

116<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 8235

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IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2020

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

To provide for the modernization of electronic case management systems, 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 “Open Courts Act of  
3 2020”.

4 **SEC. 2. MODERNIZATION OF ELECTRONIC COURT RECORDS**  
5 **SYSTEMS.**

6 (a) CONSOLIDATION.—Not later than the date speci-  
7 fied in subsection (e), as modified by any adjustments cer-  
8 tified pursuant to section 6(b), the Director of the Admin-  
9 istrative Office of the United States Courts, in coordina-  
10 tion with the Administrator of General Services, shall de-  
11 velop, deliver, and sustain, consistent with the require-  
12 ments of this section and section 3, one system for all pub-  
13 lic court records.

14 (b) REQUIREMENTS OF SYSTEM.—The system de-  
15 scribed in subsection (a) shall comply with the following  
16 requirements:

17 (1) The system shall provide search functions,  
18 developed in coordination with the Administrator of  
19 General Services, for use by the public and by par-  
20 ties before the court.

21 (2) The system shall make public court records  
22 automatically accessible to the public upon receipt of  
23 such records.

24 (3) Any information made available through a  
25 website established pursuant to section 205 of the

1 E-Government Act of 2002 shall be included in the  
2 system.

3 (4) Any website for the system shall substan-  
4 tially comply with the requirements under sub-  
5 sections (b) and (c) of section 205 of the E-Govern-  
6 ment Act of 2002.

7 (5) To the extent practicable, external websites  
8 shall be able to link to documents on the system.  
9 Each website established pursuant to section 205 of  
10 the E-Government Act of 2002 shall contain a link  
11 to the system.

12 (c) DATA STANDARDS.—

13 (1) ESTABLISHMENT OF DATA STANDARDS.—  
14 The Director of the Administrative Office of the  
15 United States Courts, in coordination with the Ad-  
16 ministrator of General Services and the Archivist of  
17 the United States, shall establish data standards for  
18 the system described in this section and section 3.

19 (2) REQUIREMENTS.—The data standards es-  
20 tablished under paragraph (1) shall, to the extent  
21 reasonable and practicable—

22 (A) incorporate widely accepted common  
23 data elements;

1           (B) incorporate a widely accepted, non-  
2           proprietary, full text searchable, platform-inde-  
3           pendent computer-readable format; and

4           (C) be capable of being continually up-  
5           graded as necessary.

6           (3) DEADLINES.—Not later than 9 months  
7           after the date of enactment of this Act, the Director  
8           of the Administrative Office of the United States  
9           Courts shall issue guidance to all Federal courts on  
10          the data standards established under this section.

11          (d) USE OF TECHNOLOGY.—In carrying out the du-  
12          ties under subsection (a), the Director shall use modern  
13          technology in order—

14               (1) to improve security, data accessibility, data  
15               quality, affordability, and performance; and

16               (2) to minimize the burden on pro se litigants.

17          (e) DATE SPECIFIED.—The date specified in this  
18          subsection is January 1, 2025, unless the Administrator  
19          of General Services certifies to Congress, by not later than  
20          6 months after the date of enactment of this Act, that  
21          an additional period of time is required. If the Adminis-  
22          trator so certifies, the date specified in this subsection  
23          shall be a date that is no later than January 1, 2026.

1 (f) FUNDS FOR ESTABLISHMENT, OPERATION, AND  
2 MAINTENANCE OF MODERNIZED COURT RECORDS SYS-  
3 TEM.—

4 (1) SHORT TERM ACCESS FEES TO FUND DE-  
5 VELOPMENT AND DELIVERY OF MODERNIZED COURT  
6 RECORDS SYSTEM.—Until the date specified in sub-  
7 section (e), to cover the costs of carrying out this  
8 section and section 3 and pursuant to sections 1913,  
9 1914, 1926, 1930, and 1932 of title 28, United  
10 States Code, the Judicial Conference shall prescribe  
11 a progressive schedule of reasonable additional fees  
12 for persons, other than government agencies, who  
13 accrue fees for electronic access to information  
14 under section 303 of Public Law 102–140 (28  
15 U.S.C. 1913 note; 105 Stat. 807) in an amount of  
16 \$6,000 or greater in any quarter. Any such addi-  
17 tional fees shall be assessed on a progressive fee  
18 schedule according to the level of use so that higher  
19 volume users are assessed higher fees.

20 (2) PRICING FOR HIGH-VOLUME, FOR-PROFIT  
21 USE.—

22 (A) IN GENERAL.—Pursuant to sections  
23 1913, 1914, 1926, 1930, and 1932 of title 28,  
24 United States Code, the Director of the Admin-  
25 istrative Office of the United States Courts, in

1 coordination with the Administrator of General  
2 Services and the Office of Technology Trans-  
3 formation of the General Services Administra-  
4 tion, may prescribe a schedule of reasonable  
5 fees for high-volume, for-profit public users of  
6 the system described in this section and section  
7 3, to facilitate service-level agreements for max-  
8 imum response times, integrations, high avail-  
9 ability, and service and support.

10 (B) FEE REQUIREMENTS.—The schedule  
11 of fees described in paragraph (1) shall be  
12 based on a determination of specific and sub-  
13 stantial need, and may not impair access to jus-  
14 tice and the public right of access to court  
15 records, restrain innovation in the provision of  
16 legal services and access to public court records,  
17 nor inhibit not for profit research of the busi-  
18 ness of the Federal courts.

19 (3) FEES TO FUND OPERATION AND MAINTENANCE OF  
20 MODERNIZED COURT RECORDS SYSTEM.—  
21

22 (A) IN GENERAL.—To cover the costs of  
23 carrying out this Act, the Judicial Conference  
24 of the United States may, only to the extent  
25 necessary, prescribe schedules of reasonable

1 user fees, pursuant to sections 1913, 1914,  
2 1926, 1930, and 1932 of title 28, United States  
3 Code. Such fees shall be based on the extent of  
4 use of the system described under this section  
5 and section 3 as well as factors such as feasi-  
6 bility, fairness to other users of the system, and  
7 efficacy, and may not foreclose access to justice  
8 and the public right of access to court records.

9 (B) FILING FEES PROHIBITED.—The Judi-  
10 cial Conference of the United States may not  
11 prescribe filing fees to cover the cost of the sys-  
12 tem described in this section and section 3 un-  
13 less the Judicial Conference determines that all  
14 other sources of fees will not cover the costs of  
15 such system. Only after such a determination  
16 and only to the extent necessary, the Judicial  
17 Conference may prescribe schedules of progres-  
18 sive filing fees under subparagraph (A). In ad-  
19 dition to the requirements of subparagraph (A),  
20 such filing fees—

21 (i) shall be based on factors to ensure  
22 that such schedules are graduated and eq-  
23 uitable, including the type of action and  
24 claim for relief, the status of a filer, the  
25 amount of damages demanded, the esti-

1 mated complexity of the type of action, and  
2 the interests of justice;

3 (ii) may be prescribed for the filing of  
4 a counterclaim;

5 (iii) shall not apply in the case of a  
6 pro se litigant or litigant who certifies the  
7 litigant's financial hardship;

8 (iv) shall not be a basis for rejecting  
9 a filing or otherwise denying a party seek-  
10 ing relief access to the courts of the United  
11 States;

12 (v) shall be assessed according to  
13 schedules, not on a case-by-case, ad hoc  
14 basis; and

15 (vi) shall not be greater than 15 per-  
16 cent of any other fees associated with the  
17 filing.

18 (4) USE OF FUNDS.—

19 (A) DEPOSIT FEES.—All fees collected  
20 under this subsection shall be deposited as off-  
21 setting collections to the Judiciary Information  
22 Technology Fund pursuant to section  
23 612(c)(1)(A) of title 28, United States Code, to  
24 reimburse expenses incurred in carrying out  
25 this section.



1 (B) AUTHORIZED USES OF FEES.—  
2 Amounts deposited to the Judiciary Information  
3 Technology Fund pursuant to this paragraph  
4 and not used to reimburse expenses incurred in  
5 carrying out this section and section 3 may be  
6 used pursuant to section 612(a) of title 28,  
7 United States Code.

8 (5) INTEREST OF JUSTICE.—A court may waive  
9 any fee imposed under paragraph (3) in the interest  
10 of justice upon motion.

11 (6) EFFECTIVE DATE.—Paragraphs (2) and (3)  
12 shall take effect on the date specified in subsection  
13 (e). Paragraph (1) and section 303 of Public Law  
14 102–140 (28 U.S.C. 1913 note; 105 Stat. 807) shall  
15 cease to have effect on that date.

16 **SEC. 3. PUBLIC ACCESS TO ELECTRONIC COURT RECORDS**  
17 **SYSTEM REQUIREMENT.**

18 (a) IN GENERAL.—Not later than the date specified  
19 in section 2(e), and subject to any certification under sec-  
20 tion 6(b), the Director of the Administrative Office of the  
21 United States Courts, in coordination with the Adminis-  
22 trator of General Services, shall make all materials in the  
23 system described in section 2 and this section publicly ac-  
24 cessible, free of charge and without requiring registration.

1 (b) USE OF TECHNOLOGY.—In providing public ac-  
2 cess under subsection (a), the Director shall, in coordina-  
3 tion with the Administrator of General Services, use mod-  
4 ern technology in order—

5 (1) to improve security, data accessibility, qual-  
6 ity, ease of public access, affordability, and perform-  
7 ance; and

8 (2) to minimize the burden on pro se litigants.

9 (c) FUNDING FOR PUBLIC ACCESS TO MODERNIZED  
10 ELECTRONIC COURT RECORDS SYSTEM.—

11 (1) IN GENERAL.—To cover any marginal costs  
12 of ensuring the public accessibility, free of charge, of  
13 all materials in the system in accordance with this  
14 section, the Judicial Conference of the United States  
15 shall collect an annual fee from Federal agencies  
16 equal to the Public Access to Court Electronic  
17 Records access fees paid by those agencies in 2018,  
18 as adjusted for inflation. All fees collected under this  
19 subsection shall be deposited as offsetting collections  
20 to the Judiciary Information Technology Fund pur-  
21 suant to section 612(c)(1)(A) of title 28, United  
22 States Code, to reimburse expenses incurred in pro-  
23 viding services in accordance with this section.

24 (2) AUTHORIZED USES OF FEES.—Amounts de-  
25 posited to the Judiciary Information Technology

1 Fund pursuant to this subsection and not used to  
2 reimburse expenses incurred in carrying out this sec-  
3 tion may be used to reimburse expenses incurred in  
4 carrying out section 2. Amounts not used to reim-  
5 burse expenses incurred in carrying out section 2  
6 may be used pursuant to section 612(a) of title 28,  
7 United States Code.

8 (3) EFFECTIVE DATE.—Paragraph (1) shall  
9 take effect beginning on the date specified in section  
10 2(e).

11 **SEC. 4. ENSURING MODERN DEVELOPMENT STANDARDS.**

12 (a) INDUSTRY STANDARDS.—The system described  
13 in sections 2 and 3 shall be developed in accordance with  
14 industry standards for the incremental development of  
15 new information technology systems, including user-cen-  
16 tered design, Agile software development practices and  
17 procurement, and service-oriented architecture.

18 (b) ANALYSES.—The Director of the Administrative  
19 Office of the United States Courts shall, in cooperation  
20 with the Administrator of General Services, conduct reg-  
21 ular analyses at each stage of system development to en-  
22 sure that any requirements—

23 (1) are consistent with this Act;

24 (2) meet the business needs of users of the sys-  
25 tem, the public, and the judiciary; and

1           (3) comply with relevant statutes and rules, in-  
2           cluding chapter 131 of title 28, United States Code  
3           (commonly known as the “Rules Enabling Act”), the  
4           Federal Rules of Procedure, and local rules and or-  
5           ders of Federal courts.

6           (c) INITIAL PLAN.—Not later than 6 months after  
7           the date of enactment of this Act, the Director of the Ad-  
8           ministrative Office of the United States Courts shall sub-  
9           mit to Congress a report with respect to its initial plan  
10          for development of the system after consultation with the  
11          Office of Technology Transformation Services of the Gen-  
12          eral Services Administration and the United States Digital  
13          Service, which may include an analysis of the state of the  
14          system as of the date of enactment of this Act, an ap-  
15          proach for developing the system consistent with sections  
16          2 and 3 of this Act, and a proposed timeline for develop-  
17          ment.

18          (d) REPORTS AND NOTICE.—

19                 (1) REPORTS.—

20                         (A) IN GENERAL.—Each quarter after the  
21                         issuance of the report described in subsection  
22                         (c), the Director of the Administrative Office of  
23                         the United States Courts shall report quarterly  
24                         to the Committees on the Judiciary of the  
25                         House of Representatives and the Senate on

1 progress of the development of the system, im-  
2 provements achieved, and risks that arise (such  
3 as lack of funding source or lack of techno-  
4 logical solutions to meet the needs of this Act  
5 or applicable statutes and rules). Such report  
6 shall include an assessment of vendors' compli-  
7 ance with a quality assessment surveillance  
8 plan, code quality, and whether the system is  
9 meeting users' needs.

10 (B) SYSTEM STATUS.—Not later than 60  
11 days after the end of each fiscal year, the  
12 Comptroller General of the United States shall  
13 report to Congress on the policies, goals, per-  
14 formance, budget, contracts, fee proposals, and  
15 user fees of the Administrative Office of the  
16 United States Courts, including input from a  
17 cross-section of the nongovernmental users and  
18 stakeholders, with respect to the system de-  
19 scribed in sections 2 and 3 of this Act.

20 (2) NOTICE.—Not later than 6 months after  
21 the date of enactment of this Act, and quarterly  
22 thereafter, the Comptroller General of the United  
23 States shall notify Congress that the Director of the  
24 Administrative Office of the United States Courts  
25 has—

1 (A) produced additional usable  
2 functionality of the system described under sec-  
3 tions 2 and 3 of this Act;

4 (B) held live, publicly accessible dem-  
5 onstrations of software in development; and

6 (C) allowed the Comptroller General or a  
7 designee to attend all sprint reviews held during  
8 such 6 month or quarterly period.

9 **SEC. 5. REVIEW AND PUBLICATION OF USER FEES.**

10 (a) PERIODIC REVIEW.—The Judicial Conference of  
11 the United States shall review any schedule of fees pre-  
12 scribed under this Act 3 years after such schedule becomes  
13 effective and every 3 years thereafter to ensure that the  
14 schedule meets the requirement of this Act. If a fee sched-  
15 ule does not meet such requirements, the Judicial Con-  
16 ference shall prescribe a new schedule of fees pursuant  
17 to this section and submit the new schedule of fees to Con-  
18 gress pursuant to this section.

19 (b) FEE PROPOSAL AND COMMENT PERIODS.—

20 (1) PUBLIC COMMENT.—The Judicial Con-  
21 ference of the United States shall publish any sched-  
22 ule of new fees or fee adjustments, as authorized  
23 under this Act, in the Federal Register and on the  
24 website of the United States Courts. The Judicial

1 Conference shall accept public comment on the pro-  
2 posed fees for a period of not less than 60 days.

3 (2) PUBLICATION OF FINAL SCHEDULE OF NEW  
4 FEES OR FEE ADJUSTMENTS.—After the period  
5 specified in paragraph (2), the final schedule of new  
6 fees or fee adjustments shall be published in the  
7 Federal Register and on the website of the United  
8 States Courts along with an explanation of any  
9 changes from the proposed schedule of new fees or  
10 fee adjustments.

11 (3) CONGRESSIONAL REVIEW PERIOD.—A  
12 schedule of fees set or adjusted under paragraph (3)  
13 may not become effective—

14 (A) before the end of the 90-day period be-  
15 ginning on the day after the date on which the  
16 Judicial Conference publishes the schedule of  
17 new fees or fee adjustments under paragraph  
18 (3); or

19 (B) if a law is enacted disapproving such  
20 fee.

21 (c) STUDY.—

22 (1) IN GENERAL.—The Judicial Conference of  
23 the United States shall periodically study the system  
24 described in sections 2 and 3 of this Act in accord-  
25 ance with this section. The study shall examine—

1 (A) the relative extent to which specific  
2 functions and usage of the system are sup-  
3 ported, directly or indirectly, by fees, appropria-  
4 tions, and other sources of revenue; and

5 (B) whether, and to what extent, there are  
6 additional fees of any kind that could be more  
7 appropriately imposed to support the operations  
8 and maintenance of the system and whether or  
9 not any such fees should or must be imposed by  
10 statute or by judiciary regulation;

11 (C) whether, and to what extent, there are  
12 additional appropriations that should be pur-  
13 sued that should be provided to support the sys-  
14 tem in lieu of fees; and

15 (D) whether, and to what extent, there are  
16 other sources of revenue that should be pro-  
17 vided to support the system.

18 (2) CONSIDERATIONS.—In determining the ap-  
19 propriateness of any fees, the Judicial Conference of  
20 the United States shall consider the extent to which  
21 any such fees would—

22 (A) negatively or positively affect the ad-  
23 ministration of justice;

24 (B) impose inappropriate burdens on ac-  
25 cess to justice by litigants;



1 (C) relate to the relative impact of activi-  
2 ties on system costs;

3 (D) improve fairness to users;

4 (E) otherwise be fair or unfair to the pub-  
5 lic;

6 (F) be feasible to implement effectively;

7 and

8 (G) generate meaningful revenue.

9 (3) REPORT.—Not later than 1 year after the  
10 date of enactment of this Act, the Judicial Con-  
11 ference of the United States shall submit to the  
12 Committees on the Judiciary of the House of Rep-  
13 resentative and the Senate a report on the conclu-  
14 sions of the study described under this section.

15 (4) FEE AUTHORITY.—If the Judicial Con-  
16 ference of the United States determines, pursuant to  
17 subsection (a), that additional fees are reasonable  
18 and necessary to fund the system described in sec-  
19 tions 2 and 3, it may promulgate such fees pursuant  
20 to section 2(f)(3)(A).

21 (5) ADDITIONAL REPORT.—Not less frequently  
22 than every 3 years, the Judicial Conference shall re-  
23 view the matters described in this subsection and re-  
24 port any new findings to Congress as described in

1 this subsection. Any fees may be adjusted pursuant  
2 to section 2(f)(3)(A).

3 **SEC. 6. REPORTING AND CERTIFICATION TO CONGRESS ON**  
4 **FINANCES.**

5 (a) ANNUAL REPORT AND CONSULTATION CON-  
6 CERNING FUNDING FOR THE FOLLOWING FISCAL  
7 YEAR.—At the beginning of each fiscal year after the date  
8 of enactment of this Act, the Director of the Administra-  
9 tive Office of the United States Courts shall submit to  
10 the Committees on the Judiciary of the House of Rep-  
11 resentatives and the Senate a report on—

12 (1) the status of funding the system described  
13 under sections 2 and 3; and

14 (2) plans for any new fee proposals or adjust-  
15 ments and whether there is a foreseeable need to use  
16 the certification authority provided under subsection  
17 (b)(2) in the following fiscal year.

18 (b) CERTIFICATION REGARDING ANTICIPATED  
19 FUNDING IN THE CURRENT FISCAL YEAR.—

20 (1) IN GENERAL.—The Director of the Admin-  
21 istrative Office of the United States Courts may  
22 treat any and all receipts, funds, expenditures and  
23 costs associated with the system established under  
24 sections 2 and 3 as constituting a separate item in  
25 its budget distinct from the remainder of its budget.

1           (2) CERTIFICATION.—At the beginning of a fis-  
2 cal year, starting in fiscal year 2023, and only when  
3 necessary, the Director of the Administrative Office  
4 of the United States Courts may submit a certifi-  
5 cation, including supporting documentation and  
6 analysis, to the Committees on the Judiciary of the  
7 House of Representatives and the Senate, which—

8           (A) identifies any expected deficit in funds  
9 for that fiscal year; and

10           (B) specifies the Director’s response for  
11 such deficit for the remainder of that fiscal  
12 year, including—

13           (i) modifying the scope and scale of  
14 the system described in sections 2 and 3;

15           (ii) increasing fees or other receipts  
16 within the Judicial Conference’s authority;  
17 and

18           (iii) temporarily delaying the delivery  
19 of the system.

20           (3) CONSULTATION.—Not later than 30 days  
21 after receipt of the certification described in para-  
22 graph (2), the Director of the Administrative Office  
23 of the United States Courts and the Chairs and  
24 Ranking Members of the Committees on the Judici-  
25 ary of the House of Representatives and the Senate

1 shall meet in person concerning the certification,  
2 supporting documentation, and analysis.

3 (4) IMPLEMENTATION.—The Director of the  
4 Administrative Office of the United States Courts  
5 may implement its response described in paragraph  
6 (2) any time after the 30-day period following the  
7 consultation described in paragraph (3).

8 (5) GAO REVIEW.—In any fiscal year during  
9 which such certification is issued and implemented,  
10 the Comptroller General of the United States shall  
11 conduct a comprehensive review of the certification  
12 not later than 120 days after its submission, includ-  
13 ing—

14 (A) the accuracy of the expectations of the  
15 Director of the Administrative Office of the  
16 United States Courts with respect to any deficit  
17 in funds;

18 (B) the efficacy of the Director's rec-  
19 ommended response, and

20 (C) the Comptroller General's rec-  
21 ommendations for alternative or additional re-  
22 sponses submitted as a report to the Director  
23 and Committees on the Judiciary of the House  
24 of Representatives and the Senate.

1           (6) DIRECTOR RESPONSE TO REVIEW.—Not  
2 later than 60 days after the Comptroller General of  
3 the United States conducts a review under para-  
4 graph (5), the Director of the Administrative Office  
5 of the United States Courts shall prepare and sub-  
6 mit to the Committees on the Judiciary of the  
7 House of Representatives and the Senate a response  
8 to such review.

9 **SEC. 7. RULE OF CONSTRUCTION.**

10       Nothing in this Act, or the amendments made by this  
11 Act, shall be construed to—

12           (1) affect the filing fees or other filing proce-  
13 dures for prisoners; or

14           (2) abrogate, limit, or modify the requirements  
15 described in section 1915 of title 28, United States  
16 Code.

17 **SEC. 8. DIGITAL ACCESSIBILITY STANDARDS.**

18       The system described under sections 2 and 3 of this  
19 Act shall comply with relevant digital accessibility stand-  
20 ards established pursuant to section 508 of the Rehabilita-  
21 tion Act of 1973.

22 **SEC. 9. DETERMINATION OF BUDGETARY EFFECTS.**

23       The budgetary effects of this Act, for the purpose of  
24 complying with the Statutory Pay-As-You-Go Act of 2010,  
25 shall be determined by reference to the latest statement

1 titled “Budgetary Effects of PAYGO Legislation” for this  
2 Act, submitted for printing in the Congressional Record  
3 by the Chairman of the House Budget Committee, pro-  
4 vided that such statement has been submitted prior to the  
5 vote on passage.

Passed the House of Representatives December 8,  
2020.

Attest:

CHERYL L. JOHNSON,

*Clerk.*