

106TH CONGRESS  
1ST SESSION

# S. 353

To provide for class action reform, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1999

Mr. GRASSLEY (for himself, Mr. KOHL, and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide for class action reform, 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.**

4       This Act may be cited as the “Class Action Fairness  
5       Act of 1999”.

6       **SEC. 2. NOTIFICATION REQUIREMENT OF CLASS ACTION**  
7               **CERTIFICATION OR SETTLEMENT.**

8       (a) IN GENERAL.—Part V of title 28, United States  
9       Code, is amended by inserting after chapter 113 the fol-  
10      lowing new chapter:

# 1           **“CHAPTER 114—CLASS ACTIONS**

“Sec.

“1711. Definitions.

“1712. Application.

“1713. Notification of class action certifications and settlements.

“1714. Limitation on attorney’s fees in class actions.

## 2   **“§ 1711. Definitions**

3           “In this chapter the term—

4                   “(1) ‘class’ means a group of persons that com-  
5           prise parties to a civil action brought by 1 or more  
6           representative persons;

7                   “(2) ‘class action’ means a civil action filed pur-  
8           suant to rule 23 of the Federal Rules of Civil Proce-  
9           dure or similar State rules of procedure authorizing  
10          an action to be brought by 1 or more representative  
11          persons on behalf of a class;

12                  “(3) ‘class certification order’ means an order  
13          issued by a court approving the treatment of a civil  
14          action as a class action;

15                  “(4) ‘class member’ means a person that falls  
16          within the definition of the class;

17                  “(5) ‘class counsel’ means the attorneys rep-  
18          resenting the class in a class action;

19                  “(6) ‘plaintiff class action’ means a class action  
20          in which class members are plaintiffs; and

21                  “(7) ‘proposed settlement’ means a settlement  
22          agreement between or among the parties in a class

1        action that is subject to court approval before the  
 2        settlement becomes binding on the parties.

3    **“§ 1712. Application**

4        “This chapter shall apply to—

5            “(1) all plaintiff class actions filed in Federal  
 6        court; and

7            “(2) all plaintiff class actions filed in State  
 8        court in which—

9            “(A) any class member resides outside the  
 10        State in which the action is filed; and

11            “(B) the transaction or occurrence that  
 12        gave rise to the class action occurred in more  
 13        than 1 State.

14    **“§ 1713. Notification of class action certifications and**  
 15        **settlements**

16        “(a) Not later than 10 days after a proposed settle-  
 17        ment in a class action is filed in court, class counsel shall  
 18        serve the State attorney general of each State in which  
 19        a class member resides and the Attorney General of the  
 20        United States as if such attorneys general and the Depart-  
 21        ment of Justice were parties in the class action with—

22            “(1) a copy of the complaint and any materials  
 23        filed with the complaint and any amended com-  
 24        plaints (except such materials shall not be required  
 25        to be served if such materials are made electronically

1 available through the Internet and such service in-  
2 cludes notice of how to electronically access such  
3 material);

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

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

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

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

12 “(B) a proposed settlement of a class ac-  
13 tion;

14 “(4) any proposed or final class action settle-  
15 ment;

16 “(5) any settlement or other agreement contem-  
17 poraneously made between class counsel and counsel  
18 for the defendants;

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

20 “(7)(A) if feasible the names of class members  
21 who reside in each State attorney general’s respec-  
22 tive State and the estimated proportionate claim of  
23 such members to the entire settlement; or

24 “(B) if the provision of information under sub-  
25 paragraph (A) is not feasible, a reasonable estimate

1 of the number of class members residing in each at-  
2 torney general's State and the estimated propor-  
3 tionate claim of such members to the entire settle-  
4 ment; and

5 “(8) any written judicial opinion relating to the  
6 materials described under paragraphs (3) through  
7 (6).

8 “(b) A hearing to consider final approval of a pro-  
9 posed settlement may not be held earlier than 120 days  
10 after the date on which the State attorneys general and  
11 the Attorney General of the United States are served no-  
12 tice under subsection (a).

13 “(c) Any court with jurisdiction over a plaintiff class  
14 action shall require that—

15 “(1) any written notice provided to the class  
16 through the mail or publication in printed media  
17 contain a short summary written in plain, easily un-  
18 derstood language, describing—

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

20 “(B) the legal consequences of being a  
21 member of the class action;

22 “(C) the ability of a class member to seek  
23 removal of the class action to Federal court if—

24 “(i) the action is filed in a State  
25 court; and

1 “(ii) Federal jurisdiction would apply  
2 to such action under section 1332(d);

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

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

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

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

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

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

19 “(E) any other material matter; and

20 “(2) any notice provided through television or  
21 radio to inform the class members of the right of  
22 each member to be excluded from a class action or  
23 a proposed settlement, if such right exists, shall, in  
24 plain, easily understood language—

1           “(A) describe the persons who may poten-  
2           tially become class members in the class action;  
3           and

4           “(B) explain that the failure of a person  
5           falling within the definition of the class to exer-  
6           cise such person’s right to be excluded from a  
7           class action will result in the person’s inclusion  
8           in the class action.

9           “(d) Compliance with this section shall not provide  
10          immunity to any party from any legal action under Fed-  
11          eral or State law, including actions for malpractice or  
12          fraud.

13          “(e)(1) A class member may refuse to comply with  
14          and may choose not to be bound by a settlement agree-  
15          ment or consent decree in a class action if the class mem-  
16          ber resides in a State where the State attorney general  
17          has not been provided notice and materials under sub-  
18          section (a).

19          “(2) The rights created by this subsection shall apply  
20          only to class members or any person acting on a class  
21          member’s behalf, and shall not be construed to limit any  
22          other rights affecting a class member’s participation in the  
23          settlement.

24          “(f) Nothing in this section shall be construed to im-  
25          pose any obligations, duties, or responsibilities upon State

1 attorneys general or the Attorney General of the United  
2 States.

3 **“§ 1714. Limitation on attorney’s fees in class actions**

4 “(a) In any class action, the total attorney’s fees and  
5 expenses awarded by the court to counsel for the plaintiff  
6 class may not exceed a reasonable percentage of the  
7 amount of—

8 “(1) any damages and prejudgment interest ac-  
9 tually paid to the class;

10 “(2) any future financial benefits to the class  
11 based on the cessation of alleged improper conduct  
12 by the defendants; and

13 “(3) costs actually incurred by all defendants in  
14 complying with the terms of an injunctive order or  
15 settlement agreement.

16 “(b) Notwithstanding subsection (a), to the extent  
17 that the law permits, the court may award attorney’s fees  
18 and expenses to counsel for the plaintiff class based on  
19 a reasonable lodestar calculation.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
21 The table of chapters for part V of title 28, United States  
22 Code, is amended by inserting after the item relating to  
23 chapter 113 the following:

**“114. Class Actions ..... 1711”.**



1 **SEC. 3. DIVERSITY JURISDICTION FOR CLASS ACTIONS.**

2 Section 1332 of title 28, United States Code, is  
3 amended—

4 (1) by redesignating subsection (d) as sub-  
5 section (e); and

6 (2) by inserting after subsection (c) the follow-  
7 ing:

8 “(d)(1) In this subsection, the terms ‘class’, ‘class ac-  
9 tion’, and ‘class certification order’ have the meanings  
10 given such terms under section 1711.

11 “(2) The district courts shall have original jurisdic-  
12 tion of any civil action where the matter in controversy  
13 exceeds the sum or value of \$75,000, exclusive of interest  
14 and costs, and is a class action in which—

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

17 “(B) any member of a class of plaintiffs is a  
18 foreign state or a citizen or subject of a foreign state  
19 and any defendant is a citizen of a State; or

20 “(C) any member of a class of plaintiffs is a  
21 citizen of a State and any defendant is a foreign  
22 state or a citizen or subject of a foreign state.

23 “(3) The district court shall abstain from hearing a  
24 civil action described under paragraph (2) if—

25 “(A)(i) the substantial majority of the  
26 members of the proposed plaintiff class are citi-

1           zens of a single State of which the primary de-  
2           fendants are also citizens; and

3                 “(ii) the claims asserted will be governed  
4           primarily by the laws of that State; or

5                 “(B) the primary defendants are States,  
6           State officials, or other governmental entities  
7           against whom the district court may be fore-  
8           closed from ordering relief.

9           “(4) In any class action, the claims of the individual  
10       members of any class shall be aggregated to determine  
11       whether the matter in controversy exceeds the sum or  
12       value of \$75,000, exclusive of interest and costs.

13           “(5) This subsection shall apply to any class action  
14       before or after the entry of a class certification order by  
15       the court.

16           “(6)(A) A district court shall dismiss, or, if after re-  
17       moval, strike the class allegations and remand, any civil  
18       action if—

19                 “(i) the action is subject to the jurisdiction of  
20       the court solely under this subsection; and

21                 “(ii) the court determines the action may not  
22       proceed as a class action based on a failure to sat-  
23       isfy the conditions of rule 23 of the Federal Rules  
24       of Civil Procedure.

1 “(B) Nothing in subparagraph (A) shall prohibit  
2 plaintiffs from filing an amended class action in Federal  
3 or State court.

4 “(C) Upon dismissal or remand, the period of limita-  
5 tions for any claim that was asserted in an action on be-  
6 half of any named or unnamed member of any proposed  
7 class shall be deemed tolled to the full extent provided  
8 under Federal law.

9 “(7) Paragraph (2) shall not apply to any class ac-  
10 tion, regardless of which forum any such action may be  
11 filed in, involving any claim relating to—

12 “(A) the internal affairs or governance of a cor-  
13 poration or other form of entity or business associa-  
14 tion arising under or by virtue of the statutory, com-  
15 mon, or other laws of the State in which such cor-  
16 poration, entity, or business association is incor-  
17 porated (in the case of a corporation) or organized  
18 (in the case of any other entity); or

19 “(B) the rights, duties (including fiduciary du-  
20 ties), and obligations relating to or created by or  
21 pursuant to any security (as defined under section  
22 2(a)(1) of the Securities Act of 1933 or the rules  
23 and regulations adopted under such Act).”.

1 **SEC. 4. REMOVAL OF CLASS ACTIONS TO FEDERAL COURT.**

2 (a) IN GENERAL.—Chapter 89 of title 28, United  
3 States Code, is amended by adding after section 1452 the  
4 following:

5 **“§ 1453. Removal of class actions**

6 “(a) In this section, the terms ‘class’, ‘class action’,  
7 and ‘class member’ have the meanings given such terms  
8 under section 1711.

9 “(b) A class action may be removed to a district court  
10 of the United States in accordance with this chapter, ex-  
11 cept that such action may be removed—

12 “(1) by any defendant without the consent of  
13 all defendants; or

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

17 “(c) This section shall apply to any class action be-  
18 fore or after the entry of any order certifying a class.

19 “(d) The provisions of section 1446 relating to a de-  
20 fendant removing a case shall apply to a plaintiff removing  
21 a case under this section, except that in the application  
22 of subsection (b) of such section the requirement relating  
23 to the 30-day filing period shall be met if a plaintiff class  
24 member files notice of removal within 30 days after receipt  
25 by such class member, through service or otherwise, of the  
26 initial written notice of the class action.

1 “(e) This section shall not apply to any class action,  
 2 regardless of which forum any such action may be filed  
 3 in, involving any claim relating to—

4 “(1) the internal affairs or governance of a cor-  
 5 poration or other form of entity or business associa-  
 6 tion arising under or by virtue of the statutory, com-  
 7 mon, or other laws of the State in which such cor-  
 8 poration, entity, or business association is incor-  
 9 porated (in the case of a corporation) or organized  
 10 (in the case of any other entity); or

11 “(2) the rights, duties (including fiduciary du-  
 12 ties), and obligations relating to or created by or  
 13 pursuant to any security (as defined under section  
 14 2(a)(1) of the Securities Act of 1933 or the rules  
 15 and regulations adopted under such Act).”.

16 (b) REMOVAL LIMITATION.—Section 1446(b) of title  
 17 28, United States Code, is amended in the second sentence  
 18 by inserting “(a)” after “section 1332”.

19 (c) TECHNICAL AND CONFORMING AMENDMENTS.—  
 20 The table of sections for chapter 89 of title 28, United  
 21 States Code, is amended by adding after the item relating  
 22 to section 1452 the following:

“1453. Removal of class actions.”.

1 **SEC. 5. REPRESENTATIONS AND SANCTIONS UNDER RULE**  
2 **11 OF THE FEDERAL RULES OF CIVIL PROCE-**  
3 **DURE.**

4 Rule 11(c) of the Federal Rules of Civil Procedure  
5 is amended—

6 (1) in the first sentence by striking “may, sub-  
7 ject to the conditions stated below,” and inserting  
8 “shall”;

9 (2) in paragraph (2) by striking the first and  
10 second sentences and inserting “A sanction imposed  
11 for violation of this rule may consist of reasonable  
12 attorneys’ fees and other expenses incurred as a re-  
13 sult of the violation, directives of a nonmonetary na-  
14 ture, or an order to pay penalty into court or to a  
15 party.”; and

16 (3) in paragraph (2)(A) by inserting before the  
17 period “, although such sanctions may be awarded  
18 against a party’s attorneys”.

19 **SEC. 6. EFFECTIVE DATE.**

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

○