

## **Video Teleconferencing for Criminal Proceedings (Division B, Sec. 15002)**

In-person court proceedings present a risk of exposure and spread of the coronavirus to court personnel, the parties, and their lawyers, which also creates a broader public health risk as these individuals interact in their larger communities. This provision allows courts to limit in-person proceedings in order to help stop the spread of the coronavirus. It authorizes the courts to conduct certain criminal proceedings by videoconference or telephonically, provided that the defendant consents after consultation with counsel.

Section (a) defines the “covered emergency period” as beginning when the President declared a national emergency with respect to the coronavirus and ending 30 days after the declaration terminates.

Section (b)(1) provides that if the Judicial Conference of the United States finds that the national emergency affects the courts, a Chief Judge may authorize the use of video or telephone conferencing for various criminal proceedings.

Section (b)(2) provides that if the Judicial Conference of the United States specifically finds that conducting felony pleas and sentencing cannot be conducted in person without endangering public health and safety, and that delay would harm the interests of justice, a Chief Judge may authorize the use of video or telephone conferencing for felony pleas and sentencing.

Section(b)(3) requires that Chief Judges review authorizations to conduct hearings by video or telephone every 90 days.

Section(b)(4) requires defendants, after consulting with counsel, to consent to conducting hearings by video or telephone.

Section (b)(5) terminates the authority to conduct hearings by video or telephone either on the last day of the emergency or when the Judicial Conference determines that the measures are no longer necessary.

Section(b)(6) instructs the Judicial Conference and Supreme Court to consider rules that address emergency measures that can be taken by federal courts in a national emergency.

Section (b)(7) is a rule of construction specifying that none of the language should be construed to obviate a defendant’s right to counsel.

### **Bureau of Prisons (Division B, Sec. 12003)**

Prisons and jails present a risk of contagion because of issues with crowding, ventilation, and security measures that require close contact between personnel and inmates. This provision instructs the Department of Health and Human Services (HHS) to give consideration to the needs of the Bureau of Prisons (BOP) with regard to personal protective equipment and testing for COVID-19. It also gives the BOP Director more authority to release prisoners to home confinement, providing an alternative to keeping certain inmates in prison facilities. Finally, it instructs the BOP Director to promulgate rules to enhance the use of video visitation, free of charge to inmates, to mitigate restrictions on in-person visits.

Section (a) provides relevant definitions.

Section (b)(1) finds that there is an urgent need for personal protective equipment and test kits in BOP and instructs the HHS Secretary to give appropriate consideration in supplying resources to BOP.

Section (b)(2) allows the BOP Director to lengthen the maximum amount of time that a prisoner can be released to home confinement.

Section (c) instructs the BOP Director to promulgate rules regarding the ability of inmates to use video visitation, free of charge.

The bill also provides the relevant funding below:

- \$100 million to the Bureau of Prisons to prevent, prepare for, and respond to coronavirus, domestically or internationally, including the impact of the coronavirus on the work of the Department of Justice.
- \$850 million for state and local law enforcement through Byrne-JAG grants to prevent, prepare for, and respond to coronavirus, domestic or internationally.

### **PTO Regulatory Flexibility Provision (Division B, Sec. 12004)**

This provision ensures that inventors and businesses do not lose their rights to patents or trademarks because of an inability to comply with statutory deadlines during the COVID-19 pandemic. It grants the Director of the Patent and Trademark Office (PTO) the authority to toll deadlines related to the filing, application, or registration of patents and trademarks, or other proceedings before the Office, if the Director determines that the current COVID-19 emergency materially affects either the PTO's operations or the rights of patent/trademark applicants, registrants, owners, or others appearing before the Office.

The provision requires notice to the public of any toll or modification, and maintains congressional accountability by requiring a report from PTO if any deadline is tolled by 120 days or more and sunsets after two years, irrespective of when the COVID-19 national emergency officially ends.

Section 1(a) sets forth the conditions under which the Director may in response to the COVID-19 emergency toll, waive, adjust, or modify, any timing deadline.

Section 1(b) requires public notice of the action.

Section 1(c) requires the Director to submit to Congress a statement if the extension(s) exceeds 120 days. Such statement must be provided within an additional 20 days (140 days total) and must detail any tolling actions the Director has taken and provide a rationale.

Section 1(d) clarifies that the authority is not contingent upon any additional declaration by the President under the National Emergencies Act.

Section 1(e) limits the authority to change timing deadlines to the duration of the COVID-19 emergency and 60 days after its conclusion.

Section 1(f) is a rule of construction to ensure that this provision is not read to modify the existing authority of the Director to modify certain deadlines.

Section 1(g) sunsets any and all extensions under this new authority two years after the date of enactment regardless of the duration of any emergency or extension.

Section 1(h) states the two definitions used in this provision.

### **Copyright Regulatory Flexibility Provision (Division B, Sec. 19011)**

This provision ensures that, in the event of an emergency, affected industries do not lose valuable rights by an inability to meet deadlines contained in the Copyright Act related to the registration of copyrights and licensing regimes administered by the Copyright Office. The provision gives the Register the much-needed ability to change deadlines if a national emergency threatens the function of the copyright system. This provision will help safeguard the rights of a broad range of creators and artists across a broad range of industries who might not be in a position to meet the formalities of obtaining copyright registrations while sheltering in place, running the risk that these innovators and workers will lose valuable rights.

The provision requires notice to the public of any tolling of deadlines or modifications and maintains congressional accountability by requiring a report from the Copyright Office if any deadline is tolled by 120 days or more. The Register's authority to toll deadlines under this provision expires on December 31, 2021, and the Register is specifically prohibited from using this emergency authority to modify the term of copyrights.

§710(a) creates the new flexible regulatory authority under Presidentially declared emergencies under the National Emergencies Act until December 31, 2021.

§710(b) waives any rulemaking requirement to develop such changes in Copyright Offices deadlines so long as there is general public notice. Such changes can have retroactive effect if the retroactivity does not extend prior to a previously passed deadline.

§710(c) requires any declaration by the Register of Copyrights that exceeds 120 days to be communicated to Congress within 20 additional days (140 days total) with the reason for such duration.

§710(d) clarifies that for certain activity that occurs under Section 115 of the Copyright Act, follow on private sector action is also tolled. In the recently enacted Music Modernization Act, musical works copyright owners had a specified amount of time to dispute certain royalties after the License Availability Date. In the event the License Availability Date is extended under this new authority, the deadline to dispute these royalties is equally extended. The interested parties have agreed to this provision.

§710(e) clarifies that the Register may not extend the term of copyrights under this new provision, (except the required time to file notices of termination under 304) or extend the term provisions related to pre-1972 recordings established by the Music Modernization Act.

§710(f) ensures that the provision goes into effect without any need for greater detail or delegation of authority from the President once a President declares an emergency under the National Emergencies Act.

### **Small Business and Consumer Bankruptcy Reforms (Division A, Section 1113)**

This provision will allow more struggling small businesses to obtain bankruptcy relief – allowing them to keep more employees on the payroll and continue operating – during the COVID-19 pandemic. Under existing law, small businesses with up to \$2.7 million in debt can file for Chapter 11 bankruptcy using Subchapter V, which was created by the Small Business Reorganization Act (SBRA). The SBRA created new, streamlined procedures for small businesses in Chapter 11 to reorganize quickly and keep more employees on their payroll. The attached bill raises the SBRA debt cap to \$7.5 million to allow more small businesses to take advantage of Subchapter V in light of the COVID-19 pandemic.

- Section (a) amends the Small Business Reorganization Act to increase the eligibility threshold to file under subchapter V of chapter 11 of the U.S. Bankruptcy Code to businesses with less than \$7,500,000 of debt. The increase sunsets after one year and the eligibility threshold returns to \$2,725,625.

This provision also ensures that the assistance that individuals and families receive in response to the COVID-19 pandemic are not taken from them through the bankruptcy process, safeguarding the needs of these individuals and helping protect the economy that relies on consumer participation. Individuals and families who are currently making payments to creditors under Chapter 13 bankruptcy repayment plans will likely suffer additional hardship – such as losing a job or getting sick – as a result of the COVID-19 pandemic. This provision allows consumers who receive financial assistance from the government in response to the COVID-19 pandemic to keep that money in the bankruptcy process and also allows them to seek to modify payment plans to provide them more time to meet their financial obligations.

- Section (b)(1)(A) amends the definition of income in the Bankruptcy Code for chapters 7 and 13 to exclude coronavirus-related payments from the federal government from being treated as “income” for purposes of filing bankruptcy.
- Section (b)(1)(B) clarifies that the calculation of disposable income for purposes of confirming a chapter 13 plan shall not include coronavirus-related payments.
- Section (b)(1)(C) adds a provision that explicitly permits individuals and families currently in chapter 13 to seek payment plan modifications if they are experiencing a material financial hardship due to the coronavirus pandemic, including extending their payments for up to 7 years after their initial plan payment was due.
- Section (b)(2) sunsets all the provisions in section (b)(1)(A)-(C) after one year.