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Class Actions: H.R. 1875, 106th Congress, the "Interstate Class Action Jurisdiction Act of 1999"

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Summary

H.R. 1875, with some exceptions, reflects a preference for class actions to be adjudicated in federal courts rather than state courts. This report, gives a brief sketch of the proposal, the pros and cons that have been advanced concerning the bill as passed by the House of Representatives,[2] and summarizes the action the 106th Congress took on this legislation. It will not be updated.

Class Actions

> "One of the most controversial developments in the law of federal procedure is the growth of the class action. ... " The class action ... has been described as everything from "one of the most socially useful remedies in history" to "legalized blackmail." ...
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> "The class action was an invention of equity * * * mothered by the practical necessity of providing a procedural device so that mere numbers would not disable large groups of individuals, united in interest, from enforcing their equitable rights nor grant them immunity from their equitable wrongs. * * * By Rule 23 [of the Federal Rules of Civil Procedure, 28 Appendix, *United States Code*] the Supreme Court has extended the use of the class action device to the entire field of federal civil litigation by making it applicable to all civil actions." It provides a means by which, where a large group of persons are interested in a matter, one or more may sue or be sued as representatives of the class without needing to join every member of the class. This procedure is available in federal courts, even in diversity actions in states that do not recognize the

[1] This is an update of CRS Report RS20347, H.R. 1875, 106th Congress, the "Interstate Class Action Jurisdiction Act of 1999" by P.L. Morgan.

[2] 145 *Cong. Rec.* H8595 (daily ed. Sept. 23, 1999). The 106th Congress adjourned without taking further action. See also, CRS Report RS20667 for discussion of a similar Senate bill on class action reform.

class suit, though the state law will define the substantive interest of the members of the class and the capacity to sue or be sued of the named representatives.[3]

The Legislation

Section 1. Short title. The Act may be cited as the "Interstate Class Action Jurisdiction Act of 1999."

Section 2. Findings. Would provide that class actions implicate interstate commerce, invite discrimination by a local State, and tend to attract bias against business enterprises, but because of an unintended technicality most class actions fall outside of federal diversity jurisdictional statutes. Would also provide that it is appropriate for Congress to amend the federal diversity jurisdiction statutes to allow more such actions to be brought in, or removed to, federal court to ensure that they are adjudicated in a fair, consistent, and efficient manner.

Section 3. Jurisdiction of District Courts. Except in certain securities transaction cases and cases involving the internal affairs or governance of some entities under State business incorporation or organizational law, the Act would give federal district courts original jurisdiction over civil suits brought as class actions where any member of the proposed plaintiff class is: (1) a citizen of a State different from any defendant; (2) a foreign state and any defendant is a citizen of a State; or (3) a citizen of a State and any defendant is a citizen or subject of a foreign state. District courts would not exercise jurisdiction in a class action which is: (1) an intrastate case, *i.e.*, the claim therein would be governed primarily by the law of the State in which the action was originally filed, and the substantial majority of the members of all proposed plaintiff classes, and the primary defendants, are citizens of the State in which the action was originally filed; (2) a limited scope case, *i.e.*, the record indicates that all matters in controversy asserted by all members of all proposed plaintiff classes would not, in the aggregate, exceed the sum or value of $1,000,000, exclusive of interest and costs, or in which the number of members of all proposed plaintiff classes in the aggregate would be less that 100; or (3) a State action case, *i.e.*, where the primary defendants would be States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief. A "member of a proposed class shall be deemed to be a citizen of a State different from a defendant corporation only if that member is a citizen of a State different from all States of which the defendant corporation is deemed a citizen."

Section 4. Removal of class actions. Would allow removal of a class action to federal court: (1) without regard to whether any defendant is a citizen of the State in which the action is brought; (2) by any defendant without the consent of all defendants; or (3) by any plaintiff class member, without the consent of all members of such class, if the removing plaintiff is not a named or representative class member of the action for which removal is sought. Would allow removal before or after the entry of any order certifying a class but removal may not be sought by a non-named, non-representative plaintiff class member before entry of an order certifying a class of which the plaintiff is a member. Would allow non-named, non-representative class member plaintiff to remove action to federal court no later than 30 days after receipt of the initial written notice of the

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[3] Charles Alan Wright, Law of Federal Courts 507-08 (5th ed. 1994) (footnotes omitted).

class action provided at the court's direction. Would provide that this section not apply to certain securities transaction cases or cases involving the internal affairs or governance of some entities under State business incorporation or organizational law. Would provide that State substantive law not be changed by application of sections 3 or 4 of this Act. Would authorize dismissal of removed actions not properly before the federal court and allow the amendment of, and refiling of, the dismissed action in State court. Would authorize removal again if the refiled action is one of which the federal courts have original jurisdiction. Would authorize tolling of limitation periods for the time during which the dismissed class actions were pending.

Section 5. Applicability. Amendments made by the Act would apply to any action commenced on or after the date of the enactment.

Section 6. GAO study. Would require that the Comptroller General of the United States conduct a study of the impact of this Act upon the workload of the federal courts and report the results of the study to Congress not later than one year after the date of enactment.

Pros and Cons of the Proposal[4]

Proponents argue that the legislation is needed for the following reasons:

(1) Class action cases should be heard in federal court as they typically affect more citizens, involve more money and implicate more interstate commerce issues than any other type of law suit.

(2) Present law allows counsel to "game" the system by recruiting irrelevant parties, from the same state as the defendant, to class actions to destroy complete diversity[5] and keep the case in state court. Likewise, counsel may understate the amount in controversy[6] to avoid removal to federal court. When the statutory time to remove the suit to federal court has passed, the irrelevant parties may be dropped and the amount in controversy restated upward.

(3) Abuse of the class action device occurs because some State courts are improperly supervising settlements, *e.g.*, some class claimants have won cases, recovered nothing, and then been billed for attorneys fees.

(4) Some State courts are so lax in certifying classes that the due process rights of unnamed class members and/or those of defendants are violated.

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[4] Arguments on the merits of the bill are set forth in greater detail in H.R. Rep. No. 106-320, at 4-12 [need for legislation]; 31-47 [dissenting views] (1999). The arguments are generally repeated in the floor debate prior to House passage of the bill at 145 *Cong. Rec*. H8568-H8592 (daily ed. Sept. 23, 1999).

[5] Under present law, there must be complete diversity of citizenship at the time of filing a class action suit, *i.e.*, all representatives of a class named as plaintiffs must be citizens of a state or states different from the state of citizenship of the defendant. 28 U.S.C. § 1332. "H.R. 1875 would have allowed the principles of Federal diversity jurisdiction to be applied to interstate class actions."

[6] The amount in controversy in a diversity case must exceed the sum or value of $75,000, exclusive of interest and costs, before the issue may be tried in federal court. *Id.*. Generally, each member of the class must individually seek damages of $75,000 to be allowed to remain in the class. *Zahn v. International Paper Co.*, 414 U.S. 291 (1973).

(5) Lack of control of class actions in State courts can amount to extortion by requiring innocent defendants to pay plaintiff's lawyers to avoid a costly trial and the slim chance of having to pay millions of dollars in damages.

(6) Some State courts continue to misapply their own law and misinterpret the laws of other states, a denial of due process.

(7) The legislation would eliminate a "race to file" in the State courts with the most lax attitude toward class certification.

(8) Unlike the federal court system, which can consolidate overlapping or "copycat" class action suits on behalf of the same members, the State courts have no such mechanism. State courts and counsel may compete for control of the cases, often to the detriment of the plaintiffs and defendants.

(9) Under the present law, and State court practice, many class actions of questionable merit are being filed without the procedural protections available to defendants in federal courts.

Opponents argue that the legislation should not be enacted because:

(1) This bill, which would bar most state class actions, is opposed by the Justice Department, the Conference of [State] Chief Justices, and the Judicial Conference of the United States, as well as consumer and public interest groups.

(2) Removal to federal court would make access to justice by groups of injured persons burdensome, expensive and time-consuming.

(3) The workload of the federal courts would be increased, and the parties may be forced to wait 3 years or more for trial. Also, state courts would have judicial resources drained away by being forced to adjudicate the actions on a case-by-case basis.

(4) The bill has been written in a one-sided manner which favors defendants with no attempt to deal with abuses of the system by that group.

(5) Inadequate study has been made of the effect this legislation would have on State court prerogatives.

(6) There would be specific adverse impact upon the ability of plaintiffs to obtain redress against the tobacco, gun, and managed care industries in federal courts.[7]

On May 19, 1999, H.R. was referred to the House Committee on the Judiciary[8] where Committee hearings were held.[9] On September 14, 1999, H.R. 1875 was reported, as amended, by the House Judiciary Committee and placed on the Legislative Calendar.[10] On September 23, 1999, H.R. 1875 passed the House by a recorded vote of 222-207.[11] On September 24, 1999, it was received in the Senate[12] and on November 19, 1999,

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[7] Arguments on this point are contained in "Additional Dissenting Views," H.R. Rep. No. 106-320, at 43-47 (1999).

[8] 145 *Cong. Rec.* H3392 (daily ed. May 19, 1999).

[9] *Id.* At D846 (daily ed. July 21, 1999).

[10] *H. Rept.*106-320. 145 Cong. Rec. D981 (daily ed. September 14, 1999).

[11] 145 *Cong. Rec.* H.8594-95 (daily ed. September 23, 1999).

[12] *Id.* at S11249 (daily ed. September 24, 1999).

referred to the Senate Committee on the Judiciary.[13] The 106th Congress adjourned without taking further action.

[13] *Id.* at S15086 (daily ed. November 19, 1999).