

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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*CLASS ACTIONS AND PROPOSED REFORM IN THE
106TH CONGRESS: CLASS ACTION FAIRNESS ACT OF
2000*

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Abstract. S. 353 reflects a preference for class actions to be adjudicated in federal courts and would give U.S. district courts original jurisdiction over class actions with claims aggregating \$2 million or more. It is intended to protect class members and to make the procedure easier for them to understand but, conversely, it is also said to be anti-plaintiff and pro-business. The Senate Judiciary Committee reported out an amended version of the bill, but the 106th Congress adjourned without taking further action. This report summarizes the action the 107th Congress took on this legislation.

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Class Actions and Proposed Reform in the 106th Congress: Class Action Fairness Act of 2000

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Summary

S. 353 reflects a preference for class actions to be adjudicated in federal courts and would give U.S. district courts original jurisdiction over class actions with claims aggregating \$2,000,000 or more. It is intended to protect class members and to make the procedure easier for them to understand but, conversely, it is also said to be anti-plaintiff and pro-business. The Senate Judiciary Committee reported out an amended version of the bill, but the 106th Congress adjourned without taking further action. This report summarizes the action the 106th Congress took on this legislation and will not be updated.

Congressional Intent

The provisions of the bill, as introduced, which remained in the amended version reported from Committee,² are intended to: (1) require that “notice of proposed settlements in all class actions as well as all class notices . . . be in clear, easily understood English and . . . include all material settlement terms including the amount and source of attorneys’ fees;” (2) require that “State attorneys general be notified of any proposed class settlement that would affect residents of their States . . . [which would] give a State attorney general the opportunity to object if the settlement terms are unfair;” and (3) allow

¹ This is an update of CRS Report RS20067, *S. 353, 106th Congress, the “Class Action Fairness Act of 2000,”* by P.L. Morgan.

² Reported favorably, without written report, from the Senate Committee on the Judiciary with an amendment in the nature of a substitute, July 27, 2000. 146 *Cong. Rec.* S7838 (daily ed. July 27, 2000). The Committee subsequently filed a written report, Sen. Report No. 106-402 (2000).

“more class action lawsuits to be removed from State court to Federal court, either by a defendant or an unnamed class member.”³

“[C]lass actions can result in significant and important benefits for class members and society, and . . . most class lawyers and most state courts are acting responsibly. . . . The difficulty in any effort to improve a basically good system is weeding out the abuses without causing undue damage. The legislation we propose attempts to do this. It does not limit anyone’s ability to file or settle a class action.”⁴

Additionally, the bill, as reported, would: (1) in cases involving diversity of citizenship, give the district courts of the United States original jurisdiction over class actions when the aggregated claims of the individual members of any class exceeds the sum or value of \$2,000,000; and (2) require the Judicial Conference of the United States,⁵ assisted by the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, to prepare a report of class action settlements within twelve months of passage of the legislation.

The Legislation.⁶

Section 1. Short title. The Act may be cited as the “Class Action Fairness Act of 2000.”

Section 2. Notification requirement of class action certification or settlement. Would add a new chapter to 28 U.S.C. which would: (1) define various terms; and (2) exclude from the chapter’s application only: (a) certain claims concerning covered securities under the Securities Acts; (b) certain claims arising under state laws which incorporate or organize a corporation or business enterprise; and (c) claims relating to the rights, duties, and obligations under section 2(a)(1) of the Securities Act of 1933. Would require, within 10 days after a proposed class action settlement is filed in court, class counsel to serve the Attorney General of the United States and the attorney general of each state in which a class member resides with: (1) copies of complaints and amendments thereto unless available on the Internet; (2) notice of scheduled judicial

³ 145 *Cong. Rec.* S1166 (daily ed. Feb. 3, 1999) (statement of Sen. Grassley).

⁴ 145 *Cong. Rec.* S1169 (daily ed. Feb. 3, 1999) (statement of Sen. Kohl).

⁵ The Conference, established in 1922, is the policy making body of the federal judiciary with the Chief Justice as its chairman and membership composed of the chief judge of each circuit, the chief judge of the Court of International Trade, and a district judge from each circuit. 28 U.S. C. § 331. Its principal statutory duties are to: survey conditions of business in the federal courts so judges may be assigned according to need; submit suggestions to the federal courts for purposes of uniformity and expedition of business; and conduct a continuous study of federal judicial practices and procedure for improvement of the administration of justice. *Id.*

⁶ Portions of the bill, as noted, *infra*, are substantially similar to parts of H.R. 1875, 106th Congress, the “Interstate Class Action Jurisdiction Act of 1999,” as passed by the House of Representatives. *See: Class Actions: H.R. 1875, 106th Congress, the “Interstate Class Action Jurisdiction Act of 1999,”* CRS Report RS20347, Feb. 20, 2001. [Includes pros/cons of that legislation].

hearings; (3) any proposed or final notification to class members of: (a) any right to request exclusion from the class action, (b) lack of a right to request exclusion, and (c) a proposed settlement of the class action; (4) any proposed or final class action settlement; (5) any settlement or other agreement contemporaneously made between plaintiff and defendant counsel; (6) any final judgment or notice of dismissal; (7) if feasible, the names of class members and the estimated proportionate claim of such members to the entire settlement who reside in each state or, if not feasible, a reasonable estimate of the number and proportion; and (8) any written judicial opinion relating to the materials described in items (3) through (6). Would prohibit a hearing to consider final approval of a proposed settlement earlier than 120 days after the date on which the state attorneys general and the Attorney General of the United States are served with the aforementioned notice. Would direct courts with jurisdiction over class actions to require that notice to the class through the mail or media include a short summary written in plain, easily understood language describing: (1) the class action subject matter; (2) the legal consequences of being a member of the class; and (3) if applicable, the benefits, rights and obligations imposed by a settlement as well as an amount, if possible, or a good faith estimate of the amount, of any class attorney's fee and how that fee would be calculated and funded; and (4) any other material matter. Would provide that notice issued through television or radio to inform class members of exclusion or settlement rights shall explain those rights in plain, easily understood language. Would provide that compliance with these requirements shall not give immunity for actions under state or federal law, including actions for malpractice or fraud. Would provide that if a state attorney general has not been given notice and materials as required by this Act, resident class members could refuse to comply with, and choose not to be bound by, a settlement agreement or a consent decree while any other rights affecting a class member's participation in the settlement shall not be construed to be limited. Would provide that the authority of the state attorneys general or the Attorney General of the United States is not expanded by this section nor are any obligations, duties, or responsibilities imposed upon those offices.

Section 3. Diversity jurisdiction for class actions. Would amend 28 U.S.C. § 1332 to give the district courts of the United States original jurisdiction over a class action when the aggregated claims of the individual members of any class exceeds the sum or value of \$2,000,000 exclusive of interest and costs and where: (1) any member of a class of plaintiffs is a citizen of a state different from any defendant; (2) any member of a class of plaintiffs is a foreign state or citizen or subject of a foreign state and any defendant is a citizen of a state; or (3) 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. Would provide that this jurisdiction is not applicable, before or after entry of a class certification order by the court, to civil actions in which: (1) the substantial majority of the proposed plaintiff class and the primary defendants are citizens of the state in which the action was originally filed and the claims asserted would be governed primarily by the laws of the state in which the action was originally filed; (2) the primary defendants are states, state officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; (3) the number of members of all proposed plaintiff classes in the aggregate is less than 100; or (4) the class action solely involves a claim that relates to: (a) 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 the entity is incorporated or organized; or (b) rights, duties and obligations relating to, or created by or pursuant to, any security as defined under the Securities Act of 1933. Would require dismissal of the action if the court determines that it may not proceed based on a failure to satisfy the

conditions of rule 23 of the Federal Rules of Civil Procedure.⁷ Would allow the filing of an amended action in federal court or the filing of an action in state court but a state court action may be removed if it is an action of which the district court has original jurisdiction. When federal actions are dismissed and reasserted in the same state court as originally filed and by the same plaintiffs, would toll limitation periods for the time during which the dismissed actions were pending. Similarly, would toll limitation periods on class actions dismissed and reasserted as an individual action. Would provide that, for purposes of sections 1332 and 1453 of 28 U.S.C., 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.

Section 4. Removal of class actions to federal court.⁸ Would add a section 1453 to 28 U.S.C. to govern removal of class actions, before or after the entry of any order certifying a class, to district courts of the United States. Would allow removal without regard to whether any defendant is a citizen of the state in which the action is brought and would allow removal: (1) by any defendant without the consent of all defendants; or (2) by any plaintiff class member, not a named or representative class member, without the consent of all members of the class. With the exception of the 30-day filing period, would provide that existing law governing removal of a case by a defendant shall also apply to a plaintiff. Would allow a plaintiff to file notice of removal within 30 days after receipt, through service or otherwise, of the initial written notice of the class action. Would not apply to: (1) covered securities as defined in the Securities Act of 1933 and 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 the entity is incorporated or organized; or (3) a claim that relates to the rights, duties and obligations relating to, or created by or pursuant to, any security as defined under the Securities Act of 1933.

Section 5. Report on class action settlements.⁹ Would provide that, within 12 months after enactment, the Judicial Conference of the United States, with the assistance of the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall prepare and transmit a report on class action settlements to the Committees on the Judiciary of the Senate and House. Would provide that the report contain recommendations on the best practices that courts can use to ensure that: (1) proposed class action settlements are fair to the class members; (2) the fees and expenses awarded to counsel appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation; and (3) the class members are the primary beneficiaries of the settlement. Would require that the report also contain the actions the Judicial Conference has taken and intends to take toward having the federal judiciary

⁷ The Federal Rules of Civil Procedure are printed as an appendix to 28 U.S.C. Rule 23 is entitled “Class Actions.”

⁸ This section is substantially similar to section 4 of H.R. 1875, 106th Congress as passed by the House.

⁹ Section 6 of H.R. 1875 would also require a study within one year but it would be conducted by the General Accounting Office and would be limited to the Act’s impact on the workload of the federal courts.

implement any or all of the recommendations therein made.¹⁰ Would further provide that nothing in this legislation shall be construed to alter the authority of the federal courts to supervise attorneys' fees.

Section 6. Effective date.¹¹ Would provide that the amendments made by the Act shall apply to any civil action commenced on or after the date of enactment.

Pros and Cons of the Proposal.

Proponents, said to include the business community, contend that:

(1) The "current system is fraught with abuse and allows plaintiffs to forum shop for the best state [court] to hear their case." The bill protects diversity jurisdiction as mandated by the Constitution and allows the federal court to function as an independent arbitrator.¹²

(2) The bill would curtail "abuses by attorneys who get huge awards for themselves and very little for the victims," *e.g.*, the attorneys get large fees and class members get coupons.¹³

Opponents, said to include trial lawyers and consumer groups, contend that:

(1) The measure would "cause massive delays and protect corporations from having to pay settlements."¹⁴

¹⁰ The Advisory Committee on Civil Rules of the Judicial Conference is said to be in the early stages of considering an amendment to Federal Rule of Civil Procedure 23, "Class actions." Three changes reported to be under discussion concern: (1) evaluation of proposed settlements of certified class actions; (2) judicial participation in the selection of class counsel; and (3) providing oversight of the award of attorneys' fees. 68 U.S.L.W. 2694 (May 23, 2000). For a discussion of the rule amending process, *see*: P.L. Morgan, *Promulgating Procedural Rules For the United States District Courts and Courts of Appeals*, CRS Report 98-292 A, March 26, 1998.

¹¹ Substantially similar to section 5 of H.R. 1875.

¹² Amy Fagan, *Law & Judiciary: Senate Panel Puts Final Touch on Class Action Bill*, CQ Daily Monitor, June 30, 2000, at 9. [Discussing comments of Senators Hatch and Grassley]. See also, Sen. Report No. 106-402 at 9.

¹³ Elizabeth A. Palmer, *Class Action Lawsuit Overhaul Heads for Senate Floor With Democratic Filibuster Likely*, CQ Weekly, July 1, 2000, at 1616. [Discussing Sen. Grassley's position]. See also, Sen. Report No. 106-402 at 9.

¹⁴ Fagan, *supra*, note 11. [Discussing the position of some Members of the Minority on the Senate Judiciary Committee and noting that amendments to exempt tobacco, gun and environmental litigation from the bill were rejected during Committee mark-up]. See also, Sen. Report No. 106-402, at 57 (minority views of Senators Leahy, Kennedy, Biden, Feingold, and Torricelli).

(2) “Forcing these cases into federal courts means increasing stress and expense for plaintiffs who would have to travel, in some cases, hundreds of miles to participate in courtroom proceedings.”¹⁵

On February 3, 1999, S. 353 was referred to the Senate Judiciary’s Committee.¹⁶ On May 4, 1999, the Subcommittee on Administrative Oversight and the Courts held hearings¹⁷ and subsequently reported an amendment to S. 353 without a written report.¹⁸ The bill was placed on the Senate Legislative Calendar on July 27, 2000, and on September 26, 2000, a written report was filed by Senator Hatch.¹⁹ The 106th Congress adjourned without taking further action.

¹⁵ Kristin Loiacono, *Washington Focus: Tort ‘reformers’ turn to federal court*, Trial, March 2000, at 12.

¹⁶ 145 *Cong. Rec.* S1144 (daily ed. February 3, 1999).

¹⁷ S. Hrg. 106-465. 145 *Cong. Rec.* D478 (daily ed. May 4, 1999).

¹⁸ 146 *Cong. Rec.* D837 (daily ed. July 27, 2000).

¹⁹ Sen. Report No. 106-420. 146 *Cong. Rec.* D968 (daily ed. September 26, 2000).