

103D CONGRESS
1ST SESSION

H. R. 1100

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1993

Mr. HUGHES (for himself and Mr. MOORHEAD) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, 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 “Multiparty,
5 Multiforum Jurisdiction Act of 1993”.

6 **SEC. 2. JURISDICTION OF DISTRICT COURTS.**

7 (a) BASIS OF JURISDICTION.—Chapter 85 of title 28,
8 United States Code, is amended by adding at the end the
9 following new section:

1 **“§ 1368. Multiparty, multiform jurisdiction**

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

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

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

18 “(3) substantial parts of the accident took place
19 in different States.

20 “(b) For purposes of this section—

21 “(1) minimal diversity exists between adverse
22 parties if any party is a citizen of a State and any
23 adverse party is a citizen of another State, a citizen
24 or subject of a foreign state, or a foreign state as
25 defined in section 1603(a) of this title;

1 “(2) a corporation is deemed to be a citizen of
2 any State, and a citizen or subject of any foreign
3 state, in which it is incorporated or has its principal
4 place of business, and is deemed to be a resident of
5 any State in which it is incorporated or licensed to
6 do business or is doing business;

7 “(3) the term ‘injury’ means—

8 “(A) physical harm to a natural person;
9 and

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

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

17 “(5) the term ‘State’ includes the District of
18 Columbia, the Commonwealth of Puerto Rico, and
19 the territories or possessions of the United States.

20 “(c) In any action in a district court which is or could
21 have been brought, in whole or in part, under this section,
22 any person with a claim arising from the accident de-
23 scribed in subsection (a) shall be permitted to intervene
24 as a party plaintiff in the action, even if that person could

1 not have brought an action in a district court as an origi-
2 nal matter.

3 “(d) A district court in which an action under this
4 section is pending shall promptly notify the judicial panel
5 on multidistrict litigation of the pendency of the action.”.

6 (b) A CONFORMING AMENDMENT.—The table of sec-
7 tions at the beginning of chapter 85 of title 28, United
8 States Code, is amended by adding at the end the follow-
9 ing new item:

“1368. Multiparty, multiforum jurisdiction.”.

10 **SEC. 3. VENUE.**

11 Section 1391 of title 28, United States Code, is
12 amended by adding at the end the following:

13 “(g) A civil action in which jurisdiction of the district
14 court is based upon section 1368 of this title may be
15 brought in any district in which any defendant resides or
16 in which a substantial part of the accident giving rise to
17 the action took place.”.

18 **SEC. 4. MULTIDISTRICT LITIGATION.**

19 Section 1407 of title 28, United States Code, is
20 amended by adding at the end the following:

21 “(i)(1) In actions transferred under this section when
22 jurisdiction is or could have been based, in whole or in
23 part, on section 1368 of this title, the transferee district
24 court may, notwithstanding any other provision of this
25 section, retain actions so transferred for the determination

1 of liability and punitive damages. An action retained for
2 the determination of liability shall be remanded to the dis-
3 trict court from which the action was transferred, or to
4 the State court from which the action was removed, for
5 the determination of damages, other than punitive dam-
6 ages, unless the court finds, for the convenience of parties
7 and witnesses and in the interest of justice, that the action
8 should be retained for the determination of damages.

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

23 “(3) An appeal with respect to determination of puni-
24 tive damages by the transferee court may be taken, during
25 the 60-day period beginning on the date the order making

1 the determination is issued, to the court of appeals with
2 jurisdiction over the transferee court.

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

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

9 **SEC. 5. REMOVAL OF ACTIONS.**

10 Section 1441 of title 28, United States Code, is
11 amended—

12 (1) in subsection (e) by striking out “(e) The
13 court to which such civil action is removed” and in-
14 serting in lieu thereof “(f) The court to which a civil
15 action is removed under this section”; and

16 (2) by inserting after subsection (d) the follow-
17 ing new subsection;

18 (e)(1) Notwithstanding the provisions of subsection
19 (b) of this section, a defendant in a civil action in a State
20 court may remove the action to the district court of the
21 United States for the district and division embracing the
22 place where the action is pending if—

23 “(A) the action could have been brought in a
24 United States district court under section 1368 of
25 this title, or

1 “(B) the defendant is a party to an action
2 which is or could have been brought, in whole or in
3 part, under section 1368 in a United States district
4 court and arises from the same accident as the ac-
5 tion in State court, even if the action to be removed
6 could not have been brought in a district court as
7 an original matter.

8 The removal of an action under this subsection shall be
9 made in accordance with section 1446 of this title, except
10 that a notice of removal may also be filed before trial of
11 the action in State court within 30 days after the date
12 on which the defendant first becomes a party to an action
13 under section 1368 in a United States district court that
14 arises from the same accident as the action in State court,
15 or at a later time with leave of the district court.

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

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

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

18 “(5) An action removed under this subsection shall
19 be deemed to be an action under section 1368 and an ac-
20 tion in which jurisdiction is based on section 1368 of this
21 title for purposes of this section and sections 1407, 1659,
22 1697, and 1785 of this title.

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

1 **SEC. 6. CHOICE OF LAW.**

2 (a) DETERMINATION BY THE COURT.—Chapter 111
3 of title 28, United States Code, is amended by adding at
4 the end the following new section:

5 **§ 1659. Choice of law in multiparty, multiform ac-**
6 **tions**

7 “(a) In an action which is or could have been
8 brought, in whole or in part, under section 1368 of this
9 title, the district court in which the action is brought or
10 to which it is removed shall determine the source of the
11 applicable substantive law, except that if an action is
12 transferred to another district court, the transferee court
13 shall determine the source of the applicable substantive
14 law. In making this determination, a district court shall
15 not be bound by the choice of law rules of any State, and
16 the factors that the court may consider in choosing the
17 applicable law include—

18 “(1) the place of the injury;

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

21 “(3) the principal places of business or
22 domiciles of the parties;

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

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

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

8 “(b) The district court making the determination
9 under subsection (a) shall enter an order designating the
10 single jurisdiction whose substantive law is to be applied
11 in all other actions under section 1368 arising from the
12 same accident as that giving rise to the action in which
13 the determination is made. The substantive law of the des-
14 ignated jurisdiction shall be applied to the parties and
15 claims in all such actions before the court, and to all other
16 elements of each action, except where Federal law applies
17 or the order specifically provides for the application of the
18 law of another jurisdiction with respect to a party, claim,
19 or other element of an action.

20 “(c) In an action remanded to another district court
21 or a State court under section 1407(i)(1) or 1441(e)(2)
22 of this title, the district court’s choice of law under sub-
23 section (b) shall continue to apply.”

24 (b) CONFORMING AMENDMENT.—The table of sec-
25 tions at the beginning of chapter 111 of title 28, United

1 States Code, is amended by adding at the end the follow-
2 ing new item:

“1659. Choice of law in multiparty, multiform actions.”.

3 **SEC. 7. SERVICE OF PROCESS.**

4 (a) OTHER THAN SUBPOENAS.—(1) Chapter 113 of
5 title 28, United States Code, is amended by adding at the
6 end the following new section:

7 **“§ 1697. Service in multiparty, multiform actions**

8 “When the jurisdiction of the district court is based
9 in whole or in part upon section 1368 of this title, process,
10 other than subpoenas, may be served at any place within
11 the United States, or anywhere outside the United States
12 if otherwise permitted by law.”.

13 (2) The table of sections at the beginning of chapter
14 113 of title 28, United States Code, is amended by adding
15 at the end the following new item:

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

16 (b) SERVICE OF SUBPOENAS.—(1) Chapter 117 of
17 title 28, United States Code, is amended by adding at the
18 end the following new section:

19 **“§ 1785. Subpoenas in multiparty, multiform actions**

20 “When the jurisdiction of the district court is based
21 in whole or in part upon section 1368 of this title, a sub-
22 poena for attendance at a hearing or trial may, if author-
23 ized by the court upon motion for good cause shown, and
24 upon such terms and conditions as the court may impose,

1 be served at any place within the United States, or any-
2 where outside the United States if otherwise permitted by
3 law.”.

4 (2) The table of sections at the beginning of chapter
5 117 of title 28, United States Code, is amended by adding
6 at the end the following new item:

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

7 **SEC. 8. EFFECTIVE DATE.**

8 The amendments made by this Act shall apply to a
9 civil action if the accident giving rise to the cause of action
10 occurred on or after the 90th day after the date of the
11 enactment of this Act.

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