

105TH CONGRESS
2D SESSION

S. 2083

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

IN THE SENATE OF THE UNITED STATES

MAY 14, 1998

Mr. GRASSLEY (for himself and Mr. KOHL) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for Federal 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 1998”.

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

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

1 **“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.

2 **“§ 1711. Definitions**

3 “In this chapter the term—

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

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

12 “(3) ‘class certification order’ means an order
13 issued by a court approving the treatment of a civil
14 action as a class action;

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

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

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

21 “(7) ‘proposed settlement’ means a settlement
22 agreement between or among the parties in a class

1 action that is subject to court approval before the
2 settlement becomes binding on the parties.

3 **“§ 1712. Application**

4 “This chapter shall apply to—

5 “(1) all plaintiff class actions filed in Federal
6 court; and

7 “(2) all plaintiff class actions filed in State
8 court in which—

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

11 “(B) the transaction or occurrence that
12 gave rise to the class action occurred in more
13 than 1 State.

14 **“§ 1713. Notification of class action certifications and**
15 **settlements**

16 “(a) No later than 10 days after a proposed settle-
17 ment in a class action is filed in court, class counsel shall
18 serve the State attorney general of each State in which
19 a class member resides and the Department of Justice as
20 if such attorneys general and the Department were parties
21 in the class action with—

22 “(1) a copy of the complaint and any materials
23 filed with the complaint and any amended com-
24 plaints;

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

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

5 “(A) the members’ rights to request exclu-
6 sion from the class action; and

7 “(B) a proposed settlement of a class ac-
8 tion;

9 “(4) any proposed or final class action settle-
10 ment;

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

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

15 “(7)(A) if feasible the names of class members
16 who reside in each State attorney general’s respec-
17 tive State and the estimated proportionate claim of
18 such members to the entire settlement; or

19 “(B) if the provision of information under sub-
20 paragraph (A) is not feasible, a reasonable estimate
21 of the number of class members residing in each at-
22 torney general’s State and the estimated propor-
23 tionate claim of such members to the entire settle-
24 ment; and

1 “(8) any written judicial opinion relating to the
2 materials described under paragraphs (3) through
3 (6).

4 “(b) A hearing to consider final approval of a pro-
5 posed settlement may not be held earlier than 120 days
6 after the date on which the State attorneys general and
7 the Department of Justice are served notice under sub-
8 section (a).

9 “(c) Any court with jurisdiction over a plaintiff class
10 action shall require that—

11 “(1) any written notice provided to the class
12 through the mail or publication in printed media
13 contain a short summary written in plain, easily un-
14 derstood language, describing—

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

16 “(B) the legal consequences of joining the
17 class action;

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

20 “(i) the action is filed in a State
21 court; and

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

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

1 “(i) the benefits that will accrue to
2 the class due to the settlement;

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

5 “(iii) obligations that will be imposed
6 on the defendants by the settlement;

7 “(iv) a good faith estimate of the dol-
8 lar amount of any attorney’s fee if pos-
9 sible; and

10 “(v) an explanation of how any attor-
11 ney’s fee will be calculated and funded;
12 and

13 “(E) any other material matter; and

14 “(2) any notice provided through television or
15 radio to inform the class members of the right of
16 each member to be excluded from a class action or
17 a proposed settlement shall, in plain, easily under-
18 stood language—

19 “(A) describe the persons who may poten-
20 tially become class members in the class action;
21 and

22 “(B) explain that the failure of a person
23 falling within the definition of the class to exer-
24 cise such person’s right to be excluded from a

1 class action will result in the person’s inclusion
2 in the class action.

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

7 “(e)(1) A class member may refuse to comply with
8 and may choose not to be bound by a settlement agree-
9 ment or consent decree in a class action if the class mem-
10 ber resides in a State where the State attorney general
11 has not been provided notice and materials under sub-
12 section (a).

13 “(2) The rights created by this subsection shall apply
14 only to class members or any person acting on a class
15 member’s behalf, and shall not be construed to limit any
16 other rights affecting a class member’s participation in the
17 settlement.

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

22 **“§ 1714. Limitation on attorney’s fees in class actions**

23 “In any class action, the total attorneys’ fees and ex-
24 penses awarded by the court to counsel for the plaintiff

1 class may not exceed a reasonable percentage of the
2 amount of—

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

5 “(2) costs actually incurred by all defendants in
6 complying with the terms of an injunctive order or
7 settlement agreement.”.

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

“114. Class Actions 1711”.

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

13 Section 1332 of title 28, United States Code, is
14 amended—

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

17 (2) by inserting after subsection (c) the follow-
18 ing:

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

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

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

3 “(B) any member of a class of plaintiffs is a
4 foreign state or a citizen or subject of a foreign state
5 and any defendant is a citizen of a State; or

6 “(C) any member of a class of plaintiffs is a
7 citizen of a State and any defendant is a foreign
8 state or a citizen or subject of a foreign state.

9 “(3) In any class action, the claims of the individual
10 members of any class shall be aggregated to determine
11 whether the matter in controversy exceeds the sum or
12 value of \$75,000, exclusive of interest and costs.

13 “(4) This subsection shall apply to any class action
14 before or after the entry of a class certification order by
15 the court.

16 “(5) A district court shall dismiss any civil action if—

17 “(A) the action is subject to the jurisdiction of
18 the court solely under this subsection; and

19 “(B) the court determines the action may not
20 proceed as a class action under rule 23 of the Fed-
21 eral Rules of Civil Procedure.”.

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

23 (a) IN GENERAL.—Chapter 89 of title 28, United
24 States Code, is amended by adding after section 1452 the
25 following:

1 **“§ 1453. Removal of class actions**

2 “(a) In this section, the terms ‘class’, ‘class action’,
3 and ‘class member’ have the meanings given such terms
4 under section 1711.

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

8 “(1) by any defendant without the consent of
9 all defendants; or

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

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

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

23 (b) REMOVAL LIMITATION.—Section 1446(b) of title
24 28, United States Code, is amended in the second sentence
25 by inserting “(a)” after “section 1332”.

1 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
 2 The table of sections for chapter 89 of title 28, United
 3 States Code, is amended by adding after the item relating
 4 to section 1452 the following:

“1453. Removal of class actions.”.

5 **SEC. 5. REPRESENTATIONS AND SANCTIONS UNDER RULE**
 6 **11 OF THE FEDERAL RULES OF CIVIL PROCE-**
 7 **DURE.**

8 Rule 11(c) of the Federal Rules of Civil Procedure
 9 is amended—

10 (1) in the first sentence by striking “may, sub-
 11 ject to the conditions stated below,” and inserting
 12 “shall”;

13 (2) in paragraph (2) by striking the first and
 14 second sentences and inserting “A sanction imposed
 15 for violation of this rule may consist of reasonable
 16 attorneys’ fees and other expenses incurred as a re-
 17 sult of the violation, directives of a nonmonetary na-
 18 ture, or an order to pay penalty into court or to a
 19 party.”; and

20 (3) in paragraph (2)(A) by inserting before the
 21 period “, although such sanctions may be awarded
 22 against a party’s attorneys”.

23 **SEC. 6. EFFECTIVE DATE.**

24 The amendments made by this Act shall—

1 (1) take effect 1 year after the date of enact-
2 ment of this Act; and

3 (2) apply to any civil action—

4 (A) pending on such effective date; or

5 (B) filed on or after such effective date.

○