

110TH CONGRESS
1ST SESSION

H. R. 2878

To amend titles 18 and 28 of the United States Code to provide incentives for the prompt payments of debts owed to the United States and the victims of crime by imposing surcharges on unpaid judgments owed to the United States and to the victims of crime, to provide for offsets on amounts collected by the Department of Justice for Federal agencies, and to increase the amount of special assessments imposed upon convicted persons; to establish an Enhanced Financial Recovery Fund to enhance, supplement and improve the debt collection activities of the Department of Justice; to amend title 5, United States Code, to provide to assistant United States attorneys the same retirement benefits as are afforded to Federal law enforcements officers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 2007

Mr. DAVIS of Alabama (for himself, Mr. DELAHUNT, Mr. TOM DAVIS of Virginia, Mr. CANNON, Mr. McCAUL of Texas, Mr. SCHIFF, Ms. ROSLEHTINEN, Mr. SHAYS, Mr. UDALL of New Mexico, Mr. MORAN of Virginia, Ms. NORTON, and Mr. CUMMINGS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend titles 18 and 28 of the United States Code to provide incentives for the prompt payments of debts owed to the United States and the victims of crime by imposing surcharges on unpaid judgments owed to the United States and to the victims of crime, to provide for offsets

on amounts collected by the Department of Justice for Federal agencies, and to increase the amount of special assessments imposed upon convicted persons; to establish an Enhanced Financial Recovery Fund to enhance, supplement and improve the debt collection activities of the Department of Justice; to amend title 5, United States Code, to provide to assistant United States attorneys the same retirement benefits as are afforded to Federal law enforcements officers, 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 “Enhanced Financial
 5 Recovery and Equitable Retirement Treatment Act of
 6 2007”.

7 **TITLE I—ENHANCED FINANCIAL**
 8 **RECOVERY**

9 **SEC. 101. IMPOSITION OF CRIMINAL SURCHARGE.**

10 (a) IN GENERAL.—Section 3612 of title 18, United
 11 States Code, is amended by striking subsection (g) and
 12 inserting the following:

13 “(g) IMPOSITION OF SURCHARGE.—

14 “(1) IN GENERAL.—A surcharge shall be im-
 15 posed upon a defendant if there are any unpaid
 16 criminal monetary penalties as of the date specified
 17 in subsection (f)(1).

1 “(2) AMOUNT OF SURCHARGE.—The surcharge
2 imposed under paragraph (1) shall be—

3 “(A) 5 percent of the unpaid principal bal-
4 ance; or

5 “(B) \$50, if the unpaid balance is less
6 than \$1,000.

7 “(3) ALLOCATION OF PAYMENTS.—

8 “(A) FINE OR SPECIAL ASSESSMENT.—If a
9 surcharge is imposed under paragraph (1) for a
10 fine or special assessment—

11 “(i) an amount equal to 95 percent of
12 each principal payment made by a defend-
13 ant shall be credited to the Crime Victims
14 Fund established under section 1402 of
15 the Victims of Crime Act of 1984 (42
16 U.S.C. 10601); and

17 “(ii) an amount equal to 5 percent of
18 each principal payment shall be credited to
19 the Department of Justice Enhanced Fi-
20 nancial Recovery Fund established under
21 section 104 of the Enhanced Financial Re-
22 covery and Equitable Retirement Treat-
23 ment Act of 2007.

1 “(B) RESTITUTION.—If a surcharge is im-
2 posed under paragraph (1) for a restitution ob-
3 ligation—

4 “(i) an amount equal to 95 percent of
5 each principal payment shall be paid to
6 any victim identified by the court; and

7 “(ii) an amount equal to 5 percent of
8 each principal payment shall be credited to
9 the Department of Justice Enhanced Fi-
10 nancial Recovery Fund established under
11 section 104 of the Enhanced Financial Re-
12 covery and Equitable Retirement Treat-
13 ment Act of 2007.

14 “(C) SURCHARGES.—For any payment
15 made by a defendant after the full amount of
16 a surcharge imposed under paragraph (1) has
17 been satisfied, the full amount of such payment
18 shall be credited to the principal amount due or
19 accrued interest, as the case may be.

20 “(4) DEFINITIONS.—In this section—

21 “(A) the term ‘criminal monetary pen-
22 alties’ includes the principal amount of any
23 amount imposed as a fine, restitution obliga-
24 tion, or special assessment, regardless of wheth-
25 er any payment schedule has been imposed; and

1 “(B) the term ‘principal payment’ does not
2 include any amount that is imposed as interest,
3 penalty, or a surcharge.”.

4 (b) CONFORMING AMENDMENTS.—Section 3612 of
5 title 18, United States Code, is amended—

6 (1) by striking subsections (d) and (e); and

7 (2) by redesignating subsections (f) through (i),
8 as amended by this Act, as subsections (d) through
9 (g), respectively.

10 **SEC. 102. IMPOSITION OF CIVIL SURCHARGE.**

11 (a) IN GENERAL.—Section 3011 of title 28, United
12 States Code, is amended to read as follows:

13 **“§ 3011. Imposition of surcharge**

14 “(a) IN GENERAL.—A surcharge shall be imposed on
15 a defendant if there is an unpaid balance due to the
16 United States on any money judgment in a civil matter
17 recovered in a district court as of—

18 “(1) the fifteenth day after the date of the
19 judgment; or

20 “(2) if the day described in paragraph (1) is a
21 Saturday, Sunday, or legal public holiday, the next
22 day that is not a Saturday, Sunday, or legal holiday.

23 “(b) AMOUNT OF SURCHARGE.—A surcharge im-
24 posed under subsection (a) shall be—

1 “(1) 5 percent of the unpaid principal balance;

2 or

3 “(2) \$50, if the unpaid balance is less than

4 \$1,000.

5 “(c) ALLOCATION OF PAYMENTS.—If a surcharge is
6 imposed under subsection (a)—

7 “(1) an amount equal to 95 percent of each
8 principal payment made by a defendant shall be
9 credited as otherwise provided by law; and

10 “(2) an amount equal to 5 percent of each prin-
11 cipal payment shall be credited to the Department of
12 Justice Enhanced Financial Recovery Fund estab-
13 lished under section 104 of the Enhanced Financial
14 Recovery and Equitable Retirement Treatment Act
15 of 2007.

16 “(d) SURCHARGES.—For any payment made by a de-
17 fendant after the full amount of a surcharge imposed
18 under subsection(a) has been satisfied, the full amount of
19 such payment shall be credited to the principal amount
20 due or accrued interest, as the case may be.

21 “(e) DEFINITIONS.—In this section—

22 “(1) the term ‘principal payment’ does not in-
23 clude any amount that is imposed as interest, pen-
24 alty, or a surcharge; and

1 “(iii) the amount of \$100 in the case
2 of a class A misdemeanor; and

3 “(B) if the defendant is a person other
4 than an individual—

5 “(i) the amount of \$100 in the case of
6 an infraction or a class C misdemeanor;

7 “(ii) the amount of \$200 in the case
8 of a class B misdemeanor; and

9 “(iii) the amount of \$500 in the case
10 of a class A misdemeanor; and

11 “(2) in the case of a felony—

12 “(A) the amount of \$200 if the defendant
13 is an individual; and

14 “(B) the amount of \$1,000 if the defend-
15 ant is a person other than an individual.”.

16 **SEC. 104. ENHANCED FINANCIAL RECOVERY FUND.**

17 (a) **ESTABLISHMENT.**—There is established in the
18 Treasury a separate account known as the Department
19 of Justice Enhanced Financial Recovery Fund (in this sec-
20 tion referred to as the “Fund”).

21 (b) **DEPOSITS.**—Notwithstanding section 3302 of
22 title 31, United States Code, or any other law regarding
23 the crediting of collections, there shall be credited as an
24 offsetting collection to the Fund an amount equal to—

1 (1) 2 percent of any amount collected pursuant
2 to civil debt collection litigation activities of the De-
3 partment of Justice (in addition to any amount
4 credited under section 11013 of the 21st Century
5 Department of Justice Appropriations Authorization
6 Act (28 U.S.C. 527 note));

7 (2) 5 percent of all amounts collected as res-
8 titution due to the United States pursuant to the
9 criminal debt collection litigation activities of the
10 Department of Justice;

11 (3) any surcharge collected under section
12 3612(g) of title 18, United States Code, as amended
13 by this Act, or section 3011 of title 28, United
14 States Code, as amended by this Act; and

15 (4) 50 percent of any special assessment col-
16 lected under section 3013(a) of title 18, United
17 States Code, as amended by this Act.

18 (c) AVAILABILITY.—The amounts credited to the
19 Fund shall remain available until expended.

20 (d) PAYMENTS FROM THE FUND.—

21 (1) AMOUNT.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), the Attorney General shall
24 use not less than \$20,000,000 of the Fund in
25 each fiscal year, to the extent that funds are

1 available, for the civil and criminal debt collec-
2 tion activities of the Department of Justice, in-
3 cluding restitution judgments where the bene-
4 ficiaries are the victims of crime.

5 (B) EXCEPTIONS.—

6 (i) ADJUSTMENT OF AMOUNT.—In
7 each fiscal year following the first fiscal
8 year in which deposits into the Fund are
9 greater than \$20,000,000, the amount to
10 be used under paragraph (1) shall be in-
11 creased by a percentage equal to the
12 change in the Consumer Price Index for
13 the calendar year preceding that fiscal
14 year.

15 (ii) LIMITATION.—In any fiscal year,
16 amounts in the Fund shall be available to
17 the extent that the amount appropriated in
18 that fiscal year for the purposes described
19 in subparagraph (A) is not less than an
20 amount equal to the amount appropriated
21 for such activities in fiscal year 2006, ad-
22 justed annually in the same proportion as
23 increases reflected in the amount of aggre-
24 gate level of appropriations for the Execu-

1 tive Office of United States Attorneys and
2 United States Attorneys.

3 (2) USE OF FUNDS.—

4 (A) IN GENERAL.—Funds used under
5 paragraph (1) shall be used to enhance, supple-
6 ment, and improve civil and criminal debt col-
7 lection litigation activities of the Department of
8 Justice, primarily such activities by United
9 States attorneys' offices. A portion of such
10 sums may be used by the Department of Jus-
11 tice to provide legal, investigative, accounting,
12 and training support to the United States attor-
13 neys' offices.

14 (B) LIMITATION ON USE.—Funds used
15 under paragraph (1) may not be used to deter-
16 mine whether a defendant is guilty of an of-
17 fense or liability to the United States (except
18 incidentally for the provision of assistance nec-
19 essary or desirable in a case to ensure the pres-
20 ervation of assets or the imposition of a judg-
21 ment which assists in the enforcement of a
22 judgment or in a proceeding directly related to
23 the failure of a defendant to satisfy the mone-
24 tary portion of a judgment).

1 (e) OTHER USE OF FUNDS.—After using funds
2 under subsection (d), the Attorney General may use
3 amounts remaining in the Fund for additional civil or
4 criminal debt collection activities, for personnel expenses,
5 for personnel benefit expenses incurred as a result of this
6 Act or the amendments made by this Act, or for other
7 prosecution and litigation expenses. The availability of
8 amounts from the Fund shall have no effect on the imple-
9 mentation of title II or the amendments made by title II.

10 (f) DEFINITION.—In this section, the term “United
11 States”—

12 (1) includes—

13 (A) the executive departments, the judicial
14 and legislative branches, the military depart-
15 ments, and independent establishments of the
16 United States; and

17 (B) corporations primarily acting as in-
18 strumentalities or agencies of the United
19 States; and

20 (2) except as provided in paragraph (1), does
21 not include any contractor of the United States.

22 **SEC. 105. EFFECTIVE DATES.**

23 (a) IN GENERAL.—The amendments made by section
24 101 and section 103 shall apply to any offense committed
25 on or after the date of enactment of this Act, including

1 any offense involving conduct that continued on or after
2 the date of enactment of this Act.

3 (b) FUND AND SURCHARGES.—

4 (1) IN GENERAL.—Section 104 and the amend-
5 ments made by section 102 shall take effect 30 days
6 after the date of enactment of this Act.

7 (2) PENDING CASES.—The amendments made
8 by section 102 shall apply to any case pending on
9 or after the date of enactment of this Act.

10 **TITLE II—EQUITABLE RETIRE-**
11 **MENT TREATMENT OF AS-**
12 **SISTANT UNITED STATES AT-**
13 **TORNEYS**

14 **SEC. 201. RETIREMENT TREATMENT OF ASSISTANT UNITED**
15 **STATES ATTORNEYS.**

16 (a) CIVIL SERVICE RETIREMENT SYSTEM.—

17 (1) ASSISTANT UNITED STATES ATTORNEY DE-
18 FINED.—Section 8331 of title 5, United States
19 Code, is amended—

20 (A) in paragraph (28), by striking “and”
21 at the end;

22 (B) in paragraph (29) relating to dynamic
23 assumptions, by striking the period and insert-
24 ing a semicolon;

1 (C) by redesignating paragraph (29) relat-
2 ing to air traffic controllers as paragraph (30);

3 (D) in paragraph (30), as so redesignated,
4 by striking the period and inserting “; and”;
5 and

6 (E) by adding at the end the following:

7 “(31) ‘assistant United States attorney’ means
8 an assistant United States attorney appointed under
9 section 542 of title 28.”.

10 (2) RETIREMENT TREATMENT.—Chapter 83 of
11 title 5, United States Code, is amended by adding
12 after section 8351 the following:

13 **“§ 8352. Assistant United States attorneys**

14 “Except as provided under the Enhanced Financial
15 Recovery and Equitable Retirement Treatment Act of
16 2007 (including the provisions relating to the non-applica-
17 bility of mandatory separation requirements under section
18 8335(b) and 8425(b) of this title), an assistant United
19 States attorney shall be treated in the same manner and
20 to the same extent as a law enforcement officer for pur-
21 poses of this chapter.”.

22 (3) TECHNICAL AND CONFORMING AMEND-
23 MENTS.—

24 (A) TABLE OF SECTIONS.—The table of
25 sections for chapter 83 of title 5, United States

1 Code, is amended by inserting after the item re-
2 lating to section 8351 the following:

“8352. Assistant United States attorneys.”.

3 (B) MANDATORY SEPARATION.—Section
4 8335(a) of title 5, United States Code, is
5 amended by striking “8331(29)(A)” and insert-
6 ing “8331(30)(A)”.

7 (b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—

8 (1) ASSISTANT UNITED STATES ATTORNEY DE-
9 FINED.—Section 8401 of title 5, United States
10 Code, is amended—

11 (A) in paragraph (34), by striking “and”
12 at the end;

13 (B) in paragraph (35), by striking the pe-
14 riod and inserting “; and”; and

15 (C) by adding at the end the following:

16 “(36) ‘assistant United States attorney’ means
17 an assistant United States attorney appointed under
18 section 542 of title 28.”.

19 (2) RETIREMENT TREATMENT.—Section 8402
20 of title 5, United States Code, is amended by adding
21 at the end the following:

22 “(h) Except as provided under the Enhanced Finan-
23 cial Recovery and Equitable Treatment Act of 2006 (in-
24 cluding the provisions relating to the non-applicability of
25 mandatory separation requirements under section 8335(b)

1 and 8425(b) of this title), an assistant United States at-
2 torney shall be treated in the same manner and to the
3 same extent as a law enforcement officer for purposes of
4 this chapter.”.

5 (c) MANDATORY SEPARATION.—Sections 8335(b)(1)
6 and 8425(b)(1) of title 5, United States Code, are each
7 amended by adding at the end the following: “This sub-
8 section shall not apply in the case of an assistant United
9 States attorney.”.

10 **SEC. 202. PROVISIONS RELATING TO INCUMBENTS.**

11 (a) DEFINITIONS.—In this section—

12 (1) the term “assistant United States attorney”
13 means an assistant United States attorney appointed
14 under section 542 of title 28, United States Code;
15 and

16 (2) the term “incumbent” means an individual
17 who is serving as an assistant United States attor-
18 ney on the 120th day after the date of enactment of
19 this Act.

20 (b) NOTICE REQUIREMENT.—Not later than 9
21 months after the date of enactment of this Act, the De-
22 partment of Justice shall take measures reasonably de-
23 signed to provide notice to incumbents on—

24 (1) their election rights under this title; and

1 (2) the effects of making or not making a time-
2 ly election under this title.

3 (c) ELECTION AVAILABLE TO INCUMBENTS.—

4 (1) IN GENERAL.—An incumbent may elect, for
5 all purposes, to be treated—

6 (A) in accordance with the amendments
7 made by this title; or

8 (B) as if this title had never been enacted.

9 (2) FAILURE TO ELECT.—Failure to make a
10 timely election under this subsection shall be treated
11 in the same way as an election under paragraph
12 (1)(A), made on the last day allowable under para-
13 graph (3).

14 (3) TIME LIMITATION.—An election under this
15 subsection shall not be effective unless the election
16 is made not later than the earlier of—

17 (A) 120 days after the date on which the
18 notice under subsection (b) is provided; or

19 (B) the date on which the incumbent in-
20 volved separates from service.

21 (d) LIMITED RETROACTIVE EFFECT.—

22 (1) EFFECT ON RETIREMENT.—In the case of
23 an incumbent who elects (or is deemed to have elect-
24 ed) the option under subsection (c)(1)(A), all service

1 performed by that individual as an assistant United
2 States attorney shall—

3 (A) to the extent performed on or after the
4 effective date of that election, be treated in ac-
5 cordance with applicable provisions of sub-
6 chapter III of chapter 83 or chapter 84 of title
7 5, United States Code, as amended by this title;
8 and

9 (B) to the extent performed before the ef-
10 fective date of that election, be treated in ac-
11 cordance with applicable provisions of sub-
12 chapter III of chapter 83 or chapter 84 of title
13 5, United States Code, as if the amendments
14 made by this title had then been in effect.

15 Any service performed by the incumbent pursuant to
16 an appointment under section 515, 541, 543, or 546
17 of title 28, United States Code, shall, for purposes
18 of subparagraph (B), be treated in the same manner
19 as if performed as an assistant United States attor-
20 ney; this sentence shall not be taken into account for
21 purposes of determining whether or not an indi-
22 vidual is an incumbent.

23 (2) NO OTHER RETROACTIVE EFFECT.—Noth-
24 ing in this title (including the amendments made by
25 this title) shall affect any of the terms or conditions

1 of an individual's employment (apart from those
2 governed by subchapter III of chapter 83 or chapter
3 84 of title 5, United States Code) with respect to
4 any period of service preceding the date on which
5 such individual's election under subsection (c) is
6 made (or is deemed to have been made).

7 (e) INDIVIDUAL CONTRIBUTIONS FOR PRIOR SERV-
8 ICE.—

9 (1) IN GENERAL.—An individual who makes an
10 election under subsection (c)(1)(A) shall, with re-
11 spect to prior service performed by such individual,
12 deposit, with interest, to the Civil Service Retire-
13 ment and Disability Fund the difference between the
14 individual contributions that were actually made for
15 such service and the individual contributions that
16 would have been made for such service if the amend-
17 ments made by this title had then been in effect.

18 (2) EFFECT OF NOT CONTRIBUTING.—If the
19 deposit required under paragraph (1) is not paid, all
20 prior service of the incumbent shall remain fully
21 creditable as law enforcement officer service, but the
22 resulting annuity shall be reduced in a manner simi-
23 lar to that described in section 8334(d)(2)(B) of
24 title 5, United States Code.

1 (3) **PRIOR SERVICE DEFINED.**—In this sub-
2 section, the term “prior service” means, with respect
3 to any individual who makes an election (or is
4 deemed to have made an election) under subsection
5 (c)(1)(A), all service performed as an assistant
6 United States attorney, but not exceeding 20 years,
7 performed by such individual before the date as of
8 which applicable retirement deductions begin to be
9 made in accordance with such election.

10 (f) **REGULATIONS.**—The Office of Personnel Manage-
11 ment shall prescribe regulations necessary to carry out
12 this title, including provisions under which any interest
13 due on the amount described under subsection (e) shall
14 be determined.

15 **SEC. 203. EFFECTIVE DATE.**

16 The amendments made by section 201 shall take ef-
17 fect on the first day of the first applicable pay period be-
18 ginning on or after the 120th day after the date of enact-
19 ment of this Act.

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