

“(f) LIMITATIONS ON REMEDIES.—

“(1) CLASS ACTION LIMITATIONS.—No class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

“(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or

“(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

“(2) REMOVAL OF CLASS ACTIONS.—Any class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

“(3) PRESERVATION OF CERTAIN ACTIONS.—

“(A) IN GENERAL.—Notwithstanding paragraph (1), a class action described in subparagraph (B) of this paragraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

“(B) PERMISSIBLE ACTIONS.—A class action is described in this subparagraph if it involves—

“(i) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

“(ii) any recommendation, position, or other communication with respect to the sale of securities of an issuer that—

“(I) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

“(II) concerns decisions of such equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

“(4) PRESERVATION OF STATE JURISDICTION.—The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

“(5) STATE ACTIONS.—

“(A) IN GENERAL.—Notwithstanding any other provision of this subsection, nothing in this subsection may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans similarly situated.

“(B) STATE PENSION PLAN DEFINED.—For purposes of this paragraph, the term ‘State pension plan’ means a pension plan established and maintained for its employees by the government of a State or political subdivision thereof, or by any agency or instrumentality thereof.

“(6) DEFINITIONS.—For purposes of this subsection the following definitions shall apply:

“(A) AFFILIATE OF THE ISSUER.—The term ‘affiliate of the issuer’ means a person that directly or indirectly, through 1 or more intermediaries, controls or is controlled by or is under common control with, the issuer.

“(B) CLASS ACTION.—The term ‘class action’ means—

“(i) any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

“(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individ-

ualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

“(II) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

“(ii) any group of lawsuits (other than derivative suits brought by 1 or more shareholders on behalf of a corporation) filed in or pending in the same court and involving common questions of law or fact, in which—

“(I) damages are sought on behalf of more than 50 persons; and

“(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

“(C) COUNTING OF CERTAIN CLASS MEMBERS.—For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as 1 person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

“(D) COVERED SECURITY.—The term ‘covered security’ means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933, at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred.”.

SEC. 4. APPLICABILITY.

The amendments made by this Act shall not affect or apply to any action commenced before and pending on the date of enactment of this Act.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LOTT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, I am trying to have an announcement for the Members. But I need to check with a couple of people in just a moment. So if the Senator from Iowa would like to proceed with statements, I would like to maybe interrupt in a moment.

Mr. LEAHY. Mr. President, while the leader is on the floor—if the Senator from Iowa will withhold for just a moment—I know the leader is trying to get a schedule together. I just wanted to note, because there has been some question over here on this side of the aisle, that on S. 2037, the WIPO bill, or the digital new millennium copyright legislation, there is absolutely no objection to going forward with it. I suggest that there will be unanimous sup-

port for it over here. I just wanted to advise the distinguished majority leader of that fact.

Mr. LOTT. I might respond to the fact that we do want to get that bill done. We have run into a possible technical problem that we are trying to work out, as you well know.

Mr. LEAHY. I understand what the leader wants to do. I wanted to make sure that he understands this side of the aisle is ready and raring to go.

Mr. LOTT. Mr. President, for the information of all Senators, the Senate has now passed the second of the four high-tech bills that we had been working on and have worked to get agreements. And we have been successful in that. It is our intent at the earliest opportunity to consider and pass the WIPO bill, even though I understand there may be a technical problem with the blue slip issue involving the House of Representatives. We are trying to check that out, and also the immigration bill that the Senator from Michigan has been working on, and Senator KENNEDY from Massachusetts.

It would be our intent to call up that immigration bill, if we do not do it before noon on Monday, with the possibility of stacked votes on Monday afternoon about 5:30. I am not asking unanimous consent to that effect right now. I have discussed that with Senator ABRAHAM, and Senator KENNEDY. But I would need to check that with Senator DASCHLE and others.

But I want the Members to know that we need to complete action on these high-tech bills. A lot of great work has been done. We have been able to pass two of them. We are very close to being able to get the other two done. Our intent is to stay with that until we get it completed.

The Senate will now begin the DOD authorization bill.

Having said all of that, there will be no further votes this evening, and the Senate will consider the DOD authorization bill throughout Thursday's session of the Senate. I had hoped there would be opening statements. But I understand we will just lay the bill down, and then we will begin tomorrow.

But I want the RECORD to show that I was requested to have the remainder of the night for the DOD authorization bill so that we could get 2 or 3 hours on it. We are not going to be able to do that. But I am certainly prepared and willing, and wanted to do that.

UNANIMOUS-CONSENT REQUEST— S. 2057

Mr. LOTT. Mr. President, I now ask unanimous consent the Senate turn to S. 2057, the DOD authorization bill.

Mr. ABRAHAM. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The Senate majority leader has the floor.