

## Union Calendar No. 9

107<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 860

[Report No. 107-14]

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.

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### IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2001

Mr. SENSENBRENNER introduced the following bill; which was referred to the Committee on the Judiciary

MARCH 12, 2001

Committed to the Committee of the Whole House on the State of the Union  
and ordered to be printed

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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 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Multidistrict,  
3 Multiparty, Multiforum Trial Jurisdiction Act of 2001”.

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  
8 inserting “or ordered transferred to the transferee  
9 or 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  
19 parties and witnesses.

20 “(2) Any action transferred for trial purposes under  
21 paragraph (1) shall be remanded by the panel for the de-  
22 termination 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  
25 finds, for the convenience of the parties and witnesses and

1 in the interests of justice, that the action should be re-  
 2 tained for the determination of compensatory damages.”.

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

5 (a) BASIS OF JURISDICTION.—

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

9 **“§ 1369. Multiparty, multiform jurisdiction**

10 “(a) IN GENERAL.—The district courts shall have  
 11 original jurisdiction of any civil action involving minimal  
 12 diversity between adverse parties that arises from a single  
 13 accident, where at least 25 natural persons have either  
 14 died or incurred injury in the accident at a discrete loca-  
 15 tion and, in the case of injury, the injury has resulted in  
 16 damages which exceed \$150,000 per person, exclusive of  
 17 interest and costs, if—

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

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

1           “(3) substantial parts of the accident took place  
2           in different States.

3           “(b) LIMITATION OF JURISDICTION OF DISTRICT  
4 COURTS.—The district court shall abstain from hearing  
5 any civil action described in subsection (a) in which—

6           “(1) the substantial majority of all plaintiffs  
7           are citizens of a single State of which the primary  
8           defendants are also citizens; and

9           “(2) the claims asserted will be governed pri-  
10          marily by the laws of that State.

11          “(c) SPECIAL RULES AND DEFINITIONS.—For pur-  
12 poses of this section—

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

18          “(2) a corporation is deemed to be a citizen of  
19 any State, and a citizen or subject of any foreign  
20 state, in which it is incorporated or has its principal  
21 place of business, and is deemed to be a resident of  
22 any State in which it is incorporated or licensed to  
23 do business or is doing business;

24          “(3) the term ‘injury’ means—

1                   “(A) physical harm to a natural person;  
2                   and

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

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

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

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

20                  “(e) NOTIFICATION OF JUDICIAL PANEL ON MULTI-  
21                  DISTRICT LITIGATION.—A district court in which an ac-  
22                  tion under this section is pending shall promptly notify  
23                  the judicial panel on multidistrict litigation of the pend-  
24                  ency of the action.”.

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

“1369. Multiparty, multiform jurisdiction.”.

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

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

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

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

1 ages, unless the court finds, for the convenience of parties  
2 and witnesses and in the interest of justice, that the action  
3 should be retained for the determination of damages.

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

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

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

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

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

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

10 (2) by inserting after subsection (d) the fol-  
11 lowing new subsection:

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

17 “(A) the action could have been brought in a  
18 United States district court under section 1369 of  
19 this title; or

20 “(B) the defendant is a party to an action  
21 which is or could have been brought, in whole or in  
22 part, under section 1369 in a United States district  
23 court and arises from the same accident as the ac-  
24 tion in State court, even if the action to be removed



1       could not have been brought in a district court as  
2       an original matter.

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

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

21       “(3) Any remand under paragraph (2) shall not be  
22   effective until 60 days after the district court has issued  
23   an order determining liability and has certified its inten-  
24   tion to remand the removed action for the determination  
25   of damages. An appeal with respect to the liability deter-

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

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

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

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

21 (e) SERVICE OF PROCESS.—

22 (1) OTHER THAN SUBPOENAS.—(A) Chapter  
23 113 of title 28, United States Code, is amended by  
24 adding at the end the following new section:

1 **“§ 1697. Service in multiparty, multiform actions**

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

7 (B) The table of sections at the beginning of  
8 chapter 113 of title 28, United States Code, is  
9 amended by adding at the end the following new  
10 item:

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

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

14 **“§ 1785. Subpoenas in multiparty, multiform actions**

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

23 (B) The table of sections at the beginning of  
24 chapter 117 of title 28, United States Code, is

1       amended by adding at the end the following new  
2       item:

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

3   **SEC. 4. EFFECTIVE DATE.**

4       (a) SECTION 2.—The amendments made by section  
5   2 shall apply to any civil action pending on or brought  
6   on or after the date of the enactment of this Act.

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



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1<sup>ST</sup> SESSION

**H. R. 860**

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**A BILL**

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