



## **H.R. 725 – Innocent Party Protection Act (Rep. Buck, R-CO)**

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### **FLOOR SCHEDULE:**

Expected to be considered on March 9, 2017, under a structured [rule](#).

### **TOPLINE SUMMARY:**

[H.R. 725](#) would set a uniform standard for determining whether a defendant has been fraudulently joined to a lawsuit for the purposes of defeating federal diversity jurisdiction. This bill would also clarify that federal courts can consider evidence outside of pleadings in deciding motions to remand cases removed to federal court.

### **COST:**

The Congressional Budget Office (CBO) [estimates](#) “that any changes in discretionary costs to implement H.R. 725 would not be significant.”

### **CONSERVATIVE CONCERNS:**

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### **DETAILED SUMMARY AND ANALYSIS:**

Under current law regarding federal jurisdiction, trial lawyers have the ability to keep cases in state courts if they sue a defendant from another state, so long as they also sue a defendant in the state in which the case is filed. This practice, defeating federal jurisdiction, has in the past been abused by trial lawyers that fraudulently sue defendants in the state of filing, even if those claims have little to no merit. This allows trial lawyers to keep cases in preferential state court forums at the expense of the local defendant.

If the locally joined defendant has no true connection to the controversy in question, this joinder is referred to as “fraudulent joinder.” The fraudulent joinder doctrine has been recognized by the Supreme Court since the early 20th century and [allows](#) for an exception to the complete diversity rule to prevent plaintiff efforts to deny defendants the protections of a federal court forum to which they are entitled. Despite this provision, the Supreme Court has not clarified fraudulent joinder since the early 1900s, and lower courts are forced to consider the rule on a case-by-case basis, often with vastly differing results. Because the rules are often complicated, the district court will frequently remand the case to state court, where the local defendant is often dropped altogether. Though they are often eventually dropped from the case, extreme

harm has already occurred, as these defendants, who are often individuals or small businesses, incur huge costs in their defense.

H.R. 725 would address the abuse surrounding fraudulent joinder by adopting a uniform standard for determining whether a defendant has been fraudulently joined to a lawsuit for the purposes of defeating federal diversity jurisdiction. It would make clear that the standard only applies to cases that are removed under the [general diversity statute](#) and when there is a motion to remand on the ground that joinder of another defendant would destroy complete diversity or would violate the [forum defendant rule](#). Meaning, the provision would apply to motions for remand when one or more defendants are citizens of the same state as one or more plaintiffs, or if one or more defendants that are properly joined are citizens of the state in which the case was brought. The legislation would only apply if the motion to remand is opposed on the grounds that the joinder was fraudulent.

The joinder would be fraudulent if the court finds that: (1) there is actual fraud in the pleading of jurisdictional facts; (2) based on the complaint and materials submitted to the court, it is implausible to affirm that state law would impose liability on each defendant; (3) state or federal law bars all of the claims against all defendants; or (4) objective evidence indicates there is lack of a good-faith intention to prosecute all of the defendants. This bill would also clarify that federal courts can consider evidence outside of pleadings in deciding motions to remand cases removed to federal court. Should the court find that there is indeed a fraudulent joinder of a defendant, the court would dismiss without prejudice all claims fraudulently joined and deny the motion to remand.

This legislation was previously passed in the 114<sup>th</sup> Congress on February 25, 2016, as the Fraudulent Joinder Protection Act, by a [vote](#) of 229-189. A previous legislative bulletin can be found [here](#). The committee report can be found [here](#).

#### **AMENDMENTS:**

1. [Rep. Soto](#) (D-FL) – This amendment would provide for an exception for instances of public health risks, and would include byproducts of hydraulic fracturing, well stimulation, or water contamination in the definition of public health risks.
2. [Rep. Cartwright](#) (D-PA) – This amendment would create an exception for plaintiffs seeking compensation for harm resulting from the bad faith of an insurer.

#### **COMMITTEE ACTION:**

H.R. 725 was introduced on January 30, 2017 and was referred to the House Committee on the Judiciary.

#### **ADMINISTRATION POSITION:**

A Statement of Administration Policy is not yet available.

#### **CONSTITUTIONAL AUTHORITY:**

Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 9; Article III, Section 1, Clause 1; and Article III, Section 2, Clause 2 of the Constitution, which grant Congress authority over federal courts.

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