

Legislative Bulletin.....March 13, 2002

Contents:

1. H.R. 2341 – Class Action Fairness Act

H.R. 2341 — Class Action Fairness Act of 2002 (Goodlatte)

Order of Business: The bill will be considered on Wednesday, March 13, 2002, under a structured rule.

Summary: H.R. 2341 reforms current law related to class-action lawsuits as follows:

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 nonmonetary 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.

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 state or a citizen or subject of a foreign state 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 state or a citizen or subject of a foreign state.

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 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.

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).

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.

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.

Cost to Taxpayers: The CBO has in the past estimated that similar legislation would result in a few hundred additional cases being heard in federal courts each year. The increased costs of disposing of these additional cases is estimated to be about \$5 million a year.

Does the Bill Create New Federal Programs or Rules?: No, the bill alters current law related to class action lawsuits.

Constitutional Authority: In the pasts the Judiciary Committee has cited Article III, section one of the Constitution as providing authority for this legislation.

Amendments:

Issa Amendment: Requires class action settlement notices to provide a good-faith estimate of the hourly rate that class counsel would be paid under the proposed settlement.

Nadler & Delahunt Amendment: Prevents records of class action cases (including those obtained through discovery irrespective of whether or not they were formally filed with the court) from being sealed unless the order sealing such records is narrowly tailored, protects public health and safety, and is in the public interest and the interest in maintaining the confidentiality of such information clearly outweighs the interest in disclosing.

Waters Amendment: If a party to which a discovery order is directed withholds, destroys or misrepresents the existence of material subject to the order, then such action shall be deemed an admission of any fact with respect to which the order was issued.

Keller Amendment: Ensures that when a class action judgment favors the plaintiff that their attorneys must disclose the amount of fees that they intend to collect. The amount must be disclosed to all plaintiffs at the time of rendered judgment or at the time that any award is transmitted to the plaintiffs.

Lofgren & Schiff Amendment: Moves to Federal district court class actions brought on behalf of the general public.

Conyers, Jackson-Lee, & Neal Amendment: Treats a foreign corporation which acquires a domestic corporation in a corporate repatriation transaction as being incorporated in the state under whose laws the acquired domestic corporation was organized.

Jackson-Lee Amendment: Prohibits a party to a class action from removing the case to a district court if that party destroys material relating to the subject matter of the class action, or makes a misrepresentation with respect to existence of such materials.

Frank, Meehan, & Berman Amendment: Provides that if an action is removed to Federal court and the court subsequently determines that any aspect of the suit fails to qualify as a class action under the Federal Rules of Civil Procedure, that the portions of the case that fail to qualify will be remanded back to the court from which the action was remanded. The court may certify that part of the action as a class action if it meets the requirements of the laws of that State.

Hart Amendment: Requires the Judicial Conference of the United States to conduct a study and issue a report related to the best practices that courts can use to ensure fair class action settlements and that ensure that fees and expenses awarded to counsel as part of a settlement are reasonable.

Staff Contact: Neil Bradley, x6-9717
