

106TH CONGRESS
2D SESSION

S. 3123

To provide for Federal class action reform.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27 (legislative day, SEPTEMBER 22), 2000

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

A BILL

To provide for Federal class action reform.

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 Act may be cited as the “Consumer Rights in
5 Federal Class Actions Act of 2000”.

6 **SEC. 2. FEDERAL CLASS ACTION REFORM.**

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

10 **“CHAPTER 114—FEDERAL CLASS ACTIONS**

“Sec.

“1711. Definitions.

“1712. Application.

“1713. Pleading requirements and notification of class upon settlements.

1 **“§ 1711. Definitions**

2 “In this chapter, the term—

3 “(1) ‘class’ means a group of persons that com-
4 prise parties to a civil action brought by 1 or more
5 representative persons;

6 “(2) ‘class action’ means a civil action filed pur-
7 suant to rule 23 of the Federal Rules of Civil Proce-
8 dure;

9 “(3) ‘class member’ means a person that falls
10 within the definition of the class;

11 “(4) ‘class counsel’ means the attorneys rep-
12 resenting the class in a class action; and

13 “(5) ‘proposed settlement’ means a settlement
14 agreement regarding a class action that is subject to
15 court approval and would be binding on the class.

16 **“§ 1712. Application**

17 “This chapter shall apply to all plaintiff class actions
18 filed in or removed to Federal court, except any such class
19 action solely involving—

20 “(1) claims concerning a covered security as de-
21 fined under section 16(f)(3) of the Securities Act of
22 1933 and section 28(f)(5)(E) of the Securities Ex-
23 change Act of 1934;

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

6 “(3) claims that relate to the rights, duties (in-
 7 cluding fiduciary duties), and obligations relating to
 8 or created by or pursuant to any security (as defined
 9 under section 2(a)(1) of the Securities Act of 1933
 10 and the regulations issued thereunder).

11 **“§ 1713. Pleading requirements and notification of**
 12 **class upon settlement**

13 “(a) PLEADING REQUIREMENTS.—The complaint in
 14 a class action shall include a disclosure of the recovery
 15 sought for class members and the anticipated attorney’s
 16 fees including an explanation of how any attorney’s fees
 17 will be calculated.

18 “(b) SETTLEMENT REQUIREMENTS.—

19 “(1) IN GENERAL.—Not later than 10 days
 20 after a proposed settlement in a class action is filed
 21 in court, the class counsel shall provide notice to
 22 class members of a proposed settlement agreement,
 23 written in plain, easily understood language, inform-
 24 ing the members of—

1 “(A) the benefits that will accrue to the
2 class due to the settlement;

3 “(B) the rights that class members will
4 lose or waive through the settlement;

5 “(C) obligations that will be imposed on
6 the defendants by the settlement;

7 “(D) the dollar amount of any attorney’s
8 fee class counsel will be seeking, or if not pos-
9 sible, a good faith estimate of the dollar amount
10 of any attorney’s fee class counsel will be seek-
11 ing;

12 “(E) an explanation of how any attorney’s
13 fee will be calculated and funded; and

14 “(F) the right of any class member to
15 enter comments as a part of the court record
16 not later than 60 days after receiving notice
17 about the proposed settlement.

18 The court may not accept or reject the settlement
19 agreement before the expiration of the period pro-
20 vided in subparagraph (F).

21 “(2) SETTLEMENTS INVOLVING COUPONS OR
22 RECOVERY FROM A CLASS FUND.—If a proposed set-
23 tlement involves a coupon or requires a class mem-
24 ber to obtain a recovery from a fund set aside for
25 the class, the defendant shall provide the court and

1 class members with regular reports (not more than
 2 90 days apart) as to how many members of the class
 3 are participating in the settlement. The reports re-
 4 quired by this paragraph shall be posted on the
 5 Internet by the defendant and continue until expira-
 6 tion of the coupons, in the event of a coupon settle-
 7 ment, or until disposition of the fund, in the event
 8 of a class fund. The Internet website address for the
 9 reports shall be made part of the court record and
 10 shall be printed in all notices to class members.”.

11 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 12 The table of chapters for part V of title 28, United States
 13 Code, is amended by inserting after the item relating to
 14 chapter 113 the following:

“114. Federal Class Actions 1711”.

15 **SEC. 3. REPORT ON ACTUAL PARTICIPATION OF CLASS**
 16 **MEMBERS IN SETTLEMENTS.**

17 (a) FINDINGS.—Congress finds that—

18 (1) there have been abuses of class action law-
 19 suits whereby few members of the class pursue and
 20 benefit from the settlement;

21 (2) use of surveys by plaintiffs’ attorneys to de-
 22 termine utilization of settlements are often biased;

23 (3) judges often do not examine written com-
 24 ments sent in by class members who may dispute
 25 the settlement or need for the action; and

1 (4) attorney’s fees are often based on inac-
2 curate information regarding how many class mem-
3 bers actually participate in the settlement.

4 (b) REPORT.—Not later than 12 months after the
5 date of enactment of this Act, the Judicial Conference of
6 the United States, with the assistance of the Director of
7 the Federal Judicial Center and the Director of the Ad-
8 ministrative Office of the United States Courts, shall pre-
9 pare and transmit to the Committees on the Judiciary of
10 the Senate and the House of Representatives a report on
11 class action settlements.

12 (c) CONTENT.—The report under subsection (b) shall
13 contain—

14 (1) a recommendation for a method to measure
15 actual class member utilization of settlement funds
16 or coupons, with regular reporting requirements;

17 (2) recommendations on the best practices that
18 courts can use to ensure that proposed class action
19 settlements are fair to the class members that the
20 settlements are supposed to benefit;

21 (3) recommendations on the best practices that
22 courts can use to ensure that—

23 (A) the fees and expenses awarded to
24 counsel in connection with a class action settle-
25 ment appropriately reflect the extent to which

1 counsel succeeded in obtaining full redress for
2 the injuries alleged and the time, expense, and
3 risk that counsel devoted to the litigation;

4 (B) the fees and expenses awarded to
5 counsel accurately reflect the utilization of class
6 action settlements by class members, class
7 member comments received, and review of ac-
8 tual usage of similar previous settlements as in-
9 dicators of what attorney's fees should be; and

10 (C) the class members on whose behalf the
11 settlement is proposed are the primary bene-
12 ficiaries of the settlement; and

13 (4) the actions that the Judicial Conference of
14 the United States has taken and intends to take to-
15 ward having the Federal judiciary implement any or
16 all of the recommendations contained in the report.

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