

PROVIDING FOR CONSIDERATION OF H.R. 2341, CLASS
ACTION FAIRNESS ACT OF 2002

MARCH 12, 2002.—Referred to the House Calendar and ordered to be printed

Ms. PRYCE of Ohio, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 367]

The Committee on Rules, having had under consideration House Resolution 367, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration of H.R. 2341, the “Class Action Fairness Act of 2002,” under a structured rule. The rule provides one hour of general debate equally divided and controlled between the chairman and ranking minority member of the Committee on the Judiciary. The rule waives all points of order against consideration of the bill.

The rule provides that the amendment in the nature of a substituted recommended by the Committee on the Judiciary now printed in the bill be considered as an original bill for the purpose of amendment. The rule makes in order only those amendments printed in this report. The rule provides that each amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The rule waives all points of order against such amendments. Finally, the rule provides one motion to recommit with or without instructions.

The waiver of all points of order against consideration of the bill includes a waiver of clause 4(a) of rule XIII (requiring a three-day layover of the committee report), which is needed because the com-

mittee report was not filed until Tuesday, March 12 and the bill may be considered by the House as early as Wednesday, March 13.

SUMMARY OF AMENDMENTS MADE IN ORDER UNDER THE RULE

Issa: Creates a new paragraph in Section 3, the “Consumer Class Action Bill of Rights,” which would require class action settlement notices to provide a good faith estimate of the hourly rate that his or her lawyer will be paid. (20 min.)

Nadler/Delahunt/Johnson (TX): Prevents records of class action cases from being sealed, if doing so would harm the public health and safety. (20 min.)

Waters: Addresses parties that withheld or shred documents related to court-ordered discovery. Such parties would be deemed to have admitted to any fact relating to the discovery order. (20 min.)

Keller: Ensures that when a class action judgment favors the plaintiff that their attorneys must disclose the amount of fees that they intend to collect. The amount must be disclosed to all plaintiffs at the time of rendered judgment or at the time that any award is transmitted to the plaintiffs. (20 min.)

Lofgren/Schiff: Seeks to federalize any state cause of action that is brought on behalf of the general public including civil law enforcement actions brought by local prosecutors. Preserves the ability of local prosecutors to enforce state antitrust and consumer protection laws. (20 min.)

Conyers/Jackson-Lee/Neal: Treats a foreign corporation which acquires a domestic corporation in a corporate repatriation transaction as being incorporated in the state under whose laws the acquired domestic corporation was organized. Ensures that a company cannot have a state class action removed to federal court merely by changing its place of incorporation abroad. (20 min.)

Jackson-Lee: Prohibits a party to a class action from removing the case to a district court if that party destroys material relating to the subject matter of the class action, or makes a misrepresentation with respect to existence of such materials. (20 min.)

Frank/Berman/Meehan: Provides that aspects of class actions filed in state court that could not be maintained under F.R.Civ.P. 23 in federal courts would still be heard by a state court rather than either dismissed or removed and remanded. Such an action refused to be heard by the federal court could only be removed again to federal court if it met the diversity standards of 28 U.S.C. Section 1332(a). (20 min.)

Hart: Creates a new section 7 which would require the Judicial Conference of the United States to conduct a study and issue a report, including recommendations, within 12 months, detailing class action fee arrangements and ways they may be improved to benefit class members. (20 min.)

Text of amendments made in order under the rule:

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ISSA OF CALIFORNIA, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 8, line 19, strike “and”.

Page 8, insert the following after line 21:

“(vi) a good faith estimate of the average hourly rate that counsel will be paid if the amount of the attor-

ney's fee that class counsel will be seeking is awarded;
and

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE NADLER OF
NEW YORK, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 9, insert the following after line 20 and redesignate the succeeding section accordingly:

“§ 1716. Sunshine in court records

“No order, opinion, or record of the court in the adjudication of a class action, including a record obtained through discovery, whether or not formally filed with the court, may be sealed or subjected to a protective order unless the court makes a finding of fact—

“ (1) that the sealing or protective order is narrowly tailored, consistent with the protection of public health and safety, and is in the public interest; and

“ (2) if the action by the court would prevent the disclosure of information, that disclosing the information is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of such information.

Page 6, in the matter preceding line 1, strike the item relating to section 1716 and insert the following:

“1716. Sunshine in court records.

“1717. Definitions.”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WATERS OF
CALIFORNIA, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 9, insert the following after line 20 and redesignate the succeeding section accordingly:

“§ 1716. Withholding or destruction of material

“If the court in a class action issues a discovery order and a party to which the order is directed withholds or destroys material subject to the order or makes a misrepresentation with respect to the existence of such material, such action by that party shall be deemed an admission of any fact with respect to which the order was issued.

Page 6, in the matter preceding line 1, strike the item relating to section 1716 and insert the following:

“1716. Withholding or destruction of material.

“1717. Definitions.”.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KELLER OF
FLORIDA, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 9, insert the following after line 20 and redesignate the succeeding section accordingly:

“§ 1716. Disclosure of attorney's fees

“Any court with jurisdiction over a plaintiff class action shall require that, if there is a settlement of the class action or a judgment

for the plaintiffs, the attorneys for the plaintiffs shall disclose to each plaintiff—

“(1) at the time when any payment or other award is transmitted to the plaintiff in accordance with the settlement of judgment, or

“(2) in a case in which no such payment or award is made to a plaintiff, at the time when notice of the final settlement or judgment is transmitted to such plaintiff,

the full amount of the attorney’s fees charged by the attorneys for services rendered in the action.

Page 6, in the matter preceding line 1, strike the item relating to section 1716 and insert the following:

“1716. Disclosure of attorney’s fees.

“1717. Definitions.”.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LOFGREN OF CALIFORNIA, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 15, line 6, strike “if—” and all that follows through line 17 and insert the following: “if monetary relief claims in the action are proposed to be tried jointly in any respect with the claims of 100 or more other persons on the ground that the claims involve common questions of law or fact.”.

Page 15, line 21, strike “The” and all that follows through “subparagraph (A).” on line 24.

Page 16, line 2, strike “subparagraph (B)” and insert “this paragraph”.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CONYERS OF MICHIGAN, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 16, line 2, strike the quotation marks and second period.

Page 16, insert the following after line 2:

“(10)(A) For purposes of this subsection and section 1453 of this title, a foreign corporation which acquires a domestic corporation in a corporate repatriation transaction shall be treated as being incorporated in the State under whose laws the acquired domestic corporation was organized.

“(B) In this paragraph, the term ‘corporate repatriation transaction’ means any transaction in which—

“(i) a foreign corporation acquires substantially all of the properties held by a domestic corporation;

“(ii) shareholders of the domestic corporation, upon such acquisition, are the beneficial owners of securities in the foreign corporation that are entitled to 50 percent or more of the votes on any issue requiring shareholder approval; and

“(iii) the foreign corporation does not have substantial business activities (when compared to the total business activities of the corporate affiliated group) in the foreign country in which the foreign corporation is organized.”.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON-LEE OF TEXAS, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 18, line 14, strike the quotation marks and second period.

Page 18, insert the following after line 14:

“(g) CERTAIN ACTIONS NOT REMOVABLE.—A party to a class action may not remove the class action to a district court under this section if that party has been found by a court to have knowingly altered, destroyed, mutilated, concealed, falsified, or made a false entry in, any record, document, or tangible object in connection with that class action.”.

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FRANK OF MASSACHUSETTS, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 18, line 14, strike the quotation marks and second period.

Page 18, insert the following after line 14:

“(g) PROCEDURE AFTER REMOVAL.—If, after an action is removed under this section, the court determines that any aspect of the action that is subject to its jurisdiction solely under the provisions of section 1332(d) may not be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, the court shall remand all such aspects of the action to the State court from which the action was removed. In such event, the State court may certify the action or any part thereof as a class action pursuant to the laws of that State, and such action may not be removed to Federal court unless it meets the requirements of section 1332(a).”.

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HART OF PENNSYLVANIA, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 19, insert the following after line 11 and redesignate the succeeding section accordingly:

SEC. 7. REPORT ON CLASS ACTION SETTLEMENTS.

(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Judicial Conference of the United States, with the assistance of the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall prepare and transmit to the Committees on the Judiciary of the Senate and House of Representatives a report on class action settlements in the Federal courts.

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

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

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

(A) the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation; and

(B) the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement; and

(3) the actions that the Judicial Conference of the United States has taken and intends to take toward having the Fed-

eral judiciary implement any or all of the recommendations contained in the report.

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

