



Legislative Bulletin.....June 12, 2003

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H.R. 1115—Class Action Fairness Act

H.R. 1115—Class Action Fairness Act (Goodlatte)

Order of Business: The bill is scheduled to be considered on Thursday, June 12th, subject to a structured rule (H.Res. 270). A substantively identical bill (H.R. 2341) passed the House on March 13, 2002, by a vote of 233-190: <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=62>

Summary: H.R. 1115 would reform current law related to class-action lawsuits, allowing for such suits to be removed to federal court, as follows:

Federal Jurisdiction: Provides that Federal District Courts shall have jurisdiction over class action lawsuits when the amount in controversy exceeds \$2 million and when:

1. any member of the class of plaintiffs is a citizen of a State different from any defendant;
2. any member of the class of plaintiffs is a foreign country or a citizen or subject of a foreign country and any defendant is a citizen of a State; or
3. any member of the class of plaintiffs is a citizen of a State and any defendant is a foreign country or a citizen or subject of a foreign country.

However, Federal District Courts would not have jurisdiction when:

1. the substantial majority of the member of the plaintiff class and the primary defendants are citizens of the State in which the lawsuit is filed and the claims will be governed by the laws of the State;
2. the primary defendants are States, State officials, or other governmental entities against whom the District Court may be foreclosed from ordering relief;
3. the size of plaintiff class is less than 100; or
4. the class action is brought by shareholders and involves a claim related to a covered security, the internal affairs or governance of corporation arising by virtue of State law, or the rights and duties relating to any security.

Under H.R. 1115, most class action suits would be heard in a federal—rather than a state—court.

Removal of Class Actions to Federal Court: Permits any defendant or any class member who is not a named or representative class member to remove a class action from state court to federal court, provided the action meets the requirements set forth for federal court jurisdiction (see above).

Standards for Non-Cash Settlements: Requires the court to hold a hearing and make a written finding that a proposed settlement is “fair, reasonable, and adequate” for class members prior to the approval of any proposed settlement under which class members would receive non-cash benefits or would otherwise be required to expend their own money to obtain the benefits of the settlement.

Prohibition Against Financial Loss of a Class Member: Prohibits any settlement under which any class member is obligated to pay the class lawyer more than the class member received under the settlement, unless the court makes a written finding that non-monetary benefits to the class member outweigh the financial loss to the class member.

Prohibition Against Geographic Discrimination: Prohibits a settlement that provides greater sums to some class members based on their geographic proximity to the court.

Prohibition Against Bounties for Class Representatives: Prohibits a settlement that provides a class representative a greater share of the award than other class members (except allowing for compensation for reasonable time or costs associated with serving as a class representative).

Plain English Requirement: Requires that any written notice concerning a proposed settlement be written in plain English.

Appeal of Class Certification Orders: Provides that the orders of a district court either granting or denying the certification of a class of plaintiffs may be appealed as a matter of right.

Effective Date: The provisions of this legislation would generally become effective on the date of enactment, though some cases *already pending* in state courts could be removed to federal courts, under certain circumstances.

Additional Background Related to Federal Jurisdiction: Article III of the Constitution protects out-of-state litigants against the prejudice of local courts by allowing for federal diversity jurisdiction when the plaintiffs and defendants are citizens of different states. However, under current law, federal diversity jurisdiction for a class action does not exist unless every member of the class is a citizen of a different state from every defendant (which is impossible in class actions in which citizens from all 50 states make up the class), and every member of the class is seeking damages in excess of \$75,000.

Amendments Made in Order under the Rule (H.Res. 270):

1. Sensenbrenner/ Boucher/ Goodlatte/ Moran (VA)/ Dooley/ Stenholm/ Terry:

Restricts the number of class action lawsuits that could be removed to federal court in two ways:

- Raises the aggregate amount in controversy required for federal court jurisdiction from \$2 million to \$5 million.
- Gives federal courts the discretion to return to state courts any intrastate class action in which local law best governs (after weighing five factors to test local character). This discretion would only come into play when between one-third and two-thirds of the plaintiffs are citizens of the same state as the primary defendants. *(10 minutes of debate)*

2. Jackson-Lee:

Makes domestic corporations that are acquired by foreign corporations (that do not have “substantial business activities” in the foreign country in which the foreign corporation is organized) subject to the same class action laws and liabilities as if they were still incorporated domestically. *(10 minutes of debate)* Last year, the House rejected a similar amendment by a vote of 202-223: <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=58>

3. Lofgren/ Linda Sanchez:

Preserves the ability of local prosecutors to bring cases “for the interests of the general public” (such as state antitrust and consumer protection cases, as cited by the amendment sponsors) in state courts and not have such cases be eligible for removal to federal court. *(10 minutes of debate)*

4. Sandlin/ Conyers (Amendment in the Nature of a Substitute):

- Establishes new procedures for certain class actions, including provisions for the use of coupon settlements, court approval of settlements, sealing of class action documents, and interlocutory appeals.
- Loosens restrictions on attorney’s fees, relative to the base bill.
- Similar provisions to the base bill regarding: 1) non-monetary benefits outweighing monetary benefits, 2) geographic discrimination, 3) public access to court records on class actions, and 4) the recommendations of the United States Judicial Conference with respect to notice to class members.
- Prevents removals to federal court from being blocked by a defendant named only because it was known he or she would block such removal.
- Allows appeals courts to receive motions from federal District Courts as to whether a case should be certified as a class action.
- Establishes a state court multi-district litigation panel for class actions. The panel allows for the consolidation of class actions pending in different state courts for pretrial proceedings.
- Authorizes \$1 million in FY2004 for the multi-district panel and “such sums” as may be necessary each year thereafter.
- Authorizes the National Center for State Courts to develop and implement a procedure by which state courts or the state court multi-district litigation panel may transfer

certain class actions to federal court (includes language substantively similar to the Sensenbrenner amendment summarized above). (*20 minutes of debate*)

- Authorizes the National Center for State Courts to study and report to Congress on the problems that arise in the litigation of state class actions (and recommended solution thereto).

Committee Action: On May 21, 2003, the Judiciary Committee marked up and favorably reported the bill by a vote of 20-14:

<http://nationaljournal.com/members/markups/2003/05/200314109.htm>

Cost to Taxpayers: CBO estimates that H.R. 1115 would cost the Federal District Courts about \$6 million a year, subject to appropriations. Though the bill would not *directly* affect mandatory spending or revenues, CBO anticipates that enacting it could increase the need for additional federal judges. Because the salaries and benefits of district court judges are considered mandatory in the federal budget, adding more judges would increase direct spending. But separate legislation would be necessary to authorize an increase in the number of district judges.

Does the Bill Create New Federal Programs or Rules?: No, the bill alters current law related to class action lawsuits. H.R. 1115 contains no private-sector mandates.

Constitutional Authority: The Judiciary Committee, in House Report 108-144, cites constitutional authority in Article I, Section 8 (but does not cite a specific clause) and Article III, Section 1 (the establishment of the federal judiciary). Article III, Section 2 extends federal judicial power to “Controversies...between a State and Citizens of another State; -- between Citizens of different States,...and between a State, or the Citizens thereof, and foreign States, Citizens, or Subjects.”

Administration Position: Though no Statement of Administration Policy (SAP) is available for H.R. 1115, the SAP for last year’s nearly-identical bill (H.R. 2341) stated that, “The Administration strongly supports the enactment of H.R. 2341 as an important step in reforming class action litigation.” To read the complete SAP from last year, visit this website: <http://www.whitehouse.gov/omb/legislative/sap/107-2/HR2341-r.html>

Outside Organizations: The U.S. Chamber of Commerce strongly supports this bill and is likely to score it as a key vote for 2003:

<http://www.uschamber.com/government/issues/reform/classaction.htm>

Other organizations supporting H.R. 1115 include:

- American Association of Health Plans
- American Insurance Association
- American Tort Reform Association
- American Trucking Association
- Associated General Contractors of America
- The Business Roundtable
- National Association of Manufacturers

- National Restaurant Association
- National Retail Federation
- Plus dozens of the nations largest companies (such as Citigroup, Dell Computers, DuPont, Eastman Kodak, Ford Motor Company, Fox Entertainment, General Electric, Johnson & Johnson, Intel, Shell Oil, 3M, and the Wachovia Corporation)

Organizations **opposing** H.R. 1115 include:

- American Lung Association
- American Trial Lawyers Association (ATLA)
- Conference of State Chief Justices
- Consumer Federation of America
- Consumers Union
- Lawyer's Committee on Civil Rights
- National Association for the Advancement of Colored People (NAACP)
- National Organization for Women (NOW)
- People Over Profits Action Network
- Public Citizen
- U.S. Public Interest Research Group
- Plus a coalition of environmental groups, including the Sierra Club and Greenpeace

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