

108TH CONGRESS  
1ST SESSION

# H. R. 2723

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 two circuits, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2003

Mr. SIMPSON introduced the following bill; which was 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 two 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 Court  
5 of Appeals Judgeship and Reorganization Act of 2003”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1           (1) the term “former ninth circuit” means the  
2           ninth judicial circuit of the United States as in ex-  
3           istence on the day before the effective date of this  
4           Act;

5           (2) the term “new ninth circuit” means the  
6           ninth judicial circuit of the United States established  
7           by the amendment made by section 3(2)(A); and

8           (3) the term “twelfth circuit” means the twelfth  
9           judicial circuit of the United States established by  
10          the amendment made by section 3(2)(B).

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

12          Section 41 of title 28, United States Code, is amend-  
13 ed—

14           (1) in the matter preceding the table, by strik-  
15          ing “thirteen” and inserting “fourteen”; and

16           (2) in the table—

17                   (A) by striking the item relating to the  
18          ninth circuit and inserting the following:

“Ninth ..... Arizona, California, Nevada.”;

19          and

20                   (B) by inserting after the item relating to  
21          the eleventh circuit the following:

“Twelfth ..... Alaska, Guam, Hawaii, Idaho, Mon-  
tana, Northern Mariana Islands,  
Oregon, Washington.”.

22 **SEC. 4. JUDGESHIPS.**

23          (a) NEW JUDGESHIPS.—

1           (1) FOR FORMER NINTH CIRCUIT.—The Presi-  
2           dent shall appoint, by and with the advice and con-  
3           sent of the Senate, 2 additional circuit judges for  
4           the former ninth circuit court of appeals, whose offi-  
5           cial duty stations shall be in Arizona, California, or  
6           Nevada.

7           (2) FOR NEW NINTH CIRCUIT.—The President  
8           shall appoint, by and with the advice and consent of  
9           the Senate, 3 additional circuit judges for the new  
10          ninth circuit court of appeals. The judges authorized  
11          by this paragraph shall not be appointed before Jan-  
12          uary 21, 2005.

13          (b) TEMPORARY JUDGESHIPS.—

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

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

24           (c) EFFECTIVE DATE.—This section shall take effect  
25          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 ..... 24”;

6 and

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

“Twelfth ..... 9”.

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, Pasadena, Phoenix.”;

14 and

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

“Twelfth ..... 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 Arizona, California, or Nevada shall be  
2           a circuit judge of the new ninth circuit as of such  
3           effective date; and

4           (2) is in Alaska, Guam, Hawaii, Idaho, Mon-  
5           tana, Northern Mariana Islands, Oregon, or Wash-  
6           ington shall be a circuit judge of the twelfth circuit  
7           as of such effective date.

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

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

15   **SEC. 9. SENIORITY OF JUDGES.**

16          The seniority of each judge—

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

18               (2) who elects to be assigned under section 8,  
19          shall run from the date of commission of such judge as  
20          a judge of the former ninth circuit.

21   **SEC. 10. APPLICATION TO CASES.**

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

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

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

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

1 **SEC. 11. TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES**  
2 **BETWEEN CIRCUITS.**

3 Section 291 of title 28, United States Code, is  
4 amended by adding at the end the following new sub-  
5 sections:

6 “(c) The chief judge of the Ninth Circuit may, in the  
7 public interest and upon request by the chief judge of the  
8 Twelfth Circuit, designate and assign temporarily any cir-  
9 cuit judge of the Ninth Circuit to act as circuit judge in  
10 the Twelfth Circuit.

11 “(d) The chief judge of the Twelfth Circuit may, in  
12 the public interest and upon request by the chief judge  
13 of the Ninth Circuit, designate and assign temporarily any  
14 circuit judge of the Twelfth Circuit to act as circuit judge  
15 in the Ninth Circuit.”.

16 **SEC. 12. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES**  
17 **BETWEEN CIRCUITS.**

18 Section 292 of title 28, United States Code, is  
19 amended by adding at the end the following new sub-  
20 sections:

21 “(f) The chief judge of the Ninth Circuit may in the  
22 public interest—

23 “(1) upon request by the chief judge of the  
24 Twelfth Circuit, designate and assign one or more  
25 district judges within the Ninth Circuit to sit upon  
26 the Court of Appeals of the Twelfth Circuit or a di-

1 vision thereof whenever the business of that court so  
2 requires; and

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

6 “(g) The chief judge of the Twelfth Circuit may in  
7 the public interest—

8 “(1) upon request by the chief judge of the  
9 Ninth Circuit, designate and assign one or more dis-  
10 trict judges within the Twelfth Circuit to sit upon  
11 the Court of Appeals of the Ninth Circuit or a divi-  
12 sion thereof whenever the business of that court so  
13 requires; and

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

17 “(h) Any designations or assignments under sub-  
18 section (f)(1) or (g)(1) shall be in conformity with the  
19 rules or orders of the court of appeals of the circuit to  
20 which the judge is designated or assigned.”.

21 **SEC. 13. ADMINISTRATIVE COORDINATION.**

22 Section 332 of title 28, United States Code, is  
23 amended by adding at the end the following new sub-  
24 section:

1       “(i) Any 2 contiguous circuits may jointly carry out  
2 such administrative functions and activities as the judicial  
3 councils of the 2 circuits determine may benefit from co-  
4 ordination or consolidation.”.

5 **SEC. 14. ADMINISTRATION.**

6       The court of appeals for the ninth circuit as con-  
7 stituted on the day before the effective date of this Act  
8 may take such administrative action as may be required  
9 to carry out this Act and the amendments made by this  
10 Act. Such court shall cease to exist for administrative pur-  
11 poses on October 1, 2006.

12 **SEC. 15. EFFECTIVE DATE.**

13       Except as provided in section 4(c), this Act and the  
14 amendments made by this Act shall take effect on October  
15 1, 2004.

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