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 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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2005

Mr. Goodlatte (for himself, Mr. Boucher, Mr. Sensenbrenner, Mr. Smith of Texas, Mr. DeLay, Mr. Blunt, Mr. Cantor, Ms. Price of Ohio, Mr. Dreier, Mr. Manzullo, Mr. Kingston, Mr. Feeney, Mr. Coble, Mr. Chabot, Mr. Forbes, Mr. Pence, Mr. Issa, Mr. Keller, Mr. Bachus, Mr. Hostettler, Mr. Gallegly, Mr. Daniel E. Lungren of California, Mr. Flake, Mr. Bradley of New Hampshire, Mr. Carter, Mr. Sessions, Mr. Rogers of Michigan, Mr. Kuhl of New York, Ms. Hart, Mr. Norwood, Mr. Pearce, Mr. Gilchrest, Mr. Chocola, Mr. Hensarling, Mr. Baker, Mrs. Biggert, Mr. Kennedy of Minnesota, Mr. Burgess, Mr. Gingrey, Mr. Cox, Mr. Dent, Mr. Wicker, Mr. Cannon, Mr. Cunningham, Mr. Miller of Florida, Mr. Fitzpatrick of Pennsylvania, Mr. McCrery, Mr. Stearns, Ms. Foxx, Mr. Conaway, Mr. Moran of Virginia, Mr. Matheson, Mr. Holden, Mr. Boyd, Mr. Tanner, Mr. Cooper, Mr. Cramer, Mr. Scott of Georgia, Mr. Davis of Tennessee, Mr. Moore of Kansas, Ms. Ginny Brown-Waite of Florida, and Mr. Boren) introduced the following bill; which was referred to the Committee on the Judiciary

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 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Class Action Fairness Act of 2005”.

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

(c) TABLE OF CONTENTS.—The table of contents for 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.
SEC. 2. FINDINGS AND PURPOSES.

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

(1) Class action lawsuits are an important and valuable part of our legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.

(2) For many years there have been abuses of the class action device that have—

(A) harmed class members with legitimate claims and defendants that have acted responsibly;

(B) adversely affected interstate commerce;

and

(C) undermined public respect for the judicial system in the United States.

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

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

(B) plaintiffs' lawyers taking large fees from class members, to which they are entitled under applicable law.

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

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

(B) plaintiffs' lawyers taking large fees from class members, to which they are entitled under applicable law.

(b) PURPOSES.—The Congress hereby finds that the purposes of the enactment of this Act are—

(1) to provide a meaningful and workable method for the administration of justice in class action lawsuits; and

(2) to ensure that class actions are conducted in a manner appropriate to the fair and efficient resolution of legitimate claims.
(B) unjustified rewards being made to certain plaintiffs at the expense of other class members.

(4) Through the use of artful pleading, plaintiffs are able to avoid litigating class actions in Federal court, forcing businesses and other organizations to defend interstate class action lawsuits in county and State courts where—

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

(B) less scrutiny may be given to the merits of the case; and

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

(5) These abuses undermine the Federal judicial system, the free flow of interstate commerce, and the intent of the framers of the Constitution in creating diversity jurisdiction, in that county and State courts are—

(A) handling interstate class actions that affect parties from many States;
(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and

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

(6) Abusive interstate class actions have harmed society as a whole by forcing innocent parties to settle cases rather than risk a huge judgment by a local jury, thereby costing consumers billions of dollars in increased costs to pay for forced settlements and excessive judgments.

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

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

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

(3) to restore the intent of the framers of the Constitution by providing for Federal court consideration of interstate class actions; and

(4) to benefit society by encouraging innovation and lowering consumer prices.
SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IMPROVED PROCEDURES FOR INTERSTATE CLASS ACTIONS.

(a) In general.—Part V is amended by inserting after chapter 113 the following:

“CHAPTER 114—CLASS ACTIONS

Sec.
1711. Judicial scrutiny of coupon and other noncash settlements.
1712. Protection against loss by class members.
1713. Protection against discrimination based on geographic location.
1714. Prohibition on the payment of bounties.
1715. Definitions.

§ 1711. Judicial scrutiny of coupon and other noncash settlements

“The court may approve a proposed settlement under which the class members would receive noncash benefits or would otherwise be required to expend funds in order to obtain part or all of the proposed benefits only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members.

§ 1712. Protection against loss by class members

“The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member outweigh the monetary loss.
§ 1713. Protection against discrimination based on geographic location

The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

§ 1714. Prohibition on the payment of bounties

(a) In general.—The court may not approve a proposed settlement that provides for the payment of a greater share of the award to a class representative serving on behalf of a class, on the basis of the formula for distribution to all other class members, than that awarded to the other class members.

(b) Rule of construction.—The limitation in subsection (a) shall not be construed to prohibit any payment approved by the court for reasonable time or costs that a person was required to expend in fulfilling his or her obligations as a class representative.

§ 1715. Definitions

In this chapter:

(1) Class action.—The term ‘class action’ means—

(A) any civil action filed in a district court of the United States pursuant to rule 23 of the Federal Rules of Civil Procedure; or
“(B) any civil action that is removed to a district court of the United States and that was originally filed pursuant to a State statute or rule of judicial procedure authorizing an action to be brought by one or more representatives on behalf of a class.

“(2) CLASS COUNSEL.—The term ‘class counsel’ means the persons who serve as the attorneys for the class members in a proposed or certified class action.

“(3) CLASS MEMBER.—The term ‘class member’ means any of the persons who fall within the definition of the proposed or certified class in a class action.

“(4) PROPOSED SETTLEMENT.—The term ‘proposed settlement’ means an agreement that resolves claims in a class action, that is subject to court approval, and that, if approved, would be binding on the class members.”.

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

“114. Class Actions ................................................................. 1711”.
SEC. 4. FEDERAL DISTRICT COURT JURISDICTION OF

INTERSTATE CLASS ACTIONS.

(a) Application of Federal Diversity Jurisdiction.—Section 1332 is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d)(1) In this subsection—

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

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

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

“(D) the term ‘class member’ means any of the persons who fall within the definition of the proposed or certified class in a class action.

“(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy
exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which—

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

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

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

“(3) A district court may, in the interests of justice, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of the following factors:

“(A) Whether the claims asserted involve matters of national or interstate interest.

“(B) Whether the claims asserted will be governed by laws other than those of the State in which the action was originally filed.

“(C) In the case of a class action originally filed in a State court, whether the class action has
been pleaded in a manner that seeks to avoid Federal jurisdiction.

“(D) Whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States.

“(E) Whether 1 or more class actions asserting the same or similar claims on behalf of the same or other persons have been or may be filed.

“(4) Paragraph (2) shall not apply to any class action in which—

“(A) two-thirds or more of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed;

“(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

“(C) the number of members of all proposed plaintiff classes in the aggregate is less than 100.
“(5) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

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

“(7)(A) A district court shall dismiss any civil action that is subject to the jurisdiction of the court solely under this subsection if the court determines that the action may not proceed as a class action based on a failure to satisfy the requirements of rule 23 of the Federal Rules of Civil Procedure.

“(B) Nothing in subparagraph (A) shall prohibit plaintiffs from filing an amended class action in Federal court or filing an action in State court, except that any such action filed in State court may be removed to the appropriate district court if it is an action of which the district courts of the United States have original jurisdiction.

“(C) In any action that is dismissed under this paragraph and is filed by any of the original named plaintiffs therein in the same State court venue in which the dismissed action was originally filed, the limitations periods on all reasserted claims shall be deemed tolled for the pe-
period during which the dismissed class action was pending.

The limitations periods on any claims that were asserted in a class action dismissed under this paragraph that are subsequently asserted in an individual action shall be deemed tolled for the period during which the dismissed action was pending.

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

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

“(B) the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

“(C) the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).

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

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

“(A) the named plaintiff purports to act for the interests of its members (who are not named parties to the action) or for the interests of the general public, seeks a remedy of damages, restitution, disgorgement, or any other form of monetary relief, and is not a State attorney general; or

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

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

(b) Conforming Amendments.—

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

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

SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FEDERAL DISTRICT COURT.

(a) In General.—Chapter 89 is amended by adding after section 1452 the following:

“§ 1453. Removal of class actions

“(a) Definitions.—In this section, the terms ‘class’, ‘class action’, ‘class certification order’, and ‘class member’ have the meanings given these terms in section 1332(d)(1).

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

“(1) by any defendant without the consent of all defendants; or
“(2) by any plaintiff class member who is not
a named or representative class member without the
consent of all members of such class.

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

“(d) PROCEDURE FOR REMOVAL.—The provisions of
section 1446 relating to a defendant removing a case shall
apply to a plaintiff removing a case under this section,
except that, in the application of subsection (b) of such
section, the requirement relating to the 30-day filing pe-
riod shall be met if a plaintiff class member files notice
of removal within 30 days after receipt by such class mem-
ber, through service or otherwise, of the initial written no-
tice of the class action.

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

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

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

“(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

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

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

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

“1453. Removal of class actions.”.
SEC. 6. APPEALS OF CLASS ACTION CERTIFICATION ORDERS.

(a) In General.—Section 1292(a) is amended by inserting after paragraph (3) the following:

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

(b) Discovery Stay.—All discovery and other proceedings shall be stayed during the pendency of any appeal taken pursuant to the amendment made by subsection (a), unless the court finds upon the motion of any party that specific discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

SEC. 7. EFFECTIVE DATE.

(a) In General.—The amendments made by this Act shall apply to—

(1) any civil action commenced on or after the date of the enactment of this Act; and

(2) any civil action commenced before such date of enactment in which a class certification order (as defined in section 1332(d)(1)(C) of title 28, United States Code, as amended by section 4 of this Act) is entered on or after such date of enactment.
(b) **FILING OF NOTICE OF REMOVAL.**—In the case of any civil action to which subsection (a)(2) applies, the requirement relating to the 30-day period for the filing of a notice of removal under section 1446(b) and section 1453(d) of title 28, United States Code, shall be met if the notice of removal is filed within 30 days after the date on which the class certification order referred to in subsection (a)(2) is entered.