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 Court of Claims were filed in a district court, the district court, if it were in the interest of justice, was required to transfer the case to the Court of Claims where the case would proceed as if it had been filed in the Court of Claims on the date that it was filed in the district court, was struck out.

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

1960—Subsec. (c). Pub. L. 86–770 added subsec. (c).

1949—Subsec. (a). Act May 24, 1949, inserted ''dismiss, or if it be in the interest of justice''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–317 applicable to cases pending on Oct. 19, 1996, and to cases commenced on or after such date, see section 610(c) of Pub. L. 104–317, set out as a note under section 1404 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–845 effective Jan. 2, 1962, see section 25 of Pub. L. 87–845, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 4 of Pub. L. 86–770 provided in part that: ''The amendments made by sections 1 and 2 of this Act [adding subsec. (c) of this section and section 1506 of this title] shall apply to any case or proceeding pending on, or brought after, the date of enactment of this Act [Sept. 13, 1960] in the district courts or the Court of Claims.''

§ 1407. Multidistrict litigation

(a) When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated: *Provided, however*, That the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.

(b) Such coordinated or consolidated pretrial proceedings shall be conducted by a judge or judges to whom such actions are assigned by the judicial panel on multidistrict litigation. For this purpose, upon request of the panel, a circuit judge or a district judge may be designated and assigned temporarily for service in the transferee district by the Chief Justice of the United States or the chief judge of the circuit, as may be required, in accordance with the provisions of chapter 13 of this title. With the consent of the

transferee district court, such actions may be assigned by the panel to a judge or judges of such district. The judge or judges to whom such actions are assigned, the members of the judicial panel on multidistrict litigation, and other circuit and district judges designated when needed by the panel may exercise the powers of a district judge in any district for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.

(c) Proceedings for the transfer of an action under this section may be initiated by—

(i) the judicial panel on multidistrict litigation upon its own initiative, or

(ii) motion filed with the panel by a party in any action in which transfer for coordinated or consolidated pretrial proceedings under this section may be appropriate. A copy of such motion shall be filed in the district court in which the moving party's action is pending.

The panel shall give notice to the parties in all actions in which transfers for coordinated or consolidated pretrial proceedings are contemplated, and such notice shall specify the time and place of any hearing to determine whether such transfer shall be made. Orders of the panel to set a hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed in the office of the clerk of the district court in which a transfer hearing is to be or has been held. The panel's order of transfer shall be based upon a record of such hearing at which material evidence may be offered by any party to an action pending in any district that would be affected by the proceedings under this section, and shall be supported by findings of fact and conclusions of law based upon such record. Orders of transfer and such other orders as the panel may make thereafter shall be filed in the office of the clerk of the district court of the transferee district and shall be effective when thus filed. The clerk of the transferee district court shall forthwith transmit a certified copy of the panel's order to transfer to the clerk of the district court from which the action is being transferred. An order denying transfer shall be filed in each district wherein there is a case pending in which the motion for transfer has been made.

(d) The judicial panel on multidistrict litigation shall consist of seven circuit and district judges designated from time to time by the Chief Justice of the United States, no two of whom shall be from the same circuit. The concurrence of four members shall be necessary to any action by the panel.

(e) No proceedings for review of any order of the panel may be permitted except by extraordinary writ pursuant to the provisions of title 28, section 1651, United States Code. Petitions for an extraordinary writ to review an order of the panel to set a transfer hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed only in the court of appeals having jurisdiction over the district in which a hearing is to be or has been held. Petitions for an extraordinary writ to review an order to transfer or orders subsequent to transfer shall be filed only in the court of appeals having jurisdiction over the transferee district. There shall be no appeal or review of an order of the panel denying a motion to transfer for consolidated or coordinated proceedings.

(f) The panel may prescribe rules for the conduct of its business not inconsistent with Acts of Congress and the Federal Rules of Civil Procedure.

(g) Nothing in this section shall apply to any action in which the United States is a complainant arising under the antitrust laws. ''Antitrust laws'' as used herein include those acts referred to in the Act of October 15, 1914, as amended (38 Stat. 730; 15 U.S.C. 12), and also include the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13, 13a, and 13b) and the Act of September 26, 1914, as added March 21, 1938 (52 Stat. 116, 117; 15 U.S.C. 56); but shall not include section 4A of the Act of October 15, 1914, as added July 7, 1955 (69 Stat. 282; 15 U.S.C. 15a).

(h) Notwithstanding the provisions of section 1404 or subsection (f) of this section, the judicial panel on multidistrict litigation may consolidate and transfer with or without the consent of the parties, for both pretrial purposes and for trial, any action brought under section 4C of the Clayton Act.

(Added Pub. L. 90–296, § 1, Apr. 29, 1968, 82 Stat. 109; amended Pub. L. 94–435, title III, § 303, Sept. 30, 1976, 90 Stat. 1396.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to this title.

Section 4C of the Clayton Act, referred to in subsec. (h), is section 4C of act Oct. 15, 1914, ch. 323, as added by Pub. L. 94–435, title III, § 301, Sept. 30, 1976, 90 Stat. 1394, which is classified to section 15c of Title 15, Commerce and Trade.

AMENDMENTS

1976—Pub. L. 94–435 added subsec. (h).

§ 1408. Venue of cases under title 11

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district—

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

(Added Pub. L. 98–353, title I, § 102(a), July 10, 1984, 98 Stat. 334.)

PRIOR PROVISIONS

A prior section 1408, added by Pub. L. 95–598, title II, § 240(a), Nov. 6, 1978, 92 Stat. 2668, which related to bankruptcy appeals, did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.