

103D CONGRESS
1ST SESSION

S. 1546

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.

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

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,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

1 **SEC. 3. MAILING OF NOTICES OF APPEAL TO THE COURT**
2 **OF VETERANS APPEALS.**

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

5 “(a)(1) In order to obtain review by the Court of Vet-
6 erans Appeals of a final decision of the Board of Veterans’
7 Appeals, a person adversely affected by such decision shall
8 file a notice of appeal with the Court within 120 days after
9 the date on which notice of the decision is mailed pursuant
10 to section 7104(e) of this title.

11 “(2) An appellant shall file a notice of appeal under
12 this section by delivering or mailing the notice to the
13 Court.

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

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

18 “(B) On the date of the United States Post
19 Service postmark stamped on the cover in which the
20 notice is posted, if the notice is mailed.

21 “(4) For a notice of appeal mailed to the Court to
22 be deemed to be received under paragraph (3)(B) on a
23 particular date, the United States Postal Service postmark
24 on the cover in which the notice is posted must be legible.
25 The Court shall determine the legibility of any such post-

1 mark and the Court's determination as to legibility shall
2 be final and not subject to review by any other Court.”.

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

8 **SEC. 4. AVAILABILITY OF REVIEW BY COURT OF VETERANS**
9 **APPEALS.**

10 (a) AVAILABILITY.—Section 402 of the Veterans' Ju-
11 dicial Review Act (38 U.S.C. 7251 note) is amended by
12 striking out “in which a notice of disagreement” and all
13 that follows through the end of the section and inserting
14 in lieu thereof “in which the Board of Veterans' Appeals
15 makes a final decision under section 7104 of title 38,
16 United States Code, on or after November 18, 1988.”.

17 (b) EFFECTIVE DATE.—(1) The amendment made by
18 subsection (a) shall take effect as of November 18, 1988,
19 and apply to cases in which the Board of Veterans' Ap-
20 peals makes a final decision under section 7104 of title
21 38, United States Code, on or after that date.

22 (2)(A) Notwithstanding paragraph (1), a person re-
23 ferred to in subparagraph (B) shall be entitled to obtain
24 review by the Court of Veterans Appeals of a final decision
25 referred to in clause (ii) of that subparagraph if the person

1 files a notice of appeal with the Court of Veterans Appeals
2 with respect to that decision not later than 180 days after
3 the notification date referred to in subparagraph (C).

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

5 (i) filed a notice of disagreement with the
6 Board of Veterans' Appeals before November 18,
7 1988; and

8 (ii) received a final decision by the Board on
9 the matter subject to the notice of disagreement on
10 or after such date.

11 (C) The Secretary of Veterans Affairs shall, to the
12 maximum extent practicable, notify each person referred
13 to in subparagraph (B) of the eligibility of the person to
14 file a notice of appeal with the Court under subparagraph
15 (A). The date of such notification shall be deemed to be—

16 (i) the date of such notification, in the case of
17 actual notification; or

18 (ii) the date of the postmark stamped on the
19 cover in which the notification is posted, if the notice
20 is mailed.

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

22 **UNDER CONTINGENT FEE AGREEMENTS.**

23 Section 5905(d)(2)(A) of title 38, United States
24 Code, is amended to read as follows:

1 “(A) A fee agreement referred to in paragraph
2 (1) of this subsection is one under which the total
3 amount of the fee payable to the attorney (i) is to
4 be paid to the attorney by the Secretary directly
5 from any past-due benefits awarded on the basis of
6 the claim, and (ii) is contingent on whether or not
7 the matter is resolved in a manner favorable to the
8 claimant.”.

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