

105TH CONGRESS
2D SESSION

H. R. 3212

To amend title 38, United States Code, to revise the provisions of law relating to retirement of judges of the United States Court of Veterans Appeals, to provide for a staggered judicial retirement option, to rename the Court as the United States Court of Appeals for Veterans Claims, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 1998

Mr. STUMP (for himself and Mr. EVANS) (both by request) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to revise the provisions of law relating to retirement of judges of the United States Court of Veterans Appeals, to provide for a staggered judicial retirement option, to rename the Court as the United States Court of Appeals for Veterans Claims, 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,*

3 **SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38,**
4 **UNITED STATES CODE.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “Court of Veterans Appeals Act of 1998”.

1 (b) REFERENCES TO TITLE 38, UNITED STATES
2 CODE.—Except as otherwise expressly provided, whenever
3 in this Act an amendment or repeal is expressed in terms
4 of an amendment to, or repeal of, a section or other provi-
5 sion, the reference shall be considered to be made to a
6 section or other provision of title 38, United States Code.

7 **TITLE I—ADMINISTRATIVE PRO-**
8 **VISIONS RELATING TO THE**
9 **COURT**

10 **SEC. 101. AUTHORITY TO PRESCRIBE RULES AND REGULA-**
11 **TIONS.**

12 Section 7254 is amended by adding at the end the
13 following new subsection:

14 “(f) The Court may prescribe rules and regulations
15 to carry out this chapter.”.

16 **SEC. 102. CALCULATION OF YEARS OF SERVICE AS A**
17 **JUDGE.**

18 Section 7296(b) is amended by adding at the end the
19 following new paragraph:

20 “(4) For purposes of calculating the years of service
21 of an individual under this subsection and subsection (c),
22 only those years of service as a judge of the Court shall
23 be credited. In determining the number of years of such
24 service, that portion of the aggregate number of years of
25 such service that is a fractional part of one year shall be

1 disregarded if less than 6 months and shall be credited
2 as a full year if 6 months or more.”.

3 **SEC. 103. LIMITATION ON COST-OF-LIVING ADJUSTMENT TO**
4 **RETIRED PAY.**

5 Section 7296 is amended by adding at the end the
6 following new subsection:

7 “(1)(1) If a cost-of-living adjustment provided by law
8 to be made to the retired pay payable under this section
9 of a retired chief judge of the Court would (but for this
10 subsection) result in the retired pay of that retired chief
11 judge being in excess of the annual rate of pay in effect
12 for the chief judge of the court as provided in section
13 7253(e)(1) of this title, such adjustment may be made
14 only in such amount as results in the retired pay of the
15 retired chief judge being the same as that annual rate of
16 pay (as in effect on the effective date of such adjustment).

17 “(2) If a cost-of-living adjustment provided by law
18 to be made to the retired pay payable under this section
19 of a retired judge (other than a retired chief judge) of
20 the Court would (but for this subsection) result in the re-
21 tired pay of that retired judge being in excess of the an-
22 nual rate of pay in effect for judges of the court as pro-
23 vided in section 7253(e)(2) of this title, such adjustment
24 may be made only in such amount as results in the retired
25 pay of the retired judge being the same as that annual

1 rate of pay (as in effect on the effective date of such ad-
2 justment).”.

3 **SEC. 104. SURVIVOR ANNUITIES.**

4 (a) ELECTION TO PARTICIPATE.—Subsection (b) of
5 section 7297 is amended in the first sentence by inserting
6 before the period the following: “or within 6 months after
7 the date on which the judge marries if the judge has re-
8 tired under section 7296 of this title”.

9 (b) REDUCTION OF CONTRIBUTIONS OF ACTIVE
10 JUDGES.—(1) Subsection (c) of such section is amended
11 by striking out “3.5 percent of the judge’s pay” and in-
12 serting in lieu thereof “2.2 percent of the judge’s salary
13 received under section 7253(e) of this title, 3.5 percent
14 of the judge’s retired pay received under section 7296 of
15 this title when the judge is not serving in recall status
16 under section 7257 of this title, and 2.2 percent of the
17 judge’s retired pay received under such section 7296 when
18 the judge is serving in recall status under such section
19 7257”.

20 (2) The amendment made by paragraph (1) shall
21 take effect on the first day of the first pay period begin-
22 ning on or after January 1, 1995.

23 (c) INTEREST PAYMENTS.—Subsection (d) of such
24 section is amended—

25 (1) by inserting “(1)” after “(d)”; and

1 (2) by adding at the end the following new
2 paragraph:

3 “(2) If a judge has previously performed a period of
4 service as a judge, or has performed service as a judicial
5 official (as defined under section 376(a)(1) of title 28),
6 a Member of Congress, or a congressional employee, the
7 interest required under the first sentence of paragraph (1)
8 shall not be required for any period—

9 “(A) during which a judge was separated from
10 all such service; and

11 “(B) during which the judge was not receiving
12 retired pay or a retirement annuity based on service
13 as a judge or as a judicial official.”.

14 (d) SERVICE ELIGIBILITY.—(1) Subsection (f) of
15 such section is amended—

16 (A) in the matter in paragraph (1) preceding
17 subparagraph (A)—

18 (i) by striking out “at least 5 years” and
19 inserting in lieu thereof “at least 18 months”;
20 and

21 (ii) by striking out “last 5 years” and in-
22 sserting in lieu thereof “last 18 months”; and

23 (B) by adding at the end the following new
24 paragraph:

1 “(5) If a judge dies as a result of an assassination
2 and leaves a survivor or survivors who are entitled to re-
3 ceive annuity benefits under this section, the matter in
4 paragraph (1) preceding subparagraph (A) shall not
5 apply.”.

6 (2) Subsection (a) of such section is amended—

7 (A) in paragraph (2), by inserting “who is in
8 active service or who has retired under section 7296
9 of this title” after “Court”;

10 (B) in paragraph (3), by striking “7296(c)”
11 and inserting “7296”; and

12 (C) by adding at the end the following new
13 paragraph:

14 “(8) The term ‘assassination’ means the killing of a
15 judge that is motivated by the performance by that judge
16 of the judge’s official duties.”.

17 (e) AGE REQUIREMENT OF SURVIVING SPOUSE.—

18 Subparagraph (A) of subsection (f)(1) of such section is
19 amended by striking out “or following the surviving
20 spouse’s attainment of the age of 50 years, whichever is
21 later”.

22 (f) COLA FOR SURVIVOR ANNUITIES.—Subsection
23 (o) of such section is amended to read as follows:

24 “(o) Each survivor annuity payable from the retire-
25 ment fund shall be increased at the same time as, and

1 by the same percentage by which, annuities payable from
2 the Judicial Survivors' Annuities Fund are increased pur-
3 suant to section 376(m) of title 28.”.

4 **SEC. 105. EXEMPTION OF RETIREMENT FUND FROM SE-**
5 **QUESTRATION ORDERS.**

6 Section 7298 is amended by adding at the end the
7 following new subsection:

8 “(g) For purpose of section 255(g)(1)(B) of the Bal-
9 anced Budget and Emergency Deficit Control Act of 1985
10 (2 U.S.C. 905(b)(1)(B)), the retirement fund shall be
11 treated in the same manner as the Court of Federal
12 Claims Judges' Retirement Fund.”.

13 **SEC. 106. LIMITATION ON ACTIVITIES OF RETIRED JUDGES.**

14 (a) IN GENERAL.—Chapter 72 is amended by adding
15 at the end the following new section:

16 **“§ 7299. Limitation on activities of retired judges**

17 “If a retired judge of the Court (as defined in section
18 7257(a)(2) of this title) in the practice of law represents
19 (or supervises or directs the representation of) a client in
20 making any claim relating to veterans' benefits against the
21 United States or any agency thereof, the retired judge
22 shall forfeit all rights to retired pay under section 7296
23 of this title or under chapter 83 or 84 of title 5 for the
24 period beginning on the date on which the representation

1 begins and ending one year after the date on which the
2 representation ends.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of chapter 72 is amended by adding at
5 the end the following new item:

“7299. Limitation on activities of retired judges.”.

6 **TITLE II—STAGGERED RETIRE-**
7 **MENT AND RECALL PROVI-**
8 **SIONS**

9 **SEC. 201. STAGGERED RETIREMENT.**

10 (a) RETIREMENT AUTHORIZED.—One eligible judge
11 each year shall be eligible to retire under this section start-
12 ing in the year 1999 and ending in the year 2003.

13 (b) ELIGIBLE JUDGES.—

14 (1) DEFINITION OF ELIGIBLE JUDGE.—For
15 purposes of this section, an eligible judge is an indi-
16 vidual who—

17 (A) is an associate judge of the United
18 States Court of Appeals for Veterans Claims
19 who has at least 10 years of service creditable
20 under section 7296 of title 38, United States
21 Code;

22 (B) has made an election to receive retired
23 pay under section 7296 of such title;

24 (C) has at least 20 years of service allow-
25 able under section 7297(l) of such title;

1 (D) is at least 55 years of age; and

2 (E) has years of age, years of service cred-
3 itable under section 7296 of such title, and
4 years of service allowable under section 7297(l)
5 of such title not creditable under section 7296
6 of such title, that total at least 80.

7 (2) MULTIPLE ELIGIBLE JUDGES.—In the case
8 of a year in which more than one eligible judge pro-
9 vides notice in accordance with subsection (c), the
10 judge who is eligible to retire in that year shall be
11 the judge who has the greatest seniority as a judge
12 of the United States Court of Appeals for Veterans
13 Claims of the judges who provide such notice.

14 (c) NOTICE.—A judge who desires to retire under
15 subsection (d) shall provide the President and the chief
16 judge of the United States Court of Appeals for Veterans
17 Claims with written notice to that effect not later than
18 April 1 of any year specified in subsection (a). Such notice
19 shall specify the retirement date in accordance with sub-
20 section (d). Notice provided under this subsection shall be
21 irrevocable.

22 (d) RETIREMENT.—A judge who is eligible to retire
23 under subsection (a) shall retire during the fiscal year in
24 which notice is provided pursuant to subsection (c), but
25 not earlier than 90 days after the date on which such no-

1 tice is provided. Such judge shall be deemed, for all pur-
2 poses, to be retiring under section 7296(b)(1) of title 38,
3 United States Code, except that the rate of retired pay
4 for a judge retiring under this section shall, on the date
5 of such judge's separation from service, be equal to the
6 rate described in section 7296(c)(1) of such title multi-
7 plied by the percentage represented by the fraction in
8 which the numerator is the sum of the number represented
9 by years of service as a judge of the United States Court
10 of Appeals for Veterans Claims creditable under section
11 7296 of such title and the age of such judge, and the de-
12 nominator is 80.

13 (e) DUTY OF ACTUARY.—Section 7298(e)(2) is
14 amended—

15 (1) by redesignating subparagraph (C) as sub-
16 paragraph (D); and

17 (2) by inserting after subparagraph (B) the fol-
18 lowing new subparagraph:

19 “(C) For purposes of subparagraph (B) of this para-
20 graph, the term ‘present value’ includes a value deter-
21 mined by an actuary with respect to a payment that may
22 be made under subsection (b) from the retirement fund
23 within the contemplation of law.”.

1 **SEC. 202. RECALL OF RETIRED JUDGES.**

2 (a) IN GENERAL.—Chapter 72 is further amended by
3 inserting after section 7256 the following new section:

4 **“§ 7257. Recall of retired judges of the Court**

5 “(a)(1) A retired judge of the Court may be recalled
6 for further service on the Court in accordance with this
7 section. To be eligible to be recalled for such service, a
8 retired judge must provide to the chief judge of the Court
9 notice in writing that the retired judge is available for
10 such service and is willing to be recalled under this section.

11 “(2) For the purposes of this section, a retired judge
12 is a judge of the Court of Veterans Appeals who retires
13 from the Court under section 7296 of this title or under
14 chapter 83 or 84 of title 5.

15 “(b) The chief judge may recall a retired judge upon
16 written certification by the chief judge that substantial
17 service is expected to be performed by the retired judge
18 for such period as determined by the chief judge to be
19 necessary to meet the needs of the Court. Any such recall
20 may only be made with the agreement in writing of the
21 retired judge.

22 “(c) A retired judge who is recalled under this section
23 may exercise all of the powers and duties of the office of
24 a judge in active service.

25 “(d) A retired judge who is recalled under this section
26 shall be paid, during the period for which the judge serves

1 in recall status, pay at the rate of pay in effect under sec-
 2 tion 7253(e) of this title for a judge performing active
 3 service, less the amount the judge is paid in retired pay
 4 under section 7296 of this title or an annuity under the
 5 applicable provisions of chapter 83 or 84 of title 5.

6 “(e) Except as provided in subsection (d), a judge
 7 who is recalled under this section who retired under the
 8 provisions of chapter 83 or 84 of title 5 shall be considered
 9 to be a reemployed annuitant under that chapter.

10 “(f) Nothing in this section may be construed to af-
 11 fect the right of a judge who retired under chapter 83
 12 or 84 of title 5 to serve as a reemployed annuitant in ac-
 13 cordance with the provisions of title 5.”

14 (b) CLERICAL AMENDMENT.—The table of sections
 15 at the beginning of chapter 72 is amended by inserting
 16 after the item relating to section 7256 the following new
 17 item:

“7257. Recall of retired judges of the Court.”

18 **TITLE III—RENAMING OF COURT**

19 **SEC. 301. RENAMING OF THE COURT OF VETERANS AP-** 20 **PEALS.**

21 (a) IN GENERAL.—The United States Court of Vet-
 22 erans Appeals is hereby renamed as, and shall hereafter
 23 be known and designated as, the United States Court of
 24 Appeals for Veterans Claims.

1 (b) SECTION 7251.—Section 7251 is amended by
2 striking out “United States Court of Veterans Appeals”
3 and inserting in lieu thereof “United States Court of Ap-
4 peals for Veterans Claims”.

5 **SEC. 302. CONFORMING AMENDMENTS.**

6 (a) CONFORMING AMENDMENTS TO TITLE 38.—

7 (1) The following sections are amended by
8 striking out “Court of Veterans Appeals” each place
9 it appears and inserting in lieu thereof “Court of
10 Appeals for Veterans Claims”: sections 5904,
11 7101(b), 7252(a), 7253, 7254, 7255, 7256, 7261,
12 7262, 7263, 7264, 7266(a)(1), 7267(a), 7268(a),
13 7269, 7281(a), 7282(a), 7283, 7284, 7285(a), 7286,
14 7291, 7292, 7296, 7297, and 7298.

15 (2)(A) The heading of section 7286 is amended
16 to read as follows:

17 **“§ 7286. Judicial Conference of the Court”.**

18 (B) The heading of section 7291 is amended to
19 read as follows:

20 **“§ 7291. Date when Court decision becomes final”.**

21 (C) The heading of section 7298 is amended to
22 read as follows:

23 **“§ 7298. Retirement Fund”.**

24 (3) The table of sections at the beginning of
25 chapter 72 is amended as follows:

1 (A) The item relating to section 7286 is
2 amended to read as follows:

“7286. Judicial Conference of the Court.”.

3 (B) The item relating to section 7291 is
4 amended to read as follows:

“7291. Date when Court decision becomes final.”.

5 (C) The item relating to section 7298 is
6 amended to read as follows:

“7298. Retirement Fund.”.

7 (4)(A) The heading of chapter 72 is amended
8 to read as follows:

9 **“CHAPTER 72—UNITED STATES COURT OF**
10 **APPEALS FOR VETERANS CLAIMS”.**

11 (B) The item relating to chapter 72 in the table
12 of chapters at the beginning of title 38 and the item
13 relating to such chapter in the table of chapters at
14 the beginning of part V are amended to read as fol-
15 lows:

“72. United States Court of Appeals for Veterans Claims 7251.”.

16 (b) CONFORMING AMENDMENTS TO OTHER LAWS.—

17 (1) The following provisions of law are amended
18 by striking out “Court of Veterans Appeals” each
19 place it appears and inserting in lieu thereof “Court
20 of Appeals for Veterans Claims”:

21 (A) Section 8440d of title 5, United States
22 Code.

1 (B) Section 2412 of title 28, United States
2 Code.

3 (C) Section 906 of title 44, United States
4 Code.

5 (D) Section 109 of the Ethics in Govern-
6 ment Act of 1978 (5 U.S.C. App.).

7 (2)(A) The heading of section 8440d of title 5,
8 United States Code, is amended to read as follows:

9 **“§ 8440d. Judges of the United States Court of Ap-
10 peals for Veterans Claims”.**

11 (B) The item relating to such section in the
12 table of sections at the beginning of chapter 84 of
13 such title is amended to read as follows:

“8440d. Judges of the United States Court of Appeals for Veterans Claims.”.

14 (c) OTHER LEGAL REFERENCES.—Any reference in
15 a law, regulation, document, paper, or other record of the
16 United States to the United States Court of Veterans Ap-
17 peals shall be deemed to be a reference to the United
18 States Court of Appeals for Veterans Claims.

○