

36 Stat. 1094-1098; Jan. 20, 1914, ch. 11, 39 Stat. 278; Aug. 23, 1916, ch. 399, 39 Stat. 532; Apr. 16, 1920, ch. 146, 41 Stat. 554; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54).

Section consolidates procedural provisions of sections 71, 72, 74, 76, 80, 81 and 83 of title 28, U.S.C., 1940 ed., with important changes in substance and phraseology.

Subsection (a) is derived from sections 72, 76, 81 and 83 of title 28, U.S.C., 1940 ed. The remaining provisions of said section 83 are the basis of section 1448 of this title.

Subsection (b) is derived from sections 72, 74, 76 and 83 of title 28, U.S.C., 1940 ed., which have been rewritten to provide the utmost simplicity and flexibility of procedure in bringing the State court record to the district court.

[*Editorial Note.*—Subsecs. (c), (d) and (e) as originally revised and incorporated in this section read as follows:

“(c) It may order the pleadings recast and the parties realigned according to their real interest.

“(d) If any party fails to comply with its lawful orders, the district court may enter such further orders and judgments as justice requires.

“(e) If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.”]

Subsections (c) and (d) are substituted for unnecessary and inconsistent procedural provisions.

Subsection (e) [now subsec. (c)] is derived from sections 71 and 80 of title 28, U.S.C., 1940 ed. Such subsection is rewritten to eliminate the cumbersome procedure of remand. Under this chapter as revised, the petition for removal under section 1446 of this chapter will be filed in the Federal court in the first instance and the right of removal determined in that court before the petition is granted.

The provisions in section 80 of title 28, U.S.C., 1940 ed., relating to actions commenced in district courts, as distinguished from actions removed thereto, are incorporated in section 1359 of this title. Other provisions of said section 80 appear in section 1919 of this title.

1949 ACT

This section strikes out subsections (c) and (d) of section 1447 of title 28, U.S.C., as covered by the Federal Rules of Civil Procedure, and adds a new subsection to such section 1447 to remove any doubt that the former law as to the finality of an order of remand to a State court is continued. This section also amends renumbered subsection (c) to remove any doubt that the former law authorizing the district court upon remand to order payment of costs is continued.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-219 substituted “any defect other than lack of subject matter jurisdiction” for “any defect in removal procedure” in first sentence.

1991—Subsec. (b). Pub. L. 102-198 substituted “removing party” for “petitioner”.

1988—Subsec. (c). Pub. L. 100-702, § 1016(c)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.”

Subsec. (e). Pub. L. 100-702, § 1016(c)(2), added subsec. (e).

1964—Subsec. (d). Pub. L. 88-352, inserted exception provision.

1949—Subsec. (c). Act May 24, 1949, § 84(a), struck out former subsecs. (c) and (d), renumbered former subsec. (e) to be subsec. (c) and inserted at end of first sentence of new subsec. (c) “and may order the payment of just costs”.

Subsec. (d). Act May 24, 1949, § 84(b), added subsec. (d).

EXCEPTION TO SUBSECTION (d)

Act Aug. 4, 1947, ch. 458, § 3(c), 61 Stat. 732, provides in part that the United States shall have the right to appeal from any order of remand entered in any case removed to a United States district court pursuant to the provisions of act Apr. 12, 1926, ch. 115, 44 Stat. 239. These acts referred to herein relate to restrictions on land of the Five Civilized Tribes of Oklahoma and are set out as notes under section 355 of Title 25, Indians.

§ 1448. Process after removal

In all cases removed from any State court to any district court of the United States 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 district court.

This section shall not deprive any defendant upon whom process is served after removal of his right to move to remand the case.

(June 25, 1948, ch. 646, 62 Stat. 940.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 83 (Apr. 16, 1920, ch. 146, 41 Stat. 554).

Words “district court of the United States” were substituted for “United States Court,” because only the district courts now possess jurisdiction over removed civil and criminal cases.

Changes were made in phraseology.

§ 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 district court of the United States, and the clerk of such State court, upon demand, and the payment or tender of the legal fees, fails to deliver certified copies, the district 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 district court, and all such process awarded, as if certified copies had been filed in the district court.

(June 25, 1948, ch. 646, 62 Stat. 940; May 24, 1949, ch. 139, § 85, 63 Stat. 102.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 78 (Mar. 3, 1911, ch. 231, § 35, 36 Stat. 1098).

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error by eliminating from section 1449 of title 28, U.S.C., the words “any attachment or sequestration of the”, which had been inadvertently included, and inserting in lieu thereof the words, “and the clerk of such State court, upon”.

AMENDMENTS

1949—Act May 24, 1949, substituted “and the clerk of such State court, upon” for “any attachment or sequestration of the”.

§ 1450. Attachment or sequestration; securities

Whenever any action is removed from a State court to a district court of the United States,

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 district court.

(June 25, 1948, ch. 646, 62 Stat. 940.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 79 (Mar. 3, 1911, ch. 231, § 36, 36 Stat. 1098).

Changes were made in phraseology.

§ 1451. Definitions

For purposes of this chapter—

(1) The term “State court” includes the Superior Court of the District of Columbia.

(2) The term “State” includes the District of Columbia.

(Added Pub. L. 91-358, title I, § 172(d)(1), July 29, 1970, 84 Stat. 591.)

EFFECTIVE DATE

Section effective first day of seventh calendar month which begins after July 29, 1970, see section 199(a) of Pub. L. 91-358, set out as an Effective Date of 1970 Amendment note under section 1257 of this title.

§ 1452. Removal of claims related to bankruptcy cases

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit’s police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

(b) 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 under section 1254 of this title.

(Added Pub. L. 98-353, title I, § 103(a), July 10, 1984, 98 Stat. 335; amended Pub. L. 101-650, title III, § 309(c), Dec. 1, 1990, 104 Stat. 5113.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-650 inserted before period at end “by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title”.

EFFECTIVE DATE

Section effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as a note under section 151 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 district court of the United States in accordance with section 1446 (except that the 1-year limitation under section 1446(b) 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 district 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—

(A) all parties to the proceeding agree to such extension, for any period of time; or

(B) 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—

(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)¹) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

(2) 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

(3) 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.C. 77b(a)(1)) and the regulations issued thereunder).

(Added Pub. L. 109-2, § 5(a), Feb. 18, 2005, 119 Stat. 12; amended Pub. L. 111-16, § 6(2), May 7, 2009, 123 Stat. 1608.)

¹ So in original. Probably should be “77p(f)(3)”.