

Union Calendar No. 165

106TH CONGRESS
1ST SESSION

H. R. 2112

[Report No. 106-276]

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

JULY 30, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 9, 1999]

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”.*

6 **SEC. 2. MULTIDISTRICT LITIGATION.**

7 *Section 1407 of title 28, United States Code, is*
8 *amended—*

9 *(1) in the third sentence of subsection (a), by in-*
10 *serting “or ordered transferred to the transferee or*
11 *other district under subsection (i)” after “termi-*
12 *nated”; and*

13 *(2) by adding at the end the following new sub-*
14 *section:*

15 *“(i)(1) Subject to paragraph (2) and except as pro-*
16 *vided in subsection (j), any action transferred under this*
17 *section by the panel may be transferred for trial purposes,*
18 *by the judge or judges of the transferee district to whom*
19 *the action was assigned, to the transferee or other district*
20 *in the interest of justice and for the convenience of the par-*
21 *ties and witnesses.*

22 *“(2) Any action transferred for trial purposes under*
23 *paragraph (1) shall be remanded by the panel for the deter-*
24 *mination of compensatory damages to the district court*
25 *from which it was transferred, unless the court to which*

1 *the action has been transferred for trial purposes also finds,*
2 *for the convenience of the parties and witnesses and in the*
3 *interests of justice, that the action should be retained for*
4 *the determination of compensatory damages.”.*

5 **SEC. 3. MULTIPARTY, MULTIFORUM JURISDICTION OF DIS-**
6 **TRICT COURTS.**

7 *(a) BASIS OF JURISDICTION.—*

8 *(1) IN GENERAL.—Chapter 85 of title 28, United*
9 *States Code, is amended by adding at the end the fol-*
10 *lowing new section:*

11 **“§ 1369. Multiparty, multiforum jurisdiction**

12 *“(a) IN GENERAL.—The district courts shall have*
13 *original jurisdiction of any civil action involving minimal*
14 *diversity between adverse parties that arises from a single*
15 *accident, where at least 25 natural persons have either died*
16 *or incurred injury in the accident at a discrete location*
17 *and, in the case of injury, the injury has resulted in dam-*
18 *ages which exceed \$75,000 per person, exclusive of interest*
19 *and costs, if—*

20 *“(1) a defendant resides in a State and a sub-*
21 *stantial part of the accident took place in another*
22 *State or other location, regardless of whether that de-*
23 *fendant is also a resident of the State where a sub-*
24 *stantial part of the accident took place;*

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

4 “(3) *substantial parts of the accident took place*
5 *in different States.*

6 “(b) *SPECIAL RULES AND DEFINITIONS.—For pur-*
7 *poses of this section—*

8 “(1) *minimal diversity exists between adverse*
9 *parties if any party is a citizen of a State and any*
10 *adverse party is a citizen of another State, a citizen*
11 *or subject of a foreign state, or a foreign state as de-*
12 *finied in section 1603(a) of this title;*

13 “(2) *a corporation is deemed to be a citizen of*
14 *any State, and a citizen or subject of any foreign*
15 *state, in which it is incorporated or has its principal*
16 *place of business, and is deemed to be a resident of*
17 *any State in which it is incorporated or licensed to*
18 *do business or is doing business;*

19 “(3) *the term ‘injury’ means—*

20 “(A) *physical harm to a natural person;*
21 *and*

22 “(B) *physical damage to or destruction of*
23 *tangible property, but only if physical harm de-*
24 *scribed in subparagraph (A) exists;*

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

5 “(5) the term ‘State’ includes the District of Co-
6 lumbia, the Commonwealth of Puerto Rico, and any
7 territory or possession of the United States.

8 “(c) *INTERVENING PARTIES*.—In any action in a dis-
9 trict court which is or could have been brought, in whole
10 or in part, under this section, any person with a claim aris-
11 ing from the accident described in subsection (a) shall be
12 permitted to intervene as a party plaintiff in the action,
13 even if that person could not have brought an action in
14 a district court as an original matter.

15 “(d) *NOTIFICATION OF JUDICIAL PANEL ON MULTIDIS-*
16 *TRICT LITIGATION*.—A district court in which an action
17 under this section is pending shall promptly notify the judi-
18 cial panel on multidistrict litigation of the pendency of the
19 action.”.

20 “(2) *CONFORMING AMENDMENT*.—The table of sec-
21 tions at the beginning of chapter 85 of title 28,
22 United States Code, is amended by adding at the end
23 the following new item:

“1369. *Multiparty, multiform jurisdiction*.”.

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

1 “(g) *A civil action in which jurisdiction of the district*
2 *court is based upon section 1369 of this title may be brought*
3 *in any district in which any defendant resides or in which*
4 *a substantial part of the accident giving rise to the action*
5 *took place.*”.

6 (c) *MULTIDISTRICT LITIGATION.*—Section 1407 of title
7 28, *United States Code*, as amended by section 2 of this
8 *Act*, is further amended by adding at the end the following:

9 “(j)(1) *In actions transferred under this section when*
10 *jurisdiction is or could have been based, in whole or in part,*
11 *on section 1369 of this title, the transferee district court*
12 *may, notwithstanding any other provision of this section,*
13 *retain actions so transferred for the determination of liabil-*
14 *ity and punitive damages. An action retained for the deter-*
15 *mination of liability shall be remanded to the district court*
16 *from which the action was transferred, or to the State court*
17 *from which the action was removed, for the determination*
18 *of damages, other than punitive damages, unless the court*
19 *finds, for the convenience of parties and witnesses and in*
20 *the interest of justice, that the action should be retained for*
21 *the determination of damages.*

22 “(2) *Any remand under paragraph (1) shall not be*
23 *effective until 60 days after the transferee court has issued*
24 *an order determining liability and has certified its inten-*
25 *tion to remand some or all of the transferred actions for*

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

11 “(3) *An appeal with respect to determination of puni-*
12 *tive damages by the transferee court may be taken, during*
13 *the 60-day period beginning on the date the order making*
14 *the determination is issued, to the court of appeals with*
15 *jurisdiction over the transferee court.*

16 “(4) *Any decision under this subsection concerning re-*
17 *mand for the determination of damages shall not be review-*
18 *able by appeal or otherwise.*

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

22 (d) *REMOVAL OF ACTIONS.*—Section 1441 of title 28,
23 *United States Code, is amended—*

24 (1) *in subsection (e) by striking “(e) The court*
25 *to which such civil action is removed” and inserting*

1 “(f) *The court to which a civil action is removed*
2 *under this section*”; and

3 (2) *by inserting after subsection (d) the following*
4 *new subsection:*

5 “(e)(1) *Notwithstanding the provisions of subsection*
6 *(b) of this section, a defendant in a civil action in a State*
7 *court may remove the action to the district court of the*
8 *United States for the district and division embracing the*
9 *place where the action is pending if—*

10 “(A) *the action could have been brought in a*
11 *United States district court under section 1369 of this*
12 *title, or*

13 “(B) *the defendant is a party to an action which*
14 *is or could have been brought, in whole or in part,*
15 *under section 1369 in a United States district court*
16 *and arises from the same accident as the action in*
17 *State court, even if the action to be removed could not*
18 *have been brought in a district court as an original*
19 *matter.*

20 *The removal of an action under this subsection shall be*
21 *made in accordance with section 1446 of this title, except*
22 *that a notice of removal may also be filed before trial of*
23 *the action in State court within 30 days after the date on*
24 *which the defendant first becomes a party to an action*
25 *under section 1369 in a United States district court that*

1 *arises from the same accident as the action in State court,*
2 *or at a later time with leave of the district court.*

3 “(2) *Whenever an action is removed under this sub-*
4 *section and the district court to which it is removed or*
5 *transferred under section 1407(j) has made a liability deter-*
6 *mination requiring further proceedings as to damages, the*
7 *district court shall remand the action to the State court*
8 *from which it had been removed for the determination of*
9 *damages, unless the court finds that, for the convenience of*
10 *parties and witnesses and in the interest of justice, the ac-*
11 *tion should be retained for the determination of damages.*

12 “(3) *Any remand under paragraph (2) shall not be*
13 *effective until 60 days after the district court has issued*
14 *an order determining liability and has certified its inten-*
15 *tion to remand the removed action for the determination*
16 *of damages. An appeal with respect to the liability deter-*
17 *mination and the choice of law determination of the district*
18 *court may be taken during that 60-day period to the court*
19 *of appeals with appellate jurisdiction over the district*
20 *court. In the event a party files such an appeal, the remand*
21 *shall not be effective until the appeal has been finally dis-*
22 *posed of. Once the remand has become effective, the liability*
23 *determination and the choice of law determination shall not*
24 *be subject to further review by appeal or otherwise.*

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

4 “(5) An action removed under this subsection shall be
5 deemed to be an action under section 1369 and an action
6 in which jurisdiction is based on section 1368 of this title
7 for purposes of this section and sections 1407, 1660, 1697,
8 and 1785 of this title.

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

12 (e) CHOICE OF LAW.—

13 (1) DETERMINATION BY THE COURT.—Chapter
14 111 of title 28, United States Code, is amended by
15 adding at the end the following new section:

16 **“§1660. Choice of law in multiparty, multiform ac-**
17 **tions**

18 “(a) FACTORS.—In an action which is or could have
19 been brought, in whole or in part, under section 1369 of
20 this title, the district court in which the action is brought
21 or to which it is removed shall determine the source of the
22 applicable substantive law, except that if an action is trans-
23 ferred to another district court, the transferee court shall
24 determine the source of the applicable substantive law. In
25 making this determination, a district court shall not be

1 bound by the choice of law rules of any State, and the fac-
2 tors that the court may consider in choosing the applicable
3 law include—

4 “(1) the place of the injury;

5 “(2) the place of the conduct causing the injury;

6 “(3) the principal places of business or domiciles
7 of the parties;

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

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

12 The factors set forth in paragraphs (1) through (5) shall
13 be evaluated according to their relative importance with re-
14 spect to the particular action. If good cause is shown in
15 exceptional cases, including constitutional reasons, the
16 court may allow the law of more than one State to be ap-
17 plied with respect to a party, claim, or other element of
18 an action.

19 “(b) *ORDER DESIGNATING CHOICE OF LAW.*—The dis-
20 trict court making the determination under subsection (a)
21 shall enter an order designating the single jurisdiction
22 whose substantive law is to be applied in all other actions
23 under section 1369 arising from the same accident as that
24 giving rise to the action in which the determination is
25 made. The substantive law of the designated jurisdiction

1 *shall be applied to the parties and claims in all such actions*
 2 *before the court, and to all other elements of each action,*
 3 *except where Federal law applies or the order specifically*
 4 *provides for the application of the law of another jurisdic-*
 5 *tion with respect to a party, claim, or other element of an*
 6 *action.*

7 “(c) *CONTINUATION OF CHOICE OF LAW AFTER RE-*
 8 *MAND.—In an action remanded to another district court*
 9 *or a State court under section 1407(j)(1) or 1441(e)(2) of*
 10 *this title, the district court’s choice of law under subsection*
 11 *(b) shall continue to apply.”.*

12 (2) *CONFORMING AMENDMENT.—The table of sec-*
 13 *tions at the beginning of chapter 111 of title 28,*
 14 *United States Code, is amended by adding at the end*
 15 *the following new item:*

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

16 (f) *SERVICE OF PROCESS.—*

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

20 **“§ 1697. Service in multiparty, multiform actions**

21 *“When the jurisdiction of the district court is based*
 22 *in whole or in part upon section 1369 of this title, process,*
 23 *other than subpoenas, may be served at any place within*
 24 *the United States, or anywhere outside the United States*
 25 *if otherwise permitted by law.”.*

1 (B) *The table of sections at the beginning of*
2 *chapter 113 of title 28, United States Code, is amend-*
3 *ed by adding at the end the following new item:*

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

4 (2) *SERVICE OF SUBPOENAS.—(A) Chapter 117*
5 *of title 28, United States Code, is amended by adding*
6 *at the end the following new section:*

7 **“§ 1785. Subpoenas in multiparty, multiform actions**

8 *“When the jurisdiction of the district court is based*
9 *in whole or in part upon section 1369 of this title, a sub-*
10 *poena for attendance at a hearing or trial may, if author-*
11 *ized by the court upon motion for good cause shown, and*
12 *upon such terms and conditions as the court may impose,*
13 *be served at any place within the United States, or any-*
14 *where outside the United States if otherwise permitted by*
15 *law.”.*

16 (B) *The table of sections at the beginning of*
17 *chapter 117 of title 28, United States Code, is amend-*
18 *ed by adding at the end the following new item:*

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

19 **SEC. 4. EFFECTIVE DATE.**

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

23 (b) *SECTION 3.—The amendments made by section 3*
24 *shall apply to a civil action if the accident giving rise to*

- 1 *the cause of action occurred on or after the 90th day after*
- 2 *the date of the enactment of this Act.*

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H. R. 2112

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A BILL

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