

105TH CONGRESS  
1ST SESSION

# H. R. 1857

To amend title 28, United States Code, to provide for Federal jurisdiction of certain multiparty, multiform civil actions.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1997

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

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## A BILL

To amend title 28, United States Code, to provide for Federal jurisdiction of certain multiparty, multiform 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 “Multiparty,  
5 Multiform Jurisdiction Act of 1997”.

6 **SEC. 2. MULTIPARTY, MULTIFORM JURISDICTION OF DIS-**  
7 **TRICT COURTS.**

8 (a) BASIS OF JURISDICTION.—

1           (1) IN GENERAL.—Chapter 85 of title 28, Unit-  
2       ed States Code, is amended by adding at the end the  
3       following new section:

4       **“§ 1369. Multiparty, multiform jurisdiction**

5       “(a) IN GENERAL.—The district courts shall have  
6       original jurisdiction of any civil action involving minimal  
7       diversity between adverse parties that arises from a single  
8       accident, where at least 25 natural persons have either  
9       died or incurred injury in the accident at a discrete loca-  
10      tion and, in the case of injury, the injury has resulted in  
11      damages which exceed \$50,000 per person, exclusive of in-  
12      terest and costs, if—

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

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

21           “(3) substantial parts of the accident took place  
22      in different States.

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

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

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

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

13               “(A) physical harm to a natural person;  
14 and

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

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

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

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

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

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

“1369. Multiparty, multiform jurisdiction.”.

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

19      “(g) A civil action in which jurisdiction of the district  
 20      court is based upon section 1369 of this title may be  
 21      brought in any district in which any defendant resides or  
 22      in which a substantial part of the accident giving rise to  
 23      the action took place.”.

1       (c) MULTIDISTRICT LITIGATION.—Section 1407 of  
2 title 28, United States Code, is amended by adding at the  
3 end the following:

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

17       “(2) Any remand under paragraph (1) shall not be  
18 effective until 60 days after the transferee court has is-  
19 sued an order determining liability and has certified its  
20 intention to remand some or all of the transferred actions  
21 for the determination of damages. An appeal with respect  
22 to the liability determination and the choice of law deter-  
23 mination of the transferee court may be taken during that  
24 60-day period to the court of appeals with appellate juris-  
25 diction over the transferee court. In the event a party files

1 such an appeal, the remand shall not be effective until the  
2 appeal has been finally disposed of. Once the remand has  
3 become effective, the liability determination and the choice  
4 of law determination shall not be subject to further review  
5 by appeal or otherwise.

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

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

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

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

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

23 (2) by inserting after subsection (d) the follow-  
24 ing new subsection:

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

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

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

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

24       “(2) Whenever an action is removed under this sub-  
25 section and the district court to which it is removed or

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

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

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



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

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

9 (e) CHOICE OF LAW.—

10 (1) DETERMINATION BY THE COURT.—Chapter  
 11 111 of title 28, United States Code, is amended by  
 12 adding at the end the following new section:

13 **“§ 1660. Choice of law in multiparty, multiform ac-**  
 14 **tions**

15 “(a) FACTORS.—In an action which is or could have  
 16 been brought, in whole or in part, under section 1369 of  
 17 this title, the district court in which the action is brought  
 18 or to which it is removed shall determine the source of  
 19 the applicable substantive law, except that if an action is  
 20 transferred to another district court, the transferee court  
 21 shall determine the source of the applicable substantive  
 22 law. In making this determination, a district court shall  
 23 not be bound by the choice of law rules of any State, and  
 24 the factors that the court may consider in choosing the  
 25 applicable law include—

1 “(1) the place of the injury;

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

4 “(3) the principal places of business or  
5 domiciles of the parties;

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

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

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

17 “(b) ORDER DESIGNATING CHOICE OF LAW.—The  
18 district court making the determination under subsection  
19 (a) shall enter an order designating the single jurisdiction  
20 whose substantive law is to be applied in all other actions  
21 under section 1369 arising from the same accident as that  
22 giving rise to the action in which the determination is  
23 made. The substantive law of the designated jurisdiction  
24 shall be applied to the parties and claims in all such ac-  
25 tions before the court, and to all other elements of each

1 action, except where Federal law applies or the order spe-  
 2 cifically provides for the application of the law of another  
 3 jurisdiction with respect to a party, claim, or other ele-  
 4 ment of an action.

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

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

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

14 (f) SERVICE OF PROCESS.—

15 (1) OTHER THAN SUBPOENAS.—(A) Chapter  
 16 113 of title 28, United States Code, is amended by  
 17 adding at the end the following new section:

18 **“§ 1697. Service in multiparty, multiforum actions**

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

24 (B) The table of sections at the beginning of  
 25 chapter 113 of title 28, United States Code, is

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

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

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

6       **“§ 1785. Subpoenas in multiparty, multiform actions**

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

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

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

19       **SEC. 3. EFFECTIVE DATE.**

20       The amendments made by this Act shall apply to a  
21      civil action if the accident giving rise to the cause of action  
22      occurred on or after the 90th day after the date of the  
23      enactment of this Act.

