

without permission from the filmmakers. This was proposed in response to a lawsuit between one company and filmmakers. From our consideration of this provision last year, we know this section inserts Congress into a private dispute and will take away the copyrights and artistic rights of filmmakers to the financial benefit of one private company. It is important to note that the bill does not immunize those who make fixed copies of edited content; such copies would still be illegal, as they are today, and the legislative history should reflect that.

I urge my colleagues to vote "yes" on this legislation.

Mr. BERMAN. Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ISSA). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the Senate bill, S. 167.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

MULTIDISTRICT LITIGATION RESTORATION ACT OF 2005

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1038) 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.

The Clerk read as follows:

H.R. 1038

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Multidistrict Litigation Restoration Act of 2005".

SEC. 2. MULTIDISTRICT LITIGATION.

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

(1) in the third sentence of subsection (a), by inserting "or ordered transferred to the transferee or other district under subsection (i)" after "terminated"; and

(2) by adding at the end the following new subsection:

"(i)(1) Subject to paragraph (2) and except as provided in subsection (j), any action transferred under this section by the panel may be transferred for trial purposes, by the judge or judges of the transferee district to whom the action was assigned, to the transferee or other district in the interest of justice and for the convenience of the parties and witnesses.

"(2) Any action transferred for trial purposes under paragraph (1) shall be remanded by the panel for the determination of compensatory damages to the district court from which it was transferred, unless the court to which the action has been transferred for trial purposes also finds, for the convenience of the parties and witnesses and in the interests of justice, that the action should be retained for the determination of compensatory damages."

SEC. 3. TECHNICAL AMENDMENT TO MULTIPARTY, MULTIFORM TRIAL JURISDICTION ACT OF 2002.

Section 1407 of title 28, United States Code, as amended by section 2 of this Act, is fur-

ther amended by adding at the end the following:

"(j)(1) In actions transferred under this section when jurisdiction is or could have been based, in whole or in part, on section 1369 of this title, the transferee district court may, notwithstanding any other provision of this section, retain actions so transferred for the determination of liability and punitive damages. An action retained for the determination of liability shall be remanded to the district court from which the action was transferred, or to the State court from which the action was removed, for the determination of damages, other than punitive damages, unless the court finds, for the convenience of parties and witnesses and in the interest of justice, that the action should be retained for the determination of damages.

"(2) Any remand under paragraph (1) shall not be effective until 60 days after the transferee court has issued an order determining liability and has certified its intention to remand some or all of the transferred actions for the determination of damages. An appeal with respect to the liability determination and the choice of law determination of the transferee court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the transferee court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination and the choice of law determination shall not be subject to further review by appeal or otherwise.

"(3) An appeal with respect to determination of punitive damages by the transferee court may be taken, during the 60-day period beginning on the date the order making the determination is issued, to the court of appeals with jurisdiction over the transferee court.

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

"(5) Nothing in this subsection shall restrict the authority of the transferee court to transfer or dismiss an action on the ground of inconvenient forum."

SEC. 4. EFFECTIVE DATE.

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

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

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1038, the bill currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SENSENBRENNER asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. SENSENBRENNER. Mr. Speaker, H.R. 1038, the Multidistrict Litigation Restoration Act of 2005, reverses the effect of a 1998 Supreme Court case commonly referred to as "Lexecon," which has hampered the Federal court system from adjudicating complex, multidistrict cases that are related by a common fact situation. Just as importantly, the bill functions as a technical correction to a related "disaster litigation" provision that was incorporated in the Department of Justice Authorization Act, which Congress passed in 2002.

A little background is in order at this point. During the 107th Congress, I authored legislation to address the Lexecon and disaster litigation problems. As passed under suspension by the House, my bill, H.R. 860, accomplished two goals: First, the bill reversed the effect of the Lexecon case which dealt with the authority of a specially designated U.S. district court to handle complex multidistrict cases consolidated for trial. Pursuant to the decision, the court known as the "transferee" court could retain Federal and State cases only for pretrial matters, but not the actual trials themselves.

H.R. 860 simply codified existing practice of the preceding 30 years by allowing the transferee court to retain jurisdiction for the purpose of determining liability and punitive damages, or to refer the cases back to those courts in which the cases were originally filed. This feature streamlines adjudication and enables the transferee court to induce the parties to settle.

Second, H.R. 860 conferred original jurisdiction on U.S. district courts to adjudicate any civil action arising out of a single accident under prescribed conditions, but would remand the case to the State courts for determination of compensatory damages. This portion of H.R. 860 is commonly referred to as the "disaster litigation" part of the bill.

The Committee on the Judiciary in the other body took no action on H.R. 860, but the matter was resurrected during House-Senate conference deliberations on the Department of Justice authorization bill. Pursuant to negotiations, the conferees agreed to take half of H.R. 860, the disaster litigation portion, which is currently codified as section 1369 of title 28 of the U.S. Code.

Trying to enact a straight Lexecon fix through the bill before us is meritorious in its own right, promoting as it does judicial efficiency, but there is another problem that the bill solves. The currently codified disaster litigation portion of H.R. 860 contemplates that the Lexecon problem is solved. In other words, the new disaster litigation law only creates original jurisdiction for a U.S. district court to accept those cases and qualify as a transferee court

under the multidistrict litigation statute; but the transferee court still cannot retain the consolidated cases for determination of liability and punitive damages, which compromises the operation of the statute.

In this sense, then, the Lexecon fix, its freestanding merits aside, also functions as a technical correction for the recently enacted disaster litigation measure. H.R. 1038, in tandem with the now-codified disaster litigation provisions, will produce what was originally intended when legislation addressing this issue was first proposed, a fix to the Lexecon problem and a disaster litigation measure that really works.

I remind Members that H.R. 1038 is identical to H.R. 1768 from the 108th Congress, which passed the House by a rollcall vote of 418-0. In sum, this legislation speaks to process, fairness and judicial efficiency. It will not interfere with jury verdicts or compensation rates for litigators.

Mr. Speaker, I include for the RECORD a letter from the U.S. Judicial Conference stating their strong support for enactment of H.R. 1038. I urge my colleagues to join me in a bipartisan effort to support this bill.

JUDICIAL CONFERENCE
OF THE UNITED STATES,
Washington, DC, April 18, 2005.

Hon. F. JAMES SENSENBRENNER, JR.,
Chairman, Committee on the Judiciary, House
of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Judicial Conference of the United States strongly supports enactment of H.R. 1038, the "Multidistrict Litigation Restoration Act of 2005," which you introduced on March 2, 2005 and which was reported favorably by the House Judiciary Committee on March 17, 2005. H.R. 1038 will facilitate the resolution of claims by citizens and improve the administration of justice.

Currently, section 1407(a) of title 28, United States Code, the multidistrict litigation statute, authorizes the Judicial Panel on Multidistrict Litigation (the Judicial Panel) to transfer civil actions with common questions of fact that are pending in multiple federal judicial districts "to any district for coordinated or consolidated pretrial proceedings." It also requires the Judicial Panel to remand any such action to the district court in which the action was filed at or before the conclusion of such pretrial proceedings, unless the action is terminated before then in the transferee court.

Although the federal courts had for nearly 30 years followed the practice of allowing a transferee court to invoke the venue transfer provision (28 U.S.C. §1404(a)) and transfer the case to itself for trial purposes, the Supreme Court in *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), held that such statutory authority did not exist. The Court noted that the proper venue for resolving the desirability of such self-transfer authority is the "the floor of Congress." 523 U.S. at 40.

Section 2 of H.R. 1038 responds to the Lexecon decision by amending 28 U.S.C. §1407 to allow a judge with a transferred case to retain it for trial or to transfer it to another district in the interest of justice and for the convenience of the parties and witnesses. This section also provides that any action transferred for trial must be remanded by the Judicial Panel to the district court from which it was transferred for the determination of compensatory damages, unless the

transferee court finds for the convenience of the parties and witnesses and in the interests of justice that the action should be retained for the determined of compensatory damages. As experience has shown, there is wisdom in permitting the judge who is familiar with the facts and parties and pretrial proceedings of a transferred case to retain the case for trial. Also, as with most federal civil actions, multidistrict litigation cases are typically resolved through settlement. Allowing the transferee judge to set a firm trial date promotes the resolution of these cases.

H.R. 1038 also seeks to make corrections to the Multiparty, Multiforum Trial Jurisdiction Act of 2002, which was enacted as section 11020 of the "21st Century Department of Justice Appropriations Authorization Act" (Pub. L. No. 107-273, 116 Stat. 1758; now codified in various sections in title 28, United States Code. See 2 U.S.C. §§1369, 1391, 1441, 1697, and 1785.)

The Judicial Conference appreciates your support of H.R. 1038. If you or your staff have any questions, please contact Mark W. Braswell or Karen Kremer, Counsel, Office of Legislative Affairs (202-502-1700).

Sincerely,

LEONIDAS RALPH MECHAM,

Secretary.

Mr. SENSENBRENNER. Mr. Speaker, I reserve the balance of my time.

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to support House passage of H.R. 1038. At least five times over the past 6 or 7 years I have risen to support legislation virtually identical to H.R. 1038. Each time the legislation has stalled in the Senate.

This bill has a very narrow purpose and effect. It overturns the 1998 Lexecon decision of the Supreme Court. That decision held that a multidistrict litigation transferred to a Federal court for pretrial proceedings cannot be retained by that court for trial purpose. In so holding, the Lexecon decision upset decades of practice by the multidistrict litigation panel and Federal district courts. The Lexecon decision also increases the cost and complexity of such multidistrict litigations by requiring courts other than the transferee court which has overseen the discovery and other pretrial proceedings to conduct a trial.

The provisions of this bill overturn Lexecon in a carefully calibrated manner. While the bill allows a transferee court to retain a case for a trial on liability issues and, when appropriate, on punitive damages, it creates a presumption that the trial of compensatory damages will be remanded to the transferor court. In so doing, the bill is careful to overturn the Lexecon decision without expanding the power previously exercised by transferee courts. More importantly, the presumption regarding the trial of compensatory damages ensures that plaintiffs will not be unduly burdened in pursuit of their claims.

In addition, this bill makes technical and conforming corrections to the provisions in the 2002 Department of Justice authorization measure relating to the consolidation of mass tort cases. While not universally endorsed, most

Democratic members of the Committee on the Judiciary have supported this piece of legislation each time it is submitted for consideration, and I ask my colleagues to once again vote for H.R. 1038.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I will not repeat the chairman's description of the bill's contents, but I would note that his bill is identical to the text of the legislation we passed in the last Congress by a vote of 418-0.

H.R. 1038 helps the Multidistrict Litigation Panel discharge its responsibilities by streamlining the adjudication of complex, multidistrict cases in a manner that is fair to all litigants.

Mr. CONYERS. Mr. Speaker, I have supported this legislation in the past because I am told it will improve the ability of Federal courts to handle complex multidistrict litigation arising from a common set of facts.

But I do have some reservations about this bill. When Congress enacted the Multidistrict Litigation, MDL, statute 35 years ago, its purpose was not to impose an unfair burden on plaintiffs and their families. Congress made plain its insistence on preserving the ability of individual plaintiffs to have their eventual day in court in a Federal district courthouse reasonably close to their home.

I want to make sure we continue to strike the right balance between emphasizing judicial economy and efficiency and preserving fundamental fairness during the critical trial phase. With this underlying goal in mind, I support this legislation. However, I hope the bill will continue to improve as it moves through the Senate and into Conference.

Mr. BERMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 1038.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TRADEMARK DILUTION REVISION ACT OF 2005

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 683) to amend the Trademark Act of 1946 with respect to dilution by blurring or tarnishment, as amended.

The Clerk read as follows:

H.R. 683

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Trademark Dilution Revision Act of 2005".