

108TH CONGRESS
1ST SESSION

S. 1769

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 21, 2003

Mr. BREAUX introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for 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; TABLE OF CONTENTS.**

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

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; reference; table of contents.
- Sec. 2. Coupon settlements in class action cases.
- Sec. 3. Federal district court jurisdiction for national class actions.
- Sec. 4. Removal of national class actions to Federal court.
- Sec. 5. Effective date.

1 **SEC. 2. COUPONS SETTLEMENTS IN CLASS ACTION CASES.**

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

5 **“CHAPTER 114—CLASS ACTIONS**

“Sec.

“1711. Definitions.

“1712. Coupons settlements.

6 **“§ 1711. Definitions**

7 “In this chapter, the following definitions shall apply:

8 “(1) CLASS.—The term ‘class’ means all of the
9 class members in a class action.

10 “(2) CLASS ACTION.—The term ‘class action’
11 means any civil action—

12 “(A) filed in a district court of the United
13 States under rule 23 of the Federal Rules of
14 Civil Procedure; or

15 “(B) any civil action that is removed to a
16 district court of the United States that was
17 originally filed under a State statute or rule of
18 judicial procedure authorizing an action to be
19 brought by 1 or more representatives on behalf
20 of a class.

21 “(3) CLASS COUNSEL.—The term ‘class coun-
22 sel’ means the persons who serve as the attorneys
23 for the class members in a proposed or certified
24 class action.

1 “(4) CLASS MEMBERS.—The term ‘class mem-
2 bers’ means the persons (named or unnamed) who
3 fall within the definition of the proposed or certified
4 class in a class action.

5 **“§ 1712. Coupons settlements**

6 “(a) CONTINGENT FEES IN COUPON SETTLE-
7 MENTS.—If a proposed settlement in a class action pro-
8 vides for a recovery of coupons to a class member, the
9 portion of any attorney’s fee to be paid to class counsel
10 based on the recovery of the coupons shall be based on
11 the value to class members of the coupons that are re-
12 deemed.

13 “(b) OTHER ATTORNEY’S FEE AWARDS IN COUPON
14 SETTLEMENTS.—

15 “(1) IN GENERAL.—If a proposed settlement in
16 a class action provides for a recovery of coupons to
17 a class member, and a portion of the recovery of the
18 coupons is not used to determine the attorney’s fee
19 to be paid to class counsel, the attorney’s fee shall
20 be based upon the amount of time class counsel ex-
21 pended working on the action.

22 “(2) COURT APPROVAL.—Any attorney’s fee
23 under this subsection shall be subject to approval by
24 the court and shall include an appropriate attorney’s
25 fee for obtaining equitable relief, including an in-

1 junction, if applicable. Nothing in this subsection
2 shall be construed to prohibit application of a
3 lodestar with a multiplier method of determining at-
4 torney's fees.

5 “(c) ATTORNEY’S FEE AWARDS CALCULATED ON A
6 MIXED BASIS IN COUPON SETTLEMENTS.—If a proposed
7 settlement in a class action provides for an award of cou-
8 pons to a class member and also provides for equitable
9 relief, including injunctive relief—

10 “(1) that portion of the attorney’s fee to be
11 paid to class counsel that is based upon a portion of
12 the recovery of the coupons shall be calculated ac-
13 cording to subsection (a); and

14 “(2) that portion of the attorney’s fee to be
15 paid to class counsel that is not based upon a por-
16 tion of the recovery of the coupons shall be cal-
17 culated according to subsection (b).

18 “(d) SETTLEMENT VALUATION EXPERTISE.—In a
19 class action involving the awarding of coupons, the court
20 may in its discretion, upon the motion of a party, receive
21 expert testimony from a witness qualified to provide infor-
22 mation on the actual value of the settlement.

23 “(e) JUDICIAL SCRUTINY OF COUPON SETTLE-
24 MENTS.—In a class action that provides for a recovery of
25 coupons to a class member, the court may approve a pro-

1 posed settlement only after a hearing to determine wheth-
 2 er, and making a written finding that, the settlement is
 3 fair, reasonable, and adequate for class members.”.

4 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
 5 The table of chapters for part V of title 28, United States
 6 Code, is amended by inserting after the item relating to
 7 chapter 113 the following:

“**114. Class Actions** **1711**”.

8 **SEC. 3. FEDERAL DISTRICT COURT JURISDICTION FOR NA-**
 9 **TIONAL CLASS ACTIONS.**

10 (a) **IN GENERAL.**—Chapter 85 of title 28, United
 11 States Code, is amended by adding at the end the fol-
 12 lowing:

13 **“§ 1370. National class actions**

14 “(a) In addition to the jurisdiction conferred under
 15 this chapter, a district court of the United States shall
 16 have jurisdiction over a class action in which $\frac{1}{3}$ or fewer
 17 of the members of all proposed plaintiff classes in the ag-
 18 gregate are citizens of the State in which the action was
 19 originally filed.

20 “(b) A district court of the United States may, in
 21 the interests of justice, decline to exercise jurisdiction over
 22 a class action in which greater than $\frac{1}{3}$ but less than $\frac{2}{3}$
 23 of the members of all proposed plaintiff classes in the ag-
 24 gregate are citizens of the State in which the action was
 25 originally filed based on consideration of—

1 “(1) whether the claims asserted involve mat-
2 ters of State or local interest;

3 “(2) whether the claims asserted will be gov-
4 erned by laws other than those of the State in which
5 the action was originally filed;

6 “(3) whether the forum for the class action was
7 chosen frivolously or in bad faith;

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

15 “(5) whether the State claims asserted by class
16 members of the State in which the action was filed
17 would be preempted by a Federal class action.

18 “(c) A district court of the United States shall not
19 exercise jurisdiction over a class action in which—

20 “(1) $\frac{2}{3}$ or more of the members of all proposed
21 plaintiff classes in the aggregate are citizens of the
22 State in which the action was originally filed;

23 “(2) the primary defendants are States, State
24 officials, or other governmental entities against

1 whom the district court may be foreclosed from or-
2 dering relief; or

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

5 “(d) Citizenship of proposed class members in sub-
6 section (a), (b), and (c) shall be determined on the date
7 of filing the proposed class action in Federal district court
8 or State court.

9 “(e) This section shall not apply to any class action
10 that solely involves a claim—

11 “(1) concerning a covered security as defined
12 under 16(f)(3) of the Securities Act of 1933 (15
13 U.S.C. 77p(f)(3));

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

19 “(3) that relates to the rights, duties (including
20 fiduciary duties), and obligations relating to or cre-
21 ated by or pursuant to any security (as defined
22 under section 2(a)(1) of the Securities Act of 1933
23 (15 U.S.C. 77b(a)(1)) and the regulations issued
24 thereunder).

1 (f) Nothing in this section shall be construed to limit
 2 Federal jurisdiction over any class action that meets diver-
 3 sity of citizenship requirements under section 1332.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
 5 at the beginning of chapter 85 of title 28, United States
 6 Code, is amended by adding at the end the following:

“1370. National class actions.”.

7 **SEC. 4. REMOVAL OF NATIONAL CLASS ACTIONS TO FED-**
 8 **ERAL COURT.**

9 (a) IN GENERAL.—Chapter 89 of title 28, United
 10 States Code, is amended by adding at the end the fol-
 11 lowing:

12 **“§ 1453. Removal of national class actions**

13 “(a) A class action over which a district court would
 14 have jurisdiction under section 1370 may be removed to
 15 a district court of the United States, in accordance with
 16 this chapter, by—

17 “(1) any defendant without the consent of all
 18 defendants; or

19 “(2) any plaintiff class member who has inter-
 20 vened, seeks to be designated as a representative
 21 class member, and is not a named or representative
 22 class member without the consent of all members of
 23 such class.

24 “(b) The Federal district court which receives a class
 25 action removed in accordance with this section shall make

1 a determination regarding the jurisdiction of the proposed
2 class action before deciding a motion to transfer to any
3 other court under—

4 “(1) section 1391; or

5 “(2) section 1407.

6 “(c) Section 1446 (relating to a defendant removing
7 a case) shall apply to a plaintiff removing a case under
8 this section, except that the application of section 1446(b)
9 (relating to the 30-day filing period requirement) shall be
10 met if a plaintiff class member files notice of removal not
11 later than 30 days after the receipt by such class member,
12 through service or otherwise, of the initial written notice
13 of class action.

14 “(d) This section shall not apply to any class action
15 that solely involves a claim—

16 “(1) concerning a covered security (as defined
17 under section 16(f)(3) of the Securities Act of 1933
18 (15 U.S.C. 77p(f)(3));

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

24 “(3) that relates to the rights, duties (including
25 fiduciary duties), and obligations relating to or cre-

1 ated by or pursuant to any security (as defined
2 under section 2(a)(1) of the Securities Act of 1933
3 (15 U.S.C. 77b(a)(1)) and the regulations issued
4 thereunder).”.

5 (b) CLERICAL AMENDMENT.—The table of sections
6 at the beginning of chapter 89 of title 28, United States
7 Code, is amended by adding at the end the following:

“1453. Removal of national class actions.”.

8 **SEC. 5. 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.

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