

**Calendar No. 376**

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1546**

**[Report No. 103-232]**

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**A BILL**

To amend title 38, United States Code, to revise certain administrative provisions relating to the United States Court of Veterans Appeals, and for other purposes.

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MARCH 2 (legislative day, FEBRUARY 22), 1994  
Reported with an amendment

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IN THE SENATE OF THE UNITED STATES

OCTOBER 14 (legislative day, OCTOBER 13), 1993

Mr. ROCKEFELLER (for himself, Mr. DECONCINI, Mr. GRAHAM, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

MARCH 2 (legislative day, FEBRUARY 22), 1994

Reported by Mr. ROCKEFELLER, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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**A BILL**

To amend title 38, United States Code, to revise certain administrative provisions relating to the United States Court of Veterans Appeals, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Court of Veterans Ap-  
3 peals Improvement Act of 1993”.

4 **SEC. 2. CONFIRMATION OF CHIEF JUDGE.**

5 Section 7253(b) of title 38, United States Code, is  
6 amended by striking out “The judges” and inserting in  
7 lieu thereof “The chief judge and the associate judges”.

8 **SEC. 3. MAILING OF NOTICES OF APPEAL TO THE COURT**  
9 **OF VETERANS APPEALS.**

10 (a) IN GENERAL.—Section 7266(a) of title 38, Unit-  
11 ed States Code, is amended to read as follows:

12 “(a)(1) In order to obtain review by the Court  
13 of Veterans Appeals of a final decision of the Board  
14 of Veterans’ Appeals, a person adversely affected by  
15 such decision shall file a notice of appeal with the  
16 Court within 120 days after the date on which no-  
17 tice of the decision is mailed pursuant to section  
18 7104(e) of this title.

19 “(2) An appellant shall file a notice of appeal  
20 under this section by delivering or mailing the notice  
21 to the Court.

22 “(3) A notice of appeal shall be deemed to be  
23 received by the Court as follows:

24 “(A) On the date of receipt by the Court,  
25 if the notice is delivered.

1           “(B) On the date of the United States  
2           Post Service postmark stamped on the cover in  
3           which the notice is posted, if the notice is  
4           mailed.

5           “(4) For a notice of appeal mailed to the Court  
6           to be deemed to be received under paragraph (3)(B)  
7           on a particular date, the United States Postal Serv-  
8           ice postmark on the cover in which the notice is  
9           posted must be legible. The Court shall determine  
10          the legibility of any such postmark and the Court’s  
11          determination as to legibility shall be final and not  
12          subject to review by any other Court.”.

13          (b) APPLICATION.—The amendment made by sub-  
14          section (a) shall take effect on the date of the enactment  
15          of this Act and shall apply to notices of appeal that are  
16          delivered or mailed to the United States Court of Veterans  
17          Appeals on or after that date.

18          **SEC. 4. AVAILABILITY OF REVIEW BY COURT OF VETERANS**

19                               **APPEALS.**

20          (a) AVAILABILITY.—Section 402 of the Veterans’ Ju-  
21          dicial Review Act (38 U.S.C. 7251 note) is amended by  
22          striking out “in which a notice of disagreement” and all  
23          that follows through the end of the section and inserting  
24          in lieu thereof “in which the Board of Veterans’ Appeals

1 makes a final decision under section 7104 of title 38,  
2 United States Code, on or after November 18, 1988.”.

3 (b) EFFECTIVE DATE.—(1) The amendment made by  
4 subsection (a) shall take effect as of November 18, 1988,  
5 and apply to cases in which the Board of Veterans’ Ap-  
6 peals makes a final decision under section 7104 of title  
7 38, United States Code, on or after that date.

8 (2)(A) Notwithstanding paragraph (1), a person re-  
9 ferred to in subparagraph (B) shall be entitled to obtain  
10 review by the Court of Veterans Appeals of a final decision  
11 referred to in clause (ii) of that subparagraph if the person  
12 files a notice of appeal with the Court of Veterans Appeals  
13 with respect to that decision not later than 180 days after  
14 the notification date referred to in subparagraph (C).

15 (B) Subparagraph (A) applies to a person who—

16 (i) filed a notice of disagreement with the  
17 Board of Veterans’ Appeals before November 18,  
18 1988; and

19 (ii) received a final decision by the Board on  
20 the matter subject to the notice of disagreement on  
21 or after such date.

22 (C) The Secretary of Veterans Affairs shall, to the  
23 maximum extent practicable, notify each person referred  
24 to in subparagraph (B) of the eligibility of the person to

1 file a notice of appeal with the Court under subparagraph

2 (A). The date of such notification shall be deemed to be—

3 (i) the date of such notification, in the case of

4 actual notification; or

5 (ii) the date of the postmark stamped on the

6 cover in which the notification is posted, if the notice

7 is mailed.

8 **SEC. 5. CLARIFICATION OF PAYMENT OF ATTORNEY FEES**

9 **UNDER CONTINGENT FEE AGREEMENTS.**

10 Section 5904(d)(2)(A) of title 38, United States

11 Code, is amended to read as follows:

12 “(A) A fee agreement referred to in para-

13 graph (1) of this subsection is one under which

14 the total amount of the fee payable to the attor-

15 ney (i) is to be paid to the attorney by the Sec-

16 retary directly from any past due benefits

17 awarded on the basis of the claim, and (ii) is

18 contingent on whether or not the matter is re-

19 solved in a manner favorable to the claimant.”.

20 **SECTION 1. SHORT TITLE.**

21 *This Act may be cited as the “Court of Veterans Ap-*

22 *peals Improvement Act of 1993”.*

1 **SEC. 2. CONFIRMATION OF CHIEF JUDGE.**

2 *Section 7253(b) of title 38, United States Code, is*  
3 *amended by striking out “The judges” and inserting in lieu*  
4 *thereof “The chief judge and the associate judges”.*

5 **SEC. 3. MAILING OF NOTICES OF APPEAL TO THE COURT OF**  
6 **VETERANS APPEALS.**

7 *(a) IN GENERAL.—Section 7266(a) of title 38, United*  
8 *States Code, is amended to read as follows:*

9 *“(a)(1) In order to obtain review by the Court of Veter-*  
10 *ans Appeals of a final decision of the Board of Veterans’*  
11 *Appeals, a person adversely affected by such decision shall*  
12 *file a notice of appeal with the Court within 120 days after*  
13 *the date on which notice of the decision is mailed pursuant*  
14 *to section 7104(e) of this title.*

15 *“(2) An appellant shall file a notice of appeal under*  
16 *this section by delivering or mailing the notice to the Court.*

17 *“(3) A notice of appeal shall be deemed to be received*  
18 *by the Court as follows:*

19 *“(A) On the date of receipt by the Court, if the*  
20 *notice is delivered.*

21 *“(B) On the date of the United States Post Serv-*  
22 *ice postmark stamped on the cover in which the notice*  
23 *is posted, if the notice is mailed.*

24 *“(4) For a notice of appeal mailed to the Court to be*  
25 *deemed to be received under paragraph (3)(B) on a particu-*  
26 *lar date, the United States Postal Service postmark on the*

1 *cover in which the notice is posted must be legible. The*  
2 *Court shall determine the legibility of any such postmark*  
3 *and the Court's determination as to legibility shall be final*  
4 *and not subject to review by any other Court."*

5 (b) *APPLICATION.—The amendment made by sub-*  
6 *section (a) shall take effect on the date of the enactment*  
7 *of this Act and shall apply to notices of appeal that are*  
8 *delivered or mailed to the United States Court of Veterans*  
9 *Appeals on or after that date.*

10 **SEC. 4. CLARIFICATION OF PAYMENT OF ATTORNEY FEES**

11 **UNDER CONTINGENT FEE AGREEMENTS.**

12 *Section 5904(d)(2)(A) of title 38, United States Code,*  
13 *is amended to read as follows:*

14 *"(A) A fee agreement referred to in paragraph (1) of*  
15 *this subsection is one under which the total amount of the*  
16 *fee payable to the attorney (i) is to be paid to the attorney*  
17 *by the Secretary directly from any past-due benefits award-*  
18 *ed on the basis of the claim, and (ii) is contingent on wheth-*  
19 *er or not the matter is resolved in a manner favorable to*  
20 *the claimant."*

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