

Calendar No. 341

106TH CONGRESS
1ST SESSION**H. R. 2112**

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 1999

Received; read twice and referred to the Committee on the Judiciary

OCTOBER 21, 1999

Reported by Mr. HATCH, with an amendment

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

AN ACT

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)(1) Subject to paragraph (2) and except as pro-
11 vided in subsection (j), any action transferred under this
12 section by the panel may be transferred for trial purposes,
13 by the judge or judges of the transferee district to whom
14 the action was assigned, to the transferee or other district
15 in the interest of justice and for the convenience of the
16 parties and witnesses.

17 “(2) Any action transferred for trial purposes under
18 paragraph (1) shall be remanded by the panel for the de-
19 termination of compensatory damages to the district court
20 from which it was transferred, unless the court to which
21 the action has been transferred for trial purposes also
22 finds, for the convenience of the parties and witnesses and
23 in the interests of justice, that the action should be re-
24 tained for the determination of compensatory damages.”.

1 **SEC. 3. MULTIPARTY, MULTIFORUM JURISDICTION OF DIS-**
2 **TRICT COURTS.**

3 (a) BASIS OF JURISDICTION.—

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

7 **“§ 1369. Multiparty, multiforum jurisdiction**

8 “(a) IN GENERAL.—The district courts shall have
9 original jurisdiction of any civil action involving minimal
10 diversity between adverse parties that arises from a single
11 accident, where at least 25 natural persons have either
12 died or incurred injury in the accident at a discrete loca-
13 tion and, in the case of injury, the injury has resulted in
14 damages which exceed \$75,000 per person, exclusive of in-
15 terest and costs, if—

16 “(1) a defendant resides in a State and a sub-
17 stantial part of the accident took place in another
18 State or other location, regardless of whether that
19 defendant is also a resident of the State where a
20 substantial part of the accident took place;

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

24 “(3) substantial parts of the accident took place
25 in different States.

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

3 “(1) minimal diversity exists between adverse
4 parties if any party is a citizen of a State and any
5 adverse party is a citizen of another State, a citizen
6 or subject of a foreign state, or a foreign state as
7 defined in section 1603(a) of this title;

8 “(2) a corporation is deemed to be a citizen of
9 any State, and a citizen or subject of any foreign
10 state, in which it is incorporated or has its principal
11 place of business, and is deemed to be a resident of
12 any State in which it is incorporated or licensed to
13 do business or is doing business;

14 “(3) the term ‘injury’ means—

15 “(A) physical harm to a natural person;
16 and

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

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

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

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

11 “(d) NOTIFICATION OF JUDICIAL PANEL ON MULTI-
12 DISTRICT LITIGATION.—A district court in which an ac-
13 tion under this section is pending shall promptly notify
14 the judicial panel on multidistrict litigation of the pend-
15 ency of the action.”.

16 (2) CONFORMING AMENDMENT.—The table of
17 sections at the beginning of chapter 85 of title 28,
18 United States Code, is amended by adding at the
19 end the following new item:

“1369. Multiparty, multiform jurisdiction.”.

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

22 “(g) A civil action in which jurisdiction of the district
23 court is based upon section 1369 of this title may be
24 brought in any district in which any defendant resides or

1 in which a substantial part of the accident giving rise to
2 the action took place.”.

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

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

20 “(2) Any remand under paragraph (1) shall not be
21 effective until 60 days after the transferee court has
22 issued an order determining liability and has certified its
23 intention to remand some or all of the transferred actions
24 for the determination of damages. An appeal with respect
25 to the liability determination and the choice of law deter-

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

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

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

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

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

22 (1) in subsection (e) by striking “(e) The court
23 to which such civil action is removed” and inserting
24 “(f) The court to which a civil action is removed
25 under this section”; and

1 ~~(2)~~ by inserting after subsection (d) the fol-
2 lowing new subsection:

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

8 ~~“(A)~~ the action could have been brought in a
9 United States district court under section 1369 of
10 this title; or

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

18 The removal of an action under this subsection shall be
19 made in accordance with section 1446 of this title, except
20 that a notice of removal may also be filed before trial of
21 the action in State court within 30 days after the date
22 on which the defendant first becomes a party to an action
23 under section 1369 in a United States district court that
24 arises from the same accident as the action in State court,
25 or at a later time with leave of the district court.

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

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

1 not be bound by the choice of law rules of any State, and
2 the factors that the court may consider in choosing the
3 applicable law include—

4 “(1) the place of the injury;

5 “(2) the place of the conduct causing the in-
6 jury;

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

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

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

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

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

1 made. The substantive law of the designated jurisdiction
 2 shall be applied to the parties and claims in all such ac-
 3 tions before the court, and to all other elements of each
 4 action, except where Federal law applies or the order spe-
 5 cifically provides for the application of the law of another
 6 jurisdiction with respect to a party, claim, or other ele-
 7 ment of an action.

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

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

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

17 (f) SERVICE OF PROCESS.—

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

21 **“§ 1697. Service in multiparty, multiform actions**

22 “When the jurisdiction of the district court is based
 23 in whole or in part upon section 1369 of this title, process,
 24 other than subpoenas, may be served at any place within

1 the United States, or anywhere outside the United States
2 if otherwise permitted by law.”.

3 (B) The table of sections at the beginning of
4 chapter 113 of title 28, United States Code, is
5 amended by adding at the end the following new
6 item:

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

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

10 **“§ 1785. Subpoenas in multiparty, multiforum actions**

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

19 (B) The table of sections at the beginning of
20 chapter 117 of title 28, United States Code, is
21 amended by adding at the end the following new
22 item:

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

1 **SEC. 4. EFFECTIVE DATE.**

2 (a) SECTION 2.—The amendments made by section
3 2 shall apply to any civil action pending on or brought
4 on or after the date of the enactment of this Act.

5 (b) SECTION 3.—The amendments made by section
6 3 shall apply to a civil action if the accident giving rise
7 to the cause of action occurred on or after the 90th day
8 after the date of the enactment of this Act.

Passed the House of Representatives September 13,
1999.

Attest:

JEFF TRANDAHL,

Clerk.

9 **SECTION 1. SHORT TITLE.**

10 *This Act may be cited as the “Multidistrict Jurisdic-*
11 *tion Act of 1999”.*

12 **SEC. 2. MULTIDISTRICT LITIGATION.**

13 *Section 1407 of title 28, United States Code, is*
14 *amended—*

15 *(1) in the third sentence of subsection (a), by in-*
16 *serting “or ordered transferred to the transferee or*
17 *other district under subsection (i)” after “termi-*
18 *nated”; and*

19 *(2) by adding at the end the following new sub-*
20 *section:*

21 *“(i)(1) Subject to paragraph (2), any action trans-*
22 *ferred under this section by the panel may be transferred,*

1 *for trial purposes, by the judge or judges of the transferee*
2 *district to whom the action was assigned to the transferee*
3 *or other district in the interest of justice and for the conven-*
4 *ience of the parties and witnesses.*

5 “(2) *Any action transferred for trial purposes under*
6 *paragraph (1) shall be remanded by the panel for the deter-*
7 *mination of compensatory damages to the district court*
8 *from which it was transferred, unless the court to which*
9 *the action has been transferred for trial purposes also finds,*
10 *for the convenience of the parties and witnesses and in the*
11 *interests of justice, that the action should be retained for*
12 *the determination of compensatory damages.”.*

13 **SEC. 3. EFFECTIVE DATE.**

14 *The amendments made by this Act shall apply to any*
15 *civil action pending on or brought on or after the date of*
16 *the enactment of this Act.*

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106TH CONGRESS
1ST SESSION

H. R. 2112

AN ACT

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.

OCTOBER 21, 1999

Reported with an amendment