

## FINDINGS

Pub. L. 112-62, § 2, Nov. 29, 2011, 125 Stat. 756, provided that: "Congress finds that—

"(1) section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure provide that the time to appeal for most civil actions is 30 days, but that the appeal time for all parties is 60 days when the parties in the civil action include the United States, a United States officer, or a United States agency;

"(2) the 60-day period should apply if one of the parties is—

"(A) the United States;

"(B) a United States agency;

"(C) a United States officer or employee sued in an official capacity; or

"(D) a current or former United States 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;

"(3) section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure (as amended to take effect on December 1, 2011, in accordance with section 2074 of that title) should uniformly apply the 60-day period to those civil actions relating to a Federal officer or employee sued in an individual capacity for an act or omission occurring in connection with Federal duties;

"(4) the civil actions to which the 60-day periods should apply include all civil actions in which a legal officer of the United States represents the relevant officer or employee when the judgment or order is entered or in which the United States files the appeal for that officer or employee; and

"(5) the application of the 60-day period in section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure—

"(A) is not limited to civil actions in which representation of the United States is provided by the Department of Justice; and

"(B) includes all civil actions in which the representation of the United States is provided by a Federal legal officer acting in an official capacity, such as civil actions in which a Member, officer, or employee of the Senate or the House of Representatives is represented by the Office of Senate Legal Counsel or the Office of General Counsel of the House of Representatives."

### § 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.

(June 25, 1948, ch. 646, 62 Stat. 963.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 231 (Feb. 13, 1925, ch. 229, § 9, 43 Stat. 941).

Words "or in the Supreme Court" were omitted. Section 7 of the 1925 act containing such words related to review by the Supreme Court of the United States of decisions of the Supreme Court of the Philippine Islands and designated a certain jurisdictional amount. Such section 7 has now become obsolete, in view of the recognition of the independence of the Philippines, title 48 U.S.C., 1940 ed., § 1240, Territories and Insular Possessions, and there is no other case wherein the power of the Supreme Court to review depends on the amount or value in controversy.

### § 2109. Quorum of Supreme Court justices absent

If a case brought to the Supreme Court by direct appeal from a district court cannot be

heard and determined because of the absence of a quorum of qualified justices, the Chief Justice of the United States may order it remitted to the court of appeals for the circuit including the district 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.

(June 25, 1948, ch. 646, 62 Stat. 963.)

#### HISTORICAL AND REVISION NOTES

Based on portions of section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation (Feb. 11, 1903, ch. 544, § 2, 32 Stat. 823; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 9, 1944, ch. 239, 58 Stat. 272).

Section consolidates portions of section 29 of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., with changes of substance and phraseology.

The revised section includes the principal provisions of sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively, in case of the absence of a quorum of qualified Justices of the Supreme Court.

Sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively, were identical and were applicable only to decisions of three-judge courts in antitrust cases under section 107 of said title 15 and Interstate Commerce cases under sections 1, 8, and 12 of said title 49, "or any other acts having a like purpose that may hereinafter be enacted." The revised section broadens and extends the application of such provisions to include "any case involving a direct appeal to the Supreme Court from the decision of a district court or a district court of three judges which cannot be heard and determined because of the absence of a quorum of qualified justices." It includes direct appeals in criminal cases under section 3731 of title 18 (H.R. 1600, 80th Cong.).

Sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively provided that the Supreme Court certify the case to the Circuit Court of Appeals and that the Senior Circuit Judge, qualified to participate should designate himself and two other circuit judges next in order of seniority. Other provisions were made for designation of circuit judges from other circuits in case of insufficient circuit judges being available in the circuit.

The revised section permits the Chief Justice of the United States to designate the "court of appeals" to hear the case in banc or by means of a specially constituted court of appeals composed of the three circuit judges senior in commission who are able to sit. In case of disqualification or disability, the court shall be filled by designation and assignment as provided in chapter 15 of this title.

The provisions of section 29 of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., relating to time for appeal are incorporated in section 2101 of this title. The provisions of said sections for direct appeal to the Supreme Court are retained in said titles 15 and 49.