

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

# H. R. 5440

To amend title 28, United States Code, to clarify the jurisdiction of the Federal courts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2006

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 28, United States Code, to clarify the jurisdiction of the Federal courts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

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

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Federal Courts Jurisdiction Clarification Act of 2006”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Resident alien exception.

Sec. 3. Citizenship of corporations and insurance companies with foreign contacts.

Sec. 4. Removal and remand procedures.

Sec. 5. Indexing the amount in controversy.

Sec. 6. Facilitating use of declarations to specify damages.

Sec. 7. Effective date.

1 **SEC. 2. RESIDENT ALIEN EXCEPTION.**

2 Section 1332(a) of title 28, United States Code, is  
3 amended—

4 (1) by striking the last sentence; and

5 (2) in paragraph (2), by inserting after “foreign  
6 state” the following: “, except that the district  
7 courts shall not have original jurisdiction of an ac-  
8 tion between a citizen of a State and a citizen or  
9 subject of a foreign state admitted to the United  
10 States for permanent residence and domiciled in the  
11 same State”.

12 **SEC. 3. CITIZENSHIP OF CORPORATIONS AND INSURANCE**  
13 **COMPANIES WITH FOREIGN CONTACTS.**

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

16 (1) by striking “a corporation” and all that fol-  
17 lows through “, except” and inserting “a corporation  
18 shall be deemed to be a citizen of every State and  
19 foreign state by which it has been incorporated and  
20 of the State or foreign state where it has its prin-  
21 cipal place of business, except”; and

22 (2) by striking all that follows “party-defend-  
23 ant,” and inserting “such insurer shall be deemed a  
24 citizen of—

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

3           “(B) every State or foreign state by which  
4           the insurer has been incorporated; and

5           “(C) the State or foreign state where the  
6           insurer has its principal place of business;  
7           and”.

8 **SEC. 4. REMOVAL AND REMAND PROCEDURES.**

9           (a) **ACTIONS REMOVABLE GENERALLY.**—Section  
10 1441(c) of title 28, United States Code, is amended to  
11 read as follows:

12           “(c)(1) If a civil action includes—

13           “(A) a claim arising under the Constitution,  
14           laws, or treaties of the United States (within the  
15           meaning of section 1331), and

16           “(B) a claim not within the original or supple-  
17           mental jurisdiction of the district court or a claim  
18           that has been made nonremovable by statute,  
19           the entire action may be removed if the action would  
20           be removable without the inclusion of the claim de-  
21           scribed in subparagraph (B).

22           “(2) Upon removal of an action described in para-  
23 graph (1), the district court shall sever from the action  
24 all claims described in paragraph (1)(B) and shall remand  
25 the severed claims to the State court from which the ac-

1 tion was removed. Only defendants against whom a claim  
2 described in paragraph (1)(A) has been asserted are re-  
3 quired to join in or consent to the removal under para-  
4 graph (1).”.

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

8 (1) The section heading is amended to read as  
9 follows:

10 **“§ 1446. Procedure for removal of civil actions”.**

11 (2) Subsection (a) is amended—

12 (A) by striking “or criminal prosecution”;

13 and

14 (B) by striking “removal signed pursuant  
15 to Rule 11 of the Federal Rules of Civil Proce-  
16 dure and containing” and inserting “removal.  
17 The notice of removal shall be signed in the  
18 same manner and with the same effect as a  
19 pleading, written motion, or other paper in a  
20 civil action in a district court of the United  
21 States, and shall contain”.

22 (3) Subsection (b) is amended—

23 (A) by inserting “(1)” after “(b)”;

24 (B) by designating the second paragraph  
25 as paragraph (3);

1           (C) by inserting after paragraph (1) (as  
2           designated by subparagraph (A) of this para-  
3           graph) the following:

4           “(2) When a civil action is removed solely under sec-  
5           tion 1441(a), all defendants who have been properly joined  
6           and served must join in or consent to the removal of the  
7           action. A defendant shall have 30 days after receipt by  
8           or service on that defendant of the initial pleading or sum-  
9           mons described in subsection (b)(1) to file the notice of  
10          removal. During the 30-day period before a defendant files  
11          a notice of removal—

12           “(A) any other defendant served before the be-  
13          ginning of that 30-day period may consent to the re-  
14          moval by the later-served defendant even though  
15          that earlier-served defendant did not previously ini-  
16          tiate or consent to removal; and

17           “(B) any defendant not yet served may join in  
18          or consent to the removal.”;

19           (D) in paragraph (3) (as designated by  
20          subparagraph (B) of this paragraph), by strik-  
21          ing “action.” and inserting “action, unless equi-  
22          table considerations warrant removal. Such equi-  
23          table considerations include whether the  
24          plaintiff has engaged in manipulative behavior,  
25          whether the defendant has acted diligently in

1 seeking to remove the action, and whether the  
2 case has progressed in State court to a point  
3 where removal would be disruptive.”; and

4 (E) by adding at the end the following:

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

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

11 “(i) non-monetary relief; or

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

16 “(B) removal of the action is proper on the  
17 basis of an amount in controversy asserted under  
18 subparagraph (A) if the district court finds, by the  
19 preponderance of the evidence, that the amount in  
20 controversy exceeds the amount specified in section  
21 1332(a).

22 “(5)(A) In a case to which paragraph (3) applies that  
23 is not removable solely because the amount in controversy  
24 does not exceed the amount specified in section 1332(a),  
25 information relating to the amount in controversy in the

1 record of the State proceeding, or in responses to dis-  
2 covery, shall be treated as an ‘other paper’ under para-  
3 graph (3). If the defendant first receives such a paper,  
4 through service or otherwise, within 1 year after the com-  
5 mencement of the action and during the trial or within  
6 30 days before the date set for trial, removal may be had  
7 only upon a finding that the plaintiff deliberately failed  
8 to disclose the actual amount in controversy in order to  
9 prevent removal.

10 “(B) If a finding is made under subparagraph (A)  
11 that the plaintiff deliberately failed to disclose the actual  
12 amount in controversy in order to prevent removal, and  
13 the notice of removal is filed more than 1 year after com-  
14 mencement of the action, that finding shall be deemed to  
15 be ‘equitable considerations’ under paragraph (3) that  
16 warrant removal.”.

17 (4) Section 1446 is further amended—

18 (A) by striking subsections (c) and (e); and

19 (B) by redesignating subsections (d) and

20 (f) as subsections (c) and (d), respectively.

21 (c) PROCEDURE FOR REMOVAL OF CRIMINAL AC-  
22 TIONS.—Chapter 89 of title 28, United States Code, is  
23 amended by inserting after section 1446 the following new  
24 section:

1 **“§ 1446a. Procedure for removal of criminal actions**

2       “(a) NOTICE OF REMOVAL.—A defendant or defend-  
3 ants desiring to remove any criminal prosecution from a  
4 State court shall file in the district court of the United  
5 States for the district and division within which such pros-  
6 ecution is pending a notice of removal. The notice of re-  
7 moval shall be signed in the same manner and to the same  
8 effect as a pleading, written motion, or other paper in a  
9 criminal prosecution in a district court of the United  
10 States and contain a short and plain statement of the  
11 grounds for removal, together with a copy of all process,  
12 pleadings, and orders served upon such defendant or de-  
13 fendants in such action.

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

21       “(2) A notice of removal of a criminal prosecution  
22 shall include all grounds for such removal. A failure to  
23 state grounds which exist at the time of the filing of the  
24 notice shall constitute a waiver of such grounds, and a  
25 second notice may be filed only on grounds not existing  
26 at the time of the original notice. For good cause shown,

1 the United States district court may grant relief from the  
2 limitations of this paragraph.

3 “(3) The filing of a notice of removal of a criminal  
4 prosecution shall not prevent the State court in which such  
5 prosecution is pending from proceeding further, except  
6 that a judgment of conviction shall not be entered unless  
7 the prosecution is first remanded.

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

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

21 “(c) WRIT OF HABEAS CORPUS.—If the defendant  
22 or defendants are in actual custody on process issued by  
23 the State court, the district court shall issue its writ of  
24 habeas corpus, and the marshal shall thereupon take such

1 defendant or defendants into custody and deliver a copy  
2 of the writ to the clerk of such State court.”.

3 (d) CONFORMING AMENDMENTS.—The table of sec-  
4 tions for chapter 89 of title 28, United States Code, is  
5 amended—

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

8 (2) by inserting after the item relating to sec-  
9 tion 1446 the following new item:

“1446a. Procedure for removal of criminal actions.”.

10 **SEC. 5. INDEXING THE AMOUNT IN CONTROVERSY.**

11 (a) IN GENERAL.—Section 1332 of title 28, United  
12 States Code, is amended by adding at the end the fol-  
13 lowing new subsection:

14 “(f)(1) Effective on January 1, 2011, and January  
15 1 of each fifth year thereafter, the dollar amount then in  
16 effect as the minimum amount in controversy applicable  
17 under subsection (a) shall be adjusted by an amount,  
18 rounded to the nearest \$5,000 (or, if midway between mul-  
19 tiples of \$5,000, to the next higher multiple of \$5,000),  
20 equal to the percentage of the dollar amount which cor-  
21 responds to the change in the Consumer Price Index for  
22 the month of September of the appropriate year, over the  
23 Consumer Price Index for the month of September of the  
24 fifth year preceding the appropriate year.

1       “(2) The Director of the Administrative Office of the  
2 United States Courts shall determine the amount of each  
3 adjustment under paragraph (1) and, not later than No-  
4 vember 15 of the appropriate year, shall submit for publi-  
5 cation in the Federal Register the amount (and the per-  
6 centage change in the Consumer Price Index that is the  
7 basis for that amount), and the new minimum amount in  
8 controversy to take effect on January 1 of the succeeding  
9 calendar year.

10       “(3) As used in this subsection—

11               “(A) the ‘appropriate year’ is the year pre-  
12 ceding the year in which the adjustment under para-  
13 graph (1) is to take effect; and

14               “(B) the term ‘Consumer Price Index’ means  
15 the Consumer Price Index for All Urban Consumers  
16 published by the Department of Labor.”.

17       (b) CONFORMING AMENDMENT.—Section 1332(a) of  
18 title 28, United States Code, is amended by inserting “as  
19 adjusted under subsection (f),” after “\$75,000,”.

20 **SEC. 6. FACILITATING USE OF DECLARATIONS TO SPECIFY**  
21 **DAMAGES.**

22       (a) REMOVAL GENERALLY.—Section 1441(a) of title  
23 28, United States Code, is amended by adding at the end  
24 the following new sentence: “If the plaintiff has filed a  
25 declaration in State court, as part of or in addition to the

1 initial pleading, providing that the plaintiff will neither  
2 seek nor accept an award of damages or entry of other  
3 relief exceeding the amount specified in section 1332(a),  
4 the case may not be removed on the basis of the jurisdic-  
5 tion under section 1332(a) as long as the plaintiff abides  
6 by the declaration and the declaration is binding under  
7 the laws and practice of the State. If the plaintiff has filed  
8 such a declaration in State court but thereafter fails to  
9 abide by that declaration, the defendant or defendants  
10 may file a notice of removal within 30 days after receiving,  
11 through service or otherwise, a copy of an amended plead-  
12 ing, motion, order or other paper from which it may first  
13 be ascertained that the plaintiff seeks or is willing to ac-  
14 cept an award of damages or other relief exceeding the  
15 amount specified in section 1332(a).”.

16 (b) PROCEDURE AFTER REMOVAL.—Section 1447 of  
17 title 28, United States Code, is amended by adding at the  
18 end the following new subsection:

19 “(f) Within 30 days after the filing of a notice of re-  
20 moval of a civil action in which the district court’s removal  
21 jurisdiction rests solely on original jurisdiction under sec-  
22 tion 1332(a), the plaintiff may file a declaration with the  
23 district court providing that the plaintiff will neither seek  
24 nor accept an award of damages or entry of other relief  
25 exceeding the amount specified in section 1332(a) of this

1 title. Upon the filing of such a declaration, the district  
2 court shall remand the action to State court unless equi-  
3 table circumstances warrant retaining the case.”.

4 **SEC. 7. EFFECTIVE DATE.**

5 (a) IN GENERAL.—Subject to subsections (b) and (c),  
6 the amendments made by this Act take effect on the date  
7 of enactment of this Act, and apply to any action or pros-  
8 ecution commenced on or after such date of enactment.

9 (b) APPLICABILITY OF CHANGE IN JURISDICTIONAL  
10 AMOUNT.—Any change in the amount in controversy  
11 under section 1332(a) of title 28, United States Code, that  
12 is made pursuant to the amendments made by section 5  
13 shall apply to any action or prosecution commenced on or  
14 after the date such change becomes effective.

15 (c) TREATMENT OF CASES REMOVED TO FEDERAL  
16 COURT.—For purposes of subsections (a) and (b ), an ac-  
17 tion or prosecution commenced in State court and re-  
18 moved to Federal court shall be deemed to commence on  
19 the date the action or prosecution was commenced in State  
20 court.

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