

88TH CONGRESS  
1ST SESSION

# H. R. 3179

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 1963

Mr. FOGARTY introduced the following bill; which was referred to the Committee on Armed Services

### A BILL

To provide that judges of the United States Court of Military Appeals shall hold office during good behavior, 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 That section 867 (a) (article 67 (a)) of title 10, United  
4 States Code, is amended to read as follows:

5 “(a) (1) There is a United States Court of Military  
6 Appeals, established under article 1 of the Constitution of  
7 the United States and located for administrative purposes  
8 only in the Department of Defense. The court consists of  
9 three judges appointed from civil life by the President, by  
10 and with the advice and consent of the Senate. Not more

1 than two of the judges of that court may be appointed from  
2 the same political party, nor is any person eligible for  
3 appointment to the court who is not a member of the bar of a  
4 Federal court or of the highest court of a State. The Presi-  
5 dent shall designate from time to time one of the judges to  
6 act as chief judge. Each judge shall hold office during good  
7 behavior, and is entitled to the salary, allowances, perqui-  
8 sites, rights of resignation, and retirement benefits provided  
9 for judges of the United States Courts of Appeals, including  
10 survivor benefits for widow and dependent children, and  
11 shall be similarly excluded from coverage under sections  
12 2251-2267 of title 5, United States Code. The chief judge  
13 of the court shall have precedence and preside at any  
14 session which he attends. The other judges shall have  
15 precedence and preside according to the seniority of their  
16 commissions. Judges whose commissions bear the same  
17 date shall have precedence according to seniority in age.  
18 The court may prescribe its own rules of procedure and de-  
19 termine the number of judges required to constitute a quo-  
20 rum. A vacancy in the court does not impair the right of  
21 the remaining judges to exercise the powers of the court.  
22 “(2) Judges of the Court of Military Appeals may be  
23 removed by the President, upon notice and hearing, for

1 neglect of duty or malfeasance in office, but for no other  
2 cause.

3 “(3) If a judge of the Court of Military Appeals is  
4 temporarily unable to perform his duties because of illness  
5 or other disability, the President may assign a judge of the  
6 United States Court of Appeals for the District of Columbia  
7 to fill the office for the period of disability.

8 “(4) If a judge of the Court of Military Appeals desires  
9 to retire for disability, he shall furnish to the President a cer-  
10 tificate of disability signed by the chief judge. If a judge of  
11 the Court of Military Appeals who is eligible to retire by  
12 reason of being permanently disabled from performing his  
13 duties does not do so, and a certificate of disability signed  
14 by the chief judge of the Court of Military Appeals is pre-  
15 sented to the President, and the President finds that such  
16 judge is unable to discharge efficiently all the duties of his  
17 office by reason of permanent mental or physical disability  
18 and that the appointment of an additional judge is necessary  
19 for the efficient dispatch of business, the President may make  
20 such appointment by and with the advice and consent of  
21 the Senate. Whenever any such additional judge is ap-  
22 pointed, the vacancy subsequently caused by the death,  
23 resignation, or retirement of the disabled judge may not be

1 filled. Any judge whose disability causes the appointment  
2 of an additional judge shall, for purpose of precedence,  
3 service as chief judge, or temporary performance of the duties  
4 of that office, be treated as junior in commission to the other  
5 judges of the court.”

6 SEC. 2. The United States Court of Military Appeals  
7 established under this Act is a continuation of the Court of  
8 Military Appeals as it existed prior to the effective date of  
9 this Act, and no loss of rights or powers, interruption of  
10 jurisdiction, or prejudice to matters pending in the Court of  
11 Military Appeals before the effective date of this Act shall  
12 result. A judge of the Court of Military Appeals so serving  
13 on the day before the effective date of this Act shall for all  
14 purposes, including salary, allowances, perquisites, rights of  
15 resignation, and retirement benefits including survivor bene-  
16 fits for widow and dependent children, be a judge of the  
17 United States Court of Military Appeals under this Act, and  
18 shall serve until the expiration of the term of office for which  
19 he was originally appointed: *Provided however*, That the  
20 President, by and with the advice and consent of the Senate,  
21 may at any time after the effective date of this Act appoint  
22 him to hold office during good behavior under section 1 of  
23 this Act. Retirement benefits of a judge serving on the  
24 effective date of this Act shall accrue from the date of his  
25 original appointment, and he may make a written election

1 concerning survivor benefits, in the manner provided by  
2 section 376 of title 28, United States Code, within six months  
3 of the effective date of this Act.

4       SEC. 3. Notwithstanding any other provision of this Act,  
5 no judge of the United States Court of Military Appeals shall  
6 upon resignation, or retirement for disability or length of  
7 service, be paid, on account of his judicial service or any  
8 other Federal service, a salary or annuity or combination  
9 thereof, the total of which exceeds the salary of a judge of  
10 the United States Court of Military Appeals.

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By Mr. FOGARTY

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