

107TH CONGRESS
2D SESSION

H. R. 2341

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2002

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, 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,*

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

5 (a) SHORT TITLE.—This Act may be cited as the
 6 “Class Action Fairness Act of 2002”.

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

12 (c) TABLE OF CONTENTS.—The table of contents for
 13 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 of interstate class actions.
- Sec. 5. Removal of interstate class actions to Federal district court.
- Sec. 6. Appeals of class action certification orders.
- Sec. 7. Report on class action settlements.
- Sec. 8. Effective date.

14 **SEC. 2. FINDINGS AND PURPOSES.**

15 (a) FINDINGS.—The Congress finds as follows:

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

1 (2) Over the past decade, there have been
2 abuses of the class action device that have harmed
3 class members with legitimate claims and defendants
4 that have acted responsibly, and that have thereby
5 undermined public respect for our judicial system.

6 (3) Class members have been harmed by a
7 number of actions taken by plaintiffs' lawyers, which
8 provide little or no benefit to class members as a
9 whole, including—

10 (A) plaintiffs' lawyers receiving large fees,
11 while class members are left with coupons or
12 other awards of little or no value;

13 (B) unjustified rewards being made to cer-
14 tain plaintiffs at the expense of other class
15 members; and

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

20 (4) Through the use of artful pleading, plain-
21 tiffs are able to avoid litigating class actions in Fed-
22 eral court, forcing businesses and other organiza-
23 tions to defend interstate class action lawsuits in
24 county and State courts where—

1 (A) the lawyers, rather than the claimants,
2 are likely to receive the maximum benefit;

3 (B) less scrutiny may be given to the mer-
4 its of the case; and

5 (C) defendants are effectively forced into
6 settlements, in order to avoid the possibility of
7 huge judgments that could destabilize their
8 companies.

9 (5) These abuses undermine our Federal system
10 and the intent of the framers of the Constitution in
11 creating diversity jurisdiction, in that county and
12 State courts are—

13 (A) handling interstate class actions that
14 affect parties from many States;

15 (B) sometimes acting in ways that dem-
16 onstrate bias against out-of-State defendants;
17 and

18 (C) making judgments that impose their
19 view of the law on other States and bind the
20 rights of the residents of those States.

21 (6) Abusive interstate class actions have
22 harmed society as a whole by forcing innocent par-
23 ties to settle cases rather than risk a huge judgment
24 by a local jury, thereby costing consumers billions of

1 dollars in increased costs to pay for forced settle-
 2 ments and excessive judgments.

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

4 (1) to assure fair and prompt recoveries for
 5 class members with legitimate claims;

6 (2) to protect responsible companies and other
 7 institutions against interstate class actions in State
 8 courts;

9 (3) to restore the intent of the framers of the
 10 Constitution by providing for Federal court consider-
 11 ation of interstate class actions; and

12 (4) to benefit society by encouraging innovation
 13 and lowering consumer prices.

14 **SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IM-**
 15 **PROVED PROCEDURES FOR INTERSTATE**
 16 **CLASS ACTIONS.**

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

19 **“CHAPTER 114—CLASS ACTIONS**

“Sec.

“1711. Judicial scrutiny of coupon and other noncash settlements.

“1712. Protection against loss by class members.

“1713. Protection against discrimination based on geographic location.

“1714. Prohibition on the payment of bounties.

“1715. Clearer and simpler settlement information.

“1716. Disclosure of attorney’s fees.

“1717. Sunshine in court records.

“1718. Definitions.”.

1 **“§ 1711. Judicial scrutiny of coupon and other**
2 **noncash settlements**

3 “The court may approve a proposed settlement under
4 which the class members would receive noncash benefits
5 or would otherwise be required to expend funds in order
6 to obtain part or all of the proposed benefits only after
7 a hearing to determine whether, and making a written
8 finding that, the settlement is fair, reasonable, and ade-
9 quate for class members.

10 **“§ 1712. Protection against loss by class members**

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

17 **“§ 1713. Protection against discrimination based on**
18 **geographic location**

19 “The court may not approve a proposed settlement
20 that provides for the payment of greater sums to some
21 class members than to others solely on the basis that the
22 class members to whom the greater sums are to be paid
23 are located in closer geographic proximity to the court.

24 **“§ 1714. Prohibition on the payment of bounties**

25 “(a) IN GENERAL.—The court may not approve a
26 proposed settlement that provides for the payment of a

1 greater share of the award to a class representative serv-
 2 ing on behalf of a class, on the basis of the formula for
 3 distribution to all other class members, than that awarded
 4 to the other class members.

5 “(b) RULE OF CONSTRUCTION.—The limitation in
 6 subsection (a) shall not be construed to prohibit any pay-
 7 ment approved by the court for reasonable time or costs
 8 that a person was required to expend in fulfilling his or
 9 her obligations as a class representative.

10 **“§ 1715. Clearer and simpler settlement information**

11 “(a) PLAIN ENGLISH REQUIREMENTS.—Any court
 12 with jurisdiction over a plaintiff class action shall require
 13 that any written notice concerning a proposed settlement
 14 of the class action provided to the class through the mail
 15 or publication in printed media contain—

16 “(1) at the beginning of such notice, a state-
 17 ment in 18-point Times New Roman type or other
 18 functionally similar type, stating ‘LEGAL NOTICE:
 19 YOU ARE A PLAINTIFF IN A CLASS ACTION
 20 LAWSUIT AND YOUR LEGAL RIGHTS ARE
 21 AFFECTED BY THE SETTLEMENT DE-
 22 SCRIBED IN THIS NOTICE.’; and

23 “(2) a short summary written in plain, easily
 24 understood language, describing—

25 “(A) the subject matter of the class action;

1 “(B) the members of the class;

2 “(C) the legal consequences of being a
3 member of the class;

4 “(D) if the notice is informing class mem-
5 bers of a proposed settlement agreement—

6 “(i) the benefits that will accrue to
7 the class due to the settlement;

8 “(ii) the rights that class members
9 will lose or waive through the settlement;

10 “(iii) obligations that will be imposed
11 on the defendants by the settlement;

12 “(iv) the dollar amount of any attor-
13 ney’s fee class counsel will be seeking, or
14 if not possible, a good faith estimate of the
15 dollar amount of any attorney’s fee class
16 counsel will be seeking; and

17 “(v) an explanation of how any attor-
18 ney’s fee will be calculated and funded;
19 and

20 “(E) any other material matter.

21 “(b) TABULAR FORMAT.—Any court with jurisdiction
22 over a plaintiff class action shall require that the informa-
23 tion described in subsection (a)—

24 “(1) be placed in a conspicuous and prominent
25 location on the notice;

1 “(2) contain clear and concise headings for
2 each item of information; and

3 “(3) provide a clear and concise form for stat-
4 ing each item of information required to be disclosed
5 under each heading.

6 “(c) TELEVISION OR RADIO NOTICE.—Any notice
7 provided through television or radio (including trans-
8 missions by cable or satellite) to inform the class members
9 in a class action of the right of each member to be ex-
10 cluded from the class action or a proposed settlement of
11 the class action, if such right exists, shall, in plain, easily
12 understood language—

13 “(1) describe the persons who may potentially
14 become class members in the class action; and

15 “(2) explain that the failure of a class member
16 to exercise his or her right to be excluded from a
17 class action will result in the person’s inclusion in
18 the class action or settlement.

19 **“§ 1716. Disclosure of attorney’s fees**

20 “Any court with jurisdiction over a plaintiff class ac-
21 tion shall require that, if there is a settlement of the class
22 action or a judgment for the plaintiffs, the attorneys for
23 the plaintiffs shall disclose to each plaintiff—

1 “(1) at the time when any payment or other
2 award is transmitted to the plaintiff in accordance
3 with the settlement of judgment, or

4 “(2) in a case in which no such payment or
5 award is made to a plaintiff, at the time when notice
6 of the final settlement or judgment is transmitted to
7 such plaintiff,

8 the full amount of the attorney’s fees charged by the attor-
9 neys for services rendered in the action.

10 **“§ 1717. Sunshine in court records**

11 “‘No order, opinion, or record of the court in the adju-
12 dication of a class action, including a record obtained
13 through discovery, whether or not formally filed with the
14 court, may be sealed or subjected to a protective order
15 unless the court makes a finding of fact—

16 “(1) that the sealing or protective order is nar-
17 rowly tailored, consistent with the protection of pub-
18 lic health and safety, and is in the public interest;
19 and

20 “(2) if the action by the court would prevent
21 the disclosure of information, that disclosing the in-
22 formation is clearly outweighed by a specific and
23 substantial interest in maintaining the confiden-
24 tiality of such information.

1 **“§ 1718. Definitions**

2 “In this chapter—

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

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

16 “(3) CLASS MEMBERS.—The term ‘class mem-
17 bers’ means the persons who fall within the defini-
18 tion of the proposed or certified class in a class ac-
19 tion.

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

23 “(5) PROPOSED SETTLEMENT.—The term ‘pro-
24 posed settlement’ means an agreement that resolves
25 claims in a class action, that is subject to court ap-

1 proval and that, if approved, would be binding on
2 the class members.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—

4 The table of chapters for part V is amended by inserting
5 after the item relating to chapter 113 the following:

“114. Class Actions 1711”.

6 **SEC. 4. FEDERAL DISTRICT COURT JURISDICTION OF**
7 **INTERSTATE CLASS ACTIONS.**

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

10 (1) by redesignating subsection (d) as sub-
11 section (e); and

12 (2) by inserting after subsection (c) the fol-
13 lowing:

14 “(d)(1) In this subsection—

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

17 “(B) the term ‘class action’ means any civil ac-
18 tion filed pursuant to rule 23 of the Federal Rules
19 of Civil Procedure or similar State statute or rule of
20 judicial procedure authorizing an action to be
21 brought by one or more representative persons on
22 behalf of a class;

23 “(C) the term ‘class certification order’ means
24 an order issued by a court approving the treatment
25 of a civil action as a class action; and

1 “(D) the term ‘class members’ means the per-
2 sons who fall within the definition of the proposed
3 or certified class in a class action.

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

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

10 “(B) any member of a class of plaintiffs is a
11 foreign state or a citizen or subject of a foreign state
12 and any defendant is a citizen of a State; or

13 “(C) any member of a class of plaintiffs is a
14 citizen of a State and any defendant is a foreign
15 state or a citizen or subject of a foreign state.

16 “(3) Paragraph (2) shall not apply to any civil action
17 in which—

18 “(A)(i) the substantial majority of the members
19 of the proposed plaintiff class and the primary de-
20 fendants are citizens of the State in which the action
21 was originally filed; and

22 “(ii) the claims asserted therein will be gov-
23 erned primarily by the laws of the State in which the
24 action was originally filed;

1 “(B) the primary defendants are States, State
2 officials, or other governmental entities against
3 whom the district court may be foreclosed from or-
4 dering relief; or

5 “(C) the number of proposed plaintiff class
6 members is less than 100.

7 “(4) In any class action, the claims of the individual
8 class members shall be aggregated to determine whether
9 the matter in controversy exceeds the sum or value of
10 \$2,000,000, exclusive of interest and costs.

11 “(5) This subsection shall apply to any class action
12 before or after the entry of a class certification order by
13 the court with respect to that action.

14 “(6)(A) A district court shall dismiss any civil action
15 that is subject to the jurisdiction of the court solely under
16 this subsection if the court determines the action may not
17 proceed as a class action based on a failure to satisfy the
18 requirements of rule 23 of the Federal Rules of Civil Pro-
19 cedure.

20 “(B) Nothing in subparagraph (A) shall prohibit
21 plaintiffs from filing an amended class action in Federal
22 court or filing an action in State court, except that any
23 such action filed in State court may be removed to the
24 appropriate district court if it is an action of which the

1 district courts of the United States have original jurisdic-
2 tion.

3 “(C) In any action that is dismissed under this para-
4 graph and is filed by any of the original named plaintiffs
5 therein in the same State court venue in which the dis-
6 missed action was originally filed, the limitations periods
7 on all reasserted claims shall be deemed tolled for the pe-
8 riod during which the dismissed class action was pending.
9 The limitations periods on any claims that were asserted
10 in a class action dismissed under this paragraph that are
11 subsequently asserted in an individual action shall be
12 deemed tolled for the period during which the dismissed
13 action was pending.

14 “(7) Paragraph (2) shall not apply to any class action
15 brought by shareholders that solely involves a claim that
16 relates to—

17 “(A) a claim concerning a covered security as
18 defined under section 16(f)(3) of the Securities Act
19 of 1933 and section 28(f)(5)(E) of the Securities
20 Exchange Act of 1934;

21 “(B) the internal affairs or governance of a cor-
22 poration or other form of business enterprise and
23 arises under or by virtue of the laws of the State in
24 which such corporation or business enterprise is in-
25 corporated or organized; or

1 “(C) the rights, duties (including fiduciary du-
2 ties), and obligations relating to or created by or
3 pursuant to any security (as defined under section
4 2(a)(1) of the Securities Act of 1933 and the regula-
5 tions issued thereunder).

6 “(8) For purposes of this subsection and section
7 1453 of this title, an unincorporated association shall be
8 deemed to be a citizen of the State where it has its prin-
9 cipal place of business and the State under whose laws
10 it is organized.

11 “(9) For purposes of this section and section 1453
12 of this title, a civil action that is not otherwise a class
13 action as defined in paragraph (1)(B) of this subsection
14 shall nevertheless be deemed a class action if—

15 “(A) the named plaintiff purports to act for the
16 interests of its members (who are not named parties
17 to the action) or for the interests of the general pub-
18 lic, seeks a remedy of damages, restitution,
19 disgorgement, or any other form of monetary relief,
20 and is not a State attorney general; or

21 “(B) monetary relief claims in the action are
22 proposed to be tried jointly in any respect with the
23 claims of 100 or more other persons on the ground
24 that the claims involve common questions of law or
25 fact.

1 In any such case, the persons who allegedly were injured
 2 shall be treated as members of a proposed plaintiff class
 3 and the monetary relief that is sought shall be treated as
 4 the claims of individual class members. The provisions of
 5 paragraphs (3) and (6) of this subsection and subsections
 6 (b)(2) and (d) of section 1453 shall not apply to civil ac-
 7 tions described under subparagraph (A). The provisions
 8 of paragraph (6) of this subsection, and subsections (b)(2)
 9 and (d) of section 1453 shall not apply to civil actions
 10 described under subparagraph (B).”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 1335(a)(1) is amended by inserting
 13 “(a) or (d)” after “1332”.

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

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

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

20 **“§ 1453. Removal of class actions**

21 “(a) DEFINITIONS.—In this section, the terms ‘class’,
 22 ‘class action’, ‘class certification order’, and ‘class mem-
 23 ber’ have the meanings given these terms in section
 24 1332(d)(1).

1 “(b) IN GENERAL.—A class action may be removed
2 to a district court of the United States in accordance with
3 this chapter, without regard to whether any defendant is
4 a citizen of the State in which the action is brought, except
5 that such action may be removed—

6 “(1) by any defendant without the consent of
7 all defendants; or

8 “(2) by any plaintiff class member who is not
9 a named or representative class member without the
10 consent of all members of such class.

11 “(c) WHEN REMOVABLE.—This section shall apply to
12 any class action before or after the entry of a class certifi-
13 cation order in the action, except that a plaintiff class
14 member who is not a named or representative class mem-
15 ber of the action may not seek removal of the action before
16 an order certifying a class of which the plaintiff is a class
17 member has been entered.

18 “(d) PROCEDURE FOR REMOVAL.—The provisions of
19 section 1446 relating to a defendant removing a case shall
20 apply to a plaintiff removing a case under this section,
21 except that in the application of subsection (b) of such
22 section the requirement relating to the 30-day filing period
23 shall be met if a plaintiff class member files notice of re-
24 moval within 30 days after receipt by such class member,

1 through service or otherwise, of the initial written notice
2 of the class action.

3 “(e) REVIEW OF ORDERS REMANDING CLASS AC-
4 TIONS TO STATE COURTS.—The provisions of section
5 1447 shall apply to any removal of a case under this sec-
6 tion, except that, notwithstanding the provisions of section
7 1447(d), an order remanding a class action to the State
8 court from which it was removed shall be reviewable by
9 appeal or otherwise.

10 “(f) EXCEPTION.—This section shall not apply to any
11 class action brought by shareholders that solely involves—

12 “(1) a claim concerning a covered security as
13 defined under section 16(f)(3) of the Securities Act
14 of 1933 and section 28(f)(5)(E) of the Securities
15 Exchange Act of 1934;

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

21 “(3) a claim that relates to the rights, duties
22 (including fiduciary duties), and obligations relating
23 to or created by or pursuant to any security (as de-
24 fined under section 2(a)(1) of the Securities Act of
25 1933 and the regulations issued thereunder).”.

1 (b) REMOVAL LIMITATION.—Section 1446(b) is
2 amended in the second sentence by inserting “(a)” after
3 “section 1332”.

4 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
5 The table of sections for chapter 89 is amended by adding
6 after the item relating to section 1452 the following:

“1453. Removal of class actions.”.

7 **SEC. 6. APPEALS OF CLASS ACTION CERTIFICATION OR-**
8 **DERS.**

9 (a) IN GENERAL.—Section 1292(a) is amended by in-
10 serting after paragraph (3) the following:

11 “(4) Orders of the district courts of the United
12 States granting or denying class certification under
13 rule 23 of the Federal Rules of Civil Procedure, if
14 notice of appeal is filed within 10 days after entry
15 of the order.”.

16 (b) DISCOVERY STAY.—All discovery and other pro-
17 ceedings shall be stayed during the pendency of any appeal
18 taken pursuant to the amendment made by subsection (a),
19 unless the court finds upon the motion of any party that
20 specific discovery is necessary to preserve evidence or to
21 prevent undue prejudice to that party.

22 **SEC. 7. REPORT ON CLASS ACTION SETTLEMENTS.**

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

1 Director of the Federal Judicial Center and the Director
2 of the Administrative Office of the United States Courts,
3 shall prepare and transmit to the Committees on the Judi-
4 ciary of the Senate and House of Representatives a report
5 on class action settlements in the Federal courts.

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 whom 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 attorney’s fees.

6 **SEC. 8. EFFECTIVE DATE.**

7 The amendments made by this Act shall apply to any
8 civil action commenced on or after the date of the enact-
9 ment of this Act.

Passed the House of Representatives March 13,
2002.

Attest:

JEFF TRANDAHL,
Clerk.