

the armed forces of the United States 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 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 district court of the United States for the district where it is pending in the manner prescribed by law, and it shall thereupon be entered on the docket of the district court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine the cause.

(Added Aug. 10, 1956, ch. 1041, §19(a), 70A Stat. 626.)

#### DERIVATION

Section was from the Uniform Code of Military Justice, act May 5, 1950, ch. 169, §9, 64 Stat. 146, which was based on Article 117, Articles of War, act June 4, 1920, ch. 227, subch. II, §1, 41 Stat. 811, as amended June 24, 1948, ch. 625, title II, §242, 62 Stat. 642.

#### § 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 district court of the United States for the district and division embracing the place wherein it is pending:

(1) 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, or of all persons within the jurisdiction thereof;

(2) 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.

(June 25, 1948, ch. 646, 62 Stat. 938.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §74 (Mar. 3, 1911, ch. 231, §31, 36 Stat. 1096).

Other provisions of section 74 of title 28, U.S.C., 1940 ed., are incorporated in sections 1446 and 1447 of this title.

Words "or in the part of the State where such suit or prosecution is pending" after "courts of such States," were omitted as unnecessary.

Changes were made in phraseology.

#### § 1444. Foreclosure action against United States

Any action brought under section 2410 of this title against the United States in any State court may be removed by the United States to the district court of the United States for the district and division in which the action is pending.

(June 25, 1948, ch. 646, 62 Stat. 938; May 24, 1949, ch. 139, §82, 63 Stat. 101.)

#### HISTORICAL AND REVISION NOTES

##### 1948 ACT

Based on title 28, U.S.C., 1940 ed., §903 (Mar. 4, 1931, ch. 515, §3, 46 Stat. 1529).

The procedural provisions of section 903 of title 28, U.S.C., 1940 ed., were omitted as covered by section 1446 of this title.

Changes were made in phraseology.

##### 1949 ACT

This section corrects typographical errors in section 1444 of title 28, U.S.C.

##### AMENDMENTS

1949—Act May 24, 1949, inserted "court" between "State" and "may", and substituted "division" for "divisions".

#### § 1445. Nonremovable actions

(a) 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.C. 51-54, 55-60), may not be removed to any district court of the United States.

(b) 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 district court of the United States unless the matter in controversy exceeds \$10,000, exclusive of interest and costs.

(c) A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States.

(d) 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 district court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 939; Pub. L. 85-554, §5, July 25, 1958, 72 Stat. 415; Pub. L. 95-473, §2(a)(3)(A), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 95-486, §9(b), Oct. 20, 1978, 92 Stat. 1634; Pub. L. 103-322, title IV, §40302(e)(5), Sept. 13, 1994, 108 Stat. 1942; Pub. L. 104-88, title III, §305(b), Dec. 29, 1995, 109 Stat. 944; Pub. L. 104-287, §3, Oct. 11, 1996, 110 Stat. 3388.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §71 (Mar. 3, 1911, ch. 231, §28, 36 Stat. 1094; Jan. 20, 1914, ch. 11, 38 Stat. 278; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

The words "or its receivers or trustees" were inserted in both subsections to make clear that nonremovable actions against a carrier do not become removable under section 1442 of this title when filed against court receivers or trustees.

This was the unquestioned rule prior to the act of Aug. 23, 1916, ch. 399, 39 Stat. 532, amending section 76 of title 28, U.S.C., 1940 ed., and permitting removal of actions against officers of United States courts. The cases are in conflict as to whether under that amendment the case becomes removable when the carrier is in receivership or undergoing reorganization. The revised section resolves the conflict by denying the right of removal to receivers and trustees where it would be nonexistent if the carrier were the party defendant. Thus the subject matter rather than legalistic distinctions as to the identity of the parties is made determinative consideration.

A reference in section 71 of title 28, U.S.C., 1940 ed., to sections 51-59 of title 45, U.S.C., 1940 ed., Railroads, was changed to "51-60." Such sections 51-59 embraced all of chapter 2 of said title 45 when the law on which such section 71 is based was enacted, but a new section (60) was added in 1939.

Other provisions of section 71 of title 28, U.S.C., 1940 ed., appear in section 1441 of this title.

Changes were made in phraseology.

#### REFERENCES IN TEXT

Section 40302 of the Violence Against Women Act of 1994, referred to in subsec. (d), is classified to section 13981 of Title 42, The Public Health and Welfare.

## AMENDMENTS

1996—Subsec. (a). Pub. L. 104-287 substituted “sections 1-4 and 5-10 of the Act of April 22, 1908 (45 U.S.C. 51-54, 55-60)” for “sections 51-60 of Title 45”.

1995—Subsec. (b). Pub. L. 104-88 substituted “carrier” for “common carrier” and “11706 or 14706” for “11707”.

1994—Subsec. (d). Pub. L. 103-322 added subsec. (d).

1978—Subsec. (b). Pub. L. 95-486 substituted “\$10,000” for “\$3,000”.

Pub. L. 95-473 substituted “section 11707 of title 49” for “section 20 of Title 49”.

1958—Pub. L. 85-554 substituted “Nonremovable actions” for “Carriers; nonremovable actions” in section catchline and added subsec. (c).

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-287 effective July 5, 1994, see section 8(1) of Pub. L. 104-287, set out as a note under section 5303 of Title 49, Transportation.

## EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

## EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-554 applicable only in the case of actions commenced after July 25, 1958, see section 3 of Pub. L. 85-554, set out as a note under section 1331 of this title.

**§ 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 district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal 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.

(B) 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.

(C) 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 district 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—

(i) nonmonetary relief; or

(ii) 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 district 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 district 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).

(d) **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.

(e) **COUNTERCLAIM IN 337 PROCEEDING.**—With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal 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)<sup>1</sup> Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for tes-

<sup>1</sup> So in original. Section does not contain a subsec. (f).