

Calendar No. 1109TH CONGRESS
1ST SESSION**S. 5**

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25, 2005

Mr. GRASSLEY (for himself, Mr. KOHL, Mr. HATCH, Mr. CARPER, Mr. FRIST, Mr. CHAFEE, Mr. DODD, Mrs. FEINSTEIN, Mr. HAGEL, Mr. KYL, Ms. LANDRIEU, Mrs. LINCOLN, Mr. LUGAR, Mr. MCCONNELL, Mr. SCHUMER, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. LOTT, Mr. ALEXANDER, Ms. SNOWE, Mr. SESSIONS, Mr. DEMINT, Mr. LIEBERMAN, Mr. MARTINEZ, Mr. ENSIGN, Mr. SANTORUM, Mr. DEWINE, and Mr. SUNUNU) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

FEBRUARY 3, 2005

Reported by Mr. SPECTER, without amendment

A BILL

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CON-**
 2 **TENTS.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
 4 “Class Action Fairness Act of 2005”.

5 (b) **REFERENCE.**—Whenever in this Act reference is
 6 made to an amendment to, or repeal of, a section or other
 7 provision, the reference shall be considered to be made to
 8 a section or other provision of title 28, United States
 9 Code.

10 (c) **TABLE OF CONTENTS.**—The table of contents for
 11 this Act is as follows:

Sec. 1. Short title; reference; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Consumer class action bill of rights and improved procedures for inter-
 state class actions.

Sec. 4. Federal district court jurisdiction for interstate class actions.

Sec. 5. Removal of interstate class actions to Federal district court.

Sec. 6. Report on class action settlements.

Sec. 7. Enactment of Judicial Conference recommendations.

Sec. 8. Rulemaking authority of Supreme Court and Judicial Conference.

Sec. 9. Effective date.

12 **SEC. 2. FINDINGS AND PURPOSES.**

13 (a) **FINDINGS.**—Congress finds the following:

14 (1) Class action lawsuits are an important and
 15 valuable part of the legal system when they permit
 16 the fair and efficient resolution of legitimate claims
 17 of numerous parties by allowing the claims to be ag-
 18 gregated into a single action against a defendant
 19 that has allegedly caused harm.

20 (2) Over the past decade, there have been
 21 abuses of the class action device that have—

1 (A) harmed class members with legitimate
2 claims and defendants that have acted respon-
3 sibly;

4 (B) adversely affected interstate commerce;
5 and

6 (C) undermined public respect for our judi-
7 cial system.

8 (3) Class members often receive little or no ben-
9 efit from class actions, and are sometimes harmed,
10 such as where—

11 (A) counsel are awarded large fees, while
12 leaving class members with coupons or other
13 awards of little or no value;

14 (B) unjustified awards are made to certain
15 plaintiffs at the expense of other class mem-
16 bers; and

17 (C) confusing notices are published that
18 prevent class members from being able to fully
19 understand and effectively exercise their rights.

20 (4) Abuses in class actions undermine the na-
21 tional judicial system, the free flow of interstate
22 commerce, and the concept of diversity jurisdiction
23 as intended by the framers of the United States
24 Constitution, in that State and local courts are—

1 (A) keeping cases of national importance
2 out of Federal court;

3 (B) sometimes acting in ways that dem-
4 onstrate bias against out-of-State defendants;
5 and

6 (C) making judgments that impose their
7 view of the law on other States and bind the
8 rights of the residents of those States.

9 (b) PURPOSES.—The purposes of this Act are to—

10 (1) assure fair and prompt recoveries for class
11 members with legitimate claims;

12 (2) restore the intent of the framers of the
13 United States Constitution by providing for Federal
14 court consideration of interstate cases of national
15 importance under diversity jurisdiction; and

16 (3) benefit society by encouraging innovation
17 and lowering consumer prices.

18 **SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IM-**
19 **PROVED PROCEDURES FOR INTERSTATE**
20 **CLASS ACTIONS.**

21 (a) IN GENERAL.—Part V is amended by inserting
22 after chapter 113 the following:

23 **“CHAPTER 114—CLASS ACTIONS**

“Sec.

“1711. Definitions.

“1712. Coupon settlements.

“1713. Protection against loss by class members.

“1714. Protection against discrimination based on geographic location.

“1715. Notifications to appropriate Federal and State officials.

1 **“§ 1711. Definitions**

2 “In this chapter:

3 “(1) CLASS.—The term ‘class’ means all of the
4 class members in a class action.

5 “(2) CLASS ACTION.—The term ‘class action’
6 means any civil action filed in a district court of the
7 United States under rule 23 of the Federal Rules of
8 Civil Procedure or any civil action that is removed
9 to a district court of the United States that was
10 originally filed under a State statute or rule of judi-
11 cial procedure authorizing an action to be brought
12 by 1 or more representatives as a class action.

13 “(3) CLASS COUNSEL.—The term ‘class coun-
14 sel’ means the persons who serve as the attorneys
15 for the class members in a proposed or certified
16 class action.

17 “(4) CLASS MEMBERS.—The term ‘class mem-
18 bers’ means the persons (named or unnamed) who
19 fall within the definition of the proposed or certified
20 class in a class action.

21 “(5) PLAINTIFF CLASS ACTION.—The term
22 ‘plaintiff class action’ means a class action in which
23 class members are plaintiffs.

1 “(6) PROPOSED SETTLEMENT.—The term ‘pro-
 2 posed settlement’ means an agreement regarding a
 3 class action that is subject to court approval and
 4 that, if approved, would be binding on some or all
 5 class members.

6 **“§ 1712. Coupon settlements**

7 “(a) CONTINGENT FEES IN COUPON SETTLE-
 8 MENTS.—If a proposed settlement in a class action pro-
 9 vides for a recovery of coupons to a class member, the
 10 portion of any attorney’s fee award to class counsel that
 11 is attributable to the award of the coupons shall be based
 12 on the value to class members of the coupons that are
 13 redeemed.

14 “(b) OTHER ATTORNEY’S FEE AWARDS IN COUPON
 15 SETTLEMENTS.—

16 “(1) IN GENERAL.—If a proposed settlement in
 17 a class action provides for a recovery of coupons to
 18 class members, and a portion of the recovery of the
 19 coupons is not used to determine the attorney’s fee
 20 to be paid to class counsel, any attorney’s fee award
 21 shall be based upon the amount of time class counsel
 22 reasonably expended working on the action.

23 “(2) COURT APPROVAL.—Any attorney’s fee
 24 under this subsection shall be subject to approval by
 25 the court and shall include an appropriate attorney’s

1 fee, if any, for obtaining equitable relief, including
2 an injunction, if applicable. Nothing in this sub-
3 section shall be construed to prohibit application of
4 a lodestar with a multiplier method of determining
5 attorney’s fees.

6 “(c) ATTORNEY’S FEE AWARDS CALCULATED ON A
7 MIXED BASIS IN COUPON SETTLEMENTS.—If a proposed
8 settlement in a class action provides for an award of cou-
9 pons to class members and also provides for equitable re-
10 lief, including injunctive relief—

11 “(1) that portion of the attorney’s fee to be
12 paid to class counsel that is based upon a portion of
13 the recovery of the coupons shall be calculated in ac-
14 cordance with subsection (a); and

15 “(2) that portion of the attorney’s fee to be
16 paid to class counsel that is not based upon a por-
17 tion of the recovery of the coupons shall be cal-
18 culated in accordance with subsection (b).

19 “(d) SETTLEMENT VALUATION EXPERTISE.—In a
20 class action involving the awarding of coupons, the court
21 may, in its discretion upon the motion of a party, receive
22 expert testimony from a witness qualified to provide infor-
23 mation on the actual value to the class members of the
24 coupons that are redeemed.

1 “(e) JUDICIAL SCRUTINY OF COUPON SETTLE-
2 MENTS.—In a proposed settlement under which class
3 members would be awarded coupons, the court may ap-
4 prove the proposed settlement only after a hearing to de-
5 termine whether, and making a written finding that, the
6 settlement is fair, reasonable, and adequate for class mem-
7 bers. The court, in its discretion, may also require that
8 a proposed settlement agreement provide for the distribu-
9 tion of a portion of the value of unclaimed coupons to 1
10 or more charitable or governmental organizations, as
11 agreed to by the parties. The distribution and redemption
12 of any proceeds under this subsection shall not be used
13 to calculate attorneys’ fees under this section.

14 **“§ 1713. Protection against loss by class members**

15 “The court may approve a proposed settlement under
16 which any class member is obligated to pay sums to class
17 counsel that would result in a net loss to the class member
18 only if the court makes a written finding that nonmone-
19 tary benefits to the class member substantially outweigh
20 the monetary loss.

21 **“§ 1714. Protection against discrimination based on**
22 **geographic location**

23 “The court may not approve a proposed settlement
24 that provides for the payment of greater sums to some
25 class members than to others solely on the basis that the

1 class members to whom the greater sums are to be paid
2 are located in closer geographic proximity to the court.

3 **“§ 1715. Notifications to appropriate Federal and**
4 **State officials**

5 “(a) DEFINITIONS.—

6 “(1) APPROPRIATE FEDERAL OFFICIAL.—In
7 this section, the term ‘appropriate Federal official’
8 means—

9 “(A) the Attorney General of the United
10 States; or

11 “(B) in any case in which the defendant is
12 a Federal depository institution, a State deposi-
13 tory institution, a depository institution holding
14 company, a foreign bank, or a nondepository in-
15 stitution subsidiary of the foregoing (as such
16 terms are defined in section 3 of the Federal
17 Deposit Insurance Act (12 U.S.C. 1813)), the
18 person who has the primary Federal regulatory
19 or supervisory responsibility with respect to the
20 defendant, if some or all of the matters alleged
21 in the class action are subject to regulation or
22 supervision by that person.

23 “(2) APPROPRIATE STATE OFFICIAL.—In this
24 section, the term ‘appropriate State official’ means
25 the person in the State who has the primary regu-

1 latory or supervisory responsibility with respect to
2 the defendant, or who licenses or otherwise author-
3 izes the defendant to conduct business in the State,
4 if some or all of the matters alleged in the class ac-
5 tion are subject to regulation by that person. If
6 there is no primary regulator, supervisor, or licens-
7 ing authority, or the matters alleged in the class ac-
8 tion are not subject to regulation or supervision by
9 that person, then the appropriate State official shall
10 be the State attorney general.

11 “(b) IN GENERAL.—Not later than 10 days after a
12 proposed settlement of a class action is filed in court, each
13 defendant that is participating in the proposed settlement
14 shall serve upon the appropriate State official of each
15 State in which a class member resides and the appropriate
16 Federal official, a notice of the proposed settlement con-
17 sisting of—

18 “(1) a copy of the complaint and any materials
19 filed with the complaint and any amended com-
20 plaints (except such materials shall not be required
21 to be served if such materials are made electronically
22 available through the Internet and such service in-
23 cludes notice of how to electronically access such
24 material);

1 “(2) notice of any scheduled judicial hearing in
2 the class action;

3 “(3) any proposed or final notification to class
4 members of—

5 “(A)(i) the members’ rights to request ex-
6 clusion from the class action; or

7 “(ii) if no right to request exclusion exists,
8 a statement that no such right exists; and

9 “(B) a proposed settlement of a class ac-
10 tion;

11 “(4) any proposed or final class action settle-
12 ment;

13 “(5) any settlement or other agreement contem-
14 poraneously made between class counsel and counsel
15 for the defendants;

16 “(6) any final judgment or notice of dismissal;

17 “(7)(A) if feasible, the names of class members
18 who reside in each State and the estimated propor-
19 tionate share of the claims of such members to the
20 entire settlement to that State’s appropriate State
21 official; or

22 “(B) if the provision of information under sub-
23 paragraph (A) is not feasible, a reasonable estimate
24 of the number of class members residing in each

1 State and the estimated proportionate share of the
2 claims of such members to the entire settlement; and

3 “(8) any written judicial opinion relating to the
4 materials described under subparagraphs (3)
5 through (6).

6 “(c) DEPOSITORY INSTITUTIONS NOTIFICATION.—

7 “(1) FEDERAL AND OTHER DEPOSITORY INSTI-
8 TUTIONS.—In any case in which the defendant is a
9 Federal depository institution, a depository institu-
10 tion holding company, a foreign bank, or a non-de-
11 pository institution subsidiary of the foregoing, the
12 notice requirements of this section are satisfied by
13 serving the notice required under subsection (b)
14 upon the person who has the primary Federal regu-
15 latory or supervisory responsibility with respect to
16 the defendant, if some or all of the matters alleged
17 in the class action are subject to regulation or super-
18 vision by that person.

19 “(2) STATE DEPOSITORY INSTITUTIONS.—In
20 any case in which the defendant is a State deposi-
21 tory institution (as that term is defined in section 3
22 of the Federal Deposit Insurance Act (12 U.S.C.
23 1813)), the notice requirements of this section are
24 satisfied by serving the notice required under sub-
25 section (b) upon the State bank supervisor (as that

1 term is defined in section 3 of the Federal Deposit
2 Insurance Act (12 U.S.C. 1813)) of the State in
3 which the defendant is incorporated or chartered, if
4 some or all of the matters alleged in the class action
5 are subject to regulation or supervision by that per-
6 son, and upon the appropriate Federal official.

7 “(d) FINAL APPROVAL.—An order giving final ap-
8 proval of a proposed settlement may not be issued earlier
9 than 90 days after the later of the dates on which the
10 appropriate Federal official and the appropriate State offi-
11 cial are served with the notice required under subsection
12 (b).

13 “(e) NONCOMPLIANCE IF NOTICE NOT PROVIDED.—

14 “(1) IN GENERAL.—A class member may refuse
15 to comply with and may choose not to be bound by
16 a settlement agreement or consent decree in a class
17 action if the class member demonstrates that the no-
18 tice required under subsection (b) has not been pro-
19 vided.

20 “(2) LIMITATION.—A class member may not
21 refuse to comply with or to be bound by a settlement
22 agreement or consent decree under paragraph (1) if
23 the notice required under subsection (b) was directed
24 to the appropriate Federal official and to either the
25 State attorney general or the person that has pri-

1 mary regulatory, supervisory, or licensing authority
2 over the defendant.

3 “(3) APPLICATION OF RIGHTS.—The rights cre-
4 ated by this subsection shall apply only to class
5 members or any person acting on a class member’s
6 behalf, and shall not be construed to limit any other
7 rights affecting a class member’s participation in the
8 settlement.

9 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
10 tion shall be construed to expand the authority of, or im-
11 pose any obligations, duties, or responsibilities upon, Fed-
12 eral or State officials.”.

13 (b) TECHNICAL AND CONFORMING AMENDMENT.—
14 The table of chapters for part V is amended by inserting
15 after the item relating to chapter 113 the following:

“114. Class Actions 1711”.

16 **SEC. 4. FEDERAL DISTRICT COURT JURISDICTION FOR**
17 **INTERSTATE CLASS ACTIONS.**

18 (a) APPLICATION OF FEDERAL DIVERSITY JURISDIC-
19 TION.—Section 1332 is amended—

20 (1) by redesignating subsection (d) as sub-
21 section (e); and

22 (2) by inserting after subsection (c) the fol-
23 lowing:

24 “(d)(1) In this subsection—

1 “(A) the term ‘class’ means all of the class
2 members in a class action;

3 “(B) the term ‘class action’ means any civil ac-
4 tion filed under rule 23 of the Federal Rules of Civil
5 Procedure or similar State statute or rule of judicial
6 procedure authorizing an action to be brought by 1
7 or more representative persons as a class action;

8 “(C) the term ‘class certification order’ means
9 an order issued by a court approving the treatment
10 of some or all aspects of a civil action as a class ac-
11 tion; and

12 “(D) the term ‘class members’ means the per-
13 sons (named or unnamed) who fall within the defini-
14 tion of the proposed or certified class in a class ac-
15 tion.

16 “(2) The district courts shall have original jurisdic-
17 tion of any civil action in which the matter in controversy
18 exceeds the sum or value of \$5,000,000, exclusive of inter-
19 est and costs, and is a class action in which—

20 “(A) any member of a class of plaintiffs is a
21 citizen of a State different from any defendant;

22 “(B) any member of a class of plaintiffs is a
23 foreign state or a citizen or subject of a foreign state
24 and any defendant is a citizen of a State; or

1 “(C) any member of a class of plaintiffs is a
2 citizen of a State and any defendant is a foreign
3 state or a citizen or subject of a foreign state.

4 “(3) A district court may, in the interests of justice
5 and looking at the totality of the circumstances, decline
6 to exercise jurisdiction under paragraph (2) over a class
7 action in which greater than one-third but less than two-
8 thirds of the members of all proposed plaintiff classes in
9 the aggregate and the primary defendants are citizens of
10 the State in which the action was originally filed based
11 on consideration of—

12 “(A) whether the claims asserted involve mat-
13 ters of national or interstate interest;

14 “(B) whether the claims asserted will be gov-
15 erned by laws of the State in which the action was
16 originally filed or by the laws of other States;

17 “(C) whether the class action has been pleaded
18 in a manner that seeks to avoid Federal jurisdiction;

19 “(D) whether the action was brought in a
20 forum with a distinct nexus with the class members,
21 the alleged harm, or the defendants;

22 “(E) whether the number of citizens of the
23 State in which the action was originally filed in all
24 proposed plaintiff classes in the aggregate is sub-
25 stantially larger than the number of citizens from

1 any other State, and the citizenship of the other
2 members of the proposed class is dispersed among a
3 substantial number of States; and

4 “(F) whether, during the 3-year period pre-
5 ceding the filing of that class action, 1 or more other
6 class actions asserting the same or similar claims on
7 behalf of the same or other persons have been filed.

8 “(4) A district court shall decline to exercise jurisdic-
9 tion under paragraph (2)—

10 “(A)(i) over a class action in which—

11 “(I) greater than two-thirds of the mem-
12 bers of all proposed plaintiff classes in the ag-
13 gregate are citizens of the State in which the
14 action was originally filed;

15 “(II) at least 1 defendant is a defendant—

16 “(aa) from whom significant relief is
17 sought by members of the plaintiff class;

18 “(bb) whose alleged conduct forms a
19 significant basis for the claims asserted by
20 the proposed plaintiff class; and

21 “(cc) who is a citizen of the State in
22 which the action was originally filed; and

23 “(III) principal injuries resulting from the
24 alleged conduct or any related conduct of each

1 defendant were incurred in the State in which
2 the action was originally filed; and

3 “(ii) during the 3-year period preceding the fil-
4 ing of that class action, no other class action has
5 been filed asserting the same or similar factual alle-
6 gations against any of the defendants on behalf of
7 the same or other persons; or

8 “(B) two-thirds or more of the members of all
9 proposed plaintiff classes in the aggregate, and the
10 primary defendants, are citizens of the State in
11 which the action was originally filed.

12 “(5) Paragraphs (2) through (4) shall not apply to
13 any class action in which—

14 “(A) the primary defendants are States, State
15 officials, or other governmental entities against
16 whom the district court may be foreclosed from or-
17 dering relief; or

18 “(B) the number of members of all proposed
19 plaintiff classes in the aggregate is less than 100.

20 “(6) In any class action, the claims of the individual
21 class members shall be aggregated to determine whether
22 the matter in controversy exceeds the sum or value of
23 \$5,000,000, exclusive of interest and costs.

24 “(7) Citizenship of the members of the proposed
25 plaintiff classes shall be determined for purposes of para-

1 graphs (2) through (6) as of the date of filing of the com-
2 plaint or amended complaint, or, if the case stated by the
3 initial pleading is not subject to Federal jurisdiction, as
4 of the date of service by plaintiffs of an amended pleading,
5 motion, or other paper, indicating the existence of Federal
6 jurisdiction.

7 “(8) This subsection shall apply to any class action
8 before or after the entry of a class certification order by
9 the court with respect to that action.

10 “(9) Paragraph (2) shall not apply to any class action
11 that solely involves a claim—

12 “(A) concerning a covered security as defined
13 under 16(f)(3) of the Securities Act of 1933 (15
14 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Se-
15 curities Exchange Act of 1934 (15 U.S.C.
16 78bb(f)(5)(E));

17 “(B) that relates to the internal affairs or gov-
18 ernance of a corporation or other form of business
19 enterprise and that arises under or by virtue of the
20 laws of the State in which such corporation or busi-
21 ness enterprise is incorporated or organized; or

22 “(C) that relates to the rights, duties (including
23 fiduciary duties), and obligations relating to or cre-
24 ated by or pursuant to any security (as defined
25 under section 2(a)(1) of the Securities Act of 1933

1 (15 U.S.C. 77b(a)(1)) and the regulations issued
2 thereunder).

3 “(10) For purposes of this subsection and section
4 1453, an unincorporated association shall be deemed to
5 be a citizen of the State where it has its principal place
6 of business and the State under whose laws it is organized.

7 “(11)(A) For purposes of this subsection and section
8 1453, a mass action shall be deemed to be a class action
9 removable under paragraphs (2) through (10) if it other-
10 wise meets the provisions of those paragraphs.

11 “(B)(i) As used in subparagraph (A), the term ‘mass
12 action’ means any civil action (except a civil action within
13 the scope of section 1711(2)) in which monetary relief
14 claims of 100 or more persons are proposed to be tried
15 jointly on the ground that the plaintiffs’ claims involve
16 common questions of law or fact, except that jurisdiction
17 shall exist only over those plaintiffs whose claims in a
18 mass action satisfy the jurisdictional amount requirements
19 under subsection (a).

20 “(ii) As used in subparagraph (A), the term ‘mass
21 action’ shall not include any civil action in which—

22 “(I) all of the claims in the action arise from
23 an event or occurrence in the State in which the ac-
24 tion was filed, and that allegedly resulted in injuries
25 in that State or in States contiguous to that State;

1 “(II) the claims are joined upon motion of a de-
2 fendant;

3 “(III) all of the claims in the action are as-
4 serted on behalf of the general public (and not on
5 behalf of individual claimants or members of a pur-
6 ported class) pursuant to a State statute specifically
7 authorizing such action; or

8 “(IV) the claims have been consolidated or co-
9 ordinated solely for pretrial proceedings.

10 “(C)(i) Any action(s) removed to Federal court pur-
11 suant to this subsection shall not thereafter be transferred
12 to any other court pursuant to section 1407, or the rules
13 promulgated thereunder, unless a majority of the plaintiffs
14 in the action request transfer pursuant to section 1407.

15 “(ii) This subparagraph will not apply—

16 “(I) to cases certified pursuant to rule 23 of
17 the Federal Rules of Civil Procedure; or

18 “(II) if plaintiffs propose that the action pro-
19 ceed as a class action pursuant to rule 23 of the
20 Federal Rules of Civil Procedure.

21 “(D) The limitations periods on any claims asserted
22 in a mass action that is removed to Federal court pursu-
23 ant to this subsection shall be deemed tolled during the
24 period that the action is pending in Federal court.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 1335(a)(1) is amended by inserting
2 “subsection (a) or (d) of” before “section 1332”.

3 (2) Section 1603(b)(3) is amended by striking
4 “(d)” and inserting “(e)”.

5 **SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FED-**
6 **ERAL DISTRICT COURT.**

7 (a) IN GENERAL.—Chapter 89 is amended by adding
8 after section 1452 the following:

9 **“§ 1453. Removal of class actions**

10 “(a) DEFINITIONS.—In this section, the terms ‘class’,
11 ‘class action’, ‘class certification order’, and ‘class mem-
12 ber’ shall have the meanings given such terms under sec-
13 tion 1332(d)(1).

14 “(b) IN GENERAL.—A class action may be removed
15 to a district court of the United States in accordance with
16 section 1446 (except that the 1-year limitation under sec-
17 tion 1446(b) shall not apply), without regard to whether
18 any defendant is a citizen of the State in which the action
19 is brought, except that such action may be removed by
20 any defendant without the consent of all defendants.

21 “(c) REVIEW OF REMAND ORDERS.—

22 “(1) IN GENERAL.—Section 1447 shall apply to
23 any removal of a case under this section, except that
24 notwithstanding section 1447(d), a court of appeals
25 may accept an appeal from an order of a district

1 court granting or denying a motion to remand a
2 class action to the State court from which it was re-
3 moved if application is made to the court of appeals
4 not less than 7 days after entry of the order.

5 “(2) TIME PERIOD FOR JUDGMENT.—If the
6 court of appeals accepts an appeal under paragraph
7 (1), the court shall complete all action on such ap-
8 peal, including rendering judgment, not later than
9 60 days after the date on which such appeal was
10 filed, unless an extension is granted under para-
11 graph (3).

12 “(3) EXTENSION OF TIME PERIOD.—The court
13 of appeals may grant an extension of the 60-day pe-
14 riod described in paragraph (2) if—

15 “(A) all parties to the proceeding agree to
16 such extension, for any period of time; or

17 “(B) such extension is for good cause
18 shown and in the interests of justice, for a pe-
19 riod not to exceed 10 days.

20 “(4) DENIAL OF APPEAL.—If a final judgment
21 on the appeal under paragraph (1) is not issued be-
22 fore the end of the period described in paragraph
23 (2), including any extension under paragraph (3),
24 the appeal shall be denied.

1 “(d) EXCEPTION.—This section shall not apply to
2 any class action that solely involves—

3 “(1) a claim concerning a covered security as
4 defined under section 16(f)(3) of the Securities Act
5 of 1933 (15 U.S.C. 78p(f)(3)) and section
6 28(f)(5)(E) of the Securities Exchange Act of 1934
7 (15 U.S.C. 78bb(f)(5)(E));

8 “(2) a claim that relates to the internal affairs
9 or governance of a corporation or other form of busi-
10 ness enterprise and arises under or by virtue of the
11 laws of the State in which such corporation or busi-
12 ness enterprise is incorporated or organized; or

13 “(3) a claim that relates to the rights, duties
14 (including fiduciary duties), and obligations relating
15 to or created by or pursuant to any security (as de-
16 fined under section 2(a)(1) of the Securities Act of
17 1933 (15 U.S.C. 77b(a)(1)) and the regulations
18 issued thereunder).”.

19 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
20 The table of sections for chapter 89 is amended by adding
21 after the item relating to section 1452 the following:

“1453. Removal of class actions.”.

22 **SEC. 6. REPORT ON CLASS ACTION SETTLEMENTS.**

23 (a) IN GENERAL.—Not later than 12 months after
24 the date of enactment of this Act, the Judicial Conference
25 of the United States, with the assistance of the Director

1 of the Federal Judicial Center and the Director of the Ad-
2 ministrative Office of the United States Courts, shall pre-
3 pare and transmit to the Committees on the Judiciary of
4 the Senate and the House of Representatives a report on
5 class action settlements.

6 (b) CONTENT.—The report under subsection (a) shall
7 contain—

8 (1) recommendations on the best practices that
9 courts can use to ensure that proposed class action
10 settlements are fair to the class members that the
11 settlements are supposed to benefit;

12 (2) recommendations on the best practices that
13 courts can use to ensure that—

14 (A) the fees and expenses awarded to
15 counsel in connection with a class action settle-
16 ment appropriately reflect the extent to which
17 counsel succeeded in obtaining full redress for
18 the injuries alleged and the time, expense, and
19 risk that counsel devoted to the litigation; and

20 (B) the class members on whose behalf the
21 settlement is proposed are the primary bene-
22 ficiaries of the settlement; and

23 (3) the actions that the Judicial Conference of
24 the United States has taken and intends to take to-

1 ward having the Federal judiciary implement any or
2 all of the recommendations contained in the report.

3 (c) **AUTHORITY OF FEDERAL COURTS.**—Nothing in
4 this section shall be construed to alter the authority of
5 the Federal courts to supervise attorneys' fees.

6 **SEC. 7. ENACTMENT OF JUDICIAL CONFERENCE REC-**
7 **COMMENDATIONS.**

8 Notwithstanding any other provision of law, the
9 amendments to rule 23 of the Federal Rules of Civil Pro-
10 cedure, which are set forth in the order entered by the
11 Supreme Court of the United States on March 27, 2003,
12 shall take effect on the date of enactment of this Act or
13 on December 1, 2003 (as specified in that order), which-
14 ever occurs first.

15 **SEC. 8. RULEMAKING AUTHORITY OF SUPREME COURT**
16 **AND JUDICIAL CONFERENCE.**

17 Nothing in this Act shall restrict in any way the au-
18 thority of the Judicial Conference and the Supreme Court
19 to propose and prescribe general rules of practice and pro-
20 cedure under chapter 131 of title 28, United States Code.

21 **SEC. 9. EFFECTIVE DATE.**

22 The amendments made by this Act shall apply to any
23 civil action commenced on or after the date of enactment
24 of this Act.

Calendar No. 1

109TH CONGRESS
1ST Session

S. 5

A BILL

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

FEBRUARY 3, 2005

Reported without amendment