

109TH CONGRESS
1ST SESSION

S. 5

AN ACT

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, 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; REFERENCE; TABLE OF CON-**
4 **TENTS.**

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

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

6 (c) TABLE OF CONTENTS.—The table of contents for
 7 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 inter-
state class actions.
- Sec. 4. Federal district court jurisdiction for interstate class actions.
- Sec. 5. Removal of interstate class actions to Federal district court.
- Sec. 6. Report on class action settlements.
- Sec. 7. Enactment of Judicial Conference recommendations.
- Sec. 8. Rulemaking authority of Supreme Court and Judicial Conference.
- Sec. 9. Effective date.

8 **SEC. 2. FINDINGS AND PURPOSES.**

9 (a) FINDINGS.—Congress finds the following:

10 (1) Class action lawsuits are an important and
 11 valuable part of the legal system when they permit
 12 the fair and efficient resolution of legitimate claims
 13 of numerous parties by allowing the claims to be ag-
 14 gregated into a single action against a defendant
 15 that has allegedly caused harm.

16 (2) Over the past decade, there have been
 17 abuses of the class action device that have—

18 (A) harmed class members with legitimate
 19 claims and defendants that have acted respon-
 20 sibly;

1 (B) adversely affected interstate commerce;
2 and

3 (C) undermined public respect for our judi-
4 cial system.

5 (3) Class members often receive little or no ben-
6 efit from class actions, and are sometimes harmed,
7 such as where—

8 (A) counsel are awarded large fees, while
9 leaving class members with coupons or other
10 awards of little or no value;

11 (B) unjustified awards are made to certain
12 plaintiffs at the expense of other class mem-
13 bers; and

14 (C) confusing notices are published that
15 prevent class members from being able to fully
16 understand and effectively exercise their rights.

17 (4) Abuses in class actions undermine the na-
18 tional judicial system, the free flow of interstate
19 commerce, and the concept of diversity jurisdiction
20 as intended by the framers of the United States
21 Constitution, in that State and local courts are—

22 (A) keeping cases of national importance
23 out of Federal court;

1 (B) sometimes acting in ways that dem-
 2 onstrate bias against out-of-State defendants;
 3 and

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

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

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

10 (2) restore the intent of the framers of the
 11 United States Constitution by providing for Federal
 12 court consideration of interstate cases of national
 13 importance under diversity jurisdiction; and

14 (3) benefit society by encouraging innovation
 15 and lowering consumer prices.

16 **SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IM-**
 17 **PROVED PROCEDURES FOR INTERSTATE**
 18 **CLASS ACTIONS.**

19 (a) IN GENERAL.—Part V is amended by inserting
 20 after chapter 113 the following:

21 **“CHAPTER 114—CLASS ACTIONS**

“Sec.

“1711. Definitions.

“1712. Coupon settlements.

“1713. Protection against loss by class members.

“1714. Protection against discrimination based on geographic location.

“1715. Notifications to appropriate Federal and State officials.

1 **“§ 1711. Definitions**

2 “In this chapter:

3 “(1) CLASS.—The term ‘class’ means all of the
4 class members in a class action.

5 “(2) CLASS ACTION.—The term ‘class action’
6 means any civil action filed in a district court of the
7 United States under rule 23 of the Federal Rules of
8 Civil Procedure or any civil action that is removed
9 to a district court of the United States that was
10 originally filed under a State statute or rule of judi-
11 cial procedure authorizing an action to be brought
12 by 1 or more representatives as a class action.

13 “(3) CLASS COUNSEL.—The term ‘class coun-
14 sel’ means the persons who serve as the attorneys
15 for the class members in a proposed or certified
16 class action.

17 “(4) CLASS MEMBERS.—The term ‘class mem-
18 bers’ means the persons (named or unnamed) who
19 fall within the definition of the proposed or certified
20 class in a class action.

21 “(5) PLAINTIFF CLASS ACTION.—The term
22 ‘plaintiff class action’ means a class action in which
23 class members are plaintiffs.

24 “(6) PROPOSED SETTLEMENT.—The term ‘pro-
25 posed settlement’ means an agreement regarding a
26 class action that is subject to court approval and

1 that, if approved, would be binding on some or all
2 class members.

3 **“§ 1712. Coupon settlements**

4 “(a) CONTINGENT FEES IN COUPON SETTLE-
5 MENTS.—If a proposed settlement in a class action pro-
6 vides for a recovery of coupons to a class member, the
7 portion of any attorney’s fee award to class counsel that
8 is attributable to the award of the coupons shall be based
9 on the value to class members of the coupons that are
10 redeemed.

11 “(b) OTHER ATTORNEY’S FEE AWARDS IN COUPON
12 SETTLEMENTS.—

13 “(1) IN GENERAL.—If a proposed settlement in
14 a class action provides for a recovery of coupons to
15 class members, and a portion of the recovery of the
16 coupons is not used to determine the attorney’s fee
17 to be paid to class counsel, any attorney’s fee award
18 shall be based upon the amount of time class counsel
19 reasonably expended working on the action.

20 “(2) COURT APPROVAL.—Any attorney’s fee
21 under this subsection shall be subject to approval by
22 the court and shall include an appropriate attorney’s
23 fee, if any, for obtaining equitable relief, including
24 an injunction, if applicable. Nothing in this sub-
25 section shall be construed to prohibit application of

1 a lodestar with a multiplier method of determining
2 attorney’s fees.

3 “(c) ATTORNEY’S FEE AWARDS CALCULATED ON A
4 MIXED BASIS IN COUPON SETTLEMENTS.—If a proposed
5 settlement in a class action provides for an award of cou-
6 pons to class members and also provides for equitable re-
7 lief, including injunctive relief—

8 “(1) that portion of the attorney’s fee to be
9 paid to class counsel that is based upon a portion of
10 the recovery of the coupons shall be calculated in ac-
11 cordance with subsection (a); and

12 “(2) that portion of the attorney’s fee to be
13 paid to class counsel that is not based upon a por-
14 tion of the recovery of the coupons shall be cal-
15 culated in accordance with subsection (b).

16 “(d) SETTLEMENT VALUATION EXPERTISE.—In a
17 class action involving the awarding of coupons, the court
18 may, in its discretion upon the motion of a party, receive
19 expert testimony from a witness qualified to provide infor-
20 mation on the actual value to the class members of the
21 coupons that are redeemed.

22 “(e) JUDICIAL SCRUTINY OF COUPON SETTLE-
23 MENTS.—In a proposed settlement under which class
24 members would be awarded coupons, the court may ap-
25 prove the proposed settlement only after a hearing to de-

1 termine whether, and making a written finding that, the
2 settlement is fair, reasonable, and adequate for class mem-
3 bers. The court, in its discretion, may also require that
4 a proposed settlement agreement provide for the distribu-
5 tion of a portion of the value of unclaimed coupons to 1
6 or more charitable or governmental organizations, as
7 agreed to by the parties. The distribution and redemption
8 of any proceeds under this subsection shall not be used
9 to calculate attorneys' fees under this section.

10 **“§ 1713. Protection against loss by class members**

11 “The court may approve a proposed settlement under
12 which any class member is obligated to pay sums to class
13 counsel that would result in a net loss to the class member
14 only if the court makes a written finding that nonmone-
15 tary benefits to the class member substantially outweigh
16 the monetary loss.

17 **“§ 1714. Protection against discrimination based on**
18 **geographic location**

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

1 **“§ 1715. Notifications to appropriate Federal and**
2 **State officials**

3 “(a) DEFINITIONS.—

4 “(1) APPROPRIATE FEDERAL OFFICIAL.—In
5 this section, the term ‘appropriate Federal official’
6 means—

7 “(A) the Attorney General of the United
8 States; or

9 “(B) in any case in which the defendant is
10 a Federal depository institution, a State depository
11 institution, a depository institution holding
12 company, a foreign bank, or a nondepository in-
13 stitution subsidiary of the foregoing (as such
14 terms are defined in section 3 of the Federal
15 Deposit Insurance Act (12 U.S.C. 1813)), the
16 person who has the primary Federal regulatory
17 or supervisory responsibility with respect to the
18 defendant, if some or all of the matters alleged
19 in the class action are subject to regulation or
20 supervision by that person.

21 “(2) APPROPRIATE STATE OFFICIAL.—In this
22 section, the term ‘appropriate State official’ means
23 the person in the State who has the primary regu-
24 latory or supervisory responsibility with respect to
25 the defendant, or who licenses or otherwise author-
26 izes the defendant to conduct business in the State,

1 if some or all of the matters alleged in the class ac-
2 tion are subject to regulation by that person. If
3 there is no primary regulator, supervisor, or licens-
4 ing authority, or the matters alleged in the class ac-
5 tion are not subject to regulation or supervision by
6 that person, then the appropriate State official shall
7 be the State attorney general.

8 “(b) IN GENERAL.—Not later than 10 days after a
9 proposed settlement of a class action is filed in court, each
10 defendant that is participating in the proposed settlement
11 shall serve upon the appropriate State official of each
12 State in which a class member resides and the appropriate
13 Federal official, a notice of the proposed settlement con-
14 sisting of—

15 “(1) a copy of the complaint and any materials
16 filed with the complaint and any amended com-
17 plaints (except such materials shall not be required
18 to be served if such materials are made electronically
19 available through the Internet and such service in-
20 cludes notice of how to electronically access such
21 material);

22 “(2) notice of any scheduled judicial hearing in
23 the class action;

24 “(3) any proposed or final notification to class
25 members of—

1 “(A)(i) the members’ rights to request ex-
2 clusion from the class action; or

3 “(ii) if no right to request exclusion exists,
4 a statement that no such right exists; and

5 “(B) a proposed settlement of a class ac-
6 tion;

7 “(4) any proposed or final class action settle-
8 ment;

9 “(5) any settlement or other agreement contem-
10 poraneously made between class counsel and counsel
11 for the defendants;

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

13 “(7)(A) if feasible, the names of class members
14 who reside in each State and the estimated propor-
15 tionate share of the claims of such members to the
16 entire settlement to that State’s appropriate State
17 official; or

18 “(B) if the provision of information under sub-
19 paragraph (A) is not feasible, a reasonable estimate
20 of the number of class members residing in each
21 State and the estimated proportionate share of the
22 claims of such members to the entire settlement; and

23 “(8) any written judicial opinion relating to the
24 materials described under subparagraphs (3)
25 through (6).

1 “(c) DEPOSITORY INSTITUTIONS NOTIFICATION.—

2 “(1) FEDERAL AND OTHER DEPOSITORY INSTI-
3 TUTIONS.—In any case in which the defendant is a
4 Federal depository institution, a depository institu-
5 tion holding company, a foreign bank, or a non-de-
6 pository institution subsidiary of the foregoing, the
7 notice requirements of this section are satisfied by
8 serving the notice required under subsection (b)
9 upon the person who has the primary Federal regu-
10 latory or supervisory responsibility with respect to
11 the defendant, if some or all of the matters alleged
12 in the class action are subject to regulation or super-
13 vision by that person.

14 “(2) STATE DEPOSITORY INSTITUTIONS.—In
15 any case in which the defendant is a State deposi-
16 tory institution (as that term is defined in section 3
17 of the Federal Deposit Insurance Act (12 U.S.C.
18 1813)), the notice requirements of this section are
19 satisfied by serving the notice required under sub-
20 section (b) upon the State bank supervisor (as that
21 term is defined in section 3 of the Federal Deposit
22 Insurance Act (12 U.S.C. 1813)) of the State in
23 which the defendant is incorporated or chartered, if
24 some or all of the matters alleged in the class action

1 are subject to regulation or supervision by that per-
2 son, and upon the appropriate Federal official.

3 “(d) FINAL APPROVAL.—An order giving final ap-
4 proval of a proposed settlement may not be issued earlier
5 than 90 days after the later of the dates on which the
6 appropriate Federal official and the appropriate State offi-
7 cial are served with the notice required under subsection
8 (b).

9 “(e) NONCOMPLIANCE IF NOTICE NOT PROVIDED.—

10 “(1) IN GENERAL.—A class member may refuse
11 to comply with and may choose not to be bound by
12 a settlement agreement or consent decree in a class
13 action if the class member demonstrates that the no-
14 tice required under subsection (b) has not been pro-
15 vided.

16 “(2) LIMITATION.—A class member may not
17 refuse to comply with or to be bound by a settlement
18 agreement or consent decree under paragraph (1) if
19 the notice required under subsection (b) was directed
20 to the appropriate Federal official and to either the
21 State attorney general or the person that has pri-
22 mary regulatory, supervisory, or licensing authority
23 over the defendant.

24 “(3) APPLICATION OF RIGHTS.—The rights cre-
25 ated by this subsection shall apply only to class

1 members or any person acting on a class member’s
 2 behalf, and shall not be construed to limit any other
 3 rights affecting a class member’s participation in the
 4 settlement.

5 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
 6 tion shall be construed to expand the authority of, or im-
 7 pose any obligations, duties, or responsibilities upon, Fed-
 8 eral or State officials.”.

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

“114. **Class Actions** **1711**”.

12 **SEC. 4. FEDERAL DISTRICT COURT JURISDICTION FOR**
 13 **INTERSTATE CLASS ACTIONS.**

14 (a) APPLICATION OF FEDERAL DIVERSITY JURISDIC-
 15 TION.—Section 1332 is amended—

16 (1) by redesignating subsection (d) as sub-
 17 section (e); and

18 (2) by inserting after subsection (e) the fol-
 19 lowing:

20 “(d)(1) In this subsection—

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

23 “(B) the term ‘class action’ means any civil ac-
 24 tion filed under rule 23 of the Federal Rules of Civil
 25 Procedure or similar State statute or rule of judicial

1 procedure authorizing an action to be brought by 1
2 or more representative persons as a class action;

3 “(C) the term ‘class certification order’ means
4 an order issued by a court approving the treatment
5 of some or all aspects of a civil action as a class ac-
6 tion; and

7 “(D) the term ‘class members’ means the per-
8 sons (named or unnamed) who fall within the defini-
9 tion of the proposed or certified class in a class ac-
10 tion.

11 “(2) The district courts shall have original jurisdic-
12 tion of any civil action in which the matter in controversy
13 exceeds the sum or value of \$5,000,000, exclusive of inter-
14 est and costs, and is a class action in which—

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

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

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

23 “(3) A district court may, in the interests of justice
24 and looking at the totality of the circumstances, decline
25 to exercise jurisdiction under paragraph (2) over a class

1 action in which greater than one-third but less than two-
2 thirds of the members of all proposed plaintiff classes in
3 the aggregate and the primary defendants are citizens of
4 the State in which the action was originally filed based
5 on consideration of—

6 “(A) whether the claims asserted involve mat-
7 ters of national or interstate interest;

8 “(B) whether the claims asserted will be gov-
9 erned by laws of the State in which the action was
10 originally filed or by the laws of other States;

11 “(C) whether the class action has been pleaded
12 in a manner that seeks to avoid Federal jurisdiction;

13 “(D) whether the action was brought in a
14 forum with a distinct nexus with the class members,
15 the alleged harm, or the defendants;

16 “(E) whether the number of citizens of the
17 State in which the action was originally filed in all
18 proposed plaintiff classes in the aggregate is sub-
19 stantially larger than the number of citizens from
20 any other State, and the citizenship of the other
21 members of the proposed class is dispersed among a
22 substantial number of States; and

23 “(F) whether, during the 3-year period pre-
24 ceding the filing of that class action, 1 or more other

1 class actions asserting the same or similar claims on
2 behalf of the same or other persons have been filed.

3 “(4) A district court shall decline to exercise jurisdic-
4 tion under paragraph (2)—

5 “(A)(i) over a class action in which—

6 “(I) greater than two-thirds of the mem-
7 bers of all proposed plaintiff classes in the ag-
8 gregate are citizens of the State in which the
9 action was originally filed;

10 “(II) at least 1 defendant is a defendant—

11 “(aa) from whom significant relief is
12 sought by members of the plaintiff class;

13 “(bb) whose alleged conduct forms a
14 significant basis for the claims asserted by
15 the proposed plaintiff class; and

16 “(cc) who is a citizen of the State in
17 which the action was originally filed; and

18 “(III) principal injuries resulting from the
19 alleged conduct or any related conduct of each
20 defendant were incurred in the State in which
21 the action was originally filed; and

22 “(ii) during the 3-year period preceding the fil-
23 ing of that class action, no other class action has
24 been filed asserting the same or similar factual alle-

1 gations against any of the defendants on behalf of
2 the same or other persons; or

3 “(B) two-thirds or more of the members of all
4 proposed plaintiff classes in the aggregate, and the
5 primary defendants, are citizens of the State in
6 which the action was originally filed.

7 “(5) Paragraphs (2) through (4) shall not apply to
8 any class action in which—

9 “(A) the primary defendants are States, State
10 officials, or other governmental entities against
11 whom the district court may be foreclosed from or-
12 dering relief; or

13 “(B) the number of members of all proposed
14 plaintiff classes in the aggregate is less than 100.

15 “(6) In any class action, the claims of the individual
16 class members shall be aggregated to determine whether
17 the matter in controversy exceeds the sum or value of
18 \$5,000,000, exclusive of interest and costs.

19 “(7) Citizenship of the members of the proposed
20 plaintiff classes shall be determined for purposes of para-
21 graphs (2) through (6) as of the date of filing of the com-
22 plaint or amended complaint, or, if the case stated by the
23 initial pleading is not subject to Federal jurisdiction, as
24 of the date of service by plaintiffs of an amended pleading,

1 motion, or other paper, indicating the existence of Federal
2 jurisdiction.

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

6 “(9) Paragraph (2) shall not apply to any class action
7 that solely involves a claim—

8 “(A) concerning a covered security as defined
9 under 16(f)(3) of the Securities Act of 1933 (15
10 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Se-
11 curities Exchange Act of 1934 (15 U.S.C.
12 78bb(f)(5)(E));

13 “(B) that relates to the internal affairs or gov-
14 ernance of a corporation or other form of business
15 enterprise and that arises under or by virtue of the
16 laws of the State in which such corporation or busi-
17 ness enterprise is incorporated or organized; or

18 “(C) that relates to the rights, duties (including
19 fiduciary duties), and obligations relating to or cre-
20 ated by or pursuant to any security (as defined
21 under section 2(a)(1) of the Securities Act of 1933
22 (15 U.S.C. 77b(a)(1)) and the regulations issued
23 thereunder).

24 “(10) For purposes of this subsection and section
25 1453, an unincorporated association shall be deemed to

1 be a citizen of the State where it has its principal place
2 of business and the State under whose laws it is organized.

3 “(11)(A) For purposes of this subsection and section
4 1453, a mass action shall be deemed to be a class action
5 removable under paragraphs (2) through (10) if it other-
6 wise meets the provisions of those paragraphs.

7 “(B)(i) As used in subparagraph (A), the term ‘mass
8 action’ means any civil action (except a civil action within
9 the scope of section 1711(2)) in which monetary relief
10 claims of 100 or more persons are proposed to be tried
11 jointly on the ground that the plaintiffs’ claims involve
12 common questions of law or fact, except that jurisdiction
13 shall exist only over those plaintiffs whose claims in a
14 mass action satisfy the jurisdictional amount requirements
15 under subsection (a).

16 “(ii) As used in subparagraph (A), the term ‘mass
17 action’ shall not include any civil action in which—

18 “(I) all of the claims in the action arise from
19 an event or occurrence in the State in which the ac-
20 tion was filed, and that allegedly resulted in injuries
21 in that State or in States contiguous to that State;

22 “(II) the claims are joined upon motion of a de-
23 fendant;

24 “(III) all of the claims in the action are as-
25 serted on behalf of the general public (and not on

1 behalf of individual claimants or members of a pur-
2 ported class) pursuant to a State statute specifically
3 authorizing such action; or

4 “(IV) the claims have been consolidated or co-
5 ordinated solely for pretrial proceedings.

6 “(C)(i) Any action(s) removed to Federal court pur-
7 suant to this subsection shall not thereafter be transferred
8 to any other court pursuant to section 1407, or the rules
9 promulgated thereunder, unless a majority of the plaintiffs
10 in the action request transfer pursuant to section 1407.

11 “(ii) This subparagraph will not apply—

12 “(I) to cases certified pursuant to rule 23 of
13 the Federal Rules of Civil Procedure; or

14 “(II) if plaintiffs propose that the action pro-
15 ceed as a class action pursuant to rule 23 of the
16 Federal Rules of Civil Procedure.

17 “(D) The limitations periods on any claims asserted
18 in a mass action that is removed to Federal court pursu-
19 ant to this subsection shall be deemed tolled during the
20 period that the action is pending in Federal court.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 1335(a)(1) is amended by inserting
23 “subsection (a) or (d) of” before “section 1332”.

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

1 **SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FED-**
 2 **ERAL DISTRICT COURT.**

3 (a) IN GENERAL.—Chapter 89 is amended by adding
 4 after section 1452 the following:

5 **“§ 1453. Removal of class actions**

6 “(a) DEFINITIONS.—In this section, the terms ‘class’,
 7 ‘class action’, ‘class certification order’, and ‘class mem-
 8 ber’ shall have the meanings given such terms under sec-
 9 tion 1332(d)(1).

10 “(b) IN GENERAL.—A class action may be removed
 11 to a district court of the United States in accordance with
 12 section 1446 (except that the 1-year limitation under sec-
 13 tion 1446(b) shall not apply), without regard to whether
 14 any defendant is a citizen of the State in which the action
 15 is brought, except that such action may be removed by
 16 any defendant without the consent of all defendants.

17 “(c) REVIEW OF REMAND ORDERS.—

18 “(1) IN GENERAL.—Section 1447 shall apply to
 19 any removal of a case under this section, except that
 20 notwithstanding section 1447(d), a court of appeals
 21 may accept an appeal from an order of a district
 22 court granting or denying a motion to remand a
 23 class action to the State court from which it was re-
 24 moved if application is made to the court of appeals
 25 not less than 7 days after entry of the order.

1 “(2) TIME PERIOD FOR JUDGMENT.—If the
2 court of appeals accepts an appeal under paragraph
3 (1), the court shall complete all action on such ap-
4 peal, including rendering judgment, not later than
5 60 days after the date on which such appeal was
6 filed, unless an extension is granted under para-
7 graph (3).

8 “(3) EXTENSION OF TIME PERIOD.—The court
9 of appeals may grant an extension of the 60-day pe-
10 riod described in paragraph (2) if—

11 “(A) all parties to the proceeding agree to
12 such extension, for any period of time; or

13 “(B) such extension is for good cause
14 shown and in the interests of justice, for a pe-
15 riod not to exceed 10 days.

16 “(4) DENIAL OF APPEAL.—If a final judgment
17 on the appeal under paragraph (1) is not issued be-
18 fore the end of the period described in paragraph
19 (2), including any extension under paragraph (3),
20 the appeal shall be denied.

21 “(d) EXCEPTION.—This section shall not apply to
22 any class action that solely involves—

23 “(1) a claim concerning a covered security as
24 defined under section 16(f)(3) of the Securities Act
25 of 1933 (15 U.S.C. 78p(f)(3)) and section

1 28(f)(5)(E) of the Securities Exchange Act of 1934
2 (15 U.S.C. 78bb(f)(5)(E));

3 “(2) a claim that relates to the internal affairs
4 or governance of a corporation or other form of busi-
5 ness enterprise and arises under or by virtue of the
6 laws of the State in which such corporation or busi-
7 ness enterprise is incorporated or organized; or

8 “(3) a claim that relates to the rights, duties
9 (including fiduciary duties), and obligations relating
10 to or created by or pursuant to any security (as de-
11 fined under section 2(a)(1) of the Securities Act of
12 1933 (15 U.S.C. 77b(a)(1)) and the regulations
13 issued thereunder).”.

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

“1453. Removal of class actions.”.

17 **SEC. 6. REPORT ON CLASS ACTION SETTLEMENTS.**

18 (a) **IN GENERAL.**—Not later than 12 months after
19 the date of enactment of this Act, the Judicial Conference
20 of the United States, with the assistance of the Director
21 of the Federal Judicial Center and the Director of the Ad-
22 ministrative Office of the United States Courts, shall pre-
23 pare and transmit to the Committees on the Judiciary of
24 the Senate and the House of Representatives a report on
25 class action settlements.

1 (b) CONTENT.—The report under subsection (a) shall
2 contain—

3 (1) recommendations on the best practices that
4 courts can use to ensure that proposed class action
5 settlements are fair to the class members that the
6 settlements are supposed to benefit;

7 (2) recommendations on the best practices that
8 courts can use to ensure that—

9 (A) the fees and expenses awarded to
10 counsel in connection with a class action settle-
11 ment appropriately reflect the extent to which
12 counsel succeeded in obtaining full redress for
13 the injuries alleged and the time, expense, and
14 risk that counsel devoted to the litigation; and

15 (B) the class members on whose behalf the
16 settlement is proposed are the primary bene-
17 ficiaries of the settlement; and

18 (3) the actions that the Judicial Conference of
19 the United States has taken and intends to take to-
20 ward having the Federal judiciary implement any or
21 all of the recommendations contained in the report.

22 (c) AUTHORITY OF FEDERAL COURTS.—Nothing in
23 this section shall be construed to alter the authority of
24 the Federal courts to supervise attorneys' fees.

1 **SEC. 7. ENACTMENT OF JUDICIAL CONFERENCE REC-**
2 **COMMENDATIONS.**

3 Notwithstanding any other provision of law, the
4 amendments to rule 23 of the Federal Rules of Civil Pro-
5 cedure, which are set forth in the order entered by the
6 Supreme Court of the United States on March 27, 2003,
7 shall take effect on the date of enactment of this Act or
8 on December 1, 2003 (as specified in that order), which-
9 ever occurs first.

10 **SEC. 8. RULEMAKING AUTHORITY OF SUPREME COURT**
11 **AND JUDICIAL CONFERENCE.**

12 Nothing in this Act shall restrict in any way the au-
13 thority of the Judicial Conference and the Supreme Court
14 to propose and prescribe general rules of practice and pro-
15 cedure under chapter 131 of title 28, United States Code.

16 **SEC. 9. EFFECTIVE DATE.**

17 The amendments made by this Act shall apply to any
18 civil action commenced on or after the date of enactment
19 of this Act.

Passed the Senate February 10, 2005.

Attest:

Secretary.

109TH CONGRESS
1ST SESSION

S. 5

AN ACT

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.