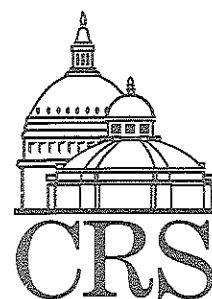


# CRS Report for Congress

## Comparison of Securities Litigation Reform Bills Passed by the House and the Senate

Michael V. Seitzinger  
Legislative Attorney  
American Law Division

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**COMPARISON OF SECURITIES LITIGATION REFORM BILLS  
PASSED BY THE  
HOUSE AND THE SENATE**

**SUMMARY**

H.R. 1058 and S. 240 are efforts to limit so-called "strike" lawsuits, those lawsuits which are filed by class action attorneys for shareholders against corporations. The bills have some provisions which are quite similar, but there are a number of differences in the bills. Certain provisions contained in at least one of these bills would attempt to limit strike lawsuits and other perceived abuses of the securities laws by such actions as requiring a plaintiff steering committee to attempt to make certain that attorneys act in the best interests of their clients; guaranteeing that plaintiffs receive full disclosure of settlement terms; prohibiting named plaintiffs from bringing more than five class action lawsuits within a three-year period; requiring that the plaintiff steering committee hold a certain amount of stock; requiring losers in certain instances to pay attorneys' fees and costs of the winner; and eliminating coverage of securities fraud by the Racketeer Influenced and Corrupt Organizations Act. The following charts compare in abbreviated form the various major provisions of the two bills.

**COMPARISON OF SECURITIES LITIGATION  
REFORM BILLS PASSED BY THE  
HOUSE AND THE SENATE**

|  | H.R. 1058                      | S. 240                                     |
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| Prohibition on referral fees to brokers and dealers from attorneys.  | §3(b)--Applicable to 1934 Act. | §101(a)--Applicable to 1934 Act.           |
| Prohibition on funds disgorged as result of SEC action from being used to pay attorneys.                             | §2(b)--Applicable to 1934 Act. | §101(c)--Applicable to 1933 and 1934 Acts. |
| Recovery by named plaintiffs must be calculated in same way as for other plaintiffs.                                 | §3(a)--Applicable to 1934 Act. | §102(a)--Applicable to 1933 and 1934 Acts. |
| If attorney owns securities which are subject of litigation, court shall determine if there is conflict of interest. | §3(a)--Applicable to 1934 Act. | §101(b)--Applicable to 1933 and 1934 Acts. |
| Settlement agreement shall not be filed under seal except for good cause.  |                                | §102(a)--Applicable to 1933 and 1934 Acts. |

|   | H.R. 1058  | S. 240  |
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| <p>Named plaintiff restrictions and certifications, including appointment of lead plaintiff and plaintiff steering committee.</p> | <p>Named plaintiffs may serve on plaintiff steering committee but may not comprise a majority. §2(a)--Applicable to 1934 Act.</p> <p>Person may be a named plaintiff in no more than 5 class actions filed during 3-year period. §3(a)--Applicable to 1934 Act.</p> <p>Provides for appointment of plaintiff steering committee to direct counsel. Members of plaintiff steering committee must hold cumulatively at least 5% of securities or securities with market value of at least \$10,000,000. §2(a)--Applicable to 1934 Act.</p> | <p>Required certifications by plaintiff wishing to serve as class representative (e.g., he did not purchase security at direction of counsel or to bring private securities action, any securities action filed within past 3 years, etc.). §102(a)--Applicable to 1933 and 1934 Acts.</p> <p>Lead plaintiff shall be most adequate plaintiff, presumably one who has largest financial interest and satisfies other requirements. Presumption may be rebutted. Most adequate plaintiff may select counsel to represent class. §102(b)--Applicable to 1933 and 1934 Acts.</p> |
| <p>Payment of attorneys' fees.</p>  |  | <p>Shall be reasonable percentage of amount of damages and prejudgment interest awarded to class. §102(a)--Applicable to 1933 and 1934 Acts.</p>  |

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| Disclosure of settlement terms to class members. | <p>If parties agree on amount of damages, must disclose agreement on amount of potential damages and probability that plaintiff would prevail. If parties disagree on amount of damages, there must be statement concerning issues on which parties disagree. If fees and costs are claimed, there must be explanation. Must also disclose lawyers' representatives. §3(a)--Applicable to 1934 Act.</p> | <p>If parties agree on amount, must disclose amount of potential damages per share. If parties disagree on amount of damages, there must be statement concerning issues of disagreement. If fees and costs are claimed, there must be explanation. Information concerning representatives of counsel must be provided. §102(a)--Applicable to 1933 and 1934 Acts.</p>  |
| Awards of fees and expenses.                     | <p>Reasonable fees and expenses may be awarded to prevailing party if court determines that position of losing party was not substantially justified, imposing fees and expenses on losing party would be just, and cost of fees and expenses to prevailing party would be substantially burdensome or unjust. Burden of persuasion is on prevailing party. §3(a)--Applicable to 1934 Act.</p>          | <p>Court record must include specific findings concerning compliance with Rule 11(b), essentially that suit has merit and is not filed for improper purpose. If court finds that Rule 11 has been violated, it shall impose sanctions, which shall be presumed to be attorneys' fees and costs. Presumption may be rebutted upon proof that award of attorneys' fees and expenses will impose undue burden or that violation of Rule 11 was <i>de minimis</i>. §103--Applicable to 1933 and 1934 Acts.</p> |

|                                | H.R. 1058  | S. 240  |
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| <p>Requirements for fraud.</p> | <p>In action in which plaintiff may recover money damages, court shall, when requested by defendant, submit written interrogatory on issue of each defendant's state of mind. §3(a)--Applicable to 1934 Act.</p> <p>Liability for fraud could be established only upon proving that defendant directly or indirectly made fraudulent statement; defendant possessed intention to deceive, manipulate, or defraud; and defendant made fraudulent statement knowingly or recklessly. §4--Applicable to 1934 Act.</p> <p>Requirements are set for explicit pleading and proof of scienter. §4--Applicable to 1934 Act.</p> <p>Plaintiff would be required to prove that he had knowledge of and relied upon statement that contained misstatement or omission and that statement proximately caused his loss. §4--Applicable to 1934 Act.</p> | <p>Complaint must specify each statement alleged to have been misleading, reason why statement is misleading, and all information on which belief is formed. §104(b)--Applicable to 1934 Act.</p> <p>In action in which plaintiff may recover money damages only upon proving that defendant acted with particular state of mind, plaintiff's complaint must specifically allege facts which provide strong inference that defendant acted with required state of mind. Inference may be established by alleging that defendant had motive and opportunity or strong circumstantial evidence indicating defendant's conscious misbehavior or recklessness. §104(b)--Applicable to 1934 Act.</p> <p>Plaintiff has burden of proving that violation caused loss. Damages may be mitigated if defendant can show that factors unrelated to act or omission contributed to loss. §104(b)--Applicable to 1934 Act.</p> |

|   | H.R. 1058  | S. 240   |
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| Encouragement of finality in settlement discharges. | Discharges defendant who settles private action from all claims for contribution. §3-- Applicable to 1934 Act.   | Defendant who settles private securities claim before verdict or judgment shall be discharged from all claims for contribution. §202-- Applicable to 1934 Act. |
| Fraud on the market.                                | Reliance on fraud on the market may be proven by establishing that market as a whole considered fraudulent statement, that price at which security was purchased or sold reflected market's estimation of that fraudulent information, and that plaintiff relied on that market price. Plaintiff is entitled to rebuttable presumption that price reflected market's estimation of that fraudulent information and that he relied upon information. §4-- Applicable to 1934 Act. |  |

|   | H.R. 1058  | S. 240  |
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| Elimination of securities coverage from RICO. | RICO would not cover person if racketeering activity involves conduct actionable as fraud in purchase or sale of securities. §6. | RICO would not cover person if racketeering activity involves conduct actionable as fraud in purchase or sale of securities. §107.<br><br>This exception to establishing RICO offense would not apply if any participant in securities fraud is criminally convicted of securities fraud. §111. |



|  | H.R. 1058  | S. 240  |
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| <p>Safe harbor for forward-looking statements.</p> | <p>Liability would not be imposed if statement contains projection, estimate, or description of future events and refers to these as forward-looking statements and the risk that these projections, estimates, or descriptions may not be realized. §5-- Applicable to 1934 Act.</p> <p>SEC shall issue rules and regulations. §5-- Applicable to 1934 Act.</p> | <p>Sets out what constitutes protection from liability for forward-looking statements. Would not be liable to extent that statement projects, estimates, or describes future events and refers clearly to projections, estimates, or descriptions as forward-looking statements and the risk that actual results may differ. Certain stated exclusions from safe harbor provision, such as a statement knowingly made with expectation, purpose, and actual intent of misleading investors, would apply. §105-- Applicable to 1933 and 1934 Acts.</p> <p>Amends Investment Company Act of 1940 to require SEC to review and if necessary issue rules and regulations describing conduct concerning making forward-looking statements that SEC deems does not provide basis for liability. §105.</p> |

|   | H.R. 1058 | S. 240  |
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| Restoration of aiding and abetting liability.                   |           | Provides for aiding and abetting liability in action brought by SEC. §108--Applicable to 1934 Act.  |
| Loss causation.   |           | Allows person who has offered or sold security by prospectus or oral communication having untrue statement to prove that amount recoverable is attributable to other than depreciation in value of security resulting from untrue statement. Such additional amount would not be recoverable. §109--Applicable to 1933 Act. |
| Protections for senior citizens and qualified retirement plans. |           | Requires SEC to determine whether senior citizens and qualified retirement plans need greater protection against securities fraud. §110.  |

|                        | H.R. 1058   | S. 240   |
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| Limitation of damages. | <p>If liability is based on fraudulent statement and plaintiff claims to have bought or sold security based on reasonable belief that market value of security reflected all publicly available information, damages shall not exceed lesser of (1) difference between price paid and market value of security immediately after dissemination of information correcting fraudulent statement and (2) difference between price paid and price sold after dissemination of information correcting fraudulent statement.</p> <p>§4--Applicable to 1934 Act.</p> | <p>Damages could not exceed difference between purchase or sale price paid or received by plaintiff for security and value of security during 90-day period beginning on date on which information correcting misstatement or omission is disseminated to market. If plaintiff sells or repurchases security before expiration of 90-day period, damages could not exceed difference between purchase or sale price paid or received by plaintiff for security and median market value of security during period beginning immediately after dissemination of information correcting misstatement or omission and ending with plaintiff's sale or repurchase of security.</p> <p>§201--Applicable to 1934 Act.</p> |

|   | H.R. 1058   | S. 240   |
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| <p>Joint and several and proportionate liability.</p> | <p>Defendant may be liable jointly and severally only if trier of fact specifically determines that defendant acted knowingly. §4-- Applicable to 1934 Act.</p> <p>If trier of fact does not determine that defendant acted knowingly, defendant's liability shall be determined according to proportionate liability only if trier of fact specifically determines that defendant acted recklessly. §4-- Applicable to 1934 Act.</p> | <p>Defendant would be liable jointly and severally only if trier of fact specifically determines that defendant committed knowing securities fraud. Reckless conduct could not be construed as knowing securities fraud. §202 --Applicable to 1934 Act.</p> <p>If defendant is not determined to have committed knowing securities fraud, he would be liable only for portion of judgment corresponding to his degree of responsibility. §202-- Applicable to 1934 Act.</p> <p>If defendant's share is not collectible, other defendants shall be liable in specified ways. §202-- Applicable to 1934 Act.</p> |

|                                 | H.R. 1058   | S. 240  |
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| Fraud detection and disclosure. | Provides that each audit shall include procedures to provide reasonable assurance of detecting illegal acts. Requires independent public accountant to observe certain procedures if he becomes aware of illegal act. §7--<br>Applicable to 1934 Act. | Provides that each audit shall include procedures to provide reasonable assurance of detecting illegal acts. Requires independent public accountant to observe certain procedures if he becomes aware of illegal act. §301--<br>Applicable to 1934 Act. |