

Calendar No. 732

106TH CONGRESS
2D SESSION**S. 353**

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1999

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

JULY 27, 2000

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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”.

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

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

6 **“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.

7 **“§ 1711. Definitions**

8 “In this chapter the term—

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

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

17 “(3) ‘class certification order’ means an order
 18 issued by a court approving the treatment of a civil
 19 action as a class action;

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

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

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

3 “(7) ‘proposed settlement’ means a settlement
4 agreement between or among the parties in a class
5 action that is subject to court approval before the
6 settlement becomes binding on the parties.

7 **“§ 1712. Application**

8 “‘This chapter shall apply to—

9 “(1) all plaintiff class actions filed in Federal
10 court; and

11 “(2) all plaintiff class actions filed in State
12 court in which—

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

15 “(B) the transaction or occurrence that
16 gave rise to the class action occurred in more
17 than 1 State.

18 **“§ 1713. Notification of class action certifications and**
19 **settlements**

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

1 “(1) a copy of the complaint and any materials
 2 filed with the complaint and any amended com-
 3 plaints (except such materials shall not be required
 4 to be served if such materials are made electronically
 5 available through the Internet and such service in-
 6 cludes notice of how to electronically access such
 7 material);

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

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

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

14 “(ii) if no right to request exclusion exists;
 15 a statement that no such right exists; and

16 “(B) a proposed settlement of a class ac-
 17 tion;

18 “(4) any proposed or final class action settle-
 19 ment;

20 “(5) any settlement or other agreement contem-
 21 poraneously made between class counsel and counsel
 22 for the defendants;

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

24 “(7)(A) if feasible the names of class members
 25 who reside in each State attorney general’s respec-

1 tive State and the estimated proportionate claim of
 2 such members to the entire settlement; or

3 ~~“(B) if the provision of information under sub-~~
 4 ~~paragraph (A) is not feasible, a reasonable estimate~~
 5 ~~of the number of class members residing in each at-~~
 6 ~~torney general’s State and the estimated propor-~~
 7 ~~tionate claim of such members to the entire settle-~~
 8 ~~ment; and~~

9 ~~“(8) any written judicial opinion relating to the~~
 10 ~~materials described under paragraphs (3) through~~
 11 ~~(6).~~

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

17 ~~“(c) Any court with jurisdiction over a plaintiff class~~
 18 ~~action shall require that—~~

19 ~~“(1) any written notice provided to the class~~
 20 ~~through the mail or publication in printed media~~
 21 ~~contain a short summary written in plain, easily un-~~
 22 ~~derstood language, describing—~~

23 ~~“(A) the subject matter of the class action;~~

24 ~~“(B) the legal consequences of being a~~
 25 ~~member of the class action;~~

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

3 “(i) the action is filed in a State
4 court; and

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

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

9 “(i) the benefits that will accrue to
10 the class due to the settlement;

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

13 “(iii) obligations that will be imposed
14 on the defendants by the settlement;

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

20 “(v) an explanation of how any attor-
21 ney’s fee will be calculated and funded;
22 and

23 “(E) any other material matter; and

24 “(2) any notice provided through television or
25 radio to inform the class members of the right of

1 each member to be excluded from a class action or
2 a proposed settlement, if such right exists, shall, in
3 plain, easily understood language—

4 “(A) describe the persons who may poten-
5 tially become class members in the class action;
6 and

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

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

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

22 “(2) The rights created by this subsection shall apply
23 only to class members or any person acting on a class
24 member’s behalf, and shall not be construed to limit any

1 other rights affecting a class member's participation in the
 2 settlement.

3 “(f) Nothing in this section shall be construed to im-
 4 pose any obligations, duties, or responsibilities upon State
 5 attorneys general or the Attorney General of the United
 6 States.

7 **“§ 1714. Limitation on attorney's fees in class actions**

8 “(a) In any class action, the total attorney's fees and
 9 expenses awarded by the court to counsel for the plaintiff
 10 class may not exceed a reasonable percentage of the
 11 amount of—

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

14 “(2) any future financial benefits to the class
 15 based on the cessation of alleged improper conduct
 16 by the defendants; and

17 “(3) costs actually incurred by all defendants in
 18 complying with the terms of an injunctive order or
 19 settlement agreement.

20 “(b) Notwithstanding subsection (a), to the extent
 21 that the law permits, the court may award attorney's fees
 22 and expenses to counsel for the plaintiff class based on
 23 a reasonable lodestar calculation.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—

25 The table of chapters for part V of title 28, United States

1 Code, is amended by inserting after the item relating to
 2 chapter 113 the following:

“114. Class Actions 1711”.

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

4 Section 1332 of title 28, United States Code, is
 5 amended—

6 (1) by redesignating subsection (d) as sub-
 7 section (e); and

8 (2) by inserting after subsection (e) the fol-
 9 lowing:

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

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

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

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

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

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

3 ~~“(A)(i) the substantial majority of the~~
 4 ~~members of the proposed plaintiff class are citi-~~
 5 ~~zens of a single State of which the primary de-~~
 6 ~~fendants are also citizens; and~~

7 ~~“(ii) the claims asserted will be governed~~
 8 ~~primarily by the laws of that State; or~~

9 ~~“(B) the primary defendants are States,~~
 10 ~~State officials, or other governmental entities~~
 11 ~~against whom the district court may be fore-~~
 12 ~~closed from ordering relief.~~

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

17 ~~“(5) This subsection shall apply to any class action~~
 18 ~~before or after the entry of a class certification order by~~
 19 ~~the court.~~

20 ~~“(6)(A) A district court shall dismiss, or, if after re-~~
 21 ~~moval, strike the class allegations and remand, any civil~~
 22 ~~action if—~~

23 ~~“(i) the action is subject to the jurisdiction of~~
 24 ~~the court solely under this subsection; and~~

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

5 “(B) Nothing in subparagraph (A) shall prohibit
6 plaintiffs from filing an amended class action in Federal
7 or State court.

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

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

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

23 “(B) the rights, duties (including fiduciary du-
24 ties), and obligations relating to or created by or
25 pursuant to any security (as defined under section

1 2(a)(1) of the Securities Act of 1933 or the rules
 2 and regulations adopted under such Act).”.

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

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

7 **“§ 1453. Removal of class actions**

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

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

14 “(1) by any defendant without the consent of
 15 all defendants; or

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

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

21 “(d) The provisions of section 1446 relating to a de-
 22 fendant removing a case shall apply to a plaintiff removing
 23 a case under this section, except that in the application
 24 of subsection (b) of such section the requirement relating
 25 to the 30-day filing period shall be met if a plaintiff class

1 member files notice of removal within 30 days after receipt
 2 by such class member, through service or otherwise, of the
 3 initial written notice of the class action.

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

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

14 “(2) the rights, duties (including fiduciary du-
 15 ties), and obligations relating to or created by or
 16 pursuant to any security (as defined under section
 17 2(a)(1) of the Securities Act of 1933 or the rules
 18 and regulations adopted under such Act).”.

19 (b) REMOVAL LIMITATION.—Section 1446(b) of title
 20 28, United States Code, is amended in the second sentence
 21 by inserting “(a)” after “section 1332”.

22 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
 23 The table of sections for chapter 89 of title 28, United
 24 States Code, is amended by adding after the item relating
 25 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(e) 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.

23 **SECTION 1. SHORT TITLE.**

24 *This Act may be cited as the “Class Action Fairness*
 25 *Act of 2000”.*

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

3 (a) *IN GENERAL.*—Part V of title 28, United States
 4 Code, is amended by inserting after chapter 113 the fol-
 5 lowing:

6 **“CHAPTER 114—CLASS ACTIONS**

“Sec.

“1711. Definitions.

“1712. Application.

“1713. Notification of class action certifications and settlements.

7 **“§ 1711. Definitions**

8 “In this chapter the term—

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

12 “(2) ‘class action’ means a civil action filed pur-
 13 suant to rule 23 of the Federal Rules of Civil Proce-
 14 dure or similar State statutes or rules of procedure
 15 authorizing an action to be brought by 1 or more rep-
 16 resentative persons on behalf of a class;

17 “(3) ‘class certification order’ means an order
 18 issued by a court approving the treatment of a civil
 19 action as a class action;

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

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

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

3 “(7) ‘proposed settlement’ means a settlement
4 agreement regarding a class action that is subject to
5 court approval and would be binding on the class.

6 **“§ 1712. Application**

7 “This chapter shall apply to all plaintiff class actions
8 filed in or removed to Federal court, except any such class
9 action solely involving—

10 “(1) claims concerning a covered security as de-
11 fined under section 16(f)(3) of the Securities Act of
12 1933 and section 28(f)(5)(E) of the Securities Ex-
13 change Act of 1934;

14 “(2) claims that relate to the internal affairs or
15 governance of a corporation or other form of business
16 enterprise and arises under or by virtue of the laws
17 of the State in which such corporation or business en-
18 terprise is incorporated or organized; or

19 “(3) claims that relate to the rights, duties (in-
20 cluding fiduciary duties), and obligations relating to
21 or created by or pursuant to any security (as defined
22 under section 2(a)(1) of the Securities Act of 1933
23 and the regulations issued thereunder).

1 **“§ 1713. Notification of class action certifications and**
2 **settlements**

3 “(a) *Not later than 10 days after a proposed settlement*
4 *in a class action is filed in court, class counsel shall serve*
5 *the State attorney general of each State in which a class*
6 *member resides and the Attorney General of the United*
7 *States as if such attorneys general and the Department of*
8 *Justice were parties in the class action with—*

9 “(1) *a copy of the complaint and any materials*
10 *filed with the complaint and any amended com-*
11 *plaints (except such materials shall not be required to*
12 *be served if such materials are made electronically*
13 *available through the Internet and such service in-*
14 *cludes notice of how to electronically access such ma-*
15 *terial);*

16 “(2) *notice of any scheduled judicial hearing in*
17 *the class action;*

18 “(3) *any proposed or final notification to class*
19 *members of—*

20 “(A)(i) *the members’ rights to request exclu-*
21 *sion from the class action; or*

22 “(ii) *if no right to request exclusion exists,*
23 *a statement that no such right exists; and*

24 “(B) *a proposed settlement of a class action;*

25 “(4) *any proposed or final class action settle-*
26 *ment;*

1 “(5) *any settlement or other agreement contem-*
 2 *poraneously made between class counsel and counsel*
 3 *for the defendants;*

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

5 “(7)(A) *if feasible the names of class members*
 6 *who reside in each State attorney general’s respective*
 7 *State and the estimated proportionate claim of such*
 8 *members to the entire settlement; or*

9 “(B) *if the provision of information under sub-*
 10 *paragraph (A) is not feasible, a reasonable estimate*
 11 *of the number of class members residing in each attor-*
 12 *ney general’s State and the estimated proportionate*
 13 *claim of such members to the entire settlement; and*

14 “(8) *any written judicial opinion relating to the*
 15 *materials described under paragraphs (3) through (6).*

16 “(b) *A hearing to consider final approval of a proposed*
 17 *settlement may not be held earlier than 120 days after the*
 18 *date on which the State attorneys general and the Attorney*
 19 *General of the United States are served notice under sub-*
 20 *section (a).*

21 “(c) *Any court with jurisdiction over a plaintiff class*
 22 *action shall require that—*

23 “(1) *any written notice provided to the class*
 24 *through the mail or publication in printed media*

1 *contain a short summary written in plain, easily un-*
 2 *derstood language, describing—*

3 “(A) *the subject matter of the class action;*

4 “(B) *the legal consequences of being a mem-*
 5 *ber of the class action;*

6 “(C) *if the notice is informing class mem-*
 7 *bers of a proposed settlement agreement—*

8 “(i) *the benefits that will accrue to the*
 9 *class due to the settlement;*

10 “(ii) *the rights that class members will*
 11 *lose or waive through the settlement;*

12 “(iii) *obligations that will be imposed*
 13 *on the defendants by the settlement;*

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

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

21 “(D) *any other material matter; and*

22 “(2) *any notice provided through television or*
 23 *radio to inform the class members of the right of each*
 24 *member to be excluded from a class action or a pro-*

1 *posed settlement, if such right exists, shall, in plain,*
2 *easily understood language—*

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

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

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

15 *“(e)(1) A class member may refuse to comply with and*
16 *may choose not to be bound by a settlement agreement or*
17 *consent decree in a class action if the class member resides*
18 *in a State where the State attorney general has not been*
19 *provided notice and materials under subsection (a).*

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

1 “(f) *Nothing in this section shall be construed to ex-*
 2 *pand the authority of, or impose any obligations, duties,*
 3 *or responsibilities upon, State attorneys general or the At-*
 4 *torney General of the United States.”.*

5 (b) *TECHNICAL AND CONFORMING AMENDMENT.—The*
 6 *table of chapters for part V of title 28, United States Code,*
 7 *is amended by inserting after the item relating to chapter*
 8 *113 the following:*

“114. Class Actions 1711”.

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

10 *Section 1332 of title 28, United States Code, is*
 11 *amended—*

12 (1) *by redesignating subsection (d) as subsection*
 13 *(e); and*

14 (2) *by inserting after subsection (c) the fol-*
 15 *lowing:*

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

19 “(2) *The district courts shall have original jurisdiction*
 20 *of any civil action where the matter in controversy exceeds*
 21 *the sum or value of \$2,000,000, exclusive of interest and*
 22 *costs, and is a class action in which—*

23 “(A) *any member of a class of plaintiffs is a cit-*
 24 *izen of a State different from any defendant;*

1 “(B) any member of a class of plaintiffs is a for-
 2 eign state or a citizen or subject of a foreign state and
 3 any defendant is a citizen of a State; or

4 “(C) any member of a class of plaintiffs is a cit-
 5 izen of a State and any defendant is a foreign state
 6 or a citizen or subject of a foreign state.

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

9 “(A)(i) the substantial majority of the members
 10 of the proposed plaintiff class and the primary de-
 11 fendants are citizens of the State in which the action
 12 was originally filed; and

13 “(ii) the claims asserted therein will be governed
 14 primarily by the laws of the State in which the action
 15 was originally filed;

16 “(B) the primary defendants are States, State
 17 officials, or other governmental entities against whom
 18 the district court may be foreclosed from ordering re-
 19 lief; or

20 “(C) the number of members of all proposed
 21 plaintiff classes in the aggregate is less than 100.

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

1 “(5) *This subsection shall apply to any class action*
 2 *before or after the entry of a class certification order by*
 3 *the court.*

4 “(6)(A) *A district court shall dismiss any civil action*
 5 *that is subject to the jurisdiction of the court solely under*
 6 *this subsection if the court determines the action may not*
 7 *proceed as a class action based on a failure to satisfy the*
 8 *conditions of rule 23 of the Federal Rules of Civil Proce-*
 9 *dure.*

10 “(B) *Nothing in subparagraph (A) shall prohibit*
 11 *plaintiffs from filing an amended class action in Federal*
 12 *court or filing an action in State court, but any such filed*
 13 *action may be removed if it is an action of which the dis-*
 14 *trict courts of the United States have original jurisdiction.*

15 “(C) *In any action that is dismissed under this sub-*
 16 *section and is filed by any of the original named plaintiffs*
 17 *therein in the same State court venue in which the dis-*
 18 *missed action was originally filed, the limitations periods*
 19 *on all reasserted claims shall be deemed tolled for the period*
 20 *during which the dismissed class action was pending. The*
 21 *limitations periods on any claims that were asserted in a*
 22 *class action dismissed under this subsection that are subse-*
 23 *quently asserted in an individual action shall be deemed*
 24 *tolled for the period during which the dismissed action was*
 25 *pending.*

1 “(7) Paragraph (2) shall not apply to any class action
2 solely involving a claim that relates to—

3 “(A) the internal affairs or governance of a cor-
4 poration or other form of business enterprise and
5 arises under or by virtue of the laws of the State in
6 which such corporation or business enterprise is in-
7 corporated or organized; or

8 “(B) the rights, duties (including fiduciary du-
9 ties), and obligations relating to or created by or pur-
10 suant to any security (as defined under section
11 2(a)(1) of the Securities Act of 1933 and the regula-
12 tions issued thereunder).

13 “(8) For purposes of this subsection and section 1453
14 of this title, an unincorporated association shall be deemed
15 to be a citizen of the State where it has its principal place
16 of business and the State under whose laws it is organized.”.

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

18 (a) *IN GENERAL.*—Chapter 89 of title 28, United
19 States Code, is amended by adding after section 1452 the
20 following:

21 **“§ 1453. Removal of class actions**

22 “(a) In this section, the terms ‘class’, ‘class action’,
23 and ‘class member’ have the meanings given such terms
24 under section 1711.

1 “(b) *A class action may be removed to a district court*
2 *of the United States in accordance with this chapter, with-*
3 *out regard to whether any defendant is a citizen of the State*
4 *in which the action is brought, except that such action may*
5 *be removed—*

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

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

11 “(c) *This section shall apply to any class action before*
12 *or after the entry of any order certifying a class.*

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

21 “(e) *This section shall not apply to any class action*
22 *solely involving—*

23 “(1) *a claim concerning a covered security as de-*
24 *finied under section 16(f)(3) of the Securities Act of*

1 1933 and section 28(f)(5)(E) of the Securities Ex-
 2 change Act of 1934;

3 “(2) a claim that relates to the internal affairs
 4 or governance of a corporation or other form of busi-
 5 ness enterprise and arises under or by virtue of the
 6 laws of the State in which such corporation or busi-
 7 ness enterprise is incorporated or organized; or

8 “(3) a claim that relates to the rights, duties (in-
 9 cluding fiduciary duties), and obligations relating to
 10 or created by or pursuant to any security (as defined
 11 under section 2(a)(1) of the Securities Act of 1933
 12 and the regulations issued thereunder).”.

13 (b) *REMOVAL LIMITATION*.—Section 1446(b) of title
 14 28, United States Code, is amended in the second sentence
 15 by inserting “(a)” after “section 1332”.

16 (c) *TECHNICAL AND CONFORMING AMENDMENTS*.—The
 17 table of sections for chapter 89 of title 28, United States
 18 Code, is amended by adding after the item relating to sec-
 19 tion 1452 the following:

 “1453. Removal of class actions.”.

20 **SEC. 5. REPORT ON CLASS ACTION SETTLEMENTS.**

21 (a) *IN GENERAL*.—Not later than 12 months after the
 22 date of enactment of this Act, the Judicial Conference of
 23 the United States, with the assistance of the Director of the
 24 Federal Judicial Center and the Director of the Administra-
 25 tive Office of the United States Courts, shall prepare and

1 *transmit to the Committees on the Judiciary of the Senate*
 2 *and the House of Representatives a report on class action*
 3 *settlements.*

4 (b) *CONTENT.—The report under subsection (a) shall*
 5 *contain—*

6 (1) *recommendations on the best practices that*
 7 *courts can use to ensure that proposed class action*
 8 *settlements are fair to the class members that the set-*
 9 *tlements are supposed to benefit;*

10 (2) *recommendations on the best practices that*
 11 *courts can use to ensure that—*

12 (A) *the fees and expenses awarded to coun-*
 13 *sel in connection with a class action settlement*
 14 *appropriately reflect the extent to which counsel*
 15 *succeeded in obtaining full redress for the inju-*
 16 *ries alleged and the time, expense, and risk that*
 17 *counsel devoted to the litigation; and*

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

21 (3) *the actions that the Judicial Conference of*
 22 *the United States has taken and intends to take to-*
 23 *ward having the Federal judiciary implement any or*
 24 *all of the recommendations contained in the report.*

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

4 ***SEC. 6. EFFECTIVE DATE.***

5 *The amendments made by this Act shall apply to any*
6 *civil action commenced on or after the date of enactment*
7 *of this Act.*

Calendar No. 732

106TH CONGRESS
2D SESSION

S. 353

A BILL

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

JULY 27, 2000

Reported with an amendment