

**Calendar No. 355**105<sup>TH</sup> CONGRESS  
2D SESSION**S. 1260****[Report No. 105-182]**

To amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes.

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**IN THE SENATE OF THE UNITED STATES**

OCTOBER 7, 1997

Mr. GRAMM (for himself, Mr. DODD, Mr. DOMENICI, Mrs. BOXER, Mr. FAIRCLOTH, Mrs. FEINSTEIN, Mr. HAGEL, Mr. REID, Mr. WYDEN, Mr. ALLARD, Ms. MOSELEY-BRAUN, Mrs. MURRAY, Mr. LIEBERMAN, Mr. BENNETT, Mr. GRAMS, Mr. SESSIONS, Mr. SANTORUM, Mr. ASHCROFT, Mr. ABRAHAM, Mr. SMITH of Oregon, Mr. KERRY, Mr. MACK, Mr. NICKLES, Mr. COCHRAN, Mr. THURMOND, Mr. INHOFE, Mr. HELMS, Mr. DEWINE, Mr. ENZI, Mr. COVERDELL, Mr. GORTON, Mr. BROWNBACK, Mr. HUTCHINSON, Mr. WARNER, Mr. ROBB, Mr. FORD, Mr. BOND, Mr. FRIST, Mr. KYL, and Mr. LUGAR) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

MAY 4, 1998

Reported by Mr. D'AMATO, with an amendment

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

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**A BILL**

To amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, 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 “Securities Litigation  
 5 Uniform Standards Act of 1997”.

6 **SEC. 2. LIMITATION ON REMEDIES.**

7 (a) AMENDMENTS TO THE SECURITIES ACT OF  
 8 1933.—

9 (1) AMENDMENT.—Section 16 of the Securities  
 10 Act of 1933 (15 U.S.C. 77p) is amended to read as  
 11 follows:

12 **“SEC. 16. ADDITIONAL REMEDIES; LIMITATION ON REM-**  
 13 **EDIES.**

14 “(a) REMEDIES ADDITIONAL.—Except as provided in  
 15 subsection (b), the rights and remedies provided by this  
 16 title shall be in addition to any and all other rights and  
 17 remedies that may exist at law or in equity.

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

22 “(1) an untrue statement or omission of a ma-  
 23 terial fact in connection with the purchase or sale of  
 24 a covered security; or

1           “(2) that the defendant used or employed any  
2           manipulative or deceptive device or contrivance in  
3           connection with the purchase or sale of a covered se-  
4           curity.

5           “(e) REMOVAL OF CLASS ACTIONS.—Any class action  
6           brought in any State court involving a covered security,  
7           as set forth in subsection (b), shall be removable to the  
8           Federal district court for the district in which the action  
9           is pending, and shall be subject to subsection (b).

10          “(d) DEFINITIONS.—For purposes of this section the  
11          following definitions shall apply:

12                 “(1) CLASS ACTION.—The term ‘class action’  
13                 means any single lawsuit, or any group of lawsuits  
14                 filed in or pending in the same court involving com-  
15                 mon questions of law or fact, in which—

16                         “(A) damages are sought on behalf of  
17                         more than 25 persons;

18                         “(B) one or more named parties seek to  
19                         recover damages on a representative basis on  
20                         behalf of themselves and other unnamed parties  
21                         similarly situated; or

22                         “(C) one or more of the parties seeking to  
23                         recover damages did not personally authorize  
24                         the filing of the lawsuit.

1           “(2) COVERED SECURITY.—A security is a ‘cov-  
 2           ered security’ if it satisfies the standard for a cov-  
 3           ered security specified in paragraph (1) or (2) of  
 4           section 18(b) at the time during which it is alleged  
 5           that the misrepresentation, omission, or manipula-  
 6           tive or deceptive conduct occurred.”.

7           (2) CONFORMING AMENDMENTS.—Section  
 8           22(a) of the Securities Act of 1933 (15 U.S.C.  
 9           77v(a)) is amended—

10           (A) by striking “and, concurrent with  
 11           State and Territorial courts,” and inserting  
 12           “and, concurrent with State and Territorial  
 13           courts, except as provided in section 16 with re-  
 14           spect to class actions,”; and

15           (B) by striking “No case arising under this  
 16           title and brought in any State court of com-  
 17           petent jurisdiction shall be removed” and in-  
 18           serting “Except as provided in section 16(c), no  
 19           case arising under this title and brought in any  
 20           State court of competent jurisdiction shall be  
 21           removed”.

22           (b) AMENDMENTS TO THE SECURITIES EXCHANGE  
 23           ACT OF 1934.—Section 28 of the Securities Exchange Act  
 24           of 1934 (15 U.S.C. 78bb) is amended—

1           (1) in subsection (a), by striking “The rights  
2 and remedies” and inserting “Except as provided in  
3 subsection (f), the rights and remedies”; and

4           (2) by adding at the end the following new sub-  
5 section:

6           “~~(f) LIMITATIONS ON REMEDIES.—~~

7           “~~(1) CLASS ACTION LIMITATIONS.—No class ac-~~  
8 ~~tion based upon the statutory or common law of any~~  
9 ~~State or subdivision thereof may be maintained in~~  
10 ~~any State or Federal court by any private party~~  
11 ~~alleging—~~

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

15           “~~(B) that the defendant used or employed~~  
16 ~~any manipulative or deceptive device or contriv-~~  
17 ~~ance in connection with the purchase or sale of~~  
18 ~~a covered security.~~

19           “~~(2) REMOVAL OF CLASS ACTIONS.—Any class~~  
20 ~~action brought in any State court involving a cov-~~  
21 ~~ered security, as set forth in paragraph (1), shall be~~  
22 ~~removable to the Federal district court for the dis-~~  
23 ~~trict in which the action is pending, and shall be~~  
24 ~~subject to paragraph (1).~~

1           “(3) DEFINITIONS.—For purposes of this sub-  
2 section the following definitions shall apply:

3           “(A) CLASS ACTION.—The term ‘class ac-  
4 tion’ means any single lawsuit, or any group of  
5 lawsuits filed in or pending in the same court  
6 involving common questions of law or fact, in  
7 which—

8           “(i) damages are sought on behalf of  
9 more than 25 persons;

10          “(ii) one or more named parties seek  
11 to recover damages on a representative  
12 basis on behalf of themselves and other  
13 unnamed parties similarly situated; or

14          “(iii) one or more of the parties seek-  
15 ing to recover damages did not personally  
16 authorize the filing of the lawsuit.

17          “(B) COVERED SECURITY.—A security is a  
18 ‘covered security’ if it satisfies the standard for  
19 a covered security specified in paragraph (1) or  
20 (2) of section 18(b) of the Securities Act of  
21 1933, at the time during which it is alleged  
22 that the misrepresentation, omission, or ma-  
23 nipulative or deceptive conduct occurred.”.

1        ~~(e) APPLICABILITY.—The amendments made by this~~  
2 section shall not affect or apply to any action commenced  
3 before and pending on the date of enactment of this Act.

4 **SECTION 1. SHORT TITLE.**

5        *This Act may be cited as the “Securities Litigation*  
6 *Uniform Standards Act of 1998”.*

7 **SEC. 2. FINDINGS.**

8        *The Congress finds that—*

9            *(1) the Private Securities Litigation Reform Act*  
10        *of 1995 sought to prevent abuses in private securities*  
11        *fraud lawsuits;*

12            *(2) since enactment of that legislation, consider-*  
13        *able evidence has been presented to Congress that a*  
14        *number of securities class action lawsuits have shifted*  
15        *from Federal to State courts;*

16            *(3) this shift has prevented that Act from fully*  
17        *achieving its objectives;*

18            *(4) State securities regulation is of continuing*  
19        *importance, together with Federal regulation of secu-*  
20        *rities, to protect investors and promote strong finan-*  
21        *cial markets; and*

22            *(5) in order to prevent certain State private se-*  
23        *curities class action lawsuits alleging fraud from*  
24        *being used to frustrate the objectives of the Private Se-*  
25        *curities Litigation Reform Act of 1995, it is appro-*

1        *appropriate to enact national standards for securities class*  
 2        *action lawsuits involving nationally traded securities,*  
 3        *while preserving the appropriate enforcement powers*  
 4        *of State securities regulators and not changing the*  
 5        *current treatment of individual lawsuits.*

6        **SEC. 3. LIMITATION ON REMEDIES.**

7        *(a) AMENDMENTS TO THE SECURITIES ACT OF*  
 8        *1933.—*

9                *(1) AMENDMENT.—Section 16 of the Securities*  
 10        *Act of 1933 (15 U.S.C. 77p) is amended to read as*  
 11        *follows:*

12        **“SEC. 16. ADDITIONAL REMEDIES; LIMITATION ON REM-**  
 13                **EDIES.**

14                *“(a) REMEDIES ADDITIONAL.—Except as provided in*  
 15        *subsection (b), the rights and remedies provided by this title*  
 16        *shall be in addition to any and all other rights and rem-*  
 17        *edies that may exist at law or in equity.*

18                *“(b) CLASS ACTION LIMITATIONS.—No class action*  
 19        *based upon the statutory or common law of any State or*  
 20        *subdivision thereof may be maintained in any State or Fed-*  
 21        *eral court by any private party alleging—*

22                *“(1) an untrue statement or omission of a mate-*  
 23        *rial fact in connection with the purchase or sale of a*  
 24        *covered security; or*

1           “(2) that the defendant used or employed any  
2           manipulative or deceptive device or contrivance in  
3           connection with the purchase or sale of a covered secu-  
4           rity.

5           “(c) *REMOVAL OF CLASS ACTIONS.*—Any class action  
6 brought in any State court involving a covered security,  
7 as set forth in subsection (b), shall be removable to the Fed-  
8 eral district court for the district in which the action is  
9 pending, and shall be subject to subsection (b).

10          “(d) *PRESERVATION OF CERTAIN ACTIONS.*—

11           “(1) *IN GENERAL.*—Notwithstanding subsection  
12 (b), a class action described in paragraph (2) of this  
13 subsection that is based upon the statutory or com-  
14 mon law of the State in which the issuer is incor-  
15 porated (in the case of a corporation) or organized  
16 (in the case of any other entity) may be maintained  
17 in a State or Federal court by a private party.

18           “(2) *PERMISSIBLE ACTIONS.*—A class action is  
19 described in this paragraph if it involves—

20           “(A) the purchase or sale of securities by the  
21 issuer or an affiliate of the issuer exclusively  
22 from or to holders of equity securities of the  
23 issuer; or

1           “(B) any recommendation, position, or  
2 other communication with respect to the sale of  
3 securities of the issuer that—

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

7                   “(ii) concerns decisions of those equity  
8 holders with respect to voting their securi-  
9 ties, acting in response to a tender or ex-  
10 change offer, or exercising dissenters’ or ap-  
11 praisal rights.

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

17           “(f) *DEFINITIONS.*—For purposes of this section the  
18 following definitions shall apply:

19                   “(1) *AFFILIATE OF THE ISSUER.*—The term ‘af-  
20 filiate of the issuer’ means a person that directly or  
21 indirectly, through 1 or more intermediaries, controls  
22 or is controlled by or is under common control with,  
23 the issuer.

24                   “(2) *CLASS ACTION.*—

1                   “(A) *IN GENERAL.*—*The term ‘class action’*  
2                   *means—*

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

7                   “(I) *damages are sought on behalf*  
8                   *of more than 50 persons or prospective*  
9                   *class members, and questions of law or*  
10                  *fact common to those persons or mem-*  
11                  *bers of the prospective class, without*  
12                  *reference to issues of individualized re-*  
13                  *liance on an alleged misstatement or*  
14                  *omission, predominate over any ques-*  
15                  *tions affecting only individual persons*  
16                  *or members; or*

17                  “(II) *1 or more named parties*  
18                  *seek to recover damages on a represent-*  
19                  *ative basis on behalf of themselves and*  
20                  *other unnamed parties similarly situ-*  
21                  *ated, and questions of law or fact com-*  
22                  *mon to those persons or members of the*  
23                  *prospective class predominate over any*  
24                  *questions affecting only individual per-*  
25                  *sons or members; or*

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

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

9                       “(II) the lawsuits are joined, con-  
10                      solidated, or otherwise proceed as a  
11                      single action for any purpose.

12           “(B) COUNTING OF CERTAIN CLASS MEM-  
13           BERS.—For purposes of this paragraph, a cor-  
14           poration, investment company, pension plan,  
15           partnership, or other entity, shall be treated as  
16           1 person or prospective class member, but only if  
17           the entity is not established for the purpose of  
18           participating in the action.

19           “(3) COVERED SECURITY.—The term ‘covered se-  
20           curity’ means a security that satisfies the standards  
21           for a covered security specified in paragraph (1) or  
22           (2) of section 18(b) at the time during which it is al-  
23           leged that the misrepresentation, omission, or ma-  
24           nipulative or deceptive conduct occurred.”.

1           (2) *CONFORMING AMENDMENTS.*—Section 22(a)  
 2 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is  
 3 amended—

4           (A) by inserting “except as provided in sec-  
 5 tion 16 with respect to class actions,” after “Ter-  
 6 ritorial courts,”; and

7           (B) by striking “No case” and inserting  
 8 “Except as provided in section 16(c), no case”.

9           (b) *AMENDMENTS TO THE SECURITIES EXCHANGE*  
 10 *ACT OF 1934.*—Section 28 of the Securities Exchange Act  
 11 of 1934 (15 U.S.C. 78bb) is amended—

12           (1) in subsection (a), by striking “The rights and  
 13 remedies” and inserting “Except as provided in sub-  
 14 section (f), the rights and remedies”; and

15           (2) by adding at the end the following new sub-  
 16 section:

17           “(f) *LIMITATIONS ON REMEDIES.*—

18           “(1) *CLASS ACTION LIMITATIONS.*—No class ac-  
 19 tion based upon the statutory or common law of any  
 20 State or subdivision thereof may be maintained in  
 21 any State or Federal court by any private party  
 22 alleging—

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

1           “(B) that the defendant used or employed  
2           any manipulative or deceptive device or contriv-  
3           ance in connection with the purchase or sale of  
4           a covered security.

5           “(2) *REMOVAL OF CLASS ACTIONS.*—Any class  
6           action brought in any State court involving a covered  
7           security, as set forth in paragraph (1), shall be re-  
8           movable to the Federal district court for the district  
9           in which the action is pending, and shall be subject  
10          to paragraph (1).

11          “(3) *PRESERVATION OF CERTAIN ACTIONS.*—

12                 “(A) *IN GENERAL.*—Notwithstanding para-  
13                 graph (1), a class action described in subpara-  
14                 graph (B) of this paragraph that is based upon  
15                 the statutory or common law of the State in  
16                 which the issuer is incorporated (in the case of  
17                 a corporation) or organized (in the case of any  
18                 other entity) may be maintained in a State or  
19                 Federal court by a private party.

20                 “(B) *PERMISSIBLE ACTIONS.*—A class ac-  
21                 tion is described in this subparagraph if it in-  
22                 volves—

23                         “(i) the purchase or sale of securities  
24                         by the issuer or an affiliate of the issuer ex-

1 *clusively from or to holders of equity securi-*  
2 *ties of the issuer; or*

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

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

10 *“(II) concerns decisions of such*  
11 *equity holders with respect to voting*  
12 *their securities, acting in response to a*  
13 *tender or exchange offer, or exercising*  
14 *dissenters’ or appraisal rights.*

15 *“(4) PRESERVATION OF STATE JURISDICTION.—*  
16 *The securities commission (or any agency or office*  
17 *performing like functions) of any State shall retain*  
18 *jurisdiction under the laws of such State to inves-*  
19 *tigate and bring enforcement actions.*

20 *“(5) DEFINITIONS.—For purposes of this sub-*  
21 *section the following definitions shall apply:*

22 *“(A) AFFILIATE OF THE ISSUER.—The term*  
23 *‘affiliate of the issuer’ means a person that di-*  
24 *rectly or indirectly, through 1 or more inter-*

1            *mediaries, controls or is controlled by or is*  
2            *under common control with, the issuer.*

3            “(B) *CLASS ACTION.*—*The term ‘class ac-*  
4            *tion’ means—*

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

9            “(I) *damages are sought on behalf*  
10           *of more than 50 persons or prospective*  
11           *class members, and questions of law or*  
12           *fact common to those persons or mem-*  
13           *bers of the prospective class, without*  
14           *reference to issues of individualized re-*  
15           *liance on an alleged misstatement or*  
16           *omission, predominate over any ques-*  
17           *tions affecting only individual persons*  
18           *or members; or*

19           “(II) *1 or more named parties*  
20           *seek to recover damages on a represent-*  
21           *ative basis on behalf of themselves and*  
22           *other unnamed parties similarly situ-*  
23           *ated, and questions of law or fact com-*  
24           *mon to those persons or members of the*  
25           *prospective class predominate over any*

1                    *questions affecting only individual per-*  
2                    *sons or members; or*

3                    *“(ii) any group of lawsuits (other than*  
4                    *derivative suits brought by 1 or more share-*  
5                    *holders on behalf of a corporation) filed in*  
6                    *or pending in the same court and involving*  
7                    *common questions of law or fact, in*  
8                    *which—*

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

11                    *“(II) the lawsuits are joined, con-*  
12                    *solidated, or otherwise proceed as a*  
13                    *single action for any purpose.*

14                    *“(C) COUNTING OF CERTAIN CLASS MEM-*  
15                    *BERS.—For purposes of this paragraph, a cor-*  
16                    *poration, investment company, pension plan,*  
17                    *partnership, or other entity, shall be treated as*  
18                    *1 person or prospective class member, but only if*  
19                    *the entity is not established for the purpose of*  
20                    *participating in the action.*

21                    *“(D) COVERED SECURITY.—The term ‘cov-*  
22                    *ered security’ means a security that satisfies the*  
23                    *standards for a covered security specified in*  
24                    *paragraph (1) or (2) of section 18(b) of the Secu-*  
25                    *rities Act of 1933, at the time during which it*

1            *is alleged that the misrepresentation, omission,*  
2            *or manipulative or deceptive conduct occurred.”.*

3 **SEC. 4. APPLICABILITY.**

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



Calendar No. 355

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1260**

[Report No. 105-182]

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## **A BILL**

To amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes.

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MAY 4, 1998

Reported with an amendment