

# Union Calendar No. 239

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 1768

[Report No. 108-416]

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 for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2003

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

FEBRUARY 10, 2004

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 italics]

[For text of introduced bill, see copy of bill as introduced on April 11, 2003]

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## 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 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,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Multidistrict Litigation*  
3 *Restoration Act of 2004”.*

4 **SEC. 2. MULTIDISTRICT LITIGATION.**

5 *Section 1407 of title 28, United States Code, is*  
6 *amended—*

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

11 *(2) by adding at the end the following new sub-*  
12 *section:*

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

20 *“(2) Any action transferred for trial purposes under*  
21 *paragraph (1) shall be remanded by the panel for the deter-*  
22 *mination of compensatory damages to the district court*  
23 *from which it was transferred, unless the court to which*  
24 *the action has been transferred for trial purposes also finds,*  
25 *for the convenience of the parties and witnesses and in the*

1 *interests of justice, that the action should be retained for*  
2 *the determination of compensatory damages.”.*

3 **SEC. 3. TECHNICAL AMENDMENT TO MULTIPARTY, MULTI-**  
4 **FORM TRIAL JURISDICTION ACT OF 2002.**

5 *Section 1407 of title 28, United States Code, as*  
6 *amended by section 2 of this Act, is further amended by*  
7 *adding at the end the following:*

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

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

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

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

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

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

21 **SEC. 4. EFFECTIVE DATE.**

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

1       **(b) SECTION 3.**—*The amendment made by section 3*  
2 *shall be effective as if enacted in section 11020(b) of the*  
3 *Multiparty, Multiform Trial Jurisdiction Act of 2002*  
4 *(Public Law 107–273; 116 Stat. 1826 et seq.).*

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