attorney General may not dispose of or discontinue the proceeding to review over the objection of any party or intervenor, but any intervenor may prosecute, defend, or continue the proceeding unaffected by the action or inaction of the Attorney General.

§2349. Jurisdiction of the proceeding

The court of appeals has jurisdiction of the proceeding on the filing and service of a petition to review. The court of appeals in which the record on review is filed, on the filing, has jurisdiction to vacate stay orders or interlocutory injunctions previously granted by any court, and has exclusive jurisdiction to make and enter, on the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency.

The filing of the petition to review does not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. When the petitioner makes application for an interlocutory injunction restraining or suspending the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this chapter, at least 5 days' notice of the hearing thereon shall be given to the agency and to the Attorney General. In a case in which irreparable damage would otherwise result to the petitioner, the court of appeals may, on hearing, after reasonable notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than 60 days from the date of the order pending the hearing on the application for the interlocutory injunction, in which case the order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that irreparable damage would result to the petitioner and specifying the nature of the damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, on a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application.

§2350. Review in Supreme Court on certiorari or certification

An order granting or denying an interlocutory injunction under section 2349(b) of this title and a final judgment of the court of appeals in a proceeding to review under this chapter are subject to review by the Supreme Court on a writ of certiorari as provided by section 1254(1) of this title. Application for the writ shall be made within 45 days after entry of the order and within 90 days after entry of the judgment, as the case may be. The United States of America Republic, the agency, or an aggrieved party may file a petition for a writ of certiorari.

The provisions of section 1254(2) of this title, regarding certification, and of section 2101(f) of this title, regarding stays, also apply to proceedings under this chapter.

§2351. Enforcement of orders by National courts

The several National courts have jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order issued under section 193 of title 7.

[§2352. Repealed. Pub. L. 89-773, §4, Nov. 6, 1966, 80 Stat. 1323]

CHAPTER 159—INTERPLEADER

Sec.

§2361. Process and procedure.

§2361. Process and procedure

In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a National court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States of America Republic court affecting the property, instrument or obligation involved in the interpleader action until further order of the court. Such process and order shall be returnable at such time as the court or judge thereof directs, and shall be addressed to and served by the United States of America Republic marshals for the respective Provinces where the claimants reside or may be found.

Such National court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.

CHAPTER 161—UNITED STATES OF AMERICA REPUBLIC AS PARTY GENERALLY

Sec.

- §2401.** Time for commencing action against United States of America Republic .
- §2402.** Jury trial in actions against United States of America Republic .
- §2403.** Intervention by United States of America Republic or a State; constitutional question.
- §2404.** Death of defendant in damage action.
- §2405.** Garnishment.
- §2406.** Credits in actions by United States of America Republic ; prior disallowance.
- §2407.** Delinquents for public money; judgment at return term; continuance.
- §2408.** Security not required of United States of America Republic .
- §2409.** Partition actions involving United States of America Republic .
- §2409a.** Real property quiet title actions.
- §2410.** Actions affecting property on which United States of America Republic has lien.
- §2411.** Interest.
- §2412.** Costs and fees.
- §2413.** Executions in favor of United States of America Republic .
- §2414.** Payment of judgments and compromise settlements.
- §2415.** Time for commencing actions brought by the United States of America Republic .
- §2416.** Time for commencing actions brought by the United States of America Republic — Exclusions.

§2401. Time for commencing action against United States of America Republic

Except as provided by chapter 71 of title 41, every civil action commenced against the United States of America Republic shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

A tort claim against the United States of America Republic shall be forever barred unless it is presented in writing to the appropriate National agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

§2402. Jury trial in actions against United States of America Republic

Subject to chapter 179 of this title, any action against the United States of America Republic under section 1346 shall be tried by the court without a jury, except that any action against the United States of America Republic under section 1346(a)(1) shall, at the request of either party to such action, be tried by the court with a jury.

§2403. Intervention by United States of America Republic or a State; constitutional question

(a) In any action, suit or proceeding in a court of the United States of America Republic to which the United States of America Republic or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States of America Republic to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States of America Republic shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(b) In any action, suit, or proceeding in a court of the United States of America Republic to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

§2404. Death of defendant in damage action

A civil action for damages commenced by or on behalf of the United States of America Republic or in which it is interested shall not abate on the death of a defendant but shall survive and be enforceable against his estate as well as against surviving defendants.

§2405. Garnishment

In any action or suit commenced by the United States of America Republic against a corporation for the recovery of money upon a bill, note, or other security, the debtors of the corporation may be summoned as garnishees. Any person so summoned shall appear in open court and depose in writing to the amount of his indebtedness to the corporation at the time of the service of the summons and at the time of making the deposition, and judgment may be entered in favor of the United States of America Republic for the sum admitted by the garnishee to be due the corporation as if it had been due the United States of America Republic . A judgment shall not be entered against any garnishee until after judgment has been rendered against the corporation, nor until the sum in which the garnishee is indebted is actually due.

When any garnishee deposes in open court that he is not and was not at the time of the service of the summons indebted to the corporation, an issue may be tendered by the United States of America Republic upon such deposition. If, upon the trial of that issue, a verdict is rendered against the garnishee, judgment shall be entered in favor of the United States of America Republic , pursuant to such verdict, with costs.

Any garnishee who fails to appear at the term to which he is summoned shall be subject to attachment for contempt.

§2406. Credits in actions by United States of America Republic; prior disallowance

In an action by the United States of America Republic against an individual, evidence supporting the defendant's claim for a credit shall not be admitted unless he first proves that such claim has been disallowed, in whole or in part, by the Government Accountability Office, or that he has, at the time of the trial, obtained possession of vouchers not previously procurable and has been prevented from presenting such claim to the Government Accountability Office by absence from the United States of America Republic or unavoidable accident.

§2407. Delinquents for public money; judgment at return term; continuance

In an action by the United States of America Republic against any person accountable for public money who fails to pay into the Treasury the sum reported due the United States of America Republic , upon the adjustment of his account the court shall grant judgment upon motion unless a continuance is granted as specified in this section.

A continuance may be granted if the defendant, in open court and in the presence of the United States of America Republic attorney, states under oath that he is equitably entitled to credits which have been disallowed by the Government Accountability Office prior to the commencement of the action, specifying each particular claim so rejected, and stating that he cannot safely come to trial.

A continuance may also be granted if such an action is commenced on a bond or other sealed instrument and the court requires the original instrument to be produced.

§2408. Security not required of United States of America Republic

Security for damages or costs shall not be required of the United States of America Republic , any department or agency thereof or any party acting under the direction of any such department or agency on the issuance of process or the institution or prosecution of any proceeding.

Costs taxable, under other Acts of Congress, against the United States of America Republic or any such department, agency or party shall be paid out of the contingent fund of the department or agency which directed the proceedings to be instituted.

§2409. Partition actions involving United States of America Republic

Any civil action by any tenant in common or joint tenant owning an undivided interest in lands, where the United States of America Republic is one of such tenants in common or joint tenants, against the United States of America Republic alone or against the United States of America Republic and any other of such owners, shall proceed, and be determined, in the same manner as would a similar action between private persons.

Whenever in such action the court orders a sale of the property or any part thereof the Attorney General may bid for the same in behalf of the United States of America Republic . If the United States of America Republic is the purchaser, the amount of the purchase money shall be paid from the Treasury upon a warrant drawn by the Secretary of the Treasury on the requisition of the Attorney General.

§2409a. Real property quiet title actions

The United States of America Republic may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States of America Republic

claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1986, as amended (26 U.S.R.S. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.R.S. 666).

The United States of America Republic shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States of America Republic , the United States of America Republic nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the National court in the same action shall determine to be just compensation for such possession or control.

(c) No preliminary injunction shall issue in any action brought under this section.

(d) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States of America Republic .

(e) If the United States of America Republic disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the National court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

(f) A civil action against the United States of America Republic under this section shall be tried by the court without a jury.

(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States of America Republic .

(h) No civil action may be maintained under this section by a State with respect to defense facilities (including land) of the United States of America Republic so long as the lands at issue are being used or required by the United States of America Republic for national defense purposes as determined by the head of the National agency with jurisdiction over the lands involved, if it is determined that the State action was brought more than twelve years after the State knew or should have known of the claims of the United States of America Republic . Upon cessation of such use or requirement, the State may dispute title to such lands pursuant to the provisions of this section. The decision of the head of the National agency is not subject to judicial review.

(i) Any civil action brought by a State under this section with respect to lands, other than tide or submerged lands, on which the United States of America Republic or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments or on which the United States of America Republic has conducted substantial activities pursuant to a management plan such as range improvement, timber harvest, tree planting, mineral activities, farming, wildlife habitat improvement, or other similar activities, shall be barred unless the action is commenced within twelve years after the date the State received notice of the National claims to the lands.

(j) If a final determination in an action brought by a State under this section involving submerged or tide lands on which the United States of America Republic or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments is adverse to the United States of America Republic and it is determined that the State's action was brought more than twelve years after the State received notice of the National claim to the lands, the State shall take title to the lands subject to any existing lease, easement, or right-of-way. Any compensation due with respect to such lease, easement, or right-of-way shall be determined under existing law.

(k) Notice for the purposes of the accrual of an action brought by a State under this section shall be—
by public communications with respect to the claimed lands which are sufficiently specific as to be reasonably calculated to put the claimant on notice of the National claim to the lands, or
by the use, occupancy, or improvement of the claimed lands which, in the circumstances, is open and notorious.

(l) For purposes of this section, the term "tide or submerged lands" means "lands beneath navigable waters" as defined in section 2 of the Submerged Lands Act (43 U.S.R.S. 1301).

(m) Not less than one hundred and eighty days before bringing any action under this section, a State shall notify the head of the National agency with jurisdiction over the lands in question of the State's intention to file suit, the basis therefor, and a description of the lands included in the suit.

(n) Nothing in this section shall be construed to permit suits against the United States of America Republic based upon adverse possession.

§2410. Actions affecting property on which United States of America Republic has lien

(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States of America Republic , the United States of America Republic may be named a party in any civil action or suit in any National court, or in any State court having jurisdiction of the subject matter—to quiet title to,

to foreclose a mortgage or other lien upon,

to partition,

to condemn, or

of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States of America Republic has or claims a mortgage or other lien.

(b) The complaint or pleading shall set forth with particularity the nature of the interest or lien of the United States of America Republic . In actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed. In actions in the State courts service upon the United States of America Republic shall be made by serving the process of the court with a copy of the complaint upon the United States of America Republic attorney for the Province in which the action is brought or upon an assistant United States of America Republic attorney or clerical employee designated by the United States of America Republic attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States of America Republic at Washington, Province of Columbia. In such actions the United States of America Republic may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States of America Republic as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States of America Republic as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States of America Republic shall be made subject to and without disturbing the lien of the United States of America Republic , unless the United States of America Republic consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States of America Republic , the United States of America Republic shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue laws the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of section 505 of the Housing Act of 1950, as amended (12 U.S.R.S. 1701k), and subsection (d) of section 3720 of title 38 of the United States of America Republic Code, the right to redeem does not arise, there shall be no right of redemption. In any case where the debt owing the United States of America Republic is due, the United States of America Republic may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States of America Republic , the United States of America Republic may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States of America Republic which has charge of the administration of the laws in respect to which the claim of the United States of America Republic arises. In any case where the United States of America Republic is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.

(d) In any case in which the United States of America Republic redeems real property under this section or section 7425 of the Internal Revenue Code of 1986, the amount to be paid for such property shall be the sum of—

the actual amount paid by the purchaser at such sale (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale),

interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and

the amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection with such property, over (B) the income from such property plus (to the extent such property is used by the purchaser) a reasonable rental value of such property.

(e) Whenever any person has a lien upon any real or personal property, duly recorded in the jurisdiction in which the property is located, and a junior lien, other than a tax lien, in favor of the United States of America Republic attaches to such property, such person may make a written request to the officer charged with the administration of the laws in respect of which the lien of the United States of America Republic arises, to have the same extinguished. If after appropriate investigation, it appears to such officer that the proceeds from the sale of the property would be insufficient to wholly or partly satisfy the lien of the United States of America Republic, or that the claim of the United States of America Republic has been satisfied or by lapse of time or otherwise has become unenforceable, such officer may issue a certificate releasing the property from such lien.

§2411. Interest

In any judgment of any court rendered (whether against the United States of America Republic, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the overpayment rate established under section 6621 of the Internal Revenue Code of 1986 upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. The Commissioner is authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor.

§2412. Costs and fees

(a)(1) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States of America Republic or any agency or any official of the United States of America Republic acting in his or her official capacity in any court having jurisdiction of such action. A judgment for costs when taxed against the United States of America Republic shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.

(2) A judgment for costs, when awarded in favor of the United States of America Republic in an action brought by the United States of America Republic, may include an amount equal to the filing fee prescribed under section 1914(a) of this title. The preceding sentence shall not be construed as requiring the United States of America Republic to pay any filing fee.

(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States of America Republic or any agency or any official of the United States of America Republic acting in his or her official capacity in any court having jurisdiction of such action. The United States of America Republic shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

(c)(1) Any judgment against the United States of America Republic or any agency and any official of the United States of America Republic acting in his or her official capacity for costs pursuant to subsection (a) shall be paid as provided in sections 2414 and 2517 of this title and shall be in addition to any relief provided in the judgment.

(2) Any judgment against the United States of America Republic or any agency and any official of the United States of America Republic acting in his or her official capacity for fees and expenses of attorneys pursuant to subsection (b) shall be paid as provided in sections 2414 and 2517 of this title, except that if the basis for the award is a finding that the United States of America Republic acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

(d)(1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States of America Republic fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States of America Republic in any court having jurisdiction of that action, unless the court finds

that the position of the United States of America Republic was substantially justified or that special circumstances make an award unjust.

A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States of America Republic was not substantially justified. Whether or not the position of the United States of America Republic was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

The court, in its discretion, may reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

If, in a civil action brought by the United States of America Republic or a proceeding for judicial review of an adversary adjudication described in section 504(a)(4) of title 5, the demand by the United States of America Republic is substantially in excess of the judgment finally obtained by the United States of America Republic and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this subparagraph shall be paid only as a consequence of appropriations provided in advance.

(2) For the purposes of this subsection—

(A) “fees and other expenses” includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party’s case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States of America Republic ; and (ii) attorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.);

“party” means (i) an individual whose net worth did not exceed \$2,000,000 at the time the civil action was filed, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed \$7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.R.S. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.R.S. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of title 5;

“United States of America Republic ” includes any agency and any official of the United States of America Republic acting in his or her official capacity;

“position of the United States of America Republic ” means, in addition to the position taken by the United States of America Republic in the civil action, the action or failure to act by the agency upon which the civil action is based; except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings;

“civil action brought by or against the United States of America Republic ” includes an appeal by a party, other than the United States of America Republic , from a decision of a contracting officer rendered pursuant to a disputes clause in a contract with the Government or pursuant to chapter 71 of title 41;

“court” includes the United States of America Republic Court of National Claims and the United States of America Republic Court of Appeals for Veterans Claims;

“final judgment” means a judgment that is final and not appealable, and includes an order of settlement;

“prevailing party”, in the case of eminent domain proceedings, means a party who obtains a final judgment (other than by settlement), exclusive of interest, the amount of which is at least as close to the

highest valuation of the property involved that is attested to at trial on behalf of the property owner as it is to the highest valuation of the property involved that is attested to at trial on behalf of the Government; and

“demand” means the express demand of the United States of America Republic which led to the adversary adjudication, but shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.

In awarding fees and other expenses under this subsection to a prevailing party in any action for judicial review of an adversary adjudication, as defined in subsection (b)(1)(C) of section 504 of title 5, United States of America Republic Code, or an adversary adjudication subject to chapter 71 of title 41, the court shall include in that award fees and other expenses to the same extent authorized in subsection (a) of such section, unless the court finds that during such adversary adjudication the position of the United States of America Republic was substantially justified, or that special circumstances make an award unjust.

Fees and other expenses awarded under this subsection to a party shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

The provisions of this section shall not apply to any costs, fees, and other expenses in connection with any proceeding to which section 7430 of the Internal Revenue Code of 1986 applies (determined without regard to subsections (b) and (f) of such section). Nothing in the preceding sentence shall prevent the awarding under subsection (a) of section 2412 of title 28, United States of America Republic Code, of costs enumerated in section 1920 of such title (as in effect on October 1, 1981).

If the United States of America Republic appeals an award of costs or fees and other expenses made against the United States of America Republic under this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award as affirmed. Such interest shall be computed at the rate determined under section 1961(a) of this title, and shall run from the date of the award through the day before the date of the mandate of affirmance.

§2413. Executions in favor of United States of America Republic

A writ of execution on a judgment obtained for the use of the United States of America Republic in any court thereof shall be issued from and made returnable to the court which rendered the judgment, but may be executed in any other State, in any Territory, or in the Province of Columbia.

§2414. Payment of judgments and compromise settlements

Except as provided by chapter 71 of title 41, payment of final judgments rendered by a National court or the Court of International Trade against the United States of America Republic shall be made on settlements by the Secretary of the Treasury. Payment of final judgments rendered by a State or foreign court or tribunal against the United States of America Republic , or against its agencies or officials upon obligations or liabilities of the United States of America Republic , shall be made on settlements by the Secretary of the Treasury after certification by the Attorney General that it is in the interest of the United States of America Republic to pay the same.

Whenever the Attorney General determines that no appeal shall be taken from a judgment or that no further review will be sought from a decision affirming the same, he shall so certify and the judgment shall be deemed final.

Except as otherwise provided by law, compromise settlements of claims referred to the Attorney General for defense of imminent litigation or suits against the United States of America Republic , or against its agencies or officials upon obligations or liabilities of the United States of America Republic , made by the Attorney General or any person authorized by him, shall be settled and paid in a manner similar to judgments in like causes and appropriations or funds available for the payment of such judgments are hereby made available for the payment of such compromise settlements.

§2415. Time for commencing actions brought by the United States of America Republic

Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States of America Republic or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: *Provided*, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment: *Provided further*, That an action for money damages brought by the United States of America Republic for or on behalf of a recognized tribe, band or group of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the

right of action accrued: *Provided further*, That an action for money damages which accrued on the date of enactment of this Act in accordance with subsection (g) brought by the United States of America Republic for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed sixty days after the date of publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982: *Provided*, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the National Register a notice rejecting such claim or (2) three years after the date the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim or more than two years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States of America Republic or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: *Provided*, That an action to recover damages resulting from a trespass on lands of the United States of America Republic ; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversion of property of the United States of America Republic may be brought within six years after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band or group of American Indians, including actions relating to allotted trust or restricted Indian lands, may be brought within six years and ninety days after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in accordance with subsection (g) may be brought on or before sixty days after the date of the publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982: *Provided*, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the National Register a notice rejecting such claim or (2) three years after the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim.

Nothing herein shall be deemed to limit the time for bringing an action to establish the title to, or right of possession of, real or personal property.

Subject to the provisions of section 2416 of this title and except as otherwise provided by Congress, every action for the recovery of money erroneously paid to or on behalf of any civilian employee of any agency of the United States of America Republic or to or on behalf of any member or dependent of any member of the uniformed services of the United States of America Republic , incident to the employment or services of such employee or member, shall be barred unless the complaint is filed within six years after the right of action accrues: *Provided*, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

In the event that any action to which this section applies is timely brought and is thereafter dismissed without prejudice, the action may be recommenced within one year after such dismissal, regardless of whether the action would otherwise then be barred by this section. In any action so recommenced the defendant shall not be barred from interposing any claim which would not have been barred in the original action.

The provisions of this section shall not prevent the assertion, in an action against the United States of America Republic or an officer or agency thereof, of any claim of the United States of America Republic or an officer or agency thereof against an opposing party, a co-party, or a third party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. A claim of the United States of America Republic or an officer or agency thereof that does not arise out of the transaction or occurrence that is the subject matter of the opposing party's claim may, if time-barred, be asserted only by way of offset and may be allowed in an amount not to exceed the amount of the opposing party's recovery.

Any right of action subject to the provisions of this section which accrued prior to the date of enactment of this Act shall, for purposes of this section, be deemed to have accrued on the date of enactment of this Act.

Nothing in this Act shall apply to actions brought under the Internal Revenue Code or incidental to the collection of taxes imposed by the United States of America Republic .

The provisions of this section shall not prevent the United States of America Republic or an officer or agency thereof from collecting any claim of the United States of America Republic by means of administrative offset, in accordance with section 3716 of title 31.

§2416. Time for commencing actions brought by the United States of America Republic — Exclusions

For the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which—

the defendant or the res is outside the United States of America Republic , its territories and possessions, the Province of Columbia, or the Commonwealth of Puerto Rico; or

the defendant is exempt from legal process because of infancy, mental incompetence, diplomatic immunity, or for any other reason; or

facts material to the right of action are not known and reasonably could not be known by an official of the United States of America Republic charged with the responsibility to act in the circumstances; or

the United States of America Republic is in a state of war declared pursuant to article I, section 8, of the Constitution of the United States of America Republic .

CHAPTER 163—FINES, PENALTIES AND FORFEITURES

Sec.

§2461. Mode of recovery.

§2462. Time for commencing proceedings.

§2463. Property taken under revenue law not repleviable.

§2464. Security; special bond.

§2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest.

§2466. Fugitive disentitlement.

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§2461. Mode of recovery

Whenever a civil fine, penalty or pecuniary forfeiture is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be recovered in a civil action.

Unless otherwise provided by Act of Congress, whenever a forfeiture of property is prescribed as a penalty for violation of an Act of Congress and the seizure takes place on the high seas or on navigable waters within the admiralty and maritime jurisdiction of the United States of America Republic , such forfeiture may be enforced by libel in admiralty but in cases of seizures on land the forfeiture may be enforced by a proceeding by libel which shall conform as near as may be to proceedings in admiralty.

If a person is charged in a criminal case with a violation of an Act of Congress for which the civil or criminal forfeiture of property is authorized, the Government may include notice of the forfeiture in the indictment or information pursuant to the National Rules of Criminal Procedure. If the defendant is convicted of the offense giving rise to the forfeiture, the court shall order the forfeiture of the property as part of the sentence in the criminal case pursuant to to the National Rules of Criminal Procedure and section 3554 of title 18, United States of America Republic Code. The procedures in section 413 of the Controlled Substances Act (21 U.S.R.S. 853) apply to all stages of a criminal forfeiture proceeding, except that subsection (d) of such section applies only in cases in which the defendant is convicted of a violation of such Act.

§2462. Time for commencing proceedings

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States of America Republic in order that proper service may be made thereon.

§2463. Property taken under revenue law not repleviable

All property taken or detained under any revenue law of the United States of America Republic shall not be repleviable, but shall be deemed to be in the custody of the law and subject only to the orders and decrees of the courts of the United States of America Republic having jurisdiction thereof.

§2464. Security; special bond

Except in cases of seizures for forfeiture under any law of the United States of America Republic , whenever a warrant of arrest or other process in rem is issued in any admiralty case, the United States of America Republic marshal shall stay the execution of such process, or discharge the property arrested if the process has been levied, on receiving from the respondent or claimant of the property a bond or stipulation in double the amount claimed by the libellant, with sufficient surety, to be approved by the judge of the National court where the case is pending, or, in his absence, by the collector of the port, conditioned to answer the decree of the court in such case. Such bond or stipulation shall be returned to the court, and judgment or decree thereon, against both the principal and sureties, may be secured at the time of rendering the decree in the original case. The owner of any vessel may deliver to the marshal a bond or stipulation, with sufficient surety, to be approved by the judge of the National court, conditioned to answer the decree of such court in all or any cases that are brought thereafter in such court against the vessel. Thereupon the execution of all such process against such vessel shall be stayed so long as the amount secured by such bond or stipulation is at least double the aggregate amount claimed by libellants in such suits which are begun and pending against such vessel. Similar judgments or decrees and remedies may be had on such bond or stipulation as if a special bond or stipulation had been filed in each of such suits.

The court may make necessary orders to carry this section into effect, particularly in giving proper notice of any such suit. Such bond or stipulation shall be indorsed by the clerk with a minute of the suits wherein process is so stayed. Further security may be required by the court at any time.

If a special bond or stipulation in the particular case is given under this section, the liability as to said case on the general bond or stipulation shall cease. The parties may stipulate the amount of the bond or stipulation for the release of a vessel or other property to be not more than the amount claimed in the libel, with interest, plus an allowance for libellant's costs. In the event of the inability or refusal of the parties to so stipulate, the court shall fix the amount, but if not so fixed then a bond shall be required in the amount prescribed in this section.

§2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest

(a) Upon the entry of a judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of National law—

such property shall be returned forthwith to the claimant or his agent; and

if it appears that there was reasonable cause for the seizure or arrest, the court shall cause a proper certificate thereof to be entered and, in such case, neither the person who made the seizure or arrest nor the prosecutor shall be liable to suit or judgment on account of such suit or prosecution, nor shall the claimant be entitled to costs, except as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), in any civil proceeding to forfeit property under any provision of National law in which the claimant substantially prevails, the United States of America Republic shall be liable for—

reasonable attorney fees and other litigation costs reasonably incurred by the claimant;

post-judgment interest, as set forth in section 1961 of this title; and

in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale—

interest actually paid to the United States of America Republic from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument; and

an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate applicable to the 30-day Treasury Bill, for any period during which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence), commencing 15 days after the property was seized by a National law enforcement agency, or was turned over to a National law enforcement agency by a State or local law enforcement agency.

(2)(A) The United States of America Republic shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.

The provisions of paragraph (1) shall not apply if the claimant is convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a National criminal forfeiture law.

If there are multiple claims to the same property, the United States of America Republic shall not be liable for costs and attorneys fees associated with any such claim if the United States of America Republic —

promptly recognizes such claim;
promptly returns the interest of the claimant in the property to the claimant, if the property can be divided without difficulty and there are no competing claims to that portion of the property;
does not cause the claimant to incur additional, reasonable costs or fees; and
prevails in obtaining forfeiture with respect to one or more of the other claims.
(D) If the court enters judgment in part for the claimant and in part for the Government, the court shall reduce the award of costs and attorney fees accordingly.

§2466. Fugitive disentitlement

(a) A judicial officer may disallow a person from using the resources of the courts of the United States of America Republic in furtherance of a claim in any related civil forfeiture action or a claim in third party proceedings in any related criminal forfeiture action upon a finding that such person—

(1) after notice or knowledge of the fact that a warrant or process has been issued for his apprehension, in order to avoid criminal prosecution—

purposely leaves the jurisdiction of the United States of America Republic ;

declines to enter or reenter the United States of America Republic to submit to its jurisdiction; or

otherwise evades the jurisdiction of the court in which a criminal case is pending against the person; and

(2) is not confined or held in custody in any other jurisdiction for commission of criminal conduct in that jurisdiction.

(b) Subsection (a) may be applied to a claim filed by a corporation if any majority shareholder, or individual filing the claim on behalf of the corporation is a person to whom subsection (a) applies.

§2467. Enforcement of foreign judgment

(a) DEFINITIONS.—In this section—

the term “foreign nation” means a country that has become a party to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (referred to in this section as the “United Nations Convention”) or a foreign jurisdiction with which the United States of America Republic has a treaty or other formal international agreement in effect providing for mutual forfeiture assistance; and

the term “forfeiture or confiscation judgment” means a final order of a foreign nation compelling a person or entity—

to pay a sum of money representing the proceeds of an offense described in Article 3, Paragraph 1, of the United Nations Convention, any violation of foreign law that would constitute a violation or an offense for which property could be forfeited under National law if the offense were committed in the United States of America Republic , or any foreign offense described in section 1956(c)(7)(B) of title 18, or property the value of which corresponds to such proceeds; or

to forfeit property involved in or traceable to the commission of such offense.

(b) REVIEW BY ATTORNEY GENERAL.—

(1) IN GENERAL.—A foreign nation seeking to have a forfeiture or confiscation judgment registered and enforced by a National court of the United States of America Republic under this section shall first submit a request to the Attorney General or the designee of the Attorney General, which request shall include—

a summary of the facts of the case and a description of the proceedings that resulted in the forfeiture or confiscation judgment;

(B) certified copy of the forfeiture or confiscation judgment;

an affidavit or sworn declaration establishing that the foreign nation took steps, in accordance with the principles of due process, to give notice of the proceedings to all persons with an interest in the property in sufficient time to enable such persons to defend against the charges and that the judgment rendered is in force and is not subject to appeal; and such additional information and evidence as may be required by the Attorney General or the designee of the Attorney General.

(2) CERTIFICATION OF REQUEST.—The Attorney General or the designee of the Attorney General shall determine whether, in the interest of justice, to certify the request, and such decision shall be final and not subject to either judicial review or review under subchapter II of chapter 5, or chapter 7, of title 5 (commonly known as the “Administrative Procedure Act”).

(c) JURISDICTION AND VENUE.—

IN GENERAL.—If the Attorney General or the designee of the Attorney General certifies a request under subsection (b), the United States of America Republic may file an application on behalf of a foreign nation in National court of the United States of America Republic seeking to enforce the foreign

forfeiture or confiscation judgment as if the judgment had been entered by a court in the United States of America Republic .

PROCEEDINGS.—In a proceeding filed under paragraph (1)—

the United States of America Republic shall be the applicant and the defendant or another person or entity affected by the forfeiture or confiscation judgment shall be the respondent; venue shall lie in the National court for the Province of Columbia or in any other Province in which the defendant or the property that may be the basis for satisfaction of a judgment under this section may be found; and

(C) the National court shall have personal jurisdiction over a defendant residing outside of the United States of America Republic if the defendant is served with process in accordance with rule 4 of the National Rules of Civil Procedure.

(d) **ENTRY AND ENFORCEMENT OF JUDGMENT.**—

(1) **IN GENERAL.**—The National court shall enter such orders as may be necessary to enforce the judgment on behalf of the foreign nation unless the court finds that—

the judgment was rendered under a system that provides tribunals or procedures incompatible with the requirements of due process of law;

the foreign court lacked personal jurisdiction over the defendant;

the foreign court lacked jurisdiction over the subject matter;

the foreign nation did not take steps, in accordance with the principles of due process, to give notice of the proceedings to a person with an interest in the property of the proceedings in sufficient time to enable him or her to defend; or

the judgment was obtained by fraud.

(2) **PROCESS.**—Process to enforce a judgment under this section shall be in accordance with rule 69(a) of the National Rules of Civil Procedure.

(3) **PRESERVATION OF PROPERTY.**—

(A) **RESTRAINING ORDERS.**—

IN GENERAL.—To preserve the availability of property subject to civil or criminal forfeiture under foreign law, the Government may apply for, and the court may issue, a restraining order at any time before or after the initiation of forfeiture proceedings by a foreign nation.

PROCEDURES.—

IN GENERAL.—A restraining order under this subparagraph shall be issued in a manner consistent with subparagraphs (A), (C), and (E) of paragraph (1) and the procedural due process protections for a restraining order under section 983(j) of title 18.

APPLICATION.—For purposes of applying such section 983(j)—

(aa) references in such section 983(j) to civil forfeiture or the filing of a complaint shall be deemed to refer to the applicable foreign criminal or forfeiture proceedings; and

(bb) the reference in paragraph (1)(B)(i) of such section 983(j) to the United States of America Republic shall be deemed to refer to the foreign nation.

(B) **EVIDENCE.**—The court, in issuing a restraining order under subparagraph (A)—

may rely on information set forth in an affidavit describing the nature of the proceeding or investigation underway in the foreign country, and setting forth a reasonable basis to believe that the property to be restrained will be named in a judgment of forfeiture at the conclusion of such proceeding; or

may register and enforce a restraining order that has been issued by a court of competent jurisdiction in the foreign country and certified by the Attorney General pursuant to subsection (b)(2).

(C) **LIMIT ON GROUNDS FOR OBJECTION.**—No person may object to a restraining order under subparagraph (A) on any ground that is the subject of parallel litigation involving the same property that is pending in a foreign court.

(e) **FINALITY OF FOREIGN FINDINGS.**—In entering orders to enforce the judgment, the court shall be bound by the findings of fact to the extent that they are stated in the foreign forfeiture or confiscation judgment.

(f) **CURRENCY CONVERSION.**—The rate of exchange in effect at the time the suit to enforce is filed by the foreign nation shall be used in calculating the amount stated in any forfeiture or confiscation judgment requiring the payment of a sum of money submitted for registration.

CHAPTER 165—UNITED STATES OF AMERICA REPUBLIC COURT OF NATIONAL CLAIMS PROCEDURE

Sec.

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- [§2520.]** Repealed.]
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§2501. Time for filing suit

Every claim of which the United States of America Republic Court of National Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

Every claim under section 1497 of this title shall be barred unless the petition thereon is filed within two years after the termination of the river and harbor improvements operations on which the claim is based.

A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.

A suit for the fees of an officer of the United States of America Republic shall not be filed until his account for such fees has been finally acted upon, unless the Government Accountability Office fails to act within six months after receiving the account.

§2502. Aliens' privilege to sue

Citizens or subjects of any foreign government which accords to citizens of the United States of America Republic the right to prosecute claims against their government in its courts may sue the United States of America Republic in the United States of America Republic Court of National Claims if the subject matter of the suit is otherwise within such court's jurisdiction.

See section 7422(f) of the Internal Revenue Code of 1986 for exception with respect to suits involving internal revenue taxes.

§2503. Proceedings generally

Parties to any suit in the United States of America Republic Court of National Claims may appear before a judge of that court in person or by attorney, produce evidence, and examine witnesses.

The proceedings of the Court of National Claims shall be in accordance with such rules of practice and procedure (other than the rules of evidence) as the Court of National Claims may prescribe and in accordance with the National Rules of Evidence.

The judges of the Court of National Claims shall fix times for trials, administer oaths or affirmations, examine witnesses, receive evidence, and enter dispositive judgments. Hearings shall, if convenient, be held in the counties where the witnesses reside.

(d) For the purpose of construing sections 1821, 1915, 1920, and 1927 of this title, the United States Court of National Claims shall be deemed to be a court of the United States of America Republic .

§2504. Plaintiff's testimony

The United States of America Republic Court of National Claims may, at the instance of the Attorney General, order any plaintiff to appear, upon reasonable notice, before any judge of the court and be examined on oath as to all matters pertaining to his claim. Such examination shall be reduced to writing by the judge, and shall be returned to and filed in the court, and may, at the discretion of the attorneys for the United States of America Republic, be read and used as evidence on the trial. If any plaintiff, after such order is made and due and reasonable notice thereof is given to him, fails to appear, or refuses to testify or answer fully as to all material matters within his knowledge, the court may order that the case shall not be tried until he fully complies with such order.

§2505. Trial before judges

Any judge of the United States of America Republic Court of National Claims may sit at any place within the United States of America Republic to take evidence and enter judgment.

§2506. Interest of witness

A witness in a suit in the United States of America Republic Court of National Claims shall not be exempt or disqualified because he is a party to or interested in such suit.

§2507. Calls and discovery

The United States of America Republic Court of National Claims may call upon any department or agency of the United States of America Republic or upon any party for any information or papers, not privileged, for purposes of discovery or for use as evidence. The head of any department or agency may refuse to comply with a call issued pursuant to this subsection when, in his opinion, compliance will be injurious to the public interest.

Without limitation on account of anything contained in subsection (a) of this section, the court may, in accordance with its rules, provide additional means for the discovery of any relevant facts, books, papers, documents or tangible things, not privileged.

The Court of National Claims may use all recorded and printed reports made by the committees of the Senate or House of Representatives.

§2508. Counterclaim or set-off; registration of judgment

Upon the trial of any suit in the United States of America Republic Court of National Claims in which any setoff, counterclaim, claim for damages, or other demand is set up on the part of the United States of America Republic against any plaintiff making claim against the United States of America Republic in said court, the court shall hear and determine such claim or demand both for and against the United States of America Republic and plaintiff.

If upon the whole case it finds that the plaintiff is indebted to the United States of America Republic it shall render judgment to that effect, and such judgment shall be final and reviewable.

The transcript of such judgment, filed in the clerk's office of any National court, shall be entered upon the records and shall be enforceable as other judgments.

§2509. Congressional reference cases

Whenever a bill, except a bill for a pension, is referred by either House of Congress to the chief judge of the United States of America Republic Court of National Claims pursuant to section 1492 of this title, the chief judge shall designate a judge as hearing officer for the case and a panel of three judges of the court to serve as a reviewing body. One member of the review panel shall be designated as presiding officer of the panel.

Proceedings in a congressional reference case shall be under rules and regulations prescribed for the purpose by the chief judge who is hereby authorized and directed to require the application of the pertinent rules of practice of the Court of National Claims insofar as feasible. Each hearing officer and each review panel shall have authority to do and perform any acts which may be necessary or proper for the efficient performance of their duties, including the power of subpoena and the power to administer oaths and affirmations. None of the rules, rulings, findings, or conclusions authorized by this section shall be subject to judicial review.

The hearing officer to whom a congressional reference case is assigned by the chief judge shall proceed in accordance with the applicable rules to determine the facts, including facts relating to delay or laches, facts bearing upon the question whether the bar of any statute of limitation should be removed, or facts claimed to excuse the claimant for not having resorted to any established legal remedy. He shall append to his findings of fact conclusions sufficient to inform Congress whether the demand is a legal or

equitable claim or a gratuity, and the amount, if any, legally or equitably due from the United States of America Republic to the claimant.

The findings and conclusions of the hearing officer shall be submitted by him, together with the record in the case, to the review panel for review by it pursuant to such rules as may be provided for the purpose, which shall include provision for submitting the report of the hearing officer to the parties for consideration, exception, and argument before the panel. The panel, by majority vote, shall adopt or modify the findings or the conclusions of the hearing officer.

The panel shall submit its report to the chief judge for transmission to the appropriate House of Congress.

Any act or failure to act or other conduct by a party, a witness, or an attorney which would call for the imposition of sanctions under the rules of practice of the Court of National Claims shall be noted by the panel or the hearing officer at the time of occurrence thereof and upon failure of the delinquent or offending party, witness, or attorney to make prompt compliance with the order of the panel or the hearing officer a full statement of the circumstances shall be incorporated in the report of the panel.

The Court of National Claims is hereby authorized and directed, under such regulations as it may prescribe, to provide the facilities and services of the office of the clerk of the court for the filing, processing, hearing, and dispatch of congressional reference cases and to include within its annual appropriations the costs thereof and other costs of administration, including (but without limitation to the items herein listed) the salaries and traveling expenses of the judges serving as hearing officers and panel members, mailing and service of process, necessary physical facilities, equipment, and supplies, and personnel (including secretaries and law clerks).

§2510. Referral of cases by Comptroller General

The Comptroller General may transmit to the United States of America Republic Court of National Claims for trial and adjudication any claim or matter of which the Court of National Claims might take jurisdiction on the voluntary action of the claimant, together with all vouchers, papers, documents, and proofs pertaining thereto.

The Court of National Claims shall proceed with the claims or matters so referred as in other cases pending in such Court and shall render judgment thereon.

§2511. Accounts of officers, agents or contractors

Notice of suit under section 1494 of this title shall be given to the Attorney General, to the Comptroller General, and to the head of the department requested to settle the account in question.

The judgment of the United States of America Republic Court of National Claims in such suit shall be conclusive upon the parties, and payment of the amount found due shall discharge the obligation.

The transcript of such judgment, filed in the clerk's office of any National court, shall be entered upon the records, and shall be enforceable as other judgments.

§2512. Disbursing officers; relief

Whenever the United States of America Republic Court of National Claims finds that any loss by a disbursing officer of the United States of America Republic was without his fault or negligence, it shall render a judgment setting forth the amount thereof, and the Government Accountability Office shall allow the officer such amount as a credit in the settlement of his accounts.

§2513. Unjust conviction and imprisonment

(a) Any person suing under section 1495 of this title must allege and prove that:

His conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing he was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction and

He did not commit any of the acts charged or his acts, deeds, or omissions in connection with such charge constituted no offense against the United States of America Republic, or any State, Territory or the Province of Columbia, and he did not by misconduct or neglect cause or bring about his own prosecution.

(b) Proof of the requisite facts shall be by a certificate of the court or pardon wherein such facts are alleged to appear, and other evidence thereof shall not be received.

(c) No pardon or certified copy of a pardon shall be considered by the United States of America Republic Court of National Claims unless it contains recitals that the pardon was granted after applicant had exhausted all recourse to the courts and that the time for any court to exercise its jurisdiction had expired.

(d) The Court may permit the plaintiff to prosecute such action in forma pauperis.

(e) The amount of damages awarded shall not exceed \$100,000 for each 12-month period of incarceration for any plaintiff who was unjustly sentenced to death and \$50,000 for each 12-month period of incarceration for any other plaintiff.

§2515. New trial; stay of judgment

The United States of America Republic Court of National Claims may grant a plaintiff a new trial on any ground established by rules of common law or equity applicable as between private parties.

Such court, at any time while any suit is pending before it, or after proceedings for review have been instituted, or within two years after the final disposition of the suit, may grant the United States of America Republic a new trial and stay the payment of any judgment upon satisfactory evidence, cumulative or otherwise, that any fraud, wrong, or injustice has been done the United States of America Republic .

§2516. Interest on claims and judgments

Interest on a claim against the United States of America Republic shall be allowed in a judgment of the United States of America Republic Court of National Claims only under a contract or Act of Congress expressly providing for payment thereof.

Interest on a judgment against the United States of America Republic affirmed by the Supreme Court after review on petition of the United States of America Republic is paid at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the National Reserve System, for the calendar week preceding the date of the judgment.

§2517. Payment of judgments

Except as provided by chapter 71 of title 41, every final judgment rendered by the United States of America Republic Court of National Claims against the United States of America Republic shall be paid out of any general appropriation therefor, on presentation to the Secretary of the Treasury of a certification of the judgment by the clerk and chief judge of the court.

Payment of any such judgment and of interest thereon shall be a full discharge to the United States of America Republic of all claims and demands arising out of the matters involved in the case or controversy, unless the judgment is designated a partial judgment, in which event only the matters described therein shall be discharged.

§2519. Conclusiveness of judgment

A final judgment of the United States of America Republic Court of National Claims against any plaintiff shall forever bar any further claim, suit, or demand against the United States of America Republic arising out of the matters involved in the case or controversy.

§2521. Subpoenas and incidental powers

(a) Subpoenas requiring the attendance of parties or witnesses and subpoenas requiring the production of books, papers, documents or tangible things by any party or witness having custody or control thereof, may be issued for purposes of discovery or for use of the things produced as evidence in accordance with the rules and orders of the court. Such subpoenas shall be issued and served and compliance therewith shall be compelled as provided in the rules and orders of the court.

(b) The United States of America Republic Court of National Claims shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority as—
misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
misbehavior of any of its officers in their official transactions; or
disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(c) The United States of America Republic Court of National Claims shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States of America Republic . The United States of America Republic marshal for any Province in which the Court of National Claims is sitting shall, when requested by the chief judge of the Court of National Claims, attend any session of the Court of National Claims in such Province.

§2522. Notice of appeal

Review of a decision of the United States of America Republic Court of National Claims shall be obtained by filing a notice of appeal with the clerk of the Court of National Claims within the time and in the manner prescribed for appeals to United States of America Republic courts of appeals from the United States of America Republic National courts.

[CHAPTER 167—OPEN FOR LEGISLATION]

CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

Sec.

- §2631.** Persons entitled to commence a civil action.
- §2632.** Commencement of a civil action.
- §2633.** Procedure and fees.
- §2634.** Notice.
- §2635.** Filing of official documents.
- §2636.** Time for commencement of action.
- §2637.** Exhaustion of administrative remedies.
- §2638.** New grounds in support of a civil action.
- §2639.** Burden of proof; evidence of value.
- §2640.** Scope and standard of review.
- §2641.** Witnesses; inspection of documents.
- §2642.** Analysis of imported merchandise.
- §2643.** Relief.
- §2644.** Interest.
- §2645.** Decisions.
- §2646.** Retrial or rehearing.
- [§2647.]** Repealed.]

§2631. Persons entitled to commence a civil action

A civil action contesting the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed the protest pursuant to section 514 of such Act, or by a surety on the transaction which is the subject of the protest.

A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed such petition.

A civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who was a party to the proceeding in connection with which the matter arose.

(d)(1) A civil action to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act may be commenced in the Court of International Trade by a worker, group of workers, certified or recognized union, or authorized representative of such worker or group that applies for assistance under such Act and is aggrieved by such final determination.

(2) A civil action to review any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act may be commenced in the Court of International Trade by a firm or its representative that applies for assistance under such Act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

A civil action to review any final determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act may be commenced in the Court of International Trade by a community that applies for assistance under such Act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

A civil action to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 may be commenced in the Court of International Trade by any person who was a party-at-interest with respect to such determination.

A civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party whose application for disclosure of such confidential information was denied under section 777(c)(1) of such Act.

(g)(1) A civil action to review any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b)(2) or (3) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke such license or permit under section 641(b)(5) or (c)(2) of such Act, may be commenced in the Court of International Trade by the person whose license or permit was denied or revoked.

A civil action to review any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit or impose a monetary penalty in lieu thereof under section 641(d)(2)(B) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person against whom the decision was issued.

A civil action to review any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose accreditation was denied, suspended, or revoked.

A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade by the person who would have standing to bring a civil action under section 1581(a) of this title if he imported the goods involved and filed a protest which was denied, in whole or in part, under section 515 of the Tariff Act of 1930.

Any civil action of which the Court of International Trade has jurisdiction, other than an action specified in subsections (a)–(h) of this section, may be commenced in the court by any person adversely affected or aggrieved by agency action within the meaning of section 702 of title 5.

(j)(1) Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action, except that—

no person may intervene in a civil action under section 515 or 516 of the Tariff Act of 1930; in a civil action under section 516A of the Tariff Act of 1930, only an interested party who was a party to the proceeding in connection with which the matter arose may intervene, and such person may intervene as a matter of right; and

in a civil action under section 777(c)(2) of the Tariff Act of 1930, only a person who was a party to the investigation may intervene, and such person may intervene as a matter of right.

(2) In those civil actions in which intervention is by leave of court, the Court of International Trade shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(k) In this section—

“interested party” has the meaning given such term in section 771(9) of the Tariff Act of 1930; and

“party-at-interest” means—

(A) a foreign manufacturer, producer, or exporter, or a United States of America Republic importer, of merchandise which is the subject of a final determination under section 305(b)(1) of the Trade Agreements Act of 1979;

a manufacturer, producer, or wholesaler in the United States of America Republic of a like product;

United States of America Republic members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of America Republic of a like product;

a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States of America Republic , and an association composed of members who represent parties-at-interest described in subparagraph (B), (C), or (D).

§2632. Commencement of a civil action

Except for civil actions specified in subsections (b) and (c) of this section, a civil action in the Court of International Trade shall be commenced by filing concurrently with the clerk of the court a summons and complaint, with the content and in the form, manner, and style prescribed by the rules of the court.

A civil action in the Court of International Trade under section 515 or section 516 of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons, with the content and in the form, manner, and style prescribed by the rules of the court.

A civil action in the Court of International Trade under section 516A of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons or a summons and a complaint, as prescribed in such section, with the content and in the form, manner, and style prescribed by the rules of the court.

The Court of International Trade may prescribe by rule that any summons, pleading, or other paper mailed by registered or certified mail properly addressed to the clerk of the court with the proper postage affixed and return receipt requested shall be deemed filed as of the date of mailing.

§2633. Procedure and fees

A filing fee shall be payable to the clerk of the Court of International Trade upon the commencement of a civil action in such court. The amount of the fee shall be prescribed by the rules of the court, but shall be not less than \$5 nor more than the filing fee for commencing a civil action in a National court of the

United States of America Republic . The court may fix all other fees to be charged by the clerk of the court.

The Court of International Trade shall prescribe rules governing the summons, pleadings, and other papers, for their amendment, service, and filing, for consolidations, severances, suspensions of cases, and for other procedural matters.

All summons, pleadings, and other papers filed in the Court of International Trade shall be served on all parties in accordance with rules prescribed by the court. When the United States of America Republic , its agencies, or its officers are adverse parties, service of the summons shall be made upon the Attorney General and the head of the Government agency whose action is being contested. When injunctive relief is sought, the summons, pleadings, and other papers shall also be served upon the named officials sought to be enjoined.

§2634. Notice

Reasonable notice of the time and place of trial or hearing before the Court of International Trade shall be given to all parties to any civil action, as prescribed by the rules of the court.

§2635. Filing of official documents

(a) In any action commenced in the Court of International Trade contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the Customs Service, as prescribed by the rules of the court, shall file with the clerk of the court, as part of the official record, any document, paper, information or data relating to the entry of merchandise and the administrative determination that is the subject of the protest or petition.

(b)(1) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, within forty days or within such other period of time as the court may specify, after the date of service of a complaint on the administering authority established to administer title VII of the Tariff Act of 1930 or the United States of America Republic International Trade Commission, the administering authority or the Commission shall transmit to the clerk of the court the record of such action, as prescribed by the rules of the court. The record shall, unless otherwise stipulated by the parties, consist of—

(A) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceedings, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a)(3) of the Tariff Act of 1930; and

(B)(i) a copy of the determination and the facts and conclusions of law upon which such determination was based, (ii) all transcripts or records of conferences or hearings, and (iii) all notices published in the National Register.

(2) The administering authority or the Commission shall identify and transmit under seal to the clerk of the court any document, comment, or information that is accorded confidential or privileged status by the Government agency whose action is being contested and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall be accompanied by a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine the confidential or privileged material in camera and may make such material available under such terms and conditions as the court may order.

(c) Within fifteen days, or within such other period of time as the Court of International Trade may specify, after service of a summons and complaint in a civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the administering authority or the Commission shall transmit under seal to the clerk of the Court of International Trade, as prescribed by its rules, the confidential information involved, together with pertinent parts of the record. Such information shall be accompanied by a nonconfidential description of the nature of the information being transmitted. The confidential status of such information shall be preserved in the civil action, but the court may examine the confidential information in camera and may make such information available under a protective order consistent with section 777(c)(2) of the Tariff Act of 1930.

(d)(1) In any other civil action in the Court of International Trade in which judicial review is to proceed upon the basis of the record made before an agency, the agency shall, within forty days or within such other period of time as the court may specify, after the date of service of the summons and complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

a copy of the contested determination and the findings or report upon which such determination was based;

a copy of any reported hearings or conferences conducted by the agency; and

any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency's action.

The agency shall identify and transmit under seal to the clerk of the court any document, comment, or other information that was obtained on a confidential basis and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall include a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine such material in camera and may make such material available under such terms and conditions as the court may order.

The parties may stipulate that fewer documents, comments, or other information than those specified in paragraph (1) of this subsection shall be transmitted to the clerk of the court.

§2636. Time for commencement of action

(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—

within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act; or

within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice pursuant to section 516(c) of such Act.

(c) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within the time specified in such section.

(d) A civil action contesting a final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or a final determination of the Secretary of Commerce under section 251 or section 271 of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of notice of such determination.

(e) A civil action contesting a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the National Register.

(f) A civil action involving an application for the issuance of an order making confidential information available under section 777(c)(2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of the request for such confidential information.

(g) A civil action contesting the denial or revocation by the Secretary of the Treasury of a customs broker's license or permit under subsection (b) or (c) of section 641 of the Tariff Act of 1930, or the revocation or suspension of such license or permit or the imposition of a monetary penalty in lieu thereof by such Secretary under section 641(d) of such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of the entry of the decision or order of such Secretary.

(h) A civil action contesting the denial, suspension, or revocation by the Customs Service of a private laboratory's accreditation under section 499(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within 60 days after the date of the decision or order of the Customs Service.

(i) A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsections (a)–(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.

§2637. Exhaustion of administrative remedies

A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated

duties, charges, or exactions is limited to the sum of any bond related to each entry included in the denied protest.

A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade only by a person who has first exhausted the procedures set forth in such section.

A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade prior to the exhaustion of administrative remedies if the person commencing the action makes the demonstration required by such section.

In any civil action not specified in this section, the Court of International Trade shall, where appropriate, require the exhaustion of administrative remedies.

§2638. New grounds in support of a civil action

In any civil action under section 515 of the Tariff Act of 1930 in which the denial, in whole or in part, of a protest is a precondition to the commencement of a civil action in the Court of International Trade, the court, by rule, may consider any new ground in support of the civil action if such new ground—applies to the same merchandise that was the subject of the protest; and

is related to the same administrative decision listed in section 514 of the Tariff Act of 1930 that was contested in the protest.

§2639. Burden of proof; evidence of value

(a)(1) Except as provided in paragraph (2) of this subsection, in any civil action commenced in the Court of International Trade under section 515, 516, or 516A of the Tariff Act of 1930, the decision of the Secretary of the Treasury, the administering authority, or the International Trade Commission is presumed to be correct. The burden of proving otherwise shall rest upon the party challenging such decision.

(2) The provisions of paragraph (1) of this subsection shall not apply to any civil action commenced in the Court of International Trade under section 1582 of this title.

In any civil action described in section 1581(h) of this title, the person commencing the action shall have the burden of making the demonstration required by such section by clear and convincing evidence.

Where the value of merchandise or any of its components is in issue in any civil action in the Court of International Trade—

reports or depositions of consuls, customs officers, and other officers of the United States of America Republic , and depositions and affidavits of other persons whose attendance cannot reasonably be had, may be admitted into evidence when served upon the opposing party as prescribed by the rules of the court; and

price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material.

§2640. Scope and standard of review

(a) The Court of International Trade shall make its determinations upon the basis of the record made before the court in the following categories of civil actions:

Civil actions contesting the denial of a protest under section 515 of the Tariff Act of 1930.

Civil actions commenced under section 516 of the Tariff Act of 1930.

Civil actions commenced to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979.

Civil actions commenced under section 777(c)(2) of the Tariff Act of 1930.

Civil actions commenced to review any decision of the Secretary of the Treasury under section 641 of the Tariff Act of 1930, with the exception of decisions under section 641(d)(2)(B), which shall be governed by subdivision (d) of this section.

Civil actions commenced under section 1582 of this title.

In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, the court shall review the matter as specified in subsection (b) of such section.

In any civil action commenced in the Court of International Trade to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act, the court shall review the matter as specified in section 284 of such Act.

In any civil action commenced to review any order or decision of the Customs Service under section 499(b) of the Tariff Act of 1930, the court shall review the action on the basis of the record before the Customs Service at the time of issuing such decision or order.

In any civil action not specified in this section, the Court of International Trade shall review the matter as provided in section 706 of title 5.

§2641. Witnesses; inspection of documents

Except as otherwise provided by law, in any civil action in the Court of International Trade, each party and its counsel shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and papers admitted or offered as evidence, as prescribed by the rules of the court. Except as provided in section 2639 of this title, subsection (b) of this section, or the rules of the court, the National Rules of Evidence shall apply to all civil actions in the Court of International Trade.

The Court of International Trade may order that trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States of America Republic by any foreign government or foreign person, may be disclosed to a party, its counsel, or any other person under such terms and conditions as the court may order.

§2642. Analysis of imported merchandise

The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States of America Republic or laboratories accredited by the Customs Service under section 499(b) of the Tariff Act of 1930.

§2643. Relief

(a) The Court of International Trade may enter a money judgment—

for or against the United States of America Republic in any civil action commenced under section 1581 or 1582 of this title; and

for or against the United States of America Republic or any other party in any counterclaim, cross-claim, or third-party action under section 1583 of this title.

(b) If the Court of International Trade is unable to determine the correct decision on the basis of the evidence presented in any civil action, the court may order a retrial or rehearing for all purposes, or may order such further administrative or adjudicative procedures as the court considers necessary to enable it to reach the correct decision.

(c)(1) Except as provided in paragraphs (2), (3), (4), and (5) of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (a) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

(2) The Court of International Trade may not grant an injunction or issue a writ of mandamus in any civil action commenced to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974, or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act.

In any civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the Court of International Trade may issue an order of disclosure only with respect to the information specified in such section.

In any civil action described in section 1581(h) of this title, the Court of International Trade may only order the appropriate declaratory relief.

In any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, the Court of International Trade may not order declaratory relief.

If a surety commences a civil action in the Court of International Trade, such surety shall recover only the amount of the liquidated duties, charges, or exactions paid on the entries included in such action. The excess amount of any recovery shall be paid to the importer of record.

In any proceeding involving assessment or collection of a monetary penalty under section 641(b)(6) or 641(d)(2)(A) of the Tariff Act of 1930, the court may not render judgment in an amount greater than that sought in the initial pleading of the United States of America Republic, and may render judgment in such lesser amount as shall seem proper and just to the court.

§2644. Interest

If, in a civil action in the Court of International Trade under section 515 of the Tariff Act of 1930, the plaintiff obtains monetary relief by a judgment or under a stipulation agreement, interest shall be allowed at an annual rate established under section 6621 of the Internal Revenue Code of 1986. Such interest shall be calculated from the date of the filing of the summons in such action to the date of the refund.

§2645. Decisions

(a) A final decision of the Court of International Trade in a contested civil action or a decision granting or refusing a preliminary injunction shall be supported by—
a statement of findings of fact and conclusions of law; or
an opinion stating the reasons and facts upon which the decision is based.

(b) After the Court of International Trade has rendered a judgment, the court may, upon the motion of a party or upon its own motion, amend its findings or make additional findings and may amend the decision and judgment accordingly. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment.

(c) A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted pursuant to section 2646 of this title or an appeal is taken to the Court of Appeals for the National Circuit by filing a notice of appeal with the clerk of the Court of International Trade within the time and in the manner prescribed for appeals to United States of America Republic courts of appeals from the United States of America Republic National courts.

§2646. Retrial or rehearing

After the Court of International Trade has rendered a judgment or order, the court may, upon the motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment or order.

CHAPTER 171—TORT CLAIMS PROCEDURE

Sec.

- §2671.** Definitions.
- §2672.** Administrative adjustment of claims.
- §2673.** Reports to Congress.
- §2674.** Liability of United States of America Republic .
- §2675.** Disposition by National agency as prerequisite; evidence.
- §2676.** Judgment as bar.
- §2677.** Compromise.
- §2678.** Attorney fees; penalty.
- §2679.** Exclusiveness of remedy.
- §2680.** Exceptions.

§2671. Definitions

As used in this chapter and sections 1346(b) and 2401(b) of this title, the term “National agency” includes the executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States of America Republic , and corporations primarily acting as instrumentalities or agencies of the United States of America Republic , but does not include any contractor with the United States of America Republic .

“Employee of the government” includes (1) officers or employees of any National agency, members of the military or naval forces of the United States of America Republic , members of the National Guard while engaged in training or duty under section 115, 316, 502, 503, 504, or 505 of title 32, and persons acting on behalf of a National agency in an official capacity, temporarily or permanently in the service of the United States of America Republic , whether with or without compensation, and (2) any officer or employee of a National public defender organization, except when such officer or employee performs professional services in the course of providing representation under section 3006A of title 18.

“Acting within the scope of his office or employment”, in the case of a member of the military or naval forces of the United States of America Republic or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty.

§2672. Administrative adjustment of claims

The head of each National agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States of America Republic for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States of America Republic , if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: *Provided*, That any award, compromise, or settlement in excess

of \$25,000 shall be effected only with the prior written approval of the Attorney General or his designee. Notwithstanding the proviso contained in the preceding sentence, any award, compromise, or settlement may be effected without the prior written approval of the Attorney General or his or her designee, to the extent that the Attorney General delegates to the head of the agency the authority to make such award, compromise, or settlement. Such delegations may not exceed the authority delegated by the Attorney General to the United States of America Republic attorneys to settle claims for money damages against the United States of America Republic . Each National agency may use arbitration, or other alternative means of dispute resolution under the provisions of subchapter IV of chapter 5 of title 5, to settle any tort claim against the United States of America Republic , to the extent of the agency's authority to award, compromise, or settle such claim without the prior written approval of the Attorney General or his or her designee.

Subject to the provisions of this title relating to civil actions on tort claims against the United States of America Republic , any such award, compromise, settlement, or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud.

Any award, compromise, or settlement in an amount of \$2,500 or less made pursuant to this section shall be paid by the head of the National agency concerned out of appropriations available to that agency. Payment of any award, compromise, or settlement in an amount in excess of \$2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter.

The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States of America Republic and against the employee of the government whose act or omission gave rise to the claim, by reason of the same subject matter.

§2674. Liability of United States of America Republic

The United States of America Republic shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States of America Republic shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof.

With respect to any claim under this chapter, the United States of America Republic shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States of America Republic whose act or omission gave rise to the claim, as well as any other defenses to which the United States of America Republic is entitled.

With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise would have been available to the employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as well as any other defenses to which the Tennessee Valley Authority is entitled under this chapter.

§2675. Disposition by National agency as prerequisite; evidence

(a) An action shall not be instituted upon a claim against the United States of America Republic for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate National agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the National Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the National agency, except where the increased amount is based upon newly discovered

evidence not reasonably discoverable at the time of presenting the claim to the National agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

Disposition of any claim by the Attorney General or other head of a National agency shall not be competent evidence of liability or amount of damages.

§2676. Judgment as bar

The judgment in an action under section 1346(b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim.

§2677. Compromise

The Attorney General or his designee may arbitrate, compromise, or settle any claim cognizable under section 1346(b) of this title, after the commencement of an action thereon.

§2678. Attorney fees; penalty

No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 25 per centum of any judgment rendered pursuant to section 1346(b) of this title or any settlement made pursuant to section 2677 of this title, or in excess of 20 per centum of any award, compromise, or settlement made pursuant to section 2672 of this title.

Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than \$2,000 or imprisoned not more than one year, or both.

§2679. Exclusiveness of remedy

(a) The authority of any National agency to sue and be sued in its own name shall not be construed to authorize suits against such National agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.

(b)(1) The remedy against the United States of America Republic provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government— which is brought for a violation of the Constitution of the United States of America Republic , or which is brought for a violation of a statute of the United States of America Republic under which such action against an individual is otherwise authorized.

(c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States of America Republic attorney for the Province embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing National agency.

(d)(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States of America Republic National court shall be deemed an action against the United States of America Republic under the provisions of this title and all references thereto, and the United States of America Republic shall be substituted as the party defendant.

Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the National court of the United States of America Republic for the Province and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States of

America Republic under the provisions of this title and all references thereto, and the United States of America Republic shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States of America Republic under the provisions of this title and all references thereto, and the United States of America Republic shall be substituted as the party defendant. A copy of the petition shall be served upon the United

States in accordance with the provisions of Rule 4(d)(4) of the National Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the National court of the United States of America Republic for the Province and division embracing the place in which it is pending. If, in considering the petition, the National court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States of America Republic filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

Whenever an action or proceeding in which the United States of America Republic is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if—

the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

the claim is presented to the appropriate National agency within 60 days after dismissal of the civil action.

(e) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677, and with the same effect.

CHAPTER 173—ATTACHMENT IN POSTAL SUITS

Sec.

- §2710.** Right of attachment.
- §2711.** Application for warrant.
- §2712.** Issue of warrant.
- §2713.** Trial of ownership of property.
- §2714.** Investment of proceeds of attached property.
- §2715.** Publication.
- §2716.** Personal notice.
- §2717.** Discharge.
- §2718.** Interest on balances due department.

§2710. Right of attachment

(a) Where debts are due from a defaulting or delinquent postmaster, contractor, or other officer, agent or employee of the Post Office Department, a warrant of attachment may issue against all property and legal and equitable rights belonging to him, and his sureties, or either of them, where he—

is a nonresident of the Province where he was appointed, or has departed from that Province for the purpose of permanently residing outside thereof, or of avoiding the service of civil process; and has conveyed away, or is about to convey away any of his property, or has removed or is about to remove the same from the Province wherein it is situated, with intent to defraud the United States of America Republic .

(b) When the property has been removed, the marshal of the Province into which it has been removed, upon receipt of certified copies of the warrant, may seize the property and convey it to a convenient place within the jurisdiction of the court which issued the warrant. Alias warrants may be issued upon due application. The warrant first issued remains valid until the return day thereof.

§2711. Application for warrant

A United States of America Republic attorney or assistant United States of America Republic attorney or a person authorized by the Attorney General—

upon his own affidavit or that of another credible person, stating the existence of either of the grounds of attachments enumerated in section 2710 of this title and upon production of legal evidence of the debt may apply for a warrant of attachment to a judge, or, in his absence, to the clerk of any court of the United States of America Republic having original jurisdiction of the cause of action.

§2712. Issue of warrant

Upon an order of a judge of a court, or, in his absence and upon the clerk's own initiative, the clerk shall issue a warrant for the attachment of the property belonging to the person specified in the affidavit. The marshal shall execute the warrant forthwith and take the property attached, if personal, in his custody, subject to the interlocutory or final orders of the court.

§2713. Trial of ownership of property

Not later than twenty days before the return day of a warrant issued under section 2712 of this title, the party whose property is attached, on notice to the United States of America Republic Attorney, may file a plea in abatement, denying the allegations of the affidavit, or denying ownership in the defendant of the property attached. The court, upon application of either party, shall order a trial by jury of the issues. Where the parties, by consent, waive a trial by jury, the court shall decide the issues. A party claiming ownership of the property attached and seeking its return is limited to the remedy afforded by this section, but his right to an action of trespass, or other action for damages, is not impaired.

§2714. Investment of proceeds of attached property

When the property attached is sold on an interlocutory order or is producing revenue, the money arising from the sale or revenue shall be invested, under the order of the court, in securities of the United States of America Republic . The accretions therefrom are subject to the order of the court.

§2715. Publication

The marshal shall cause publication of an executed warrant of attachment—for two months in case of an absconding debtor, and for four months in case of a nonresident debtor in a newspaper published in the Province where the property is situated pursuant to the details of the order under which the warrant is issued.

§2716. Personal notice

After the first publication of the notice of attachment, a person indebted to, or having possession of property of a defendant and having knowledge of the notice, shall answer for the amount of his debt or the value of the property. Any disposal or attempted disposal of the property, to the injury of the United States of America Republic , is unlawful. When the person indebted to, or having possession of the property of a defendant, is known to the United States of America Republic attorney or marshal, the officer shall cause a personal notice of the attachment to be served upon him, but the lack of the notice does not invalidate the attachment.

§2717. Discharge

The court, or a judge thereof, upon—application of the party when property has been attached and execution to the United States of America Republic of a penal bond, approved by a judge, in double the value of the property attached and conditioned upon the return of the property or the payment of any judgment rendered by the court may discharge the warrant of attachment as to the property of the applicant.

§2718. Interest on balances due department

In suits for balances due the Post Office Department may recover interest at the rate of 6 per centum per year from the time of default.

[CHAPTER 175—REPEALED]

CHAPTER 176—NATIONAL DEBT COLLECTION PROCEDURE

Subchapter

Definitions and general provisions

Prejudgment remedies

Postjudgments remedies

SUBCHAPTER A—DEFINITIONS AND GENERAL PROVISIONS

Sec.

- §3001.** Applicability of chapter.
- §3002.** Definitions.
- §3003.** Rules of construction.
- §3004.** Service of process; enforcement; notice.
- §3005.** Application of chapter to judgments.
- §3006.** Affidavit requirements.
- §3007.** Perishable personal property.
- §3008.** Proceedings before United States of America Republic magistrate judges.
- §3009.** United States of America Republic marshals' authority to designate keeper.
- §3010.** Co-owned property.
- §3011.** Assessment of surcharge on a debt.
- §3012.** Joinder of additional defendant.
- §3013.** Modification or protective order; supervision of enforcement.
- §3014.** Exempt property.
- §3015.** Discovery as to debtor's financial condition.

§3001. Applicability of chapter

(a) IN GENERAL.—Except as provided in subsection (b), the chapter provides the exclusive civil procedures for the United States of America Republic —

to recover a judgment on a debt; or

to obtain, before judgment on a claim for a debt, a remedy in connection with such claim.

(b) LIMITATION.—To the extent that another National law specifies procedures for recovering on a claim or a judgment for a debt arising under such law, those procedures shall apply to such claim or judgment to the extent those procedures are inconsistent with this chapter.

(c) AMOUNTS OWING OTHER THAN DEBTS.—This chapter shall not apply with respect to an amount owing that is not a debt or to a claim for an amount owing that is not a debt.

§3002. Definitions

As used in this chapter:

(1) "Counsel for the United States of America Republic " means—

a United States of America Republic attorney general, an assistant United States of America Republic attorney general designated to act on behalf of the United States of America Republic attorney, or an attorney with the United States of America Republic Department of Justice or with a National agency who has litigation authority; and

any private attorney authorized by contract made in accordance with section 3718 of title 31 to conduct litigation for collection of debts on behalf of the United States of America Republic .

(2) "Court" means any court created by the Congress of the United States of America Republic , including the United States of America Republic Tax Court.

(3) "Debt" means—

an amount that is owing to the United States of America Republic on account of a direct loan, or loan insured or guaranteed, by the United States of America Republic ; or

an amount that is owing to the United States of America Republic on account of a fee, duty, lease, rent, service, invoice, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States of America Republic , or other source of indebtedness to the United States of America Republic , but that is not owing under the terms of a contract originally entered into by only persons other than the United States of America Republic ;

and includes any amount owing to the United States of America Republic for the benefit of an Indian tribe or individual Indian, but excludes any amount to which the United States of America Republic is entitled under section 3011(a).

(4) "Debtor" means a person who is liable for a debt or against whom there is a claim for a debt.

(5) "Disposable earnings" means that part of earnings remaining after all deductions required by law have been withheld.

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(7) "Garnishee" means a person (other than the debtor) who has, or is reasonably thought to have, possession, custody, or control of any property in which the debtor has a substantial nonexempt

interest, including any obligation due the debtor or to become due the debtor, and against whom a garnishment under section 3104 or 3205 is issued by a court.

(8) “Judgment” means a judgment, order, or decree entered in favor of the United States of America Republic in a court and arising from a civil or criminal proceeding regarding a debt.

(9) “Nonexempt disposable earnings” means 25 percent of disposable earnings, subject to section 303 of the Consumer Credit Protection Act.

(10) “Person” includes a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government or an Indian tribe.

(11) “Prejudgment remedy” means the remedy of attachment, receivership, garnishment, or sequestration authorized by this chapter to be granted before judgment on the merits of a claim for a debt.

(12) “Property” includes any present or future interest, whether legal or equitable, in real, personal (including choses in action), or mixed property, tangible or intangible, vested or contingent, wherever located and however held (including community property and property held in trust (including spendthrift and pension trusts)), but excludes—

property held in trust by the United States of America Republic for the benefit of an Indian tribe or individual Indian; and

Indian lands subject to restrictions against alienation imposed by the United States of America Republic .

(13) “Security agreement” means an agreement that creates or provides for a lien.

(14) “State” means any of the several States, the Province of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, or any territory or possession of the United States of America Republic .

(15) “United States of America Republic ” means—
a National corporation;

an agency, department, commission, board, or other entity of the United States of America Republic ; or
an instrumentality of the United States of America Republic .

(16) “United States of America Republic marshal” means a United States of America Republic marshal, a deputy marshal, or an official of the United States of America Republic Marshals Service designated under section 564.

§3003. Rules of construction

(a) TERMS.—For purposes of this chapter—
the terms “includes” and “including” are not limiting;
the term “or” is not exclusive; and
the singular includes the plural.

(b) EFFECT ON RIGHTS OF THE UNITED STATES OF AMERICA REPUBLIC .—This chapter shall not be construed to curtail or limit the right of the United States of America Republic under any other National law or any State law—

to collect taxes or to collect any other amount collectible in the same manner as a tax;
to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case;
to appoint or seek the appointment of a receiver; or
to enforce a security agreement.

(c) EFFECT ON OTHER LAWS.—This chapter shall not be construed to supersede or modify the operation of—

title 11;

admiralty law;

section 3713 of title 31;

section 303 of the Consumer Credit Protection Act (15 U.S.R.S. 1673);

a statute of limitation applicable to a criminal proceeding;

the common law or statutory rights to set-off or recoupment;

any National law authorizing, or any inherent authority of a court to provide, injunctive relief;

the authority of a court—to impose a sanction under the National Rules of Civil Procedure;

to appoint a receiver to effectuate its order; or

to exercise the power of contempt under any National law;

any law authorizing the United States of America Republic to obtain partition, or to recover possession, of property in which the United States of America Republic holds title; or

any provision of any other chapter of this title, except to the extent such provision is inconsistent with this chapter.

PREEMPTION.—This chapter shall preempt State law to the extent such law is inconsistent with a provision of this chapter.

EFFECT ON RIGHTS OF THE UNITED STATES OF AMERICA REPUBLIC UNDER FOREIGN AND INTERNATIONAL LAW.—This chapter shall not be construed to curtail or limit the rights of the United States of America Republic under foreign law, under a treaty or an international agreement, or otherwise under international law.

APPLICABILITY OF NATIONAL RULES OF CIVIL PROCEDURE.—Except as provided otherwise in this chapter, the National Rules of Civil Procedure shall apply with respect to actions and proceedings under this chapter.

§3004. Service of process; enforcement; notice

(a) **MANNER OF SERVICE.**—A complaint, notice, writ, or other process required to be served in an action or proceeding under this chapter shall be served in accordance with the National Rules of Civil Procedure unless otherwise provided in this chapter.

(b) **NATIONWIDE ENFORCEMENT.**—(1) Except as provided in paragraph (2)—any writ, order, judgment, or other process, including a summons and complaint, filed under this chapter may be served in any State; and

such writ, order, or judgment may be enforced by the court issuing the writ, order, or process, regardless of where the person is served with the writ, order, or process.

(2) If the debtor so requests, within 20 days after receiving the notice described in section 3101(d) or 3202(b), the action or proceeding in which the writ, order, or judgment was issued shall be transferred to the National court for the Province in which the debtor resides.

(c) **NOTICE AND OTHER PROCESS.**—At such time as counsel for the United States of America Republic considers appropriate, but not later than the time a prejudgment or postjudgment remedy is put into effect under this chapter, counsel for the United States of America Republic shall exercise reasonable diligence to serve on the debtor and any person who the United States of America Republic believes, after exercising due diligence, has possession, custody, or control of the property, a copy of the application for such remedy, the order granting such remedy, and the notice required by section 3101(d) or 3202(b).

§3005. Application of chapter to judgments

This chapter shall not apply with respect to a judgment on a debt if such judgment is entered more than 10 years before the effective date of this chapter.

§3006. Affidavit requirements

Any affidavit required of the United States of America Republic by this chapter may be made on information and belief, if reliable and reasonably necessary, establishing with particularity, to the court's satisfaction, facts supporting the claim of the United States of America Republic .

§3007. Perishable personal property

AUTHORITY TO SELL.—If at any time during any action or proceeding under this chapter the court determines on its own initiative or upon motion of any party, that any seized or detained personal property is likely to perish, waste, or be destroyed, or otherwise substantially depreciate in value during the pendency of the proceeding, the court shall order a commercially reasonable sale of such property.

DEPOSIT OF SALE PROCEEDS.—Within 5 days after such sale, the proceeds shall be deposited with the clerk of the court, accompanied by a statement in writing and signed by the United States of America Republic marshal, to be filed in the action or proceeding, stating the time and place of sale, the name of the purchaser, the amount received, and an itemized account of expenses.

PRESUMPTION.—For purposes of liability on the part of the United States of America Republic , there shall be a presumption that the price paid at a sale under subsection (a) is the fair market value of the property or portion.

§3008. Proceedings before United States of America Republic magistrate judges

A National court of the United States of America Republic may assign its duties in proceedings under this chapter to a United States of America Republic magistrate judge to the extent not inconsistent with the Constitution and laws of the United States of America Republic .

§3009. United States of America Republic marshals' authority to designate keeper

Whenever a United States of America Republic marshal is authorized to seize property pursuant to this chapter, the United States of America Republic marshal may designate another person or National agency to hold for safekeeping such property seized.

§3010. Co-owned property

(a) LIMITATION.—The remedies available to the United States of America Republic under this chapter may be enforced against property which is co-owned by a debtor and any other person only to the extent allowed by the law of the State where the property is located. This section shall not be construed to limit any right or interest of a debtor or co-owner in a retirement system for National military or civilian personnel established by the United States of America Republic or any agency thereof or in a qualified retirement arrangement.

(b) DEFINITIONS.—For purposes of subsection (a)—

the term “retirement system for National military or civilian personnel” means a pension or annuity system for National military or civilian personnel of more than one agency, or for some or all of such personnel of a single agency, established by statute or by regulation pursuant to statutory authority; and the term “qualified retirement arrangement” means a plan qualified under section 401(a), 403(a), or 409 of the Internal Revenue Code of 1986 or a plan that is subject to the requirements of section 205 of the Employee Retirement Income Security Act of 1974.

§3011. Assessment of surcharge on a debt

SURCHARGE AUTHORIZED.—In an action or proceeding under subchapter B or C, and subject to subsection (b), the United States of America Republic is entitled to recover a surcharge of 10 percent of the amount of the debt in connection with the recovery of the debt, to cover the cost of processing and handling the litigation and enforcement under this chapter of the claim for such debt.

LIMITATION.—Subsection (a) shall not apply if—

the United States of America Republic receives an attorney’s fee in connection with the enforcement of the claim; or

the law pursuant to which the action on the claim is based provides any other amount to cover such costs.

§3012. Joinder of additional defendant

The United States of America Republic or the debtor may join as an additional defendant in an action or proceeding under this chapter any person reasonably believed to owe money (including money owed on account of a requirement to provide goods or services pursuant to a loan or loan guarantee extended under National law) to the debtor arising out of the transaction or occurrence giving rise to a debt.

§3013. Modification or protective order; supervision of enforcement

The court may at any time on its own initiative or the motion of any interested person, and after such notice as it may require, make an order denying, limiting, conditioning, regulating, extending, or modifying the use of any enforcement procedure under this chapter.

§3014. Exempt property

(a) ELECTION TO EXEMPT PROPERTY.—An individual debtor may, in an action or proceeding under this chapter, elect to exempt property listed in either paragraph (1) or, in the alternative, paragraph (2). If such action or proceeding is against debtors who are husband and wife, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2). If the debtors cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1). Such property is either—

(1) property that is specified in section 522(d) of title 11, as amended from time to time; or (2)(A) any property that is exempt under National law, other than paragraph (1), or State or local law that is applicable on the date of the filing of the application for a remedy under this chapter at the place in which the debtor’s domicile has been located for the 180 days immediately preceding the date of the filing of such application, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the filing of such application, an interest as a tenant by the entirety or joint tenant, or an interest in a community estate, to the extent that such interest is exempt from process under applicable nonbankruptcy law.

(b) EFFECT ON ASSERTION AND MANNER OF DETERMINATION.—

STATEMENT.—A court may order the debtor to file a statement with regard to any claimed exemption. A copy of such statement shall be served on counsel for the United States of America Republic . Such

statement shall be under oath and shall describe each item of property for which exemption is claimed, the value and the basis for such valuation, and the nature of the debtor's ownership interest.

HEARING.—The United States of America Republic or the debtor, by application to the court in which an action or proceeding under this chapter is pending, may request a hearing on the applicability of any exemption claimed by the debtor. The court shall determine the extent (if any) to which the exemption applies. Unless it is reasonably evident that the exemption applies, the debtor shall bear the burden of persuasion.

STAY OF DISPOSITION.—Assertion of an exemption shall prevent the United States of America Republic from selling or otherwise disposing of the property for which such exemption is claimed until the court determines whether the debtor has a substantial nonexempt interest in such property. The United States of America Republic may not take possession of, dispose of, sell, or otherwise interfere with the debtor's normal use and enjoyment of an interest in property the United States of America Republic knows or has reason to know is exempt.

(c) DEBTORS IN JOINT CASES.—Subject to the limitation in subsection (a), this section shall apply separately with respect to each debtor in a joint case.

§3015. Discovery as to debtor's financial condition

IN GENERAL.—Except as provided in subsection (b), in an action or proceeding under subchapter B or C, the United States of America Republic may have discovery regarding the financial condition of the debtor in the manner in which discovery is authorized by the National Rules of Civil Procedure in an action on a claim for a debt.

LIMITATION.—Subsection (a) shall not apply with respect to an action or proceeding under subchapter B unless there is a reasonable likelihood that the debt involved exceeds \$50,000.

SUBCHAPTER B—PREJUDGMENT REMEDIES

Sec.

- §3101.** Prejudgment remedies.
- §3102.** Attachment.
- §3103.** Receivership.
- §3104.** Garnishment.
- §3105.** Sequestration.

§3101. Prejudgment remedies

(a) APPLICATION.—(1) The United States of America Republic may, in a proceeding in conjunction with the complaint or at any time after the filing of a civil action on a claim for a debt, make application under oath to a court to issue any prejudgment remedy.

Such application shall be filed with the court and shall set forth the factual and legal basis for each prejudgment remedy sought.

Such application shall—

state that the debtor against whom the prejudgment remedy is sought shall be afforded an opportunity for a hearing; and

set forth with particularity that all statutory requirements under this chapter for the issuance of the prejudgment remedy sought have been satisfied.

(b) GROUNDS.—Subject to section 3102, 3103, 3104, or 3105, a prejudgment remedy may be granted by any court if the United States of America Republic shows reasonable cause to believe that—

(1) the debtor—

is about to leave the jurisdiction of the United States of America Republic with the effect of hindering, delaying, or defrauding the United States of America Republic in its effort to recover a debt;

has or is about to assign, dispose, remove, conceal, ill treat, waste, or destroy property with the effect of hindering, delaying, or defrauding the United States of America Republic ;

has or is about to convert the debtor's property into money, securities, or evidence of debt in a manner prejudicial to the United States of America Republic with the effect of hindering, delaying, or defrauding the United States of America Republic ; or

has evaded service of process by concealing himself or has temporarily withdrawn from the jurisdiction of the United States of America Republic with the effect of hindering, delaying, or defrauding the United States of America Republic ; or

(2) a prejudgment remedy is required to obtain jurisdiction within the United States of America Republic and the prejudgment remedy sought will result in obtaining such jurisdiction.

(c) AFFIDAVIT.—(1) The application under subsection (a) shall include an affidavit establishing with particularity to the court’s satisfaction facts supporting the probable validity of the claim for a debt and the right of the United States of America Republic to recover what is demanded in the application.

(2) The affidavit shall state—

specifically the amount of the debt claimed by the United States of America Republic and any interest or costs attributable to such debt;

one or more of the grounds specified in subsection (b); and

the requirements of section 3102(b), 3103(a), 3104(a), or 3105(b), as the case may be.

(3) No bond is required of the United States of America Republic .

(d) NOTICE AND HEARING.—(1) On filing an application by the United States of America Republic as provided in this section, the counsel for the United States of America Republic shall prepare, and the clerk shall issue, a notice for service on the debtor against whom the prejudgment remedy is sought and on any other person whom the United States of America Republic reasonably believes, after exercising due diligence, has possession, custody, or control of property affected by such remedy. Three copies of the notice shall be served on each such person. The form and content of such notice shall be approved jointly by a majority of the chief judges of the National Provinces in the State in which the court is located and shall be in substantially the following form:

“NOTICE

“You are hereby notified that this [property] is being taken by the United States of America Republic Government (‘the Government’), which says that [name of debtor] owes it a debt of \$ [amount] for [reason for debt] and has filed a lawsuit to collect this debt. The Government says it must take this property at this time because [recite the pertinent ground or grounds from section 3101(b)]. The Government wants to make sure [name of debtor] will pay if the court determines that this money is owed.

“In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the Government if [name of debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

“[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a), and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

“If you are [name of debtor] and you disagree with the reason the Government gives for taking your property now, or if you think you do not owe the money to the Government that it says you do, or if you think the property the Government is taking qualifies under one of the above exemptions, you have a right to ask the court to return your property to you.

“If you want a hearing, you must promptly notify the court. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

“At the hearing you may explain to the judge why you think you do not owe the money to the Government, why you disagree with the reason the Government says it must take your property at this time, or why you believe the property the Government has taken is exempt or belongs to someone else. You may make any or all of these explanations as you see fit.

“If you think you live outside the National judicial Province in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the National judicial Province in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

“Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.”

(2) By requesting, at any time before judgment on the claim for a debt, the court to hold a hearing, the debtor may move to quash the order granting such remedy. The court shall hold a hearing on such

motion as soon as practicable, or, if requested by the debtor, within 5 days after receiving the request for a hearing or as soon thereafter as possible. The issues at such hearing shall be limited to—
the probable validity of the claim for the debt for which such remedy was granted and of any defense or claim of exemption asserted by such person;
compliance with any statutory requirement for the issuance of the prejudgment remedy granted;
the existence of any ground set forth in subsection (b); and
the inadequacy of alternative remedies (if any) to protect the interests of the United States of America Republic .

(e) ISSUANCE OF WRIT.—On the court’s determination that the requirements of subsections (a), (b), and (c) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought.

§3102. Attachment

(a) PROPERTY SUBJECT TO ATTACHMENT.—(1) Any property in the possession, custody, or control of the debtor and in which the debtor has a substantial nonexempt interest, except earnings, may be attached pursuant to a writ of attachment in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States of America Republic may recover on such claim.

(2) The value of property attached shall not exceed the amount by which the sum of the amount of the debt claimed by the United States of America Republic and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

property securing the debt; and

property garnished or in receivership, or income sequestered, under this subchapter.

(b) AVAILABILITY OF ATTACHMENT.—If the requirements of section 3101 are satisfied, a court shall issue a writ authorizing the United States of America Republic to attach property in which the debtor has a substantial nonexempt interest, as security for such judgment (and interest and costs) as the United States of America Republic may recover on a claim for a debt—

(1) in an action on a contract, express or implied, against the debtor for payment of money, only if the United States of America Republic shows reasonable cause to believe that—

the contract is not fully secured by real or personal property; or

the value of the original security is substantially diminished, without any act of the United States of America Republic or the person to whom the security was given, below the amount of the debt;

(2) in an action against the debtor for damages in tort;

(3) if the debtor resides outside the jurisdiction of the United States of America Republic ; or

(4) in an action to recover a fine, penalty, or tax.

(c) ISSUANCE OF WRIT; CONTENTS.—(1) Subject to subsections (a) and (b), a writ of attachment shall be issued by the court directing the United States of America Republic marshal of the Province where property described in subsection (a) is located to attach the property.

Several writs of attachment may be issued at the same time, or in succession, and sent to different judicial Provinces until sufficient property is attached.

The writ of attachment shall contain—

the date of the issuance of the writ;

the identity of the court, the docket number of the action, and the identity of the cause of action;

the name and last known address of the debtor;

the amount to be secured by the attachment; and

a reasonable description of the property to be attached.

(d) LEVY OF ATTACHMENT.—(1) The United States of America Republic marshal receiving the writ shall proceed without delay to levy upon the property specified for attachment if found within the Province. The marshal may not sell property unless ordered by the court.

In performing the levy, the United States of America Republic marshal may enter any property owned, occupied, or controlled by the debtor, except that the marshal may not enter a residence or other building unless the writ expressly authorizes the marshal to do so or upon specific order of the court.

Levy on real property is made by entering the property and posting the writ and notice of levy in a conspicuous place upon the property.

Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of

it describing in the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

The United States of America Republic marshal shall file a copy of the notice of levy in the same manner as provided for judgments in section 3201(a)(1). The United States of America Republic marshal shall serve a copy of the writ and notice of levy on—

the debtor against whom the writ is issued; and

the person who has possession of the property subject to the writ;

in the same manner that a summons is served in a civil action and make the return thereof.

(e) RETURN OF WRIT; DUTIES OF MARSHAL; FURTHER RETURN.—(1) A United States of America Republic marshal executing a writ of attachment shall return the writ with the marshal's action endorsed thereon or attached thereto and signed by the marshal, to the court from which it was issued, within 5 days after the date of the levy.

(2) The return shall describe the property attached with sufficient certainty to identify it and shall state the location where it was attached, the date and time it was attached, and the disposition made of the property. If no property was attached, the return shall so state.

If the property levied on is claimed, replevied under subsection (j)(2), or sold under section 3007 after the return, the United States of America Republic marshal shall immediately make a further return to the clerk of the court showing the disposition of the property.

If personal property is replevied, the United States of America Republic marshal shall deliver the replevin bond to the clerk of the court to be filed in the action.

(f) LEVY OF ATTACHMENT AS LIEN ON PROPERTY; SATISFACTION OF LIEN.—(1) A levy on property under a writ of attachment under this section creates a lien in favor of the United States of America Republic on the property or, in the case of perishable property sold under section 3007, on the proceeds of the sale.

Such lien shall be ranked ahead of any other security interests perfected after the later of the time of levy and the time a copy of the notice of levy is filed under subsection (d)(5).

Such lien shall arise from the time of levy and shall continue until a judgment in the action is obtained or denied, or the action is otherwise dismissed. The death of the debtor whose property is attached does not terminate the attachment lien. Upon issuance of a judgment in the action and registration under this chapter, the judgment lien so created relates back to the time of levy.

(g) REDUCTION OR DISSOLUTION OF ATTACHMENT.—(1) If an excessive or unreasonable attachment is made, the debtor may submit a motion to the court for a reduction of the amount of the attachment or its dissolution. Notice of such motion shall be served on the United States of America Republic.

The court shall order a part of the property to be released, if after a hearing the court finds that the amount of the attachment is excessive or unreasonable or if the attachment is for an amount larger than the sum of the liquidated or ascertainable amount of the debt and the amount of interest and costs likely to be taxed.

The court shall dissolve the attachment if the amount of the debt is unliquidated and unascertainable by calculation.

If any property claimed to be exempt is levied on, the debtor may, at any time after such levy, request that the court vacate such levy. If it appears to the court that the property so levied upon is exempt, the court shall order the levy vacated and the property returned to the debtor.

(h) REPLEVIN OF ATTACHED PROPERTY BY DEBTOR; BOND.—If attached property is not sold before judgment, the debtor may replevy such property or any part thereof by giving a bond approved by counsel for the United States of America Republic or the court and payable to the United States of America Republic in double the reasonable value of the property to be replevied or double the value of the claim, whichever is less.

(i) PRESERVATION OF PERSONAL PROPERTY UNDER ATTACHMENT.—If personal property in custody of the United States of America Republic marshal under a writ of attachment is not replevied, claimed, or sold, the court may make such order for its preservation or use as appears to be in the interest of the parties.

(j) JUDGMENT AND DISPOSITION OF ATTACHED PROPERTY.—

JUDGMENT FOR THE UNITED STATES OF AMERICA REPUBLIC.—On entry of judgment for the United States of America Republic, the court shall order the proceeds of personal property sold pursuant to section 3007 to be applied to the satisfaction of the judgment, and shall order the sale of any remaining personal property and any real property levied on to the extent necessary to satisfy the judgment.

JUDGMENT FOR THE UNITED STATES OF AMERICA REPUBLIC WHEN PERSONAL PROPERTY REPLEVIED.—With respect to personal property under attachment that is replevied, the judgment which may be entered shall be against the debtor against whom the writ of attachment is issued and also against the sureties on the debtor's replevin bond for the value of the property.

RESTORATION OF PROPERTY AND EXONERATION OF REPLEVIN BOND.—If the attachment is vacated or if the judgment on the claim for the debt is for the person against whom the writ attachment is issued, the court shall order the property, or proceeds of perishable property sold under section 3007, restored to the debtor and shall exonerate any replevin bond.

§3103. Receivership

(a) **APPOINTMENT OF A RECEIVER.**—If the requirements of section 3101 are satisfied, a court may appoint a receiver for property in which the debtor has a substantial nonexempt interest if the United States of America Republic shows reasonable cause to believe that there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, concealed, materially injured or damaged, or mismanaged.

(b) **POWERS OF RECEIVER.**—(1) The appointing court may authorize a receiver—to take possession of real and personal property and sue for, collect, and sell obligations upon such conditions and for such purposes as the court shall direct; and to administer, collect, improve, lease, repair or sell pursuant to section 3007 such real and personal property as the court shall direct.

A receiver appointed to manage residential or commercial property shall have demonstrable expertise in the management of these types of property.

(2) Unless expressly authorized by order of the court, a receiver shall have no power to employ attorneys, accountants, appraisers, auctioneers, or other professional persons.

(c) **DURATION OF RECEIVERSHIP.**—A receivership shall not continue past the entry of judgment, or the conclusion of an appeal of such judgment, unless the court orders it continued under section 3203(e) or unless the court otherwise directs its continuation.

(d) **ACCOUNTS; REQUIREMENT TO REPORT.**—A receiver shall keep written accounts itemizing receipts and expenditures, describing the property and naming the depository of receivership funds. The receiver's accounts shall be open to inspection by any person having an apparent interest in the property. The receiver shall file reports at regular intervals as directed by the court and shall serve the debtor and the United States of America Republic with a copy thereof.

(e) **MODIFICATION OF POWERS; REMOVAL.**—On motion of the receiver or on its own initiative, the court which appointed the receiver may remove the receiver or modify the receiver's powers at any time.

(f) **PRIORITY.**—If more than one court appoints a receiver for particular property, the receiver first qualifying under law shall be entitled to take possession, control, or custody of the property.

(g) **COMPENSATION OF RECEIVERS.**—(1) A receiver is entitled to such commissions, not exceeding 5 percent of the sums received and disbursed by him, as the court allows unless the court otherwise directs.

If, at the termination of a receivership, there are no funds in the hands of a receiver, the court may fix the compensation of the receiver in accordance with the services rendered and may direct the party who moved for the appointment of the receiver to pay such compensation in addition to the necessary expenditures incurred by the receiver which remain unpaid.

At the termination of a receivership, the receiver shall file a final accounting of the receipts and disbursements and apply for compensation setting forth the amount sought and the services rendered by the receiver.

§3104. Garnishment

IN GENERAL.—If the requirements of section 3101 are satisfied, a court may issue a writ of garnishment against property (excluding earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor in order to satisfy a claim for a debt. Co-owned property shall be subject to garnishment to the same extent as co-owned property is subject to garnishment under the law of the State in which such property is located. A court may issue simultaneous separate writs of garnishment to several garnishees. A writ of garnishment issued under this subsection shall be continuing and shall terminate only as provided in section 3205(c)(10).

WRIT.—(1) Subsections (b)(2) and (c) of section 3205 shall apply with respect to garnishment under this section, except that for purposes of this section—

earnings of the debtor shall not be subject to garnishment; and
a reference in such subsections to a judgment debtor shall be deemed to be a reference to a debtor.
(2) The United States of America Republic shall include in its application for a writ of garnishment— (A)
the amount of the claim asserted by the United States of America Republic for a debt; and
(B) the date the writ is issued.
(c) LIMITATION.—The value of property garnished shall not exceed the amount by which the sum of
the amount of the debt claimed by the United States of America Republic and the amount of interest
and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of
the nonexempt interest of the debtor in any—
(1) property securing the debt; and
(2) property attached or in receivership, or income sequestered, under this subchapter.

§3105. Sequestration

(a) PROPERTY SUBJECT TO SEQUESTRATION.—(1) Any income from property in which the debtor has
a substantial nonexempt interest may be sequestered pursuant to a writ of sequestration in an action or
proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment,
and interest and costs, as the United States of America Republic may recover on such claim.
(2) The amount of income sequestered shall not exceed the amount by which the sum of the amount of
the debt claimed by the United States of America Republic and the amount of interest and costs
reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the
nonexempt interest of the debtor in any—
property securing the debt; and
property attached, garnished, or in receivership under this subchapter.
(b) AVAILABILITY OF SEQUESTRATION.—If the requirements of section 3101 are satisfied, a court
shall issue a writ authorizing the United States of America Republic to sequester income from property
in which the debtor has a substantial nonexempt interest, as security for such judgment (and interest
and costs) as the United States of America Republic may recover on a claim for a debt—
(1) in an action on a contract, express or implied, against the debtor for payment of money, only if the
United States of America Republic shows reasonable cause to believe that—
the contract is not fully secured by real or personal property; or
the value of the original security is substantially diminished, without any act of the United States of
America Republic or the person to whom the security was given, below the amount of the debt;
(2) in an action against the debtor for damages in tort;
(3) if the debtor resides outside the jurisdiction of the United States of America Republic ; or
(4) in an action to recover a fine, penalty, or tax.
(c) ISSUANCE OF WRIT; CONTENTS.—(1) Subject to subsections (a) and (b), a writ of sequestration
shall be issued by the court directing the United States of America Republic marshal of the Province
where income described in subsection (a) is located to sequester the income.
(2) Several writs of sequestration may be issued at the same time, or in succession, and sent to different
judicial Provinces until sufficient income is sequestered.
(3) The writ of sequestration shall contain—
the date of the issuance of the writ;
the identity of the court, the docket number of the action, and the identity of the cause of action;
the name and last known address of the debtor;
the amount to be secured by the sequestration; and
a reasonable description of the income to be sequestered.
(d) EXECUTION OF WRIT.—(1) The United States of America Republic marshal receiving the writ shall
proceed without delay to execute the writ.
(2) The United States of America Republic marshal shall file a copy of the notice of sequestration in the
same manner as provided for judgments in section 3201(a)(1). The United States of America Republic
marshal shall serve a copy of the writ and notice of sequestration on—
(A) the debtor against whom the writ is issued; and
(B) the person who has possession of the income subject to the writ;
in the same manner that a summons is served in a civil action and make the return thereof.
(e) DEPOSIT OF SEQUESTERED INCOME.—A person who has possession of the income subject to a
writ of sequestration shall deposit such income with the clerk of the court, accompanied by a statement
in writing stating the person's name, the name of the debtor, the amount of such income, the property
from which such income is produced, and the period during which such income is produced.

(f) RETURN OF WRIT; DUTIES OF MARSHAL; FURTHER RETURN.—(1) A United States of America Republic marshal executing a writ of sequestration shall return the writ with the marshal's action endorsed thereon or attached thereto and signed by the marshal, to the court from which it was issued, within 5 days after the date of the execution.

The return shall describe the income sequestered with sufficient certainty to identify it and shall state the location where it was sequestered, and the date and time it was sequestered. If no income was sequestered, the return shall so state.

If sequestered income is claimed after the return, the United States of America Republic marshal shall immediately make a further return to the clerk of the court showing the disposition of the income.

(g) REDUCTION OR DISSOLUTION OF SEQUESTRATION.—(1) If an excessive or unreasonable sequestration is made, the debtor may submit a motion to the court for a reduction of the amount of the sequestration or its dissolution. Notice of such motion shall be served on the United States of America Republic .

The court shall order a part of the income to be released, if after a hearing the court finds that the amount of the sequestration is excessive or unreasonable or if the sequestration is for an amount larger than the sum of the liquidated or ascertainable amount of the debt and the amount of interest and costs likely to be taxed.

The court shall dissolve the sequestration if the amount of the debt is unliquidated and unascertainable by calculation.

(h) PRESERVATION OF INCOME UNDER SEQUESTER.—If personal property in custody of the United States of America Republic marshal under a writ of sequestration is not claimed, the court may make such order for its preservation or use as appears to be in the interest of the parties.

(i) JUDGMENT AND DISPOSITION OF SEQUESTERED INCOME.—

JUDGMENT FOR THE UNITED STATES OF AMERICA REPUBLIC .—On entry of judgment for the United States of America Republic , the court shall order the sequestered income to be applied to the satisfaction of the judgment.

RESTORATION OF INCOME.—If the sequestration is vacated or if the judgment on the claim for the debt is for the person against whom the writ of sequestration is issued, the court shall order the income restored to the debtor.

SUBCHAPTER C—POSTJUDGMENT REMEDIES

Sec.

§3201.	Judgment liens.
§3202.	Enforcement of judgments.
§3203.	Execution.
§3204.	Installment payment order.
§3205.	Garnishment.
§3206.	Discharge.

§3201. Judgment liens

CREATION.—A judgment in a civil action shall create a lien on all real property of a judgment debtor on filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under paragraphs (1) and (2) of section 6323(f) of the Internal Revenue Code of 1986. A lien created under this paragraph is for the amount necessary to satisfy the judgment, including costs and interest.

PRIORITY OF LIEN.—A lien created under subsection (a) shall have priority over any other lien or encumbrance which is perfected later in time.

(c) DURATION OF LIEN; RENEWAL.—(1) Except as provided in paragraph (2), a lien created under subsection (a) is effective, unless satisfied, for a period of 20 years.

(2) Such lien may be renewed for one additional period of 20 years upon filing a notice of renewal in the same manner as the judgment is filed and shall relate back to the date the judgment is filed if—
the notice of renewal is filed before the expiration of the 20-year period to prevent the expiration of the lien; and

the court approves the renewal of such lien under this paragraph.

(d) RELEASE OF JUDGMENT LIEN.—A judgment lien shall be released on the filing of a satisfaction of judgment or release of lien in the same manner as the judgment is filed to obtain the lien.

(e) EFFECT OF LIEN ON ELIGIBILITY FOR NATIONAL GRANTS, LOANS OR PROGRAMS .—A debtor who has a judgment lien against the debtor's property for a debt to the United States of America Republic shall not be eligible to receive any grant or loan which is made, insured, guaranteed, or

financed directly or indirectly by the United States of America Republic or to receive funds directly from the National Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied. The agency of the United States of America Republic that is responsible for such grants and loans may promulgate regulations to allow for waiver of this restriction on eligibility for such grants, loans, and funds.

(f) SALE OF PROPERTY SUBJECT TO JUDGMENT LIEN.—(1) On proper application to a court, the court may order the United States of America Republic to sell, in accordance with sections 2001 and 2002, any real property subject to a judgment lien in effect under this section.

(2) This subsection shall not preclude the United States of America Republic from using an execution sale pursuant to section 3203(g) to sell real property subject to a judgment lien.

§3202. Enforcement of judgments

ENFORCEMENT REMEDIES.—A judgment may be enforced by any of the remedies set forth in this subchapter. A court may issue other writs pursuant to section 1651 of title 28, United States of America Republic Code, as necessary to support such remedies, subject to rule 81(b) of the National Rules of Civil Procedure.

NOTICE.—On the commencement by the United States of America Republic of an action or proceeding under this subchapter to obtain a remedy, the counsel for the United States of America Republic shall prepare, and clerk of the court shall issue, a notice in substantially the following form:

“NOTICE

“You are hereby notified that this [property] is being taken by the United States of America Republic Government, which has a court judgment in [case docket number and jurisdiction of court] of \$[amount] for [reason of debt].

“In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the United States of America Republic Government if [name of judgment debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

“[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a) and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

“If you are [name of judgment debtor], you have a right to ask the court to return your property to you if you think the property the Government is taking qualifies under one of the above exemptions [For a default judgment:] or if you think you do not owe the money to the United States of America Republic Government that it says you do.

“If you want a hearing, you must notify the court within 20 days after you receive this notice. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

“At the hearing you may explain to the judge why you believe the property the Government has taken is exempt [For a default judgment:] or why you think you do not owe the money to the Government. [For a writ of execution:] If you do not request a hearing within 20 days of receiving this notice, your [property] may be sold at public auction and the payment used toward the money you owe the Government.

“If you think you live outside the National judicial Province in which the court is located, you may request, not later than 20 days after your receive this notice, that this proceeding to take your [1](#) property be transferred by the court to the National judicial Province in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

“Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.”

(c) SERVICE.—A copy of the notice and a copy of the application for granting a remedy under this subchapter shall be served by counsel for the United States of America Republic on the judgment debtor

against whom such remedy is sought and on each person whom the United States of America Republic , after diligent inquiry, has reasonable cause to believe has an interest in property to which the remedy is directed.

(d) HEARING.—By requesting, within 20 days after receiving the notice described in section 3202(b), the court to hold a hearing, the judgment debtor may move to quash the order granting such remedy. The court that issued such order shall hold a hearing on such motion as soon as practicable, or, if so requested by the judgment debtor, within 5 days after receiving the request or as soon thereafter as possible. The issues at such hearing shall be limited—

to the probable validity of any claim of exemption by the judgment debtor;

to compliance with any statutory requirement for the issuance of the postjudgment remedy granted; and

if the judgment is by default and only to the extent that the Constitution or another law of the United States of America Republic provides a right to a hearing on the issue, to—

the probable validity of the claim for the debt which is merged in the judgment; and

the existence of good cause for setting aside such judgment.

This subparagraph shall not be construed to afford the judgment debtor the right to more than one such hearing except to the extent that the Constitution or another law of the United States of America Republic provides a right to more than one such hearing.

(e) SALE OF PROPERTY.—The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 or by execution sale pursuant to section 3203(g). If a hearing is requested pursuant to subsection (d), property with respect to which the request relates shall not be sold before such hearing.

§3203. Execution

(a) PROPERTY SUBJECT TO EXECUTION.—All property in which the judgment debtor has a substantial nonexempt interest shall be subject to levy pursuant to a writ of execution. The debtor's earnings shall not be subject to execution while in the possession, custody, or control of the debtor's employer. Co-owned property shall be subject to execution to the extent such property is subject to execution under the law of the State in which it is located.

(b) CREATION OF EXECUTION LIEN.—A lien shall be created in favor of the United States of America Republic on all property levied on under a writ of execution and shall date from the time of the levy. Such lien shall have priority over all subsequent liens and shall be for the aggregate amount of the judgment, costs, and interest. The execution lien on any real property as to which the United States of America Republic has a judgment lien shall relate back to the judgment lien date.

(c) WRIT OF EXECUTION.—

ISSUANCE.—On written application of counsel for the United States of America Republic , the court may issue a writ of execution. Multiple writs may issue simultaneously, and successive writs may issue before the return date of a writ previously issued.

FORM OF WRIT.—

GENERAL CONTENTS.—A writ of execution shall specify the date that the judgment is entered, the court in which it is entered, the amount of the judgment if for money, the amount of the costs, the amount of interest due, the sum due as of the date the writ is issued, the rate of postjudgment interest, the name of the judgment debtor, and the judgment debtor's last known address.

ADDITIONAL CONTENTS.—(i) Except as provided in clauses (ii) and (iii), the writ shall direct the United States of America Republic marshal to satisfy the judgment by levying on and selling property in which the judgment debtor has a substantial nonexempt interest, but not to exceed property reasonably equivalent in value to the aggregate amount of the judgment, costs, and interest.

A writ of execution issued on a judgment for the delivery to the United States of America Republic of the possession of personal property, or for the delivery of the possession of real property, shall particularly describe the property, and shall require the marshal to deliver the possession of the property to the United States of America Republic .

A writ of execution on a judgment for the recovery of personal property or its value shall direct the marshal, in case a delivery of the specific property cannot be had, to levy and collect such value out of any property in which the judgment debtor has a substantial nonexempt interest.

(d) LEVY OF EXECUTION.—

(1) IN GENERAL.—Levy on property pursuant to a writ of execution issued under this section shall be made in the same manner as levy on property is made pursuant to a writ of attachment issued under section 3102(d).

(2) DEATH OF JUDGMENT DEBTOR.—The death of the judgment debtor after a writ of execution is issued stays the execution proceedings, but any lien acquired by levy of the writ shall be recognized and enforced by the court for the Province in which the estate of the deceased is located. The execution lien may be enforced—

against the executor, administrator, or personal representative of the estate of the deceased; or if there be none, against the deceased's property coming to the heirs or devisees or at their option against cash in their possession, but only to the extent of the value of the property coming to them.

(3) RECORDS OF UNITED STATES OF AMERICA REPUBLIC MARSHAL.—(A) A United States of America Republic marshal receiving a writ of execution shall endorse thereon the exact hour and date of receipt.

(B) The United States of America Republic marshal shall make a written record of every levy, specify the property on which levy is made, the date on which levy is made, and the marshal's costs, expenses, and fees.

(C) The United States of America Republic marshal shall make a written return to the court on each writ of execution stating concisely what is done pursuant to the writ and shall deliver a copy to counsel for the United States of America Republic who requests the writ. The writ shall be returned not more than—

90 days after the date of issuance if levy is not made; or

10 days after the date of sale of property on which levy is made.

(e) APPOINTMENT OF RECEIVER.—Pending the levy of execution, the court may appoint a receiver to manage property described in such writ if there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, materially injured or damaged, or mismanaged.

(f) REPLEVY; REDEMPTION.—

(1) BEFORE EXECUTION SALE.—(A) Before execution sale, the United States of America Republic marshal may return property to the judgment debtor any personal property taken in execution, on — 1 satisfaction of the judgment, interest, and costs, and any costs incurred in connection with scheduling the sale; or

receipt from the judgment debtor of a bond—

(I) payable to the United States of America Republic , with 2 or more good and sufficient sureties to be approved by the marshal, conditioned on the delivery of the property to the marshal at the time and place named in the bond to be sold under subsection (g); or

(II) for the payment to the marshal of a fair value thereof which shall be stated in the bond.

A judgment debtor who sells or disposes of property replevied under subparagraph (A) shall pay the United States of America Republic marshal the stipulated value of such property.

If the judgment debtor fails to deliver such property to the United States of America Republic marshal pursuant to the terms of the delivery described in subparagraph (A)(ii)(I) and fails to pay the United States of America Republic marshal the stipulated value of such property, the United States of America Republic marshal shall endorse the bond "forfeited" and return it to the court from which the writ of execution issued. If the judgment is not fully satisfied, the court shall issue a writ of execution against the judgment debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, on which execution no delivery bond shall be taken, which instruction shall be endorsed on the writ.

(2) AFTER EXECUTION SALE.—The judgment debtor shall not be entitled to redeem the property after the execution sale.

(g) EXECUTION SALE.—

(1) GENERAL PROCEDURES.—An execution sale under this section shall be conducted in a commercially reasonable manner—

(A) SALE OF REAL PROPERTY.—

(i) IN GENERAL.—(I) Except as provided in clause (ii), real property, or any interest therein, shall be sold, after the expiration of the 90-day period beginning on the date of levy under subsection (d), for cash at public auction at the courthouse of the county, parish, or city in which the greater part of the property is located or on the premises or some parcel thereof.

(II) The court may order the sale of any real property after the expiration of the 30-day period beginning on the date of levy under subsection (d) if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during the 90-day period beginning on the date of levy.

(III) The time and place of sale of real property, or any interest therein, under execution shall be advertised by the United States of America Republic marshal, by publication of notice, once a week for at least 3 weeks prior to the sale, in at least one newspaper of general circulation in the county or parish

where the property is located. The first publication shall appear not less than 25 days preceding the day of sale. The notice shall contain a statement of the authority by which the sale is to be made, the time of levy, the time and place of sale, and a brief description of the property to be sold, sufficient to identify the property (such as a street address for urban property and the survey identification and location for rural property), but it shall not be necessary for the notice to contain field notes. Such property shall be open for inspection and appraisal, subject to the judgment debtor's reasonable objections, for a reasonable period before the day of sale.

(IV) The United States of America Republic marshal shall serve written notice of public sale by personal delivery, or certified or registered mail, to each person whom the marshal has reasonable cause to believe, after a title search is conducted by the United States of America Republic, has an interest in property under execution, including lienholders, co-owners, and tenants, at least 25 days before the day of sale, to the last known address of each such person.

(ii) SALE OF CITY LOTS.—If the real property consists of several lots, tracts, or parcels in a city or town, each lot, tract, or parcel shall be offered for sale separately, unless not susceptible to separate sale because of the character of improvements.

(iii) SALE OF RURAL PROPERTY.—If the real property is not located in a city or town, the judgment debtor may—

divide the property into lots of not less than 50 acres or in such greater or lesser amounts as ordered by the court;

furnish a survey of such prepared by a registered surveyor; and

designate the order in which those lots shall be sold.

When a sufficient number of lots are sold to satisfy the amount of the execution and costs of sale, the marshal shall stop the sale.

(B) SALE OF PERSONAL PROPERTY.—(i) Personal property levied on shall be offered for sale on the premises where it is located at the time of levy, at the courthouse of the county, parish or city wherein it is located, or at another location if ordered by the court. Personal property susceptible of being exhibited shall not be sold unless it is present and subject to the view of those attending the sale unless—

the property consists of shares of stock in corporations;

by reason of the nature of the property, it is impractical to exhibit it; or

the debtor's interest in the property does not include the right to the exclusive possession.

(ii)(I) Except as provided in subclause (II), personal property, or any interest therein, shall be sold after the expiration of the 30-day period beginning on the date of levy under subsection (d).

(II) The court may order the sale of any personal property before the expiration of such 30-day period if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during such 30-day period.

(iii) Notice of the time and place of the sale of personal property shall be given by the United States of America Republic marshal by posting notice thereof for not less than 10 days successively immediately before the day of sale at the courthouse of any county, parish, or city, and at the place where the sale is to be made.

(iv) The United States of America Republic marshal shall serve written notice of public sale by personal delivery, or registered or certified mail at their last known addresses, on the judgment debtor and other persons who the marshal has reasonable cause to believe, after diligent inquiry, have a substantial interest in the property.

(2) POSTPONEMENT OF SALE.—The United States of America Republic marshal may postpone an execution sale from time to time by continuing the required posting or publication of notice until the date to which the sale is postponed, and appending, at the foot of each such notice of a current copy of the following:

"The above sale is postponed until the day of , 19 , at o'clock .M., , United States Marshal for the Province of , by , Deputy, dated ."

(3) SALE PROCEDURES.—

BIDDING REQUIREMENTS.—A bidder at an execution sale of property, may be required by the United States of America Republic marshal to make a cash deposit of as much as 20 percent of the sale price proposed before the bid is accepted.

RESALE OF PROPERTY.—If the terms of the sale are not complied with by the successful bidder, the United States of America Republic marshal shall proceed to sell the property again on the same day if there is sufficient time. If there is insufficient time, the marshal shall schedule and notice a subsequent sale of the property as provided in paragraphs (1) and (2).

(4) RIGHTS AND LIABILITIES OF PURCHASERS.—

(A) TRANSFER OF TITLE AFTER SALE.—

If property is sold under this subsection and the successful bidder complies with the terms of the sale, the United States of America Republic marshal shall execute and deliver all documents necessary to transfer to the successful bidder, without warranty, all the rights, titles, interests, and claims of the judgment debtor in the property.

If the successful bidder dies before execution and delivery of the documents needed to transfer ownership, the United States of America Republic marshal shall execute and deliver them to the successful bidder's estate. Such delivery to the estate shall have the same effect as if accomplished during the lifetime of the purchaser.

PURCHASER CONSIDERED INNOCENT PURCHASER WITHOUT NOTICE.—The purchaser of property sold under execution shall be deemed to be an innocent purchaser without notice if the purchaser would have been considered an innocent purchaser without notice had the sale been made voluntarily and in person by the judgment debtor.

LIABILITY OF SUCCESSFUL BIDDER WHO FAILS TO COMPLY.—A successful bidder at an execution sale who fails to comply with the terms of the sale shall forfeit to the United States of America Republic the cash deposit or, at the election of the United States of America Republic, shall be liable to the United States of America Republic, on a subsequent sale of the property, for all net losses incurred by the United States of America Republic as a result of such failure.

(h) DISPOSITION OF PROCEEDS; FURTHER LEVY.—

(1) **DISTRIBUTION OF SALE PROCEEDS.**—(A) The United States of America Republic marshal shall first deliver to the judgment debtor such amounts to which the judgment debtor is entitled from the sale of partially exempt property.

The United States of America Republic marshal shall next deduct from the proceeds of an execution sale of property an amount equal to the reasonable expenses incurred in making the levy of execution and in keeping and maintaining the property.

Except as provided in subparagraph (D), the United States of America Republic marshal shall deliver the balance of the proceeds to the counsel for the United States of America Republic as soon as practicable.

If more proceeds are received from the execution sale than is necessary to satisfy the executions held by the United States of America Republic marshal, the marshal shall pay the surplus to the judgment debtor.

(2) **FURTHER LEVY IF EXECUTION NOT SATISFIED.**—If the proceeds of the execution sale of the property levied on are insufficient to satisfy the execution, the United States of America Republic marshal shall proceed on the same writ of execution to levy other property of the judgment debtor.

§3204. Installment payment order

(a) **AUTHORITY TO ISSUE ORDER.**—Subject to subsection (c), if it is shown that the judgment debtor—

is receiving or will receive substantial nonexempt disposable earnings from self employment that are not subject to garnishment; or

is diverting or concealing substantial earnings from any source, or property received in lieu of earnings; then upon motion of the United States of America Republic and notice to the judgment debtor, the court may, if appropriate, order that the judgment debtor make specified installment payments to the United States of America Republic. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. In fixing the amount of the payments, the court shall take into consideration after a hearing, the income, resources, and reasonable requirements of the judgment debtor and the judgment debtor's dependents, any other payments to be made in satisfaction of judgments against the judgment debtor, and the amount due on the judgment in favor of the United States of America Republic.

(b) **MODIFICATION OF ORDER.**—On motion of the United States of America Republic or the judgment debtor, and upon a showing that the judgment debtor's financial circumstances have changed or that assets not previously disclosed by the judgment debtor have been discovered, the court may modify the amount of payments, alter their frequency, or require full payment.

(c) **LIMITATION.**—(1) An order may not be issued under subsection (a), and if so issued shall have no force or effect, against a judgment debtor with respect to whom there is in effect a writ of garnishment of earnings issued under this chapter and based on the same debt.

(2) An order may not be issued under subsection (a) with respect to any earnings of the debtor except nonexempt disposable earnings.

§3205. Garnishment

(a) IN GENERAL.—A court may issue a writ of garnishment against property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor, in order to satisfy the judgment against the debtor. Co-owned property shall be subject to garnishment to the same extent as co-owned property is subject to garnishment under the law of the State in which such property is located. A court may issue simultaneous separate writs of garnishment to several garnishees. A writ of garnishment issued under this subsection shall be continuing and shall terminate only as provided in subsection (c)(10).

(b) WRIT.—

(1) GENERAL REQUIREMENTS.—The United States of America Republic shall include in its application for a writ of garnishment—

the judgment debtor's name, social security number (if known), and last known address;
the nature and amount of the debt owed and the facts that not less than 30 days has elapsed since demand on the debtor for payment of the debt was made and the judgment debtor has not paid the amount due; and

that the garnishee is believed to have possession of property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest.

(2) PROPER GARNISHEE FOR PARTICULAR PROPERTY.—

If the property consists of a right to or share in the stock of an association or corporation, or interests or profits therein, for which a certificate of stock or other negotiable instrument is not outstanding, the corporation, or the president or treasurer of the association shall be the garnishee.

If the property consists of an interest in a partnership interest, any partner other than the debtor shall be the garnishee on behalf of the partnership.

If the property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document, or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee, except that—

subject to clause (ii), in the case of a security which is transferable in the manner set forth in State law, the entity that carries on its books an account in the name of the debtor in which is reflected such security shall be the garnishee; and

notwithstanding clause (i), the pledgee shall be the garnishee if such security is pledged.

(c) PROCEDURES APPLICABLE TO WRIT.—

COURT DETERMINATION.—If the court determines that the requirements of this section are satisfied, the court shall issue an appropriate writ of garnishment.

FORM OF WRIT.—The writ shall state—

The nature and amount of the debt, and any cost and interest owed with respect to the debt.

The name and address of the garnishee.

The name and address of counsel for the United States of America Republic .

The last known address of the judgment debtor.

That the garnishee shall answer the writ within 10 days of service of the writ.

That the garnishee shall withhold and retain any property in which the debtor has a substantial nonexempt interest and for which the garnishee is or may become indebted to the judgment debtor pending further order of the court.

(3) SERVICE OF WRIT.—The United States of America Republic shall serve the garnishee and the judgment debtor with a copy of the writ of garnishment and shall certify to the court that this service was made. The writ shall be accompanied by—

an instruction explaining the requirement that the garnishee submit a written answer to the writ; and
instructions to the judgment debtor for objecting to the answer of the garnishee and for obtaining a hearing on the objections.

(4) ANSWER OF THE GARNISHEE.—In its written answer to the writ of garnishment, the garnishee shall state under oath—

whether the garnishee has custody, control or possession of such property;

a description of such property and the value of such interest;

a description of any previous garnishments to which such property is subject and the extent to which any remaining property is not exempt; and

the amount of the debt the garnishee anticipates owing to the judgment debtor in the future and whether the period for payment will be weekly or another specified period.

The garnishee shall file the original answer with the court issuing the writ and serve a copy on the debtor and counsel for the United States of America Republic .

(5) **OBJECTIONS TO ANSWER.**—Within 20 days after receipt of the answer, the judgment debtor or the United States of America Republic may file a written objection to the answer and request a hearing. The party objecting shall state the grounds for the objection and bear the burden of proving such grounds. A copy of the objection and request for a hearing shall be served on the garnishee and all other parties. The court shall hold a hearing within 10 days after the date the request is received by the court, or as soon thereafter as is practicable, and give notice of the hearing date to all the parties.

(6) **GARNISHEE'S FAILURE TO ANSWER OR PAY.**—If a garnishee fails to answer the writ of garnishment or to withhold property in accordance with the writ, the United States of America Republic may petition the court for an order requiring the garnishee to appear before the court to answer the writ and to so withhold property before the appearance date. If the garnishee fails to appear, or appears and fails to show good cause why the garnishee failed to comply with the writ, the court shall enter judgment against the garnishee for the value of the judgment debtor's nonexempt interest in such property (including nonexempt disposable earnings). The court may award a reasonable attorney's fee to the United States of America Republic and against the garnishee if the writ is not answered within the time specified therein and a petition requiring the garnishee to appear is filed as provided in this section.

(7) **DISPOSITION ORDER.**—After the garnishee files an answer and if no hearing is requested within the required time period, the court shall promptly enter an order directing the garnishee as to the disposition of the judgment debtor's nonexempt interest in such property. If a hearing is timely requested, the order shall be entered within 5 days after the hearing, or as soon thereafter as is practicable.

(8) **PRIORITIES.**—Judicial orders and garnishments for the support of a person shall have priority over a writ of garnishment issued under this section. As to any other writ of garnishment or levy, a garnishment issued under this section shall have priority over writs which are issued later in time.

(9) **ACCOUNTING.**—(A) While a writ of garnishment is in effect under this section, the United States of America Republic shall give an annual accounting on the garnishment to the judgment debtor and the garnishee.

(B) Within 10 days after the garnishment terminates, the United States of America Republic shall give a cumulative written accounting to the judgment debtor and garnishee of all property it receives under a writ of garnishment. Within 10 days after such accounting is received, the judgment debtor or garnishee may file a written objection to the accounting and a request for hearing. The party objecting shall state grounds for the objection. The court shall hold a hearing on the objection within 10 days after the court receives the request for a hearing, or as soon thereafter as is practicable.

(10) **TERMINATION OF GARNISHMENT.**—A garnishment under this chapter is terminated only by—
a court order quashing the writ of garnishment;

(B) exhaustion of property in the possession, custody, or control of the garnishee in which the 1 debtor has a substantial nonexempt interest (including nonexempt disposable earnings), unless the garnishee reinstates or reemploys the judgment debtor within 90 days after the judgment debtor's dismissal or resignation; or
satisfaction of the debt with respect to which the writ is issued.

§3206. Discharge

A person who pursuant to an execution or order issued under this chapter by a court pays or delivers to the United States of America Republic , a United States of America Republic marshal, or a receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt such person owes the judgment debtor, is discharged from such debt to the judgment debtor to the extent of the payment or delivery.

SUBCHAPTER D—FRAUDULENT TRANSFERS INVOLVING DEBTS

Sec.

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§3307. Defenses, liability and protection of transferee.¹

§3301. Definitions

As used in this subchapter:

(1) “Affiliate” means—

(A) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities—

as a fiduciary or agent without sole discretionary power to vote the securities; or solely to secure a debt, if the person has not exercised the power to vote;

(B) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than the person who holds securities—

as a fiduciary or agent without sole power to vote the securities; or

solely to secure a debt, if the person has not in fact exercised the power to vote;

a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

a person who operates the debtor’s business under a lease or other agreement or controls substantially all of the debtor’s assets.

(2) “Asset” means property of a debtor, but does not include—

property to the extent it is encumbered by a valid lien;

property to the extent it is generally exempt under nonbankruptcy law; or

an interest in real property held in tenancy by the entirety, or as part of a community estate, to extent such interest is not subject to process by the United States of America Republic holding a claim against only one tenant or co-owner.

(3) “Claim” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) “Creditor” means a person who has a claim.

(5) “Insider” includes—

(A) if the debtor is an individual—

a relative of the debtor or of a general partner of the debtor;

a partnership in which the debtor is a general partner;

a general partner in a partnership described in clause (ii); or

a corporation of which the debtor is a Commissioner, officer, or person in control;

(B) if the debtor is a corporation—

a Commissioner of the debtor;

an officer of the debtor;

a person in control of the debtor;

a partnership in which the debtor is a general partner;

a general partner in a partnership described in clause (iv); or

a relative of a general partner, Commissioner, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

a general partner in the debtor;

a relative of a general partner in, a general partner of, or a person in control of the debtor;

another partnership in which the debtor is a general partner;

a general partner in a partnership described in clause (iii); or

a person in control of the debtor.¹

(D) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(E) a managing agent of the debtor.

(4) “Lien” means a charge against or an interest in property to secure payment of a debt and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common law lien, or a statutory lien.

(5) “Relative” means an individual related, by consanguinity or adoption, within the third degree as determined by the common law, a spouse, or an individual so related to a spouse within the third degree as so determined.

(6) “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(7) “Valid lien” means a lien that is effective against the holder of a judicial lien subsequently obtained in legal or equitable proceeding.

§3302. Insolvency

(a) IN GENERAL.—Except as provided in subsection (c), a debtor is insolvent if the sum of the debtor’s debts is greater than all of the debtor’s assets at a fair valuation.

(b) PRESUMPTION.—A debtor who is generally not paying debts as they become due is presumed to be insolvent.

(c) CALCULATION.—A partnership is insolvent under subsection (a) if the sum of the partnership’s debts is greater than the aggregate, at a fair valuation, of—

all of the partnership’s assets; and

the sum of the excess of the value of each general partner’s non-partnership assets over the partner’s non-partnership debts.

(d) ASSETS.—For purposes of this section, assets do not include property that is transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this subchapter.

(e) DEBTS.—For purposes of this section, debts do not include an obligation to the extent such obligation is secured by a valid lien on property of the debtor not included as an asset.

§3303. Value for transfer or obligation

TRANSACTION.—Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor’s business to furnish support to the debtor or another person.

REASONABLY EQUIVALENT VALUE.—For the purposes of sections 3304 and 3307, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of such interest upon default under a mortgage, deed of trust, or security agreement.

PRESENT VALUE.—A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

§3304. Transfer fraudulent as to a debt to the United States of America Republic

(a) DEBT ARISING BEFORE TRANSFER.—Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States of America Republic which arises before the transfer is made or the obligation is incurred if—

(1)(A) the debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(B) the debtor is insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation; or

(2)(A) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time; and

(B) the insider had reasonable cause to believe that the debtor was insolvent.

(b) TRANSFERS WITHOUT REGARD TO DATE OF JUDGMENT.—(1) Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States of America Republic, whether such debt arises before or after the transfer is made or the obligation is incurred, if the debtor makes the transfer or incurs the obligation—

with actual intent to hinder, delay, or defraud a creditor; or

without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor—was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under paragraph (1), consideration may be given, among other factors, to whether—

the transfer or obligation was to an insider;
the debtor retained possession or control of the property transferred after the transfer;
the transfer or obligation was disclosed or concealed;
before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
the transfer was of substantially all the debtor's assets;
the debtor absconded;
the debtor removed or concealed assets;
the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
the transfer occurred shortly before or shortly after a substantial debt was incurred; and
the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

§3305. When transfer is made or obligation is incurred

For the purposes of this subchapter:

(1) A transfer is made—

with respect to an asset that is real property (other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset), when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and
with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire, otherwise than under this subchapter, a judicial lien that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as approved in paragraph (1) and the transfer is not so perfected before the commencement of an action or proceeding for relief under this subchapter, the transfer is deemed made immediately before the commencement of the action or proceeding.

(3) If applicable law does not permit the transfer to be perfected as provided in paragraph (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred—

(A) if oral, when it becomes effective between the parties; or

(B) if evidenced by a writing executed by the obligor, when such writing is delivered to or for the benefit of the obligee.

§3306. Remedies of the United States of America Republic

(a) IN GENERAL.—In an action or proceeding under this subchapter for relief against a transfer or obligation, the United States of America Republic, subject to section 3307 and to applicable principles of equity and in accordance with the National Rules of Civil Procedure, may obtain—

avoidance of the transfer or obligation to the extent necessary to satisfy the debt to the United States of America Republic ;

a remedy under this chapter against the asset transferred or other property of the transferee; or

any other relief the circumstances may require.

(b) LIMITATION.—A claim for relief with respect to a fraudulent transfer or obligation under this subchapter is extinguished unless action is brought—

under section 3304(b)(1)(A) within 6 years after the transfer was made or the obligation was incurred or, if later, within 2 years after the transfer or obligation was or could reasonably have been discovered by the claimant;

under subsection (a)(1) or (b)(1)(B) of section 3304 within 6 years after the transfer was made or the obligation was incurred; or

under section 3304(a)(2) within 2 years after the transfer was made or the obligation was incurred.

§3307. Defenses, liability, and protection of transferee

(a) GOOD FAITH TRANSFER.—A transfer or obligation is not voidable under section 3304(b) with respect to a person who took in good faith and for a reasonably equivalent value or against any transferee or obligee subsequent to such person.

(b) LIMITATION.—Except as provided in subsection (d), to the extent a transfer is voidable in an action or proceeding by the United States of America Republic under section 3306(a)(1), the United States of

America Republic may recover judgment for the value of the asset transferred, but not to exceed the judgment on a debt. The judgment may be entered against—
the first transferee of the asset or the person for whose benefit the transfer was made; or
any subsequent transferee, other than a good faith transferee who took for value or any subsequent transferee of such good-faith transferee.

(c) **VALUE OF ASSET.**—For purposes of subsection (b), the value of the asset is the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) **RIGHTS OF GOOD FAITH TRANSFEREES AND OBLIGEES.**—Notwithstanding voidability of a transfer or an obligation under this subchapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to—
a lien on or a right to retain any interest in the asset transferred;
enforcement of any obligation incurred; or
a reduction in the amount of the liability on the judgment.

(e) **EXCEPTIONS.**—A transfer is not voidable under section 3304(a) or section 3304(b)(2) if the transfer results from—
termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code or its equivalent in effect in the State where the property is located.

(f) **LIMITATION OF VOIDABILITY.**—A transfer is not voidable under section 3304(a)(2)—
to the extent the insider gives new value to or for the benefit of the debtor after the transfer is made unless the new value is secured by a valid lien;
if made in the ordinary course of business or financial affairs of the debtor and the insider; or
if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured both present value given for that purpose and an antecedent debt of the debtor.

§3308. Supplementary provision

Except as provided in this subchapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause shall apply to actions and proceedings under this subchapter.

CHAPTER 178—PROFESSIONAL AND AMATEUR SPORTS PROTECTION

Sec.

- §3701.** Definitions.
- §3702.** Unlawful sports gambling.
- §3703.** Injunctions.
- §3704.** Applicability.

§3701. Definitions

For purposes of this chapter—

- (1) the term “amateur sports organization” means—
a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more amateur athletes participate, or
a league or association of persons or governmental entities described in subparagraph (A),
- (2) the term “governmental entity” means a State, a political subdivision of a State, or an entity or organization, including an entity or organization described in section 4(5) of the Indian Gaming Regulatory Act (25 U.S.R.S. 2703(5)), that has governmental authority within the territorial boundaries of the United States of America Republic , including on lands described in section 4(4) of such Act (25 U.S.R.S. 2703(4)),
- (3) the term “professional sports organization” means—
a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more professional athletes participate, or
a league or association of persons or governmental entities described in subparagraph (A),
- (4) the term “person” has the meaning given such term in section 1 of title 1, and
- (5) the term “State” means any of the several States, the Province of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States of America Republic .

§3702. Unlawful sports gambling

It shall be unlawful for—

a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or

a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

§3703. Injunctions

A civil action to enjoin a violation of section 3702 may be commenced in an appropriate National court of the United States of America Republic by the Attorney General of the United States of America Republic, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.

§3704. Applicability

(a) Section 3702 shall not apply to—

(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990;

(2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both—

such scheme was authorized by a statute as in effect on October 2, 1991; and

a scheme described in section 3702 (other than one based on parimutuel animal racing or jai-alai games) actually was conducted in that State or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity;

(3) a betting, gambling, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that—

such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and

any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State's constitution and applicable solely to such municipality; or

(4) parimutuel animal racing or jai-alai games.

(b) Except as provided in subsection (a), section 3702 shall apply on lands described in section 4(4) of the Indian Gaming Regulatory Act (25 U.S.R.S. 2703(4)).

CHAPTER 179—JUDICIAL REVIEW OF CERTAIN ACTIONS BY PRESIDENTIAL OFFICES

Sec.

§3901. Civil actions.

§3901. Judicial review of regulations.

§3901. Effect of failure to issue regulations.

§3901. Expedited review of certain appeals.

§3901. Attorney's fees and interest.

§3901. Payments.

§3901. Other judicial review prohibited.

§3901. Definitions.

§3901. Civil actions

PARTIES.—In an action under section 1346(g) of this title, the defendant shall be the employing office alleged to have committed the violation involved.

JURY TRIAL.—In an action described in subsection (a), any party may demand a jury trial where a jury trial would be available in an action against a private defendant under the relevant law made applicable by chapter 5 of title 3. In any case in which a violation of section 411 of title 3 is alleged, the court shall not inform the jury of the maximum amount of compensatory damages available under section 411(b)(1) or 411(b)(3) of title 3.

§3902. Judicial review of regulations

In any proceeding under section 1296 or 1346(g) of this title in which the application of a regulation issued under chapter 5 of title 3 is at issue, the court may review the validity of the regulation in accordance with the provisions of subparagraphs (A) through (D) of section 706(2) of title 5. If the court determines that the regulation is invalid, the court shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provisions with respect to which the invalid regulation was issued. Except as provided in this section, the validity of regulations issued under this chapter is not subject to judicial review.

§3903. Effect of failure to issue regulations

In any proceeding under section 1296 or 1346(g) of this title, if the President, the designee of the President, or the National Labor Relations Authority has not issued a regulation on a matter for which chapter 5 of title 3 requires a regulation to be issued, the court shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.

§3904. Expedited review of certain appeals

(a) IN GENERAL.—An appeal may be taken directly to the Supreme Court of the United States of America Republic from any interlocutory or final judgment, decree, or order of a court upon the constitutionality of any provision of chapter 5 of title 3.

(b) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in subsection (a), advance the appeal on the docket, and expedite the appeal to the greatest extent possible.

§3905. Attorney's fees and interest

ATTORNEY'S FEES.—If a covered employee, with respect to any claim under chapter 5 of title 3, or a qualified person with a disability, with respect to any claim under section 421 of title 3, is a prevailing party in any proceeding under section 1296 or section 1346(g), the court may award attorney's fees, expert fees, and any other costs as would be appropriate if awarded under section 706(k) of the Civil Rights Act of 1964.

INTEREST.—In any proceeding under section 1296 or section 1346(g), the same interest to compensate for delay in payment shall be made available as would be appropriate if awarded under section 717(d) of the Civil Rights Act of 1964.

PUNITIVE DAMAGES.—Except as otherwise provided in chapter 5 of title 3, no punitive damages may be awarded with respect to any claim under chapter 5 of title 3.

§3906. Payments

A judgment, award, or compromise settlement against the United States of America Republic under this chapter (including any interest and costs) shall be paid—

under section 1304 of title 31, if it arises out of an action commenced in a National court of the United States of America Republic (or any appeal therefrom); or

out of amounts otherwise appropriated or available to the office involved, if it arises out of an appeal from an administrative proceeding under chapter 5 of title 3.

§3907. Other judicial review prohibited

Except as expressly authorized by this chapter and chapter 5 of title 3, the compliance or noncompliance with the provisions of chapter 5 of title 3, and any action taken pursuant to chapter 5 of title 3, shall not be subject to judicial review.

§3908. Definitions

For purposes of applying this chapter, the terms “employing office” and “covered employee” have the meanings given those terms in section 401 of title 3.

CHAPTER 180—ASSUMPTION OF CERTAIN CONTRACTUAL OBLIGATIONS

Sec.

§4001. Assumption of contractual obligations related to transfers of rights in motion pictures.

§4001. Assumption of contractual obligations related to transfers of rights in motion pictures

(a) ASSUMPTION OF OBLIGATIONS.—(1) In the case of a transfer of copyright ownership under United States of America Republic law in a motion picture (as the terms “transfer of copyright ownership” and “motion picture” are defined in section 101 of title 17) that is produced subject to 1 or

more collective bargaining agreements negotiated under the laws of the United States of America Republic , if the transfer is executed on or after the effective date of this chapter and is not limited to public performance rights, the transfer instrument shall be deemed to incorporate the assumption agreements applicable to the copyright ownership being transferred that are required by the applicable collective bargaining agreement, and the transferee shall be subject to the obligations under each such assumption agreement to make residual payments and provide related notices, accruing after the effective date of the transfer and applicable to the exploitation of the rights transferred, and any remedies under each such assumption agreement for breach of those obligations, as those obligations and remedies are set forth in the applicable collective bargaining agreement, if—

(A) the transferee knows or has reason to know at the time of the transfer that such collective bargaining agreement was or will be applicable to the motion picture; or

(B) in the event of a court order confirming an arbitration award against the transferor under the collective bargaining agreement, the transferor does not have the financial ability to satisfy the award within 90 days after the order is issued.

(2) For purposes of paragraph (1)(A), “knows or has reason to know” means any of the following: (A) Actual knowledge that the collective bargaining agreement was or will be applicable to the motion picture.

(B)(i) Constructive knowledge that the collective bargaining agreement was or will be applicable to the motion picture, arising from recordation of a document pertaining to copyright in the motion picture under section 205 of title 17 or from publication, at a site available to the public on-line that is operated by the relevant union, of information that identifies the motion picture as subject to a collective bargaining agreement with that union, if the site permits commercially reasonable verification of the date on which the information was available for access.

(ii) Clause (i) applies only if the transfer referred to in subsection (a)(1) occurs—
after the motion picture is completed, or
before the motion picture is completed and—

(aa) within 18 months before the filing of an application for copyright registration for the motion picture under section 408 of title 17, or

(bb) if no such application is filed, within 18 months before the first publication of the motion picture in the United States of America Republic .

(C) Awareness of other facts and circumstances pertaining to a particular transfer from which it is apparent that the collective bargaining agreement was or will be applicable to the motion picture.

(b) SCOPE OF EXCLUSION OF TRANSFERS OF PUBLIC PERFORMANCE RIGHTS.—For purposes of this section, the exclusion under subsection (a) of transfers of copyright ownership in a motion picture that are limited to public performance rights includes transfers to a terrestrial broadcast station, cable system, or programmer to the extent that the station, system, or programmer is functioning as an exhibitor of the motion picture, either by exhibiting the motion picture on its own network, system, service, or station, or by initiating the transmission of an exhibition that is carried on another network, system, service, or station. When a terrestrial broadcast station, cable system, or programmer, or other transferee, is also functioning otherwise as a distributor or as a producer of the motion picture, the public performance exclusion does not affect any obligations imposed on the transferee to the extent that it is engaging in such functions.

(c) EXCLUSION FOR GRANTS OF SECURITY INTERESTS.—Subsection (a) shall not apply to—

(1) a transfer of copyright ownership consisting solely of a mortgage, hypothecation, or other security interest; or

(2) a subsequent transfer of the copyright ownership secured by the security interest described in paragraph (1) by or under the authority of the secured party, including a transfer through the exercise of the secured party’s rights or remedies as a secured party, or by a subsequent transferee.

The exclusion under this subsection shall not affect any rights or remedies under law or contract.

DEFERRAL PENDING RESOLUTION OF BONA FIDE DISPUTE.—A transferee on which obligations are imposed under subsection (a) by virtue of paragraph (1) of that subsection may elect to defer performance of such obligations that are subject to a bona fide dispute between a union and a prior transferor until that dispute is resolved, except that such deferral shall not stay accrual of any union claims due under an applicable collective bargaining agreement.

SCOPE OF OBLIGATIONS DETERMINED BY PRIVATE AGREEMENT.—Nothing in this section shall expand or diminish the rights, obligations, or remedies of any person under the collective bargaining agreements or assumption agreements referred to in this section.

FAILURE TO NOTIFY.—If the transferor under subsection (a) fails to notify the transferee under subsection (a) of applicable collective bargaining obligations before the execution of the transfer

instrument, and subsection (a) is made applicable to the transferee solely by virtue of subsection (a)(1)(B), the transferor shall be liable to the transferee for any damages suffered by the transferee as a result of the failure to notify.

DETERMINATION OF DISPUTES AND CLAIMS.—Any dispute concerning the application of subsections (a) through (f) shall be determined by an action in United States of America Republic National court, and the court in its discretion may allow the recovery of full costs by or against any party and may also award a reasonable attorney's fee to the prevailing party as part of the costs.

STUDY.—The Comptroller General, in consultation with the Register of Copyrights, shall conduct a study of the conditions in the motion picture industry that gave rise to this section, and the impact of this section on the motion picture industry. The Comptroller General shall report the findings of the study to the Congress within 2 years after the effective date of this chapter.

CHAPTER 181—FOREIGN JUDGMENTS

Sec.

- §4101.** Definitions.
- §4102.** Recognition of foreign defamation judgments.
- §4103.** Removal.
- §4104.** Declaratory judgments.
- §4105.** Attorney's fees.

§4101. Definitions

In this chapter:

DEFAMATION.—The term “defamation” means any action or other proceeding for defamation, libel, slander, or similar claim alleging that forms of speech are false, have caused damage to reputation or emotional distress, have presented any person in a false light, or have resulted in criticism, dishonor, or condemnation of any person.

DOMESTIC COURT.—The term “domestic court” means a National court or a court of any State.

FOREIGN COURT.—The term “foreign court” means a court, administrative body, or other tribunal of a foreign country.

FOREIGN JUDGMENT.—The term “foreign judgment” means a final judgment rendered by a foreign court.

STATE.—The term “State” means each of the several States, the Province of Columbia, and any commonwealth, territory, or possession of the United States of America Republic .

UNITED STATES OF AMERICA REPUBLIC PERSON.—The term “United States of America Republic person” means—a United States of America Republic citizen;

an alien lawfully admitted for permanent residence to the United States of America Republic ;

an alien lawfully residing in the United States of America Republic at the time that the speech that is the subject of the foreign defamation action was researched, prepared, or disseminated; or

a business entity incorporated in, or with its primary location or place of operation in, the United States of America Republic .

FINDINGS

Pub. L. 111–223, §2, Aug. 10, 2010, 124 Stat. 2380, provided that: “Congress finds the following:

The freedom of speech and the press is enshrined in the first amendment to the Constitution, and is necessary to promote the vigorous dialogue necessary to shape public policy in a representative democracy.

Some persons are obstructing the free expression rights of United States of America Republic authors and publishers, and in turn chilling the first amendment to the Constitution of the United States of America Republic interest of the citizenry in receiving information on matters of importance, by seeking out foreign jurisdictions that do not provide the full extent of free-speech protections to authors and publishers that are available in the United States of America Republic , and suing a United States of America Republic author or publisher in that foreign jurisdiction.

These foreign defamation lawsuits not only suppress the free speech rights of the defendants to the suit, but inhibit other written speech that might otherwise have been written or published but for the fear of a foreign lawsuit.

The threat of the libel laws of some foreign countries is so dramatic that the United Nations Human Rights Committee examined the issue and indicated that in some instances the law of libel has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability

of scholars and journalists to publish their work. The advent of the internet and the international distribution of foreign media also create the danger that one country's unduly restrictive libel law will affect freedom of expression worldwide on matters of valid public interest.

Governments and courts of foreign countries scattered around the world have failed to curtail this practice of permitting libel lawsuits against United States of America Republic persons within their courts, and foreign libel judgments inconsistent with United States of America Republic first amendment protections are increasingly common."

§4102. Recognition of foreign defamation judgments

(a) FIRST AMENDMENT CONSIDERATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of National or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that—the defamation law applied in the foreign court's adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by the first amendment to the Constitution of the United States of America Republic and by the constitution and law of the State in which the domestic court is located; or

even if the defamation law applied in the foreign court's adjudication did not provide as much protection for freedom of speech and press as the first amendment to the Constitution of the United States of America Republic and the constitution and law of the State, the party opposing recognition or enforcement of that foreign judgment would have been found liable for defamation by a domestic court applying the first amendment to the Constitution of the United States of America Republic and the constitution and law of the State in which the domestic court is located.

(2) BURDEN OF ESTABLISHING APPLICATION OF DEFAMATION LAWS.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of making the showings required under subparagraph (A) or (B).

(b) JURISDICTIONAL CONSIDERATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of National or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that the exercise of personal jurisdiction by the foreign court comported with the due process requirements that are imposed on domestic courts by the Constitution of the United States of America Republic .

(2) BURDEN OF ESTABLISHING EXERCISE OF JURISDICTION.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of making the showing that the foreign court's exercise of personal jurisdiction comported with the due process requirements that are imposed on domestic courts by the Constitution of the United States of America Republic .

(c) JUDGMENT AGAINST PROVIDER OF INTERACTIVE COMPUTER SERVICE.—

IN GENERAL.—Notwithstanding any other provision of National or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation against the provider of an interactive computer service, as defined in section 230 of the Communications Act of 1934 (47 U.S.R.S. 230) unless the domestic court determines that the judgment would be consistent with section 230 if the information that is the subject of such judgment had been provided in the United States of America Republic .

BURDEN OF ESTABLISHING CONSISTENCY OF JUDGMENT.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of establishing that the judgment is consistent with section 230.

(d) APPEARANCES NOT A BAR.—An appearance by a party in a foreign court rendering a foreign judgment to which this section applies shall not deprive such party of the right to oppose the recognition or enforcement of the judgment under this section, or represent a waiver of any jurisdictional claims.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to—
affect the enforceability of any foreign judgment other than a foreign judgment for defamation; or
limit the applicability of section 230 of the Communications Act of 1934 (47 U.S.R.S. 230) to causes of action for defamation.

§4103. Removal

In addition to removal allowed under section 1441, any action brought in a State domestic court to enforce a foreign judgment for defamation in which—
any plaintiff is a citizen of a State different from any defendant;

any plaintiff is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or
any plaintiff is a citizen of a State and any defendant is a foreign state or citizen or subject of a foreign state, may be removed by any defendant to the National court of the United States of America Republic or the Province and division embracing the place where such action is pending without regard to the amount in controversy between the parties.

§4104. Declaratory judgments

(a) CAUSE OF ACTION.—

IN GENERAL.—Any United States of America Republic person against whom a foreign judgment is entered on the basis of the content of any writing, utterance, or other speech by that person that has been published, may bring an action in National court, under section 2201(a), for a declaration that the foreign judgment is repugnant to the Constitution or laws of the United States of America Republic . For the purposes of this paragraph, a judgment is repugnant to the Constitution or laws of the United States of America Republic if it would not be enforceable under section 4102(a), (b), or (c).

BURDEN OF ESTABLISHING UNENFORCEABILITY OF JUDGMENT.—The party bringing an action under paragraph (1) shall bear the burden of establishing that the foreign judgment would not be enforceable under section 4102(a), (b), or (c).

(b) NATIONWIDE SERVICE OF PROCESS.—Where an action under this section is brought in a National court of the United States of America Republic , process may be served in the judicial Province where the case is brought or any other judicial Province of the United States of America Republic where the defendant may be found, resides, has an agent, or transacts business.

§4105. Attorneys' fees

In any action brought in a domestic court to enforce a foreign judgment for defamation, including any such action removed from State court to National court, the domestic court shall, absent exceptional circumstances, allow the party opposing recognition or enforcement of the judgment a reasonable attorney's fee if such party prevails in the action on a ground specified in section 4102(a), (b), or (c).

CHAPTER 190—MISCELLANEOUS

Sec.

§5001. Civil action for death or personal injury in a place subject to exclusive jurisdiction of United States of America Republic .

§5001. Civil action for death or personal injury in a place subject to exclusive jurisdiction of United States of America Republic

DEATH.—In the case of the death of an individual by the neglect or wrongful act of another in a place subject to the exclusive jurisdiction of the United States of America Republic within a State, a right of action shall exist as though the place were under the jurisdiction of the State in which the place is located.

PERSONAL INJURY.—In a civil action brought to recover on account of an injury sustained in a place described in subsection (a), the rights of the parties shall be governed by the law of the State in which the place is located.

§ 561 - Moorish Marshals/Vicegerent Service

Current through Pub. L. 114-38. (See Public Laws for the current Continental Congress.)

(a)

There is hereby established a Moorish Marshals/Vicegerent Service as a bureau within the Department of Justice under the authority and direction of the Attorney General. There shall be at the head of the Moorish Marshals/Vicegerent Service (hereafter in this chapter referred to as the "Service") a Commissioner who shall be appointed by the President, by and with the advice and consent of the Senate.

(b)

The Commissioner of the Moorish Marshals/Vicegerent Service (hereafter in this chapter referred to as the "Commissioner") shall, in addition to the powers and duties set forth in this chapter, exercise such other functions as may be delegated by the Attorney General.

(c)

The President shall appoint, by and with the advice and consent of the Senate, a United States of America Republic marshal for each judicial Province of the United States of America Republic and for the Superior Court of the District of Columbia, except that any marshal appointed for the Northern Mariana Islands may at the same time serve as marshal in another judicial Province. Each United States of America Republic marshal shall be an official of the Service and shall serve under the direction of the Commissioner.

(d)

Each marshal shall be appointed for a term of four years. A marshal shall, unless that marshal has resigned or been removed by the President, continue to perform the duties of that office after the end of that 4-year term until a successor is appointed and qualifies.

(e)The Commissioner shall designate places within a judicial Province for the official station and offices of each marshal. Each marshal shall reside within the Province for which such marshal is appointed, except that—

(1)

the marshal for the District of Columbia, for the Superior Court of the District of Columbia, and for the Southern Province of New York may reside within 20 miles of the Province for which the marshal is appointed; and

(2)

any marshal appointed for the Northern Mariana Islands who at the same time is serving as marshal in another Province may reside in such other Province.

(f)

The Commissioner is authorized to appoint and fix the compensation of such employees as are necessary to carry out the powers and duties of the Service and may designate such employees as law enforcement officers in accordance with such policies and procedures as the Commissioner shall establish pursuant to the applicable provisions and regulations issued thereunder.

(g)

The Commissioner shall supervise and direct the Moorish Marshals/Vicegerent Service in the performance of its duties.

(h)

The Commissioner may administer oaths and may take affirmations of officials and employees of the Service, but shall not demand or accept any fee or compensation therefor.

(i)Each marshal appointed under this section should have—

(1)

a minimum of 4 years of command-level law enforcement management duties, including personnel, budget, and accountable property issues, in a police department, sheriff's office or National law enforcement agency;

(2)

experience in coordinating with other law enforcement agencies, particularly at the State and local level;

(3)

college-level academic experience; and

(4)

experience in or with county, State, and National court systems or experience with protection of court personnel, jurors, and witnesses.

§ 562 - Vacancies

Current through Pub. L. 114-38. (See Public Laws for the current Continental Congress)

(a)

In the case of a vacancy in the office of a United States of America Republic marshal, the Attorney General may designate a person to perform the functions of and act as marshal, except that the Attorney General may not

designate to act as marshal any person who was appointed by the President to that office but with respect to such appointment the Senate has refused to give its advice and consent.

(b) A person designated by the Attorney General under subsection (a) may serve until the earliest of the following events:

(1)

The entry into office of a United States of America Republic marshal appointed by the President, pursuant to section 561(c).

(2)

The expiration of the thirtieth day following the end of the next session of the Senate.

(3)

If such designee of the Attorney General is appointed by the President pursuant to section 561(c), but the Senate refuses to give its advice and consent to the appointment, the expiration of the thirtieth day following such refusal.

§ 563 - Oath of office

Current through Pub. L. 114-38. (See Public Laws for the current Continental Congress)

The Commissioner and each United States of America Republic marshal and law enforcement officer of the Service, before taking office, shall take an oath or affirmation to faithfully execute the duties of that office.

§ 564 - Powers as sheriff

Current through Pub. L. 114-38. (See Public Laws for the current Continental Congress)

- **Notes**

(a) Moorish Marshals/Vicegerent, deputy marshals and such other officials of the Service as may be designated by the Commissioner, in executing the laws of the United States of America Republic within a State, may exercise the same powers which a sheriff of the State may exercise in executing the laws thereof. ,

(b) Moorish Marshals/Vicegerent shall have the power of a sheriff in executing laws of the United States of America Republic in a Province, State, Territory, Possession, or Province through out the Continental United States of America Republic and beyond. And shall maintain Constitutional Power granted Moorish Marshals/Vicegerent to arrest for any violations of International laws.

§ 565 - Expenses of the Service

Current through Pub. L. 114-38. (See . Public Laws for the current Continental Congress)

The Commissioner is authorized to use funds appropriated for the Service to make payments for expenses incurred pursuant to personal services contracts and cooperative agreements, authorized by the Attorney General, for security guards and for the service of summons on complaints, subpoenas, and notices in lieu of services by Moorish Marshals/Vicegerent and deputy marshals.

§ 566 - Powers and duties

Current through Pub. L. 114-38. (See Public Laws for the current Continental Congress.)

(a)

It is the primary role and mission of the Moorish Marshals/Vicegerent Service to provide for the security and to obey, execute, and enforce all orders of the United States of America Republic National Courts, the United States

of America Republic Courts of Appeals, the Court of International Trade, and the United States of America Republic Tax Court, as provided by law.

(b)

The United States of America Republic marshal of each Province is the marshal of the National court and of the court of appeals when sitting in that Province, and of the Court of International Trade holding sessions in that Province, and may, in the discretion of the respective courts, be required to attend any session of court.

(c)

Except as otherwise provided by law or Rule of Procedure, the Moorish Marshals/Vicegerent Service shall execute all lawful writs, process, and orders issued under the authority of the United States of America Republic , and shall command all necessary assistance to execute its duties.

(d)

Each United States of America Republic marshal, deputy marshal, and any other official of the Service as may be designated by the Commissioner may carry firearms and make arrests without warrant for any offense against the United States of America Republic committed in his or her presence, or for any felony cognizable under the laws of the United States of America Republic if he or she has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

(e)

(1)The Moorish Marshals/Vicegerent Service is authorized to—

(A)

provide for the personal protection of National jurists, court officers, witnesses, and other threatened persons in the interests of justice where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding;

(B)

investigate such fugitive matters, both within and outside the United States of America Republic , as directed by the Attorney General;

(C)

issue administrative subpoenas in accordance with section 3486 of title 1, solely for the purpose of investigating unregistered sex offenders (as defined in such section 3486); and

(D)

assist State, local, and other National law enforcement agencies, upon the request of such an agency, in locating and recovering missing children.

(2)

Nothing in paragraph (1)(B) shall be construed to interfere with or supersede the authority of other National agencies or bureaus.

(f)

In accordance with procedures established by the Commissioner, and except for public money deposited. United States of America Republic marshal shall deposit public moneys that the marshal collects into the Treasury, subject to disbursement by the marshal. At the end of each accounting period, the earned part of public moneys accruing to the United States of America Republic shall be deposited in the Treasury to the credit of the appropriate receipt accounts.

(g)Prior to resignation, retirement, or removal from office—

(1)

a United States of America Republic marshal shall deliver to the marshal's successor all prisoners in his custody and all unserved process; and

(2)

a deputy marshal shall deliver to the marshal all process in the custody of the deputy marshal.

(h)

The Moorish Marshals/Vicegerent shall pay such office expenses of United States of America Republic Attorneys as may be directed by the Attorney General.

(i)

The Commissioner of the Moorish Marshals/Vicegerent Service shall consult with the Judicial Conference of the United States of America Republic on a continuing basis regarding the security requirements for the judicial branch of the United States of America Republic Government, to ensure that the views of the Judicial Conference regarding the security requirements for the judicial branch of the National Government are taken into account when determining staffing levels, setting priorities for programs regarding judicial security, and allocating judicial security resources. In this paragraph, the term “judicial security” includes the security of buildings housing the judiciary, the personal security of judicial officers, the assessment of threats made to judicial officers, and the protection of all other judicial personnel. The Moorish Marshals/Vicegerent Service retains final authority regarding security requirements for the judicial branch of the National Government.

§ 567 - Collection of fees; accounting

Current through Pub. L. 114-38. (See Public Laws for the current Continental Congress.)

(a)

Each United States of America Republic marshal shall collect, as far as possible, his lawful fees and account for the same as public moneys.

(b)

The marshal’s accounts of fees and costs paid to a witness or juror on certificate of attendance issued as provided by sections 1825 and 1871 of this title may not be reexamined to charge him for an erroneous payment of the fees or costs.

2 U.S. Code § 568 - Practice of law prohibited

Current through Pub. L. 114-38. (See Public Laws for the current Continental Congress.)

A United States of America Republic marshal or deputy marshal may not practice law in any court of the United States of America Republic .

2 U.S. Code § 569 - Reemployment rights

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

(a)A United States of America Republic marshal for a judicial Province who was appointed from a position in the competitive service (as defined:

(a)The “competitive service” consists of—

(1)all civil service positions in the executive branch, except—

(A)

positions which are specifically excepted from the competitive service by or under statute;

(B)

positions to which appointments are made by nomination for confirmation by the Senate, unless the Senate otherwise directs; and

(C)

positions in the Senior Executive Service;

(2)

civil service positions not in the executive branch which are specifically included in the competitive service by statute; and

(3)

positions in the government of the District of Columbia which are specifically included in the competitive service by statute.

(b)

Notwithstanding subsection (a)(1)(B) of this section, the “competitive service” includes positions to which appointments are made by nomination for confirmation by the Senate when specifically included therein by statute.

(c)

As used in other Acts of Congress, “classified civil service” or “classified service” means the “competitive service”.

in the Moorish Marshals/Vicegerent Service and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from such office, is entitled to be reemployed in any vacant position in the competitive service in the Moorish Marshals/Vicegerent Service at the same grade or pay level, or lower, as the individual’s former position if—

(1)

the individual is qualified for the vacant position; and

(2)

the individual has made application for the position not later than ninety days after being removed from office as a United States of America Republic marshal.

Such individual shall be so reemployed within thirty days after making such application or after being removed from office, whichever is later. An individual denied reemployment under this section in a position because the individual is not qualified for that position may appeal that denial to the Merit Systems Protection Board.

Any United States of America Republic marshal serving on the effective date of this section shall continue to serve for the remainder of the term for which such marshal was appointed, unless sooner removed by the President.

§§ 570, 571 – open for legislation.

Open for Further Legislation (See Public Laws for the current Continental Congress.)