

108TH CONGRESS  
1ST SESSION

# H. R. 1115

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2003

Mr. GOODLATTE (for himself, Mr. BOUCHER, Mr. SENSENBRENNER, Mr. MORAN of Virginia, Mr. SMITH of Texas, Mr. STENHOLM, Mr. DELAY, Mr. DOOLEY of California, Mr. HYDE, Mr. HOLDEN, Mr. COX, and Mr. CRAMER) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28,

United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, 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; REFERENCE; TABLE OF CON-**  
 4 **TENTS.**

5        (a) SHORT TITLE.—This Act may be cited as the  
 6 “Class Action Fairness Act of 2003”.

7        (b) REFERENCE.—Whenever in this Act reference is  
 8 made to an amendment to, or repeal of, a section or other  
 9 provision, the reference shall be considered to be made to  
 10 a section or other provision of title 28, United States  
 11 Code.

12        (c) TABLE OF CONTENTS.—The table of contents for  
 13 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 interstate class actions.
- Sec. 4. Federal district court jurisdiction of interstate class actions.
- Sec. 5. Removal of interstate class actions to Federal district court.
- Sec. 6. Appeals of class action certification orders.
- Sec. 7. Effective date.

14 **SEC. 2. FINDINGS AND PURPOSES.**

15        (a) FINDINGS.—The Congress finds as follows:

16            (1) Class action lawsuits are an important and  
 17 valuable part of our legal system when they permit  
 18 the fair and efficient resolution of legitimate claims  
 19 of numerous parties by allowing the claims to be ag-

1 gregated into a single action against a defendant  
2 that has allegedly caused harm.

3 (2) Over the past decade, there have been  
4 abuses of the class action device that have—

5 (A) harmed class members with legitimate  
6 claims and defendants that have acted respon-  
7 sibly;

8 (B) adversely affected interstate commerce;  
9 and

10 (C) undermined public respect for the judi-  
11 cial system in the United States.

12 (3) Class members have been harmed by a  
13 number of actions taken by plaintiffs' lawyers, which  
14 provide little or no benefit to class members as a  
15 whole, including—

16 (A) plaintiffs' lawyers receiving large fees,  
17 while class members are left with coupons or  
18 other awards of little or no value;

19 (B) unjustified rewards being made to cer-  
20 tain plaintiffs at the expense of other class  
21 members; and

22 (C) the publication of confusing notices  
23 that prevent class members from being able to  
24 fully understand and effectively exercise their  
25 rights.

1           (4) Through the use of artful pleading, plain-  
2           tiffs are able to avoid litigating class actions in Fed-  
3           eral court, forcing businesses and other organiza-  
4           tions to defend interstate class action lawsuits in  
5           county and State courts where—

6                   (A) the lawyers, rather than the claimants,  
7                   are likely to receive the maximum benefit;

8                   (B) less scrutiny may be given to the mer-  
9                   its of the case; and

10                   (C) defendants are effectively forced into  
11                   settlements, in order to avoid the possibility of  
12                   huge judgments that could destabilize their  
13                   companies.

14           (5) These abuses undermine the Federal judi-  
15           cial system, the free flow of interstate commerce,  
16           and the intent of the framers of the Constitution in  
17           creating diversity jurisdiction, in that county and  
18           State courts are—

19                   (A) handling interstate class actions that  
20                   affect parties from many States;

21                   (B) sometimes acting in ways that dem-  
22                   onstrate bias against out-of-State defendants;  
23                   and

1 (C) making judgments that impose their  
2 view of the law on other States and bind the  
3 rights of the residents of those States.

4 (6) Abusive interstate class actions have  
5 harmed society as a whole by forcing innocent par-  
6 ties to settle cases rather than risk a huge judgment  
7 by a local jury, thereby costing consumers billions of  
8 dollars in increased costs to pay for forced settle-  
9 ments and excessive judgments.

10 (b) PURPOSES.—The purposes of this Act are—

11 (1) to assure fair and prompt recoveries for  
12 class members with legitimate claims;

13 (2) to protect responsible companies and other  
14 institutions against interstate class actions in State  
15 courts;

16 (3) to restore the intent of the framers of the  
17 Constitution by providing for Federal court consider-  
18 ation of interstate class actions; and

19 (4) to benefit society by encouraging innovation  
20 and lowering consumer prices.

21 **SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IM-**  
22 **PROVED PROCEDURES FOR INTERSTATE**  
23 **CLASS ACTIONS.**

24 (a) IN GENERAL.—Part V is amended by inserting  
25 after chapter 113 the following:



1 class members to whom the greater sums are to be paid  
2 are located in closer geographic proximity to the court.

3 **“§ 1714. Prohibition on the payment of bounties**

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

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

15 **“§ 1715. Clearer and simpler settlement information**

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

21 “(1) at the beginning of such notice, a state-  
22 ment in 18-point Times New Roman type or other  
23 functionally similar type, stating ‘LEGAL NOTICE:  
24 YOU ARE A PLAINTIFF IN A CLASS ACTION  
25 LAWSUIT AND YOUR LEGAL RIGHTS ARE

1       AFFECTED BY THE SETTLEMENT DE-  
2       SCRIBED IN THIS NOTICE.’; and

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

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

6                       “(B) the members of the class;

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

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

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

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

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

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

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

25                       “(E) any other material matter.

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

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

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

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

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

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

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

24 **“§ 1716. Definitions**

25       “In this chapter—

1           “(1) CLASS ACTION.—The term ‘class action’  
2 means any civil action filed in a district court of the  
3 United States pursuant to rule 23 of the Federal  
4 Rules of Civil Procedure or any civil action that is  
5 removed to a district court of the United States that  
6 was originally filed pursuant to a State statute or  
7 rule of judicial procedure authorizing an action to  
8 be brought by one or more representatives on behalf  
9 of a class.

10           “(2) CLASS COUNSEL.—The term ‘class coun-  
11 sel’ means the persons who serve as the attorneys  
12 for the class members in a proposed or certified  
13 class action.

14           “(3) CLASS MEMBERS.—The term ‘class mem-  
15 bers’ means the persons who fall within the defini-  
16 tion of the proposed or certified class in a class ac-  
17 tion.

18           “(4) PLAINTIFF CLASS ACTION.—The term  
19 ‘plaintiff class action’ means a class action in which  
20 class members are plaintiffs.

21           “(5) PROPOSED SETTLEMENT.—The term ‘pro-  
22 posed settlement’ means an agreement that resolves  
23 claims in a class action, that is subject to court ap-  
24 proval, and that, if approved, would be binding on  
25 the class members.”.

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

“114. Class Actions ..... 1711”.

4 **SEC. 4. FEDERAL DISTRICT COURT JURISDICTION OF**  
 5 **INTERSTATE CLASS ACTIONS.**

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

8 (1) by redesignating subsection (d) as sub-  
 9 section (e); and

10 (2) by inserting after subsection (c) the fol-  
 11 lowing:

12 “(d)(1) In this subsection—

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

15 “(B) the term ‘class action’ means any civil ac-  
 16 tion filed pursuant to rule 23 of the Federal Rules  
 17 of Civil Procedure or similar State statute or rule of  
 18 judicial procedure authorizing an action to be  
 19 brought by one or more representative persons on  
 20 behalf of a class;

21 “(C) the term ‘class certification order’ means  
 22 an order issued by a court approving the treatment  
 23 of a civil action as a class action; and

1           “(D) the term ‘class members’ means the per-  
2           sons who fall within the definition of the proposed  
3           or certified class in a class action.

4           “(2) The district courts shall have original jurisdic-  
5           tion of any civil action in which the matter in controversy  
6           exceeds the sum or value of \$2,000,000, exclusive of inter-  
7           est and costs, and is a class action in which—

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

10           “(B) any member of a class of plaintiffs is a  
11           foreign state or a citizen or subject of a foreign state  
12           and any defendant is a citizen of a State; or

13           “(C) any member of a class of plaintiffs is a  
14           citizen of a State and any defendant is a foreign  
15           state or a citizen or subject of a foreign state.

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

18           “(A)(i) the substantial majority of the members  
19           of the proposed plaintiff class and the primary de-  
20           fendants are citizens of the State in which the action  
21           was originally filed; and

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

1           “(B) the primary defendants are States, State  
2 officials, or other governmental entities against  
3 whom the district court may be foreclosed from or-  
4 dering relief; or

5           “(C) the number of proposed plaintiff class  
6 members is less than 100.

7           “(4) In any class action, the claims of the individual  
8 class members shall be aggregated to determine whether  
9 the matter in controversy exceeds the sum or value of  
10 \$2,000,000, exclusive of interest and costs.

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

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

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

1 district courts of the United States have original jurisdic-  
2 tion.

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

14 “(7) Paragraph (2) shall not apply to any class action  
15 brought by shareholders that solely involves a claim that  
16 relates to—

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

21 “(B) the internal affairs or governance of a cor-  
22 poration or other form of business enterprise and  
23 arises under or by virtue of the laws of the State in  
24 which such corporation or business enterprise is in-  
25 corporated or organized; or

1           “(C) the rights, duties (including fiduciary du-  
2           ties), and obligations relating to or created by or  
3           pursuant to any security (as defined under section  
4           2(a)(1) of the Securities Act of 1933 and the regula-  
5           tions issued thereunder).

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

11          “(9) For purposes of this section and section 1453  
12          of this title, a civil action that is not otherwise a class  
13          action as defined in paragraph (1)(B) of this subsection  
14          shall nevertheless be deemed a class action if—

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

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

1 In any such case, the persons who allegedly were injured  
2 shall be treated as members of a proposed plaintiff class  
3 and the monetary relief that is sought shall be treated as  
4 the claims of individual class members. The provisions of  
5 paragraphs (3) and (6) of this subsection and subsections  
6 (b)(2) and (d) of section 1453 shall not apply to civil ac-  
7 tions described under subparagraph (A). The provisions  
8 of paragraph (6) of this subsection, and subsections (b)(2)  
9 and (d) of section 1453 shall not apply to civil actions  
10 described under subparagraph (B).”.

11 (b) CONFORMING AMENDMENTS.—

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

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

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

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

20 **“§ 1453. Removal of class actions**

21 “(a) DEFINITIONS.—In this section, the terms ‘class’,  
22 ‘class action’, ‘class certification order’, and ‘class mem-  
23 ber’ have the meanings given these terms in section  
24 1332(d)(1).

1           “(b) IN GENERAL.—A class action may be removed  
2 to a district court of the United States in accordance with  
3 this chapter, without regard to whether any defendant is  
4 a citizen of the State in which the action is brought, except  
5 that such action may be removed—

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

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

11          “(c) WHEN REMOVABLE.—This section shall apply to  
12 any class action before or after the entry of a class certifi-  
13 cation order in the action, except that a plaintiff class  
14 member who is not a named or representative class mem-  
15 ber of the action may not seek removal of the action before  
16 an order certifying a class of which the plaintiff is a class  
17 member has been entered.

18          “(d) PROCEDURE FOR REMOVAL.—The provisions of  
19 section 1446 relating to a defendant removing a case shall  
20 apply to a plaintiff removing a case under this section,  
21 except that in the application of subsection (b) of such  
22 section the requirement relating to the 30-day filing period  
23 shall be met if a plaintiff class member files notice of re-  
24 moval within 30 days after receipt by such class member,

1 through service or otherwise, of the initial written notice  
2 of the class action.

3 “(e) REVIEW OF ORDERS REMANDING CLASS AC-  
4 TIONS TO STATE COURTS.—The provisions of section  
5 1447 shall apply to any removal of a case under this sec-  
6 tion, except that, notwithstanding the provisions of section  
7 1447(d), an order remanding a class action to the State  
8 court from which it was removed shall be reviewable by  
9 appeal or otherwise.

10 “(f) EXCEPTION.—This section shall not apply to any  
11 class action brought by shareholders that solely involves—

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

16 “(2) a claim that relates to the internal affairs  
17 or governance of a corporation or other form of busi-  
18 ness enterprise and arises under or by virtue of the  
19 laws of the State in which such corporation or busi-  
20 ness enterprise is incorporated or organized; or

21 “(3) a claim that relates to the rights, duties  
22 (including fiduciary duties), and obligations relating  
23 to or created by or pursuant to any security (as de-  
24 fined under section 2(a)(1) of the Securities Act of  
25 1933 and the regulations issued thereunder).”.

1 (b) REMOVAL LIMITATION.—Section 1446(b) is  
2 amended in the second sentence by inserting “(a)” after  
3 “section 1332”.

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

“1453. Removal of class actions.”.

7 **SEC. 6. APPEALS OF CLASS ACTION CERTIFICATION OR-**  
8 **DERS.**

9 (a) IN GENERAL.—Section 1292(a) is amended by in-  
10 serting after paragraph (3) the following:

11 “(4) Orders of the district courts of the United  
12 States granting or denying class certification under  
13 rule 23 of the Federal Rules of Civil Procedure, if  
14 notice of appeal is filed within 10 days after entry  
15 of the order.”.

16 (b) DISCOVERY STAY.—All discovery and other pro-  
17 ceedings shall be stayed during the pendency of any appeal  
18 taken pursuant to the amendment made by subsection (a),  
19 unless the court finds upon the motion of any party that  
20 specific discovery is necessary to preserve evidence or to  
21 prevent undue prejudice to that party.

1 **SEC. 7. EFFECTIVE DATE.**

2       The amendments made by this Act shall apply to any  
3 civil action commenced on or after the date of the enact-  
4 ment of this Act.

○