



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

February 7, 2005

S. 5

Class Action Fairness Act of 2005

As reported by the Senate Committee on the Judiciary on February 3, 2005

S. 5 would expand the types of class-action lawsuits that would be initially heard in federal district courts and would provide guidelines for the award of attorney's fees in certain types of settlements. CBO estimates that implementing the bill would cost the federal district courts about \$7 million a year, subject to appropriation of the necessary funds. Enacting the bill would not affect direct spending or revenues. S. 5 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. S. 5 would impose private-sector mandates, as defined in UMRA, but CBO estimates that the direct cost of those mandates would fall below the annual threshold established by UMRA (\$123 million in 2005, adjusted annually for inflation).

Under S. 5, most class-action lawsuits would be heard in a federal district court rather than a state court. Therefore, CBO estimates that the bill would impose additional costs on the federal district court system. While the number of cases that would be filed in federal court under this bill is uncertain, CBO expects that a few hundred additional cases would be heard in federal court each year. According to the Administrative Office of the United States Courts, class-action lawsuits tried in federal court cost the government, on average, about \$23,000. That figure includes salaries and benefits for clerks, rent, utilities, and associated overhead expenses but excludes the costs of the salaries and benefits of judges. CBO estimates that implementing S. 5 would cost about \$7 million annually.

CBO also estimates that enacting this bill could increase the need for additional district judges. Because the salaries and benefits of district court judges are considered mandatory, adding more judges would increase direct spending. However, S. 5 would not—by itself—affect direct spending because separate legislation would be necessary to authorize an increase in the number of district judges. In any event, CBO expects that enacting the bill would not require a significant increase in the number of federal judges, so that any potential increase in direct spending from subsequent legislation would probably be less than \$500,000 a year.

S. 5 would require the Judicial Conference of the United States to transmit a report on class-action settlements to the Congress no later than one year after the bill's enactment. CBO estimates that this provision would cost less than \$500,000 in 2005.

S. 5 would impose a private-sector mandate by possibly limiting the size of awards that attorneys could receive in certain class-action settlements. If a proposed class-action settlement provides coupons to a class member, the bill would require the attorneys' fees to be based on the value of the coupons that are redeemed or on the amount of time reasonably expended working on the case by class counsel. In current practice, the attorney's fee is sometimes based on the total value of the settlement. According to information from industry representatives and academic studies, settlements with coupons account only for about 10 percent of all class-action settlements. Moreover, according to those sources, attorneys' fees correlate very closely with the amount of time spent on such cases by class counsel. Therefore, because attorneys' fees would still be negotiated as part of any settlement, CBO estimates that the direct cost of the mandate, as measured by loss of income for attorneys in class-action settlements, would be small, if any.

In addition, S. 5 would impose a private-sector mandate on defendants participating in a proposed class-action settlement. The bill would require defendants to make certain notifications and disclosures to the appropriate state official of each state in which a class member resides and the appropriate federal official within 10 days after a proposed settlement is filed in court. The bill defines a proposed settlement as an agreement regarding a class action that is subject to court approval and would be binding on the class. The required notices and disclosures would include a copy of the suit, a copy of the proposed settlement, a statement of class members' rights, and certain other materials. In effect, the defendants would have to provide copies of documents and materials related to information that they usually already possess about the case. Further, the provision would allow for the use of the Internet in making such disclosures. Thus, CBO estimates that the costs of complying with this mandate would be small.

The CBO staff contacts for this estimate are Gregory Waring (for federal costs) and Paige Piper/Bach (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.