

Calendar No. 117

108TH CONGRESS
1ST SESSION

S. 274

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

FEBRUARY 4, 2003

Mr. GRASSLEY (for himself, Mr. KOHL, Mr. HATCH, Mr. CARPER, Mr. SPECTER, Mr. MILLER, Mr. CHAFEE, Mr. LUGAR, Mr. VOINOVICH, Mr. CHAMBLISS, Mr. MCCONNELL, Mr. SESSIONS, Mr. ALLEN, Mr. DOMENICI, Mr. ENSIGN, Mr. CORNYN, Mr. KYL, Mr. BUNNING, Mr. FITZGERALD, and Mr. HAGEL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 2, 2003

Reported by Mr. HATCH, with amendments

[Omit the part struck through and insert the part printed in *italic*]

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 2003”.

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. 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. Judicial scrutiny of coupon and other noncash settlements.

“1713. Protection against loss by class members.

“1714. Protection against discrimination based on geographic location.

“1715. Prohibition on the payment of bounties.

“1716. Clearer and simpler settlement information.

“1717. 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. Judicial scrutiny of coupon and other**
 7 **noncash settlements**

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

15 **“§ 1713. Protection against loss by class members**

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

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

24 “The court may not approve a proposed settlement
 25 that provides for the payment of greater sums to some

1 class members than to others solely on the basis that the
 2 class members to whom the greater sums are to be paid
 3 are located in closer geographic proximity to the court.

4 **“§ 1715. Prohibition on the payment of bounties**

5 “(a) IN GENERAL.—The court may not approve a
 6 proposed settlement that provides for the payment of a
 7 greater share of the award to a class representative serv-
 8 ing on behalf of a class, on the basis of the formula for
 9 distribution to all other class members, than that awarded
 10 to the other class members.

11 “(b) RULE OF CONSTRUCTION.—The limitation in
 12 subsection (a) shall not be construed to prohibit a pay-
 13 ment approved by the court for reasonable time or costs
 14 that a person was required to expend in fulfilling the obli-
 15 gations of that person as a class representative.

16 **“§ 1716. Clearer and simpler settlement information**

17 “(a) PLAIN ENGLISH REQUIREMENTS.—Any court
 18 with jurisdiction over a plaintiff class action shall require
 19 that any written notice concerning a proposed settlement
 20 of the class action provided to the class through the mail
 21 or publication in printed media contain—

22 “(1) at the beginning of such notice, a state-
 23 ment in 18-point or greater bold type, stating
 24 ‘LEGAL NOTICE: YOU ARE A PLAINTIFF IN
 25 A CLASS ACTION LAWSUIT AND YOUR

1 LEGAL RIGHTS ARE AFFECTED BY THE
 2 SETTLEMENT DESCRIBED IN THIS NO-
 3 TICE.’; *and*

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

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

7 “(B) the members of the class;

8 “(C) the legal consequences of being a
 9 member of the class action;

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

12 “(i) the benefits that will accrue to
 13 the class due to the settlement;

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

16 “(iii) obligations that will be imposed
 17 on the defendants by the settlement;

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

23 “(v) an explanation of how any attor-
 24 ney’s fee will be calculated and funded;
 25 and

1 “(E) any other material matter.

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

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

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

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

12 “(c) TELEVISION OR RADIO NOTICE.—Any notice
13 provided through television or radio (including trans-
14 missions by cable or satellite) to inform the class members
15 in a class action of the right of each member to be ex-
16 cluded from a class action or a proposed settlement, if
17 such right exists, shall, in plain, easily understood lan-
18 guage—

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

21 “(2) explain that the failure of a class member
22 to exercise his or her right to be excluded from a
23 class action will result in the person’s inclusion in
24 the class action.

1 **“§ 1717. Notifications to appropriate Federal and**
 2 **State officials**

3 “(a) DEFINITIONS.—

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

7 “(A) the Attorney General of the United
 8 States; or

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

21 “(2) APPROPRIATE STATE OFFICIAL.—In this
 22 section, the term ‘appropriate State official’ means
 23 the person in the State who has the primary regu-
 24 latory or supervisory responsibility with respect to
 25 the defendant, or who licenses or otherwise author-
 26 izes the defendant to conduct business in the State,

1 if some or all of the matters alleged in the class ac-
2 tion are subject to regulation by that person. If
3 there is no primary regulator, supervisor, or licens-
4 ing authority, or the matters alleged in the class ac-
5 tion are not subject to regulation or supervision by
6 that person, then the appropriate State official shall
7 be the State attorney general.

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

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

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

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

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

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

5 “(B) a proposed settlement of a class ac-
6 tion;

7 “(4) any proposed or final class action settle-
8 ment;

9 “(5) any settlement or other agreement contem-
10 poraneously made between class counsel and counsel
11 for the defendants;

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

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

18 “(B) if the provision of information under sub-
19 paragraph (A) is not feasible, a reasonable estimate
20 of the number of class members residing in each
21 State and the estimated proportionate share of the
22 claims of such members to the entire settlement; and

23 “(8) any written judicial opinion relating to the
24 materials described under subparagraphs (3)
25 through (6).

1 “(c) DEPOSITORY INSTITUTIONS NOTIFICATION.—

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

14 “(2) STATE DEPOSITORY INSTITUTIONS.—In
 15 any case in which the defendant is a State deposi-
 16 tory institution (as that term is defined in section 3
 17 of the Federal Deposit Insurance Act (12 U.S.C.
 18 1813)), the notice requirements of this section are
 19 satisfied by serving the notice required under sub-
 20 section (b) upon the State bank supervisor (as that
 21 term is defined in section 3 of the Federal Deposit
 22 Insurance Act (12 U.S.C. 1813)) of the State in
 23 which the defendant is incorporated or chartered, if
 24 some or all of the matters alleged in the class action

1 are subject to regulation or supervision by that per-
 2 son, and upon the appropriate Federal official.

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

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

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

16 “(2) LIMITATION.—A class member may not
 17 refuse to comply with or to be bound by a settlement
 18 agreement or consent decree under paragraph (1) if
 19 the notice required under subsection (b) was directed
 20 to the appropriate Federal official and to either the
 21 State attorney general or the person that has pri-
 22 mary regulatory, supervisory, or licensing authority
 23 over the defendant.

24 “(3) APPLICATION OF RIGHTS.—The rights cre-
 25 ated by this subsection shall apply only to class

1 members or any person acting on a class member's
 2 behalf, and shall not be construed to limit any other
 3 rights affecting a class member's participation in the
 4 settlement.

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

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

“114. Class Actions 1711”.

12 **SEC. 4. FEDERAL DISTRICT COURT JURISDICTION FOR**
 13 **INTERSTATE CLASS ACTIONS.**

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

16 (1) by redesignating subsection (d) as sub-
 17 section (e); and

18 (2) by inserting after subsection (c) the fol-
 19 lowing:

20 “(d)(1) In this subsection—

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

23 “(B) the term ‘class action’ means any civil ac-
 24 tion filed under rule 23 of the Federal Rules of Civil
 25 Procedure or similar State statute or rule of judicial

1 procedure authorizing an action to be brought by 1
 2 or more representative persons as a class action;

3 “(C) the term ‘class certification order’ means
 4 an order issued by a court approving the treatment
 5 of some or all aspects of a civil action as a class
 6 action; and

7 “(D) the term ‘class members’ means the per-
 8 sons (named or unnamed) who fall within the defini-
 9 tion of the proposed or certified class in a class ac-
 10 tion.

11 “(2) The district courts shall have original jurisdic-
 12 tion of any civil action in which the matter in controversy
 13 exceeds the sum or value of ~~\$2,000,000~~ \$5,000,000, exclu-
 14 sive of interest 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) Paragraph (2) shall not apply to any civil action~~
 24 ~~in which—~~

1 “(A)(i) the substantial majority of the members
2 of the proposed plaintiff class and the primary de-
3 fendants are citizens of the State in which the action
4 was originally filed; and

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

8 “(B) the primary defendants are States, State
9 officials, or other governmental entities against
10 whom the district court may be foreclosed from or-
11 dering relief; or

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

14 “(3) *A district court may, in the interests of jus-*
15 *tice, decline to exercise jurisdiction under paragraph*
16 *(2) over a class action in which greater than one-*
17 *third but less than two-thirds of the members of all*
18 *proposed plaintiff classes in the aggregate and the*
19 *primary defendants are citizens of the State in which*
20 *the action was originally filed based on consideration*
21 *of the following factors:*

22 “(A) *Whether the claims asserted involve*
23 *matters of national or interstate interest.*

1 “(B) Whether the claims asserted will be
2 governed by laws other than those of the State in
3 which the action was originally filed.

4 “(C) In the case of a class action originally
5 filed in a State court, whether the class action
6 has been pleaded in a manner that seeks to avoid
7 Federal jurisdiction.

8 “(D) Whether the number of citizens of the
9 State in which the action was originally filed in
10 all proposed plaintiff classes in the aggregate is
11 substantially larger than the number of citizens
12 from any other State, and the citizenship of the
13 other members of the proposed class is dispersed
14 among a substantial number of States.

15 “(E) Whether 1 or more class actions assert-
16 ing the same or similar claims on behalf of the
17 same or other persons have been or may be filed.

18 “(4) Paragraph (2) shall not apply to any class
19 action in which—

20 “(A) two-thirds or more of the members of
21 all proposed plaintiff classes in the aggregate
22 and the primary defendants are citizens of the
23 State in which the action was originally filed;

24 “(B) the primary defendants are States,
25 State officials, or other governmental entities

1 *against whom the district court may be fore-*
 2 *closed from ordering relief; or*

3 “(C) *the number of members of all proposed*
 4 *plaintiff classes in the aggregate is less than 100.*

5 “~~(4)~~ (5) In any class action, the claims of the indi-
 6 vidual class members shall be aggregated to determine
 7 whether the matter in controversy exceeds the sum or
 8 value of ~~\$2,000,000~~ \$5,000,000, exclusive of interest and
 9 costs.

10 “~~(5)~~ (6) This subsection shall apply to any class ac-
 11 tion before or after the entry of a class certification order
 12 by the court with respect to that action.

13 “~~(6)~~ (7)(A) A district court shall dismiss any civil ac-
 14 tion that is subject to the jurisdiction of the court solely
 15 under this subsection if the court determines the action
 16 may not proceed as a class action based on a failure to
 17 satisfy the prerequisites of rule 23 of the Federal Rules
 18 of Civil Procedure.

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

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

12 “~~(7)~~ (8) Paragraph (2) shall not apply to any class
 13 action that solely involves a claim—

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

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

23 “(C) that relates to the rights, duties (including
 24 fiduciary duties), and obligations relating to or cre-
 25 ated by or pursuant to any security (as defined

1 under section 2(a)(1) of the Securities Act of 1933
 2 and the regulations issued thereunder).

3 “~~(8)~~ (9) For purposes of this subsection and section
 4 1453 of this title, an unincorporated association shall be
 5 deemed to be a citizen of the State where it has its prin-
 6 cipal place of business and the State under whose laws
 7 it is organized.

8 “~~(9)~~ (10) (A) For purposes of this section and section
 9 1453 of this title, a civil action that is not otherwise a
 10 class action as defined in paragraph (1)(B) shall neverthe-
 11 less be deemed a class action if—

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

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

23 “(B)(i) In any civil action described under subpara-
 24 graph ~~(A)(ii)~~ (A)(i), the persons who allegedly were in-
 25 jured shall be treated as members of a proposed plaintiff

1 class and the monetary relief that is sought shall be treat-
 2 ed as the claims of individual class members.

3 “(ii) ~~Paragraphs (3) and (6)~~ *Paragraph (7)* of this
 4 subsection and subsections (b)(2) and (d) of section 1453
 5 shall not apply to any civil action described under subpara-
 6 graph (A)(i).

7 “(iii) ~~Paragraph (6)~~ (7) of this subsection, and sub-
 8 sections (b)(2) and (d) of section 1453 shall not apply to
 9 any civil action described under subparagraph (A)(ii).”.

10 (b) CONFORMING AMENDMENTS.—

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

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

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

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

19 **“§ 1453. Removal of class actions**

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

24 “(b) IN GENERAL.—A class action may be removed
 25 to a district court of the United States in accordance with

1 this chapter, without regard to whether any defendant is
 2 a citizen of the State in which the action is brought, except
 3 that such action may be removed—

4 “(1) by any defendant without the consent of
 5 all defendants; or

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

9 “(c) WHEN REMOVABLE.—This section shall apply to
 10 any class action before or after the entry of a class certifi-
 11 cation order in the action.

12 “(d) PROCEDURE FOR REMOVAL.—Section 1446 re-
 13 lating to a defendant removing a case shall apply to a
 14 plaintiff removing a case under this section, except that
 15 in the application of subsection (b) of such section the re-
 16 quirement relating to the 30-day filing period shall be met
 17 if a plaintiff class member files notice of removal within
 18 30 days after receipt by such class member, through serv-
 19 ice or otherwise, of the initial written notice of the class
 20 action.

21 “(e) REVIEW OF ORDERS REMANDING CLASS AC-
 22 TIONS TO STATE COURTS.—Section 1447 shall apply to
 23 any removal of a case under this section, except that not-
 24 withstanding section 1447(d), an order remanding a class

1 action to the State court from which it was removed shall
 2 be reviewable by appeal or otherwise.

3 “(f) EXCEPTION.—This section shall not apply to any
 4 class action that solely involves—

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

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

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

19 (b) REMOVAL LIMITATION.—Section 1446(b) is
 20 amended in the second sentence by inserting “(a)” after
 21 “section 1332”.

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

“1453. Removal of class actions.”.

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

2 (a) IN GENERAL.—Not later than 12 months after
3 the date of enactment of this Act, the Judicial Conference
4 of the United States, with the assistance of the Director
5 of the Federal Judicial Center and the Director of the Ad-
6 ministrative Office of the United States Courts, shall pre-
7 pare and transmit to the Committees on the Judiciary of
8 the Senate and the House of Representatives a report on
9 class action settlements.

10 (b) CONTENT.—The report under subsection (a) shall
11 contain—

12 (1) recommendations on the best practices that
13 courts can use to ensure that proposed class action
14 settlements are fair to the class members that the
15 settlements are supposed to benefit;

16 (2) recommendations on the best practices that
17 courts can use to ensure that—

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

24 (B) the class members on whose behalf the
25 settlement is proposed are the primary bene-
26 ficiaries of the settlement; and

1 (3) the actions that the Judicial Conference of
2 the United States has taken and intends to take to-
3 ward having the Federal judiciary implement any or
4 all of the recommendations contained in the report.

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

8 **SEC. 7. EFFECTIVE DATE.**

9 The amendments made by this Act shall apply to any
10 civil action commenced on or after the date of enactment
11 of this Act.

Calendar No. 117

108TH CONGRESS
1ST SESSION

S. 274

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.

JUNE 2, 2003

Reported with amendments