

106TH CONGRESS
1ST SESSION

H. R. 2112

To amend title 28, United States Code, to allow a judge to whom a case is transferred to retain jurisdiction over certain multidistrict litigation cases for trial, and to provide for Federal jurisdiction of certain multiparty, multiforum civil actions.

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 1999

Mr. SENSENBRENNER (for himself, Mr. HYDE, and Mr. COBLE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to allow a judge to whom a case is transferred to retain jurisdiction over certain multidistrict litigation cases for trial, and to provide for Federal jurisdiction of certain multiparty, multiforum civil actions.

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 ‘Multidistrict,
5 Multiparty, Multiforum Trial Jurisdiction Act of 1999’.

1 **SEC. 2. MULTIDISTRICT LITIGATION.**

2 Section 1407 of title 28, United States Code, is
3 amended—

4 (1) in the third sentence of subsection (a), by
5 inserting “or ordered transferred to the transferee
6 or other district under subsection (i)” after “termi-
7 nated”; and

8 (2) by adding at the end the following new sub-
9 section:

10 “(i) Except as provided in subsection (j), any action
11 transferred under this section by the panel may be trans-
12 ferred for trial purposes, by the judge or judges of the
13 transferee district to whom the action was assigned, to the
14 transferee or other district in the interest of justice and
15 for the convenience of the parties and witnesses.”.

16 **SEC. 3. MULTIPARTY, MULTIFORUM JURISDICTION OF DIS-**
17 **TRICT COURTS.**

18 (a) BASIS OF JURISDICTION.—

19 (1) IN GENERAL.—Chapter 85 of title 28,
20 United States Code, is amended by adding at the
21 end the following new section:

22 **“§ 1369. Multiparty, multiform jurisdiction**

23 “(a) IN GENERAL.—The district courts shall have
24 original jurisdiction of any civil action involving minimal
25 diversity between adverse parties that arises from a single
26 accident, where at least 25 natural persons have either

1 died or incurred injury in the accident at a discrete loca-
2 tion and, in the case of injury, the injury has resulted in
3 damages which exceed \$50,000 per person, exclusive of in-
4 terest and costs, if—

5 “(1) a defendant resides in a State and a sub-
6 stantial part of the accident took place in another
7 State or other location, regardless of whether that
8 defendant is also a resident of the State where a
9 substantial part of the accident took place;

10 “(2) any two defendants reside in different
11 States, regardless of whether such defendants are
12 also residents of the same State or States; or

13 “(3) substantial parts of the accident took place
14 in different States.

15 “(b) SPECIAL RULES AND DEFINITIONS.—For pur-
16 poses of this section—

17 “(1) minimal diversity exists between adverse
18 parties if any party is a citizen of a State and any
19 adverse party is a citizen of another State, a citizen
20 or subject of a foreign state, or a foreign state as
21 defined in section 1603(a) of this title;

22 “(2) a corporation is deemed to be a citizen of
23 any State, and a citizen or subject of any foreign
24 state, in which it is incorporated or has its principal
25 place of business, and is deemed to be a resident of

1 any State in which it is incorporated or licensed to
2 do business or is doing business;

3 “(3) the term ‘injury’ means—

4 “(A) physical harm to a natural person;
5 and

6 “(B) physical damage to or destruction of
7 tangible property, but only if physical harm de-
8 scribed in subparagraph (A) exists;

9 “(4) the term ‘accident’ means a sudden acci-
10 dent, or a natural event culminating in an accident,
11 that results in death or injury incurred at a discrete
12 location by at least 25 natural persons; and

13 “(5) the term ‘State’ includes the District of
14 Columbia, the Commonwealth of Puerto Rico, and
15 any territory or possession of the United States.

16 “(c) INTERVENING PARTIES.—In any action in a dis-
17 trict court which is or could have been brought, in whole
18 or in part, under this section, any person with a claim
19 arising from the accident described in subsection (a) shall
20 be permitted to intervene as a party plaintiff in the action,
21 even if that person could not have brought an action in
22 a district court as an original matter.

23 “(d) NOTIFICATION OF JUDICIAL PANEL ON MULTI-
24 DISTRICT LITIGATION.—A district court in which an ac-
25 tion under this section is pending shall promptly notify

1 the judicial panel on multidistrict litigation of the pend-
2 ency of the action.”.

3 (2) CONFORMING AMENDMENT.—The table of
4 sections at the beginning of chapter 85 of title 28,
5 United States Code, is amended by adding at the
6 end the following new item:

“1369. Multiparty, multiform jurisdiction.”.

7 (b) VENUE.—Section 1391 of title 28, United States
8 Code, is amended by adding at the end the following:

9 “(g) A civil action in which jurisdiction of the district
10 court is based upon section 1369 of this title may be
11 brought in any district in which any defendant resides or
12 in which a substantial part of the accident giving rise to
13 the action took place.”.

14 (c) MULTIDISTRICT LITIGATION.—Section 1407 of
15 title 28, United States Code, as amended by section 2 of
16 this Act, is further amended by adding at the end the fol-
17 lowing:

18 “(j)(1) In actions transferred under this section when
19 jurisdiction is or could have been based, in whole or in
20 part, on section 1369 of this title, the transferee district
21 court may, notwithstanding any other provision of this
22 section, retain actions so transferred for the determination
23 of liability and punitive damages. An action retained for
24 the determination of liability shall be remanded to the dis-
25 trict court from which the action was transferred, or to

1 the State court from which the action was removed, for
2 the determination of damages, other than punitive dam-
3 ages, unless the court finds, for the convenience of parties
4 and witnesses and in the interest of justice, that the action
5 should be retained for the determination of damages.

6 “(2) Any remand under paragraph (1) shall not be
7 effective until 60 days after the transferee court has
8 issued an order determining liability and has certified its
9 intention to remand some or all of the transferred actions
10 for the determination of damages. An appeal with respect
11 to the liability determination and the choice of law deter-
12 mination of the transferee court may be taken during that
13 60-day period to the court of appeals with appellate juris-
14 diction over the transferee court. In the event a party files
15 such an appeal, the remand shall not be effective until the
16 appeal has been finally disposed of. Once the remand has
17 become effective, the liability determination and the choice
18 of law determination shall not be subject to further review
19 by appeal or otherwise.

20 “(3) An appeal with respect to determination of puni-
21 tive damages by the transferee court may be taken, during
22 the 60-day period beginning on the date the order making
23 the determination is issued, to the court of appeals with
24 jurisdiction over the transferee court.

1 “(4) Any decision under this subsection concerning
2 remand for the determination of damages shall not be re-
3 viewable by appeal or otherwise.

4 “(5) Nothing in this subsection shall restrict the au-
5 thority of the transferee court to transfer or dismiss an
6 action on the ground of inconvenient forum.”.

7 (d) REMOVAL OF ACTIONS.—Section 1441 of title 28,
8 United States Code, is amended—

9 (1) in subsection (e) by striking “(e) The court
10 to which such civil action is removed” and inserting
11 “(f) The court to which a civil action is removed
12 under this section”; and

13 (2) by inserting after subsection (d) the fol-
14 lowing new subsection:

15 “(e)(1) Notwithstanding the provisions of subsection
16 (b) of this section, a defendant in a civil action in a State
17 court may remove the action to the district court of the
18 United States for the district and division embracing the
19 place where the action is pending if—

20 “(A) the action could have been brought in a
21 United States district court under section 1369 of
22 this title, or

23 “(B) the defendant is a party to an action
24 which is or could have been brought, in whole or in
25 part, under section 1369 in a United States district

1 court and arises from the same accident as the ac-
2 tion in State court, even if the action to be removed
3 could not have been brought in a district court as
4 an original matter.

5 The removal of an action under this subsection shall be
6 made in accordance with section 1446 of this title, except
7 that a notice of removal may also be filed before trial of
8 the action in State court within 30 days after the date
9 on which the defendant first becomes a party to an action
10 under section 1369 in a United States district court that
11 arises from the same accident as the action in State court,
12 or at a later time with leave of the district court.

13 “(2) Whenever an action is removed under this sub-
14 section and the district court to which it is removed or
15 transferred under section 1407(j) has made a liability de-
16 termination requiring further proceedings as to damages,
17 the district court shall remand the action to the State
18 court from which it had been removed for the determina-
19 tion of damages, unless the court finds that, for the con-
20 venience of parties and witnesses and in the interest of
21 justice, the action should be retained for the determination
22 of damages.

23 “(3) Any remand under paragraph (2) shall not be
24 effective until 60 days after the district court has issued
25 an order determining liability and has certified its inten-

1 tion to remand the removed action for the determination
2 of damages. An appeal with respect to the liability deter-
3 mination and the choice of law determination of the dis-
4 trict court may be taken during that 60-day period to the
5 court of appeals with appellate jurisdiction over the dis-
6 trict court. In the event a party files such an appeal, the
7 remand shall not be effective until the appeal has been
8 finally disposed of. Once the remand has become effective,
9 the liability determination and the choice of law deter-
10 mination shall not be subject to further review by appeal
11 or otherwise.

12 “(4) Any decision under this subsection concerning
13 remand for the determination of damages shall not be re-
14 viewable by appeal or otherwise.

15 “(5) An action removed under this subsection shall
16 be deemed to be an action under section 1369 and an ac-
17 tion in which jurisdiction is based on section 1368 of this
18 title for purposes of this section and sections 1407, 1660,
19 1697, and 1785 of this title.

20 “(6) Nothing in this subsection shall restrict the au-
21 thority of the district court to transfer or dismiss an ac-
22 tion on the ground of inconvenient forum.”.

23 (e) CHOICE OF LAW.—

1 (1) DETERMINATION BY THE COURT.—Chapter
2 111 of title 28, United States Code, is amended by
3 adding at the end the following new section:

4 **“§ 1660. Choice of law in multiparty, multiform ac-**
5 **tions**

6 “(a) FACTORS.—In an action which is or could have
7 been brought, in whole or in part, under section 1369 of
8 this title, the district court in which the action is brought
9 or to which it is removed shall determine the source of
10 the applicable substantive law, except that if an action is
11 transferred to another district court, the transferee court
12 shall determine the source of the applicable substantive
13 law. In making this determination, a district court shall
14 not be bound by the choice of law rules of any State, and
15 the factors that the court may consider in choosing the
16 applicable law include—

17 “(1) the place of the injury;

18 “(2) the place of the conduct causing the in-
19 jury;

20 “(3) the principal places of business or
21 domiciles of the parties;

22 “(4) the danger of creating unnecessary incen-
23 tives for forum shopping; and

24 “(5) whether the choice of law would be reason-
25 ably foreseeable to the parties.

1 The factors set forth in paragraphs (1) through (5) shall
2 be evaluated according to their relative importance with
3 respect to the particular action. If good cause is shown
4 in exceptional cases, including constitutional reasons, the
5 court may allow the law of more than one State to be ap-
6 plied with respect to a party, claim, or other element of
7 an action.

8 “(b) ORDER DESIGNATING CHOICE OF LAW.—The
9 district court making the determination under subsection
10 (a) shall enter an order designating the single jurisdiction
11 whose substantive law is to be applied in all other actions
12 under section 1369 arising from the same accident as that
13 giving rise to the action in which the determination is
14 made. The substantive law of the designated jurisdiction
15 shall be applied to the parties and claims in all such ac-
16 tions before the court, and to all other elements of each
17 action, except where Federal law applies or the order spe-
18 cifically provides for the application of the law of another
19 jurisdiction with respect to a party, claim, or other ele-
20 ment of an action.

21 “(c) CONTINUATION OF CHOICE OF LAW AFTER RE-
22 MAND.—In an action remanded to another district court
23 or a State court under section 1407(j)(1) or 1441(e)(2)
24 of this title, the district court’s choice of law under sub-
25 section (b) shall continue to apply.”.

1 (2) CONFORMING AMENDMENT.—The table of
2 sections at the beginning of chapter 111 of title 28,
3 United States Code, is amended by adding at the
4 end the following new item:

“1660. Choice of law in multiparty, multiform actions.”.

5 (f) SERVICE OF PROCESS.—

6 (1) OTHER THAN SUBPOENAS.—(A) Chapter
7 113 of title 28, United States Code, is amended by
8 adding at the end the following new section:

9 **“§ 1697. Service in multiparty, multiform actions**

10 “When the jurisdiction of the district court is based
11 in whole or in part upon section 1369 of this title, process,
12 other than subpoenas, may be served at any place within
13 the United States, or anywhere outside the United States
14 if otherwise permitted by law.”.

15 (B) The table of sections at the beginning of
16 chapter 113 of title 28, United States Code, is
17 amended by adding at the end the following new
18 item:

“1697. Service in multiparty, multiform actions.”.

19 (2) SERVICE OF SUBPOENAS.—(A) Chapter 117
20 of title 28, United States Code, is amended by add-
21 ing at the end the following new section:

22 **“§ 1785. Subpoenas in multiparty, multiform actions**

23 “When the jurisdiction of the district court is based
24 in whole or in part upon section 1369 of this title, a sub-

1 poena for attendance at a hearing or trial may, if author-
2 ized by the court upon motion for good cause shown, and
3 upon such terms and conditions as the court may impose,
4 be served at any place within the United States, or any-
5 where outside the United States if otherwise permitted by
6 law.”.

7 (B) The table of sections at the beginning of
8 chapter 117 of title 28, United States Code, is
9 amended by adding at the end the following new
10 item:

“1785. Subpoenas in multiparty, multiform actions.”.

11 **SEC. 4. EFFECTIVE DATE.**

12 (a) SECTION 2.—The amendments made by section
13 2 shall apply to any civil action pending on or brought
14 on or after the date of the enactment of this Act.

15 (b) SECTION 3.—The amendments made by section
16 3 shall apply to a civil action if the accident giving rise
17 to the cause of action occurred on or after the 90th day
18 after the date of the enactment of this Act.

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