

105TH CONGRESS  
1ST SESSION

# S. 254

To amend part V of title 28, United States Code, to require that the Department of Justice and State attorneys general are provided notice of a class action certification or settlement, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 30, 1997

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

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## A BILL

To amend part V of title 28, United States Code, to require that the Department of Justice and State attorneys general are provided notice of a class action certification or settlement, 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 section may be cited as the Class Action Fair-  
5       ness Act of 1997”.

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

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

6 **“CHAPTER 114—CLASS ACTIONS**

“Sec.

“1711. Notification of class action certifications and settlements.

7 **“§ 1711. Notification of class action certifications and**  
 8 **settlements**

9 “(a) For purposes of this section, the term—

10 “(1) ‘class’ means a group of similarly situated  
 11 individuals, defined by a class certification order,  
 12 that comprise a party in a class action lawsuit;

13 “(2) ‘class action’ means a lawsuit filed pursu-  
 14 ant to rule 23 of the Federal Rules of Civil Proce-  
 15 dure or similar State rules of procedure authorizing  
 16 a lawsuit to be brought by 1 or more representative  
 17 individuals on behalf of a class;

18 “(3) ‘class certification order’ means an order  
 19 issued by a court approving the treatment of a law-  
 20 suit as a class action;

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

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

1           “(6) electronic legal databases’ means computer  
2           services available to subscribers containing text of  
3           judicial opinions and other legal materials, such as  
4           LEXIS or WESTLAW;

5           “(7) ‘official court reporter’ means a publicly  
6           available compilation of published judicial opinions;

7           “(8) ‘plaintiff class action’ means a class action  
8           in which the plaintiff is a class; and

9           “(9) ‘proposed settlement’ means a settlement  
10          agreement between the parties in a class action that  
11          is subject to court approval before it becomes bind-  
12          ing on the parties.

13          “(b) This section shall apply to—

14               “(1) all plaintiff class actions filed in Federal  
15               court; and

16               “(2) all plaintiff class actions filed in State  
17               court in which—

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

20                       “(B) the transaction or occurrence that  
21                       gave rise to the lawsuit occurred in more than  
22                       one State.

23          “(c) No later than 10 days after a proposed settle-  
24          ment in a class action is filed in court, class counsel shall  
25          serve the State attorney general of each State in which

1 a class member resides and the Department of Justice as  
2 if they were parties in the class action with—

3 “(1) a copy of the complaint and any materials  
4 filed with the complaint and any amended com-  
5 plaints;

6 “(2) notice of any future scheduled judicial  
7 hearing in the class action;

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

10 “(A) their rights to request exclusion from  
11 the class action; and

12 “(B) a proposed settlement of a class ac-  
13 tion;

14 “(4) any proposed or final class action settle-  
15 ment;

16 “(5) any settlement or other agreement contem-  
17 poraneously made between class counsel and counsel  
18 for the defendants;

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

20 “(7)(A) if feasible the names of class members  
21 who reside in each State attorney general’s respec-  
22 tive State and their estimated proportionate claim to  
23 the entire settlement; or

24 (B) if not feasible, a reasonable estimate of the  
25 number of class members residing in each attorney

1       general's State and their estimated proportionate  
2       claim to the entire settlement; and

3               “(8) any written judicial opinion relating to the  
4       materials described under paragraphs (3) through  
5       (6).

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

11      “(e) Any court with jurisdiction over a plaintiff class  
12      action shall require that—

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

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

18                      “(B) the legal consequences of joining the  
19      class action;

20                      “(C) if the notice is informing class mem-  
21      bers of a proposed settlement agreement—

22                              “(i) the benefits that will accrue to  
23      the class due to the settlement;

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

1 “(iii) obligations that will be imposed  
2 on the defendants by the settlement;

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

6 “(v) an explanation of how any attor-  
7 ney’s fee will be calculated and funded;  
8 and

9 “(D) any other material matter; and

10 “(2) any notice provided through television or  
11 radio to inform the class of its rights to be excluded  
12 from a class action or a proposed settlement shall,  
13 in plain, easily understood language—

14 “(A) describe the individuals that may po-  
15 tentially become class members in the class ac-  
16 tion; and

17 “(B) explain that the failure of individuals  
18 falling within the definition of the class to exer-  
19 cise their right to be excluded from a class ac-  
20 tion will result in the individual’s inclusion in  
21 the class action.

22 “(f) Compliance with this section shall not immunize  
23 any party from any legal action under Federal or State  
24 law, including actions for malpractice or fraud.

1       “(g)(1) A class member may refuse to comply with  
 2 and may choose not to be bound by a settlement agree-  
 3 ment or consent decree in a class action lawsuit if the class  
 4 member resides in a State where the State attorney gen-  
 5 eral has not been provided notice and materials under sub-  
 6 section (c). The rights created by this subsection shall  
 7 apply only to class members or any person acting on their  
 8 behalf, and shall not be construed to limit any other rights  
 9 affecting a class member’s participation in the settlement.

10       “(2) Nothing in this chapter shall be construed to  
 11 impose any obligations, duties, or responsibilities upon  
 12 State attorneys general or the attorney general of the Un-  
 13 tied States.”.

14       (b) TECHNICAL AND CONFORMING AMENDMENT.—  
 15 The Table of chapters for part V of title 28, Untied States  
 16 Code, is amended by inserting after the item relating to  
 17 chapter 113 the following:

**“114. Class Actions ..... 1711”.**

18       **SEC 3. APPLICABILITY.**

19       This section and the amendments made by this sec-  
 20 tion shall apply to all class action lawsuits filed after or  
 21 pending 1 year after the date of enactment of this Act.

