

# CRS Report for Congress

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## Class Actions and Proposed Reform in the 107<sup>th</sup> Congress: Class Action Fairness Act of 2002

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### Summary

The principal provisions of H.R. 2341 are concentrated on what sponsors characterize as the more serious abuses of the class action process. These provisions reminiscent of proposals in the last Congress, are intended to make class action procedures more responsive to business community concerns and to provide additional protections for consumers.<sup>1</sup> The bill reflects a preference for class actions to be adjudicated in federal courts and would enlarge U.S. district courts original jurisdiction over class actions with claims aggregating \$2,000,000 or more (even if each of the members of the class had not sustained damages in excess of \$75,000 as is now required). Consumer protection features would include, *inter alia*: (1) notices to class members written in “Plain English,” (2) judicial scrutiny of settlements in which class members receive minimal benefits or actually incur losses, (3) elimination of inequitable discrimination in favor of class agents at the expense of other class members, (4) prompt consideration of interstate class actions, and (5) application of the principles of federal diversity jurisdiction to interstate class actions.

### Congressional Intent

The provisions of H.R. 2341, as introduced by Congressman Goodlatte on June 27, 2001, are designed to provide class action reform by curbing what is seen as class action law suit abuse which in the view of proponents has caused serious problems in current class action practice with significant injury to consumers thereby creating public dissatisfaction with the system. This reform would be achieved by requiring: (1) that notice of proposed settlements in all class actions, as well as all class notices, be in clear, easily understood English, (2) that attorney’s fees in class actions be based on a reasonable

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<sup>1</sup> See CRS Report RS20667, *Class Actions and Proposed Reform in 106<sup>th</sup> Congress: Class Action Fairness Act of 2000* and CRS Report RS20347, *Class Actions: H.R. 1875, 106<sup>th</sup> Congress, the “Interstate Class Action Jurisdiction Act of 1999”*.

percentage of damages actually paid to class members, and (3) that the intent of the framers of the Constitution be restored by providing for federal court consideration of pure interstate class action issues, while ensuring that local controversies remain in state courts.<sup>2</sup>

Additionally, the bill would create a series of special consumer protections: (1) provide judicial scrutiny of settlements that provide class members with essentially worthless coupons, (2) provide protection against loss by class members in which a class member will be required to pay attorney's fees that would result in a net loss to the class member, (3) provide protection against discrimination between class members based on geographic location, and (4) provide a prohibition on the payment of bounties which in effect gives the class representative a share of the damages award that is disproportionately larger than that provided to absent class members.

## The Legislation

**Section 1. Short Title.** The Act may be cited as the "Class Action Fairness Act of 2001." This section also states that it would amend title 28 of the United States Code.

**Section 2. Findings And Purposes Of The Act.** Sets out Congress' findings and purposes by describing the: (1) circumstances in which class actions are valuable to our legal system, (2) abuses of the class action process that injure both plaintiffs and defendants, i.e., plaintiffs' lawyers receiving large fees, while class members are left with coupons or other awards of little or no value, unjustified rewards being made to certain plaintiffs at the expense of other class members, and the publication of confusing notices that prevent class members from being able to fully understand and effectively exercise their rights, (3) the impact of interstate class actions on principles of federalism through the use of artful pleading thereby permitting the plaintiffs to avoid litigating class actions in federal court and forcing businesses and other organizations to defend interstate class action lawsuits in county and state courts where (i) the lawyer, rather than the claimants, is likely to receive the maximum benefit, (ii) less scrutiny may be given to the merits of the case, and (iii) defendants are effectively forced into settlements, in order to avoid the possibility of huge judgments that could destabilize their companies, and (4) the cost that these suits impose on the national economy.

**Section 3. Consumer Class Action Bill Of Rights And Improved Procedures For Interstate Class Actions.** This section would add seven new sections to 28 U.S.C. which are intended to provide greater protections for class members. In particular, section 3 would add the following:

- **Section 1711–Judicial scrutiny of coupon and other noncash settlements**

This provision is aimed at certain proposed settlements of class actions, in which the plaintiffs' lawyer and the defendant work out a settlement that provides class members with essentially valueless coupons while rewarding the lawyers with substantial attorneys' fees. To address this problem, this section provides that a judge "may approve a proposed

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<sup>2</sup> 147 *Cong. Rec.* E1234 (daily ed. June 27, 2001)(statement of Cong. Goodlatte).

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.”

- **Section 1712–Protection against loss by class members**

This provision provides that a judge may not approve a class action settlement in which the class members will be required to pay attorney’s fees that would result in a net loss to the class members until after a hearing to determine whether, and making a written finding that the nonmonetary benefits to the class outweigh the monetary loss.

- **Section 1713–Protection against discrimination based on geographic location**

This provision provides that a settlement may not award some class members a larger recovery than others solely because the favored members of the class are located closer to the courthouse in which the settlement is filed.

- **Section 1714–Prohibition on the payment of bounties**

This provision provides that a class action may not be settled on terms that award special and disproportionate bounties to the named class representatives. A class representative will, however, be able to be compensated for his reasonable time or costs that were required to be expended in fulfilling his obligations as a class representative. The payment of bounties gives the class representatives a share of the damages award that is disproportionately larger than that provided to absent class members.

- **Section 1715–Clearer and simpler settlement information**

This provision provides that class notices should present information in “plain English.” The notices must be designed to attract the attention of class members by stating at the outset, in 18-point type, that the recipient is a plaintiff in a class action lawsuit and has legal rights that are affected by the settlement described in the notice. In addition, the notice must offer:

- (A) the subject matter of the class action;
- (B) the members of the class;
- (C) the legal consequences of being a member of the class;
- (D) detailed information about any proposed settlement, (i) including a description of the benefits for class members, (ii) the rights that class members will lose or waive through settlement, (iii) the obligations imposed on the defendant, and (iv) the amount of attorney’s fee counsel will be seeking or, if not possible, a good faith estimate of such fee;
- (E) any other material matter.

- **Section 1716–Pleading requirements for class actions<sup>3</sup>**

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<sup>3</sup> This section has been purportedly dropped during markup. See Section 3 of H.R. 2341 adding (continued...)

This provision requires that class action complaints describe with particularity the damages sought and, where relevant, the facts supporting any allegations that the defendant acted with a particular state of mind. The provision also codifies current practice in many courts by staying discovery pending resolution of a motion to dismiss on the pleadings.

- **Section 1717–Class action definitions**

(1) **Class Action**–The term is defined to include any civil action filed in federal district court under Rule 23 of the Federal Rules of Civil Procedure, as well as actions filed under similar rules in state court that have been removed to federal court. The definition also appears to suggest that some suits that are not necessarily representative actions in the traditional sense, but seek various forms of monetary relief on behalf of persons who are not parties to the litigation may be treated as class actions.

(2) **Class Counsel**–The term is defined as “the persons who serve as the attorneys for the class members in a proposed or certified class action.”

(3) **Class Members**–The term is defined as “the persons who fall within the definition of the proposed or certified class action.”

(4) **Plaintiff Class Action**–The term is defined as “a class action in which class members are plaintiffs.”

(5) **Proposed Settlement**–The term is defined as “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.”

**Section 4. Federal District Court Jurisdiction Of Interstate Class Actions.** Article III of the Constitution protects out-of-state litigants against the prejudice of local courts by allowing for federal diversity jurisdiction when the plaintiffs and defendants are citizens of different states. However, under current law, federal diversity jurisdiction for a class action does not exist unless every member of the class is a citizen of a different state from every defendant, and every member of the class is seeking damages in excess of \$75,000.<sup>4</sup> This section would change the law by providing additional protection for out-of-state litigants by creating a minimal diversity rule for class actions and by determining satisfaction of the amount-in-controversy requirement by looking at the total amount of damages at stake.

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<sup>3</sup> (...continued)

Section 1716. Amendment would strike a provision in the bill that would require a stay of discovery in class-action lawsuits while dismissal motions are pending. The amendment would also strike language that would require class action plaintiffs to state with specificity in a plea, facts that, if proven, would show that the defendant acted with a certain state of mind.

<sup>4</sup> 28 U.S.C. § 1332. See also *Zahn v. International Paper Co.* 414 U.S. 291, 301 (1973) (The Supreme Court decided that in class actions based on diversity of citizenship, every single class member must satisfy the “matter [amount] in controversy” requirement of section 1332).

Federal district courts would have original jurisdiction over any class action in which the amount in controversy, exclusive of interest costs, exceeds \$2,000,000 and 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.”

This section contains a similar class action definition as section 3, defining a class action as (A) any civil action filed pursuant to rule 23 of the Federal Rules of Civil Procedure or a similar state statute or rule; (B) an action seeking monetary relief on behalf of persons who are not parties to the action (unless the named plaintiff is the state attorney general); or (C) an action that asserts claims seeking monetary relief on behalf of 100 or more persons, in which the claims involve common questions of law or fact and are to be jointly tried.

In order that actions lacking national implications remain in state court, the minimal diversity rule does not apply in any action where (A) “the substantial majority of the members 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 [in the suit] will be governed primarily by the laws 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 proposed plaintiff class members is less than 100.”

**Section 5. Removal Of Interstate Class Actions To Federal District Court.**<sup>5</sup> This section provides for the removal of class actions brought in state courts to federal district court when minimal diversity exists. The request for removal may be sought by any defendant or by any other than a named class member or representative of the class. An order remanding a class action to the state court from which it was removed may be reviewable on appeal.

**Section 6. Appeals Of Class Action Certification Orders.** This section provides that orders granting or denying class certification may be appealed if notice of appeal is filed within 10 days after entry of the order. It also provides that discovery be stayed during the pendency of the appeal unless the judge finds that specific discovery is necessary to preserve evidence or to prevent undue prejudice to a party.

**Section 7. Effective Date.** This section provides that the legislation would apply to any civil action commenced on or after the date of the enactment.

On June 27, 2001, H.R. 2341 was referred to the House Committee on the Judiciary where a full Committee hearing was held on February 6, 2002. Following considerable

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<sup>5</sup> This section as purportedly amended during markup specifies that a non-named member of a class cannot ask for a lawsuit to be moved to a federal court until after the class is certified.

debate, the bill as amended was approved by the House Judiciary Committee by a vote of 16-10.<sup>6</sup> H.R. 2341 was reported by the House Judiciary Committee on March 12, 2002.<sup>7</sup>

A companion bill (S. 1712) to H.R. 2341 was introduced by Senator Charles Grassley on November 15, 2001.<sup>8</sup>

## Possible Objections

Although balanced by the enhanced class member protection features, the jurisdictional and removal components of H.R. 2341 are much like their antecedents in the 106<sup>th</sup> Congress. Reaction to those proposals in the 106<sup>th</sup> Congress included the objections that they:

- would have overburdened the federal courts;<sup>9</sup>
- were inconsistent with the principles of federalism;<sup>10</sup>
- would have made consumer and public interest litigation more difficult to bring, more expensive, and more burdensome.<sup>11</sup>

Proponents believe the measure will improve efficiency and help prevent abuses while not limiting the ability of anyone to file a class action lawsuit. They also argue that it allows federal courts to hear purely interstate class action cases and would allow any party to the suit to remove the class action case to federal court.

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<sup>6</sup> National Journal News Service (March 8, 2002).

<sup>7</sup> H.Rept. 107-370.

<sup>8</sup> 147 Cong., Rec. S11940 (daily ed. Nov. 15, 2001).

<sup>9</sup> H.Rept. 106-320, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. 31, 33 (1999) (Dissenting Views) (House dissent); S.Rept. 106-420, 106<sup>th</sup> Cong., 2<sup>nd</sup> Sess. 51, 53 (2000) (Minority views of Senators Leahy, Kennedy, Biden, Feingold, and Torricelli) (Senate dissent).

<sup>10</sup> *House dissent*, at 34-5; *Senate dissent*, at 54-6.

<sup>11</sup> *House dissent*, at 37-40; *Senate dissent*, at 57-9.