

Section consolidates sections 119 and 163 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology and substance.

Section 119 of title 28, U.S.C., 1940 ed., related only to transfer of cases from one division to another on stipulation of the parties.

Subsection (a) was drafted in accordance with the doctrine of forum non conveniens, permitting transfer to a more convenient forum, even though the venue is proper. As an example of the need of such a provision, see *Baltimore & Ohio R. Co. v. Kepner*, 1941, 62 S.Ct. 6, 314 U.S. 44, 86 L.Ed. 28, which was prosecuted under the Federal Employer's Liability Act in New York, although the accident occurred and the employee resided in Ohio. The new subsection requires the court to determine that the transfer is necessary for convenience of the parties and witnesses, and further, that it is in the interest of justice to do so.

Sections 143, 172, 177, and 181 of title 28, U.S.C., 1940 ed., relating to the district courts of Arizona, Montana, New Mexico, and Ohio, contained special provisions similar to subsection (b), applicable to those States. To establish uniformity, the general language of such subsection has been drafted and the special provisions of those sections omitted.

Subsection (b) is based upon section 163 of title 28, U.S.C., 1940 ed., which applied only to the district of Maine. This revised subsection extends to all judicial districts and permits transfer of cases between divisions. Criminal cases may be transferred pursuant to Rules 19-21 of the new Federal Rules of Criminal Procedure, and the criminal provisions of said section 163 are therefore omitted.

#### AMENDMENTS

2011—Subsec. (a). Pub. L. 112-63, §204(1), inserted “or to any district or division to which all parties have consented” before period at end.

Subsec. (d). Pub. L. 112-63, §204(2), substituted “Transfers from a district court of the United States to the District Court of Guam, the District Court for the Northern Mariana Islands, or the District Court of the Virgin Islands shall not be permitted under this section. As otherwise used in this section,” for “As used in this section,”.

1996—Subsec. (d). Pub. L. 104-317 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “As used in this section, ‘district court’ includes the United States District Court for the District of the Canal Zone; and ‘district’ includes the territorial jurisdiction of that court.”

1962—Subsec. (d). Pub. L. 87-845 added subsec. (d).

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-63 effective upon the expiration of the 30-day period beginning on Dec. 7, 2011, and applicable to any action commenced in a United States district court on or after such effective date, and to any action removed from a State court to a United States district court that had been commenced, within the meaning of State law, on or after such effective date, see section 205 of Pub. L. 112-63, set out as an Effective Date note under section 1390 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-317, title VI, §610(c), Oct. 19, 1996, 110 Stat. 3861, provided that: “The amendments made by this section [amending this section and section 1406 of this title] apply to cases pending on the date of the enactment of this Act [Oct. 19, 1996] and to cases commenced on or after such date.”

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-845 effective Jan. 2, 1963, see section 25 of Pub. L. 87-845, set out as a note under section 414 of this title.

### § 1405. Creation or alteration of district or division

Actions or proceedings pending at the time of the creation of a new district or division or

transfer of a county or territory from one division or district to another may be tried in the district or division as it existed at the institution of the action or proceeding, or in the district or division so created or to which the county or territory is so transferred as the parties shall agree or the court direct.

(June 25, 1948, ch. 646, 62 Stat. 937.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §121 (Mar. 3, 1911, ch. 231, §59, 36 Stat. 1103).

Enforcement of liens in like circumstances is provided by section 1656 of this title.

Remainder of section 121 of title 28, U.S.C., 1940 ed., is incorporated in section 3240 of revised title 18, Crimes and Criminal Procedure (H.R. 1600, 80th Cong.).

Changes were made in phraseology.

### § 1406. Cure or waiver of defects

(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

(b) Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

(c) As used in this section, the term “district court” includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term “district” includes the territorial jurisdiction of each such court.

(June 25, 1948, ch. 646, 62 Stat. 937; May 24, 1949, ch. 139, §81, 63 Stat. 101; Pub. L. 86-770, §1, Sept. 13, 1960, 74 Stat. 912; Pub. L. 87-845, §10, Oct. 18, 1962, 76A Stat. 699; Pub. L. 97-164, title I, §132, Apr. 2, 1982, 96 Stat. 39; Pub. L. 104-317, title VI, §610(b), Oct. 19, 1996, 110 Stat. 3860.)

#### HISTORICAL AND REVISION NOTES

##### 1948 ACT

Subsection (a) provides statutory sanction for transfer instead of dismissal, where venue is improperly laid.

Subsection (b) is declaratory of existing law. (See *Panama R.R. Co. v. Johnson*, 1924, 44 S.Ct. 391, 264 U.S. 375, 68 L.Ed. 748.) It makes clear the intent of Congress that venue provisions are not jurisdictional but may be waived.

##### 1949 ACT

This section removes an ambiguity in section 1406(a) of title 28, U.S.C., by substituting “may” for “shall”, thus making it clear that the court may decline to transfer a case brought in the wrong district under circumstances where it would not be in the interest of justice to make such transfer. [The amendment to section 1406(a) of this title described in this note was altered in the bill as enacted. See Cong. Rec., vol. 95, pt. 5, pp. 5826, 5827, 6283, 6284.]

#### AMENDMENTS

1996—Subsec. (c). Pub. L. 104-317 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “As used in this section, ‘district court’ includes the United States District Court for the District of the Canal Zone; and ‘district’ includes the territorial jurisdiction of that court.”

1982—Subsecs. (c), (d). Pub. L. 97-164 redesignated subsec. (d) as (c). Former subsec. (c), which provided that if a case within the exclusive jurisdiction of the