

108TH CONGRESS  
2D SESSION

# S. 2278

To amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into 3 circuits, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 1, 2004

Mr. ENSIGN (for himself and Mr. CRAIG) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into 3 circuits, 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.**

4       This Act may be cited as the “Ninth Circuit Judge-  
5       ship and Reorganization Act of 2004”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

1           (1) FORMER NINTH CIRCUIT.—The term  
2           “former ninth circuit” means the ninth judicial cir-  
3           cuit of the United States as in existence on the day  
4           before the effective date of this Act.

5           (2) NEW NINTH CIRCUIT.—The term “new  
6           ninth circuit” means the ninth judicial circuit of the  
7           United States established by the amendment made  
8           by section 3(2)(A).

9           (3) TWELFTH CIRCUIT.—The term “twelfth cir-  
10          cuit” means the twelfth judicial circuit of the United  
11          States established by the amendment made by sec-  
12          tion 3(2)(B).

13          (4) THIRTEENTH CIRCUIT.—The term “thir-  
14          teenth circuit” means the thirteenth judicial circuit  
15          of the United States established by the amendment  
16          made by section 3(2)(B).

17 **SEC. 3. NUMBER AND COMPOSITION OF CIRCUITS.**

18          Section 41 of title 28, United States Code, is amend-  
19 ed—

20           (1) in the matter preceding the table, by strik-  
21           ing “thirteen” and inserting “fifteen”; and

22           (2) in the table—

23                   (A) by striking the item relating to the  
24           ninth circuit and inserting the following:

“Ninth ..... California, Guam, Hawaii, Northern  
Marianas Islands.”;

1 and

2 (B) by inserting after the item relating to  
3 the eleventh circuit the following:

“Twelfth ..... Arizona, Nevada, Idaho, Montana.  
“Thirteenth ..... Alaska, Oregon, Washington.”.

4 **SEC. 4. JUDGESHIPS.**

5 (a) **NEW JUDGESHIPS.**—The President shall appoint,  
6 by and with the advice and consent of the Senate, 5 addi-  
7 tional circuit judges for the new ninth circuit court of ap-  
8 peals, whose official duty station shall be in California.  
9 The judges authorized by this paragraph shall not be ap-  
10 pointed before January 21, 2005.

11 (b) **TEMPORARY JUDGESHIPS.**—

12 (1) **APPOINTMENT OF JUDGES.**—The President  
13 shall appoint, by and with the advice and consent of  
14 the Senate, 2 additional circuit judges for the former  
15 ninth circuit court of appeals, whose official duty  
16 stations shall be in California.

17 (2) **EFFECT OF VACANCIES.**—The first 2 vacan-  
18 cies occurring on the new ninth circuit court of ap-  
19 peals 10 years or more after judges are first con-  
20 firmed to fill both temporary circuit judgeships cre-  
21 ated by this subsection shall not be filled.

22 (c) **EFFECTIVE DATE.**—This section shall take effect  
23 on the date of the enactment of this Act.

1 **SEC. 5. NUMBER OF CIRCUIT JUDGES.**

2 The table contained in section 44(a) of title 28,  
3 United States Code, is amended—

4 (1) by striking the item relating to the ninth  
5 circuit and inserting the following:

“Ninth ..... 19”;

6 and

7 (2) by inserting after the item relating to the  
8 eleventh circuit the following:

“Twelfth ..... 8  
“Thirteen ..... 6.”

9 **SEC. 6. PLACES OF CIRCUIT COURT.**

10 The table contained in section 48(a) of title 28,  
11 United States Code, is amended—

12 (1) by striking the item relating to the ninth  
13 circuit and inserting the following:

“Ninth ..... San Francisco, Los Angeles.”;

14 and

15 (2) by inserting after the item relating to the  
16 eleventh circuit the following:

“Twelfth ..... Las Vegas, Phoenix.  
“Thirteen ..... Portland, Seattle.

17 **SEC. 7. ASSIGNMENT OF CIRCUIT JUDGES.**

18 Each circuit judge of the former ninth circuit who  
19 is in regular active service and whose official duty station  
20 on the day before the effective date of this Act—

1           (1) is in California, Guam, Hawaii, or the  
2 Northern Marianas Islands shall be a circuit judge  
3 of the new ninth circuit as of such effective date;

4           (2) is in Arizona, Nevada, Idaho, or Montana  
5 shall be a circuit judge of the twelfth circuit as of  
6 such effective date; and

7           (3) is in Alaska, Oregon, or Washington shall  
8 be a circuit judge of the thirteenth circuit as of such  
9 effective date.

10 **SEC. 8. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.**

11       Each judge who is a senior circuit judge of the former  
12 ninth circuit on the day before the effective date of this  
13 Act may elect to be assigned to the new ninth circuit, the  
14 twelfth circuit, or the thirteenth circuit as of such effective  
15 date, and shall notify the Director of the Administrative  
16 Office of the United States Courts of such election.

17 **SEC. 9. SENIORITY OF JUDGES.**

18       The seniority of each judge—

19           (1) who is assigned under section 7, or

20           (2) who elects to be assigned under section 8,

21 shall run from the date of commission of such judge as

22 a judge of the former ninth circuit.

1 **SEC. 10. APPLICATION TO CASES.**

2 The following apply to any case in which, on the day  
3 before the effective date of this Act, an appeal or other  
4 proceeding has been filed with the former ninth circuit:

5 (1) If the matter has been submitted for deci-  
6 sion, further proceedings with respect to the matter  
7 shall be had in the same manner and with the same  
8 effect as if this Act had not been enacted.

9 (2) If the matter has not been submitted for de-  
10 cision, the appeal or proceeding, together with the  
11 original papers, printed records, and record entries  
12 duly certified, shall, by appropriate orders, be trans-  
13 ferred to the court to which the matter would have  
14 been submitted had this Act been in full force and  
15 effect at the time such appeal was taken or other  
16 proceeding commenced, and further proceedings with  
17 respect to the case shall be had in the same manner  
18 and with the same effect as if the appeal or other  
19 proceeding had been filed in such court.

20 (3) A petition for rehearing or a petition for re-  
21 hearing en banc in a matter decided before the effec-  
22 tive date of this Act, or submitted before the effec-  
23 tive date of this Act and decided on or after such  
24 effective date as provided in paragraph (1), shall be  
25 treated in the same manner and with the same effect  
26 as though this Act had not been enacted. If a peti-



1 **SEC. 12. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES**  
2 **AMONG CIRCUITS.**

3 Section 292 of title 28, United States Code, is  
4 amended by adding at the end the following:

5 “(f) The chief judge of the United States Court of  
6 Appeals for the Ninth Circuit may in the public interest—

7 “(1) upon request by the chief judge of the  
8 Twelfth Circuit or Thirteenth Circuit, designate and  
9 assign 1 or more district judges within the Ninth  
10 Circuit to sit upon the Court of Appeals of the  
11 Twelfth Circuit or Thirteenth Circuit, or a division  
12 thereof, whenever the business of that court so re-  
13 quires; and

14 “(2) designate and assign temporarily any dis-  
15 trict judge within the Ninth Circuit to hold a district  
16 court in any district within the Twelfth Circuit or  
17 Thirteenth Circuit.

18 “(g) The chief judge of the United States Court of  
19 Appeals for the Twelfth Circuit may in the public inter-  
20 est—

21 “(1) upon request by the chief judge of the  
22 Ninth Circuit or Thirteenth Circuit, designate and  
23 assign 1 or more district judges within the Twelfth  
24 Circuit to sit upon the Court of Appeals of the  
25 Ninth Circuit or Thirteenth Circuit, or a division

1       thereof whenever the business of that court so re-  
2       quires; and

3           “(2) designate and assign temporarily any dis-  
4       trict judge within the Twelfth Circuit to hold a dis-  
5       trict court in any district within the Ninth Circuit  
6       or Thirteenth Circuit.

7       “(h) The chief judge of the United States Court of  
8       Appeals for the Thirteenth Circuit may in the public inter-  
9       est—

10           “(1) upon request by the chief judge of the  
11       Ninth Circuit or Twelfth Circuit, designate and as-  
12       sign 1 or more district judges within the Thirteenth  
13       Circuit to sit upon the Court of Appeals of the  
14       Ninth Circuit or Twelfth Circuit, or a division there-  
15       of whenever the business of that court so requires;  
16       and

17           “(2) designate and assign temporarily any dis-  
18       trict judge within the Thirteenth Circuit to hold a  
19       district court in any district within the Ninth Circuit  
20       or Twelfth Circuit.

21       “(i) Any designations or assignments under sub-  
22       section (f), (g), or (h) shall be in conformity with the rules  
23       or orders of the court of appeals of, or the district within,  
24       as applicable, the circuit to which the judge is designated  
25       or assigned.”.

1 **SEC. 13. ADMINISTRATIVE COORDINATION.**

2 Section 332 of title 28, United States Code, is  
3 amended by adding at the end the following:

4 “(i) Any 2 contiguous circuits among the Ninth Cir-  
5 cuit, Twelfth Circuit, and Thirteenth Circuit may jointly  
6 carry out such administrative functions and activities as  
7 the judicial councils of the 2 circuits determine may ben-  
8 efit from coordination or consolidation.”.

9 **SEC. 14. ADMINISTRATION.**

10 The court of appeals for the ninth circuit as con-  
11 stituted on the day before the effective date of this Act  
12 may take such administrative action as may be required  
13 to carry out this Act and the amendments made by this  
14 Act. Such court shall cease to exist for administrative pur-  
15 poses 2 years after the date of enactment of this Act.

16 **SEC. 15. EFFECTIVE DATE.**

17 Except as provided in section 4(c), this Act and the  
18 amendments made by this Act shall take effect on the first  
19 October 1, that occurs on or after 9 months after the date  
20 on which all five judges described under section 4(a) have  
21 been appointed, by and with the advice and consent of the  
22 Senate.

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