



**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1115, AS REPORTED
OFFERED BY MR. SANDLIN OF TEXAS AND MR.
CONYERS OF MICHIGAN**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CON-
2 TENTS.

3 (a) SHORT TITLE.—This Act may be cited as the
4 “Class Action Improvement Act of 2003”.

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

9 (c) TABLE OF CONTENTS.—The table of contents for
10 this Act is as follows:

Sec. 1. Short title; reference; table of contents.

Sec. 2. Improved procedures for certain interstate class actions.

Sec. 3. Establishment of State Court Multidistrict Litigation Panel.

Sec. 4. Establishment of procedure for transferring certain actions to Federal court.

Sec. 5. Best practices study.

11 SEC. 2. IMPROVED PROCEDURES FOR CERTAIN CLASS AC-
12 TIONS.

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

15 “CHAPTER 114—CLASS ACTIONS

“Sec.



“1711. Coupons and other noncash settlements.
“1712. Protection against loss by class member.
“1713. Protection against discrimination based on geographic location.
“1714. Additional requirements.
“1715. Protecting the integrity of the courts.
“1716. Interlocutory appeals.
“1717. Definitions.”.

1 **“§ 1711. Coupons and other noncash settlements**

2 “(a) CONTINGENT FEES.—If a proposed settlement
3 in a class action provides for an award of a noncash ben-
4 efit to a class member, and the attorney’s fee to be paid
5 to class counsel is based upon a portion of the recovery,
6 then the attorney’s fee shall be based on the value of the
7 noncash benefit that is redeemed.

8 “(b) OTHER ATTORNEY’S FEE AWARDS.—If a pro-
9 posed settlement in a class action includes a noncash ben-
10 efit to a class member, and a portion of the recovery is
11 not used to determine the attorney’s fee to be paid to class
12 counsel, then the attorney’s fee shall be based upon the
13 actual amount of time class counsel expended working on
14 the action. Any attorney’s fee under this subsection shall
15 be subject to approval by the court. Nothing in this sub-
16 section shall be construed to prohibit application of a
17 lodestar with a multiplier method of determining attor-
18 ney’s fees whenever appropriate under applicable law.

19 “(c) SETTLEMENT VALUATION EXPERTISE.—In a
20 class action involving the awarding of noncash benefits,
21 the court may in its discretion, upon the motion of a party,



“(b) NOTICE TO DEFENDANTS.—The court in a class action shall require that, before the class is certified, defendants receive notice of the action and be given an opportunity to respond to the complaint.

5 “(c) BLOCKING REMOVAL.—A defendant in a class
6 action may not elect to block removal of the action to Fed-
7 eral court that is sought by other defendants if the court
8 finds that plaintiffs named the defendant solely for pur-
9 poses of blocking such removal.

10 “§ 1715. Protecting the integrity of the courts

11 “(a) OPEN RECORDS.—No order, opinion, or record
12 of the court in a class action, including a record obtained
13 through discovery, whether or not formally filed with the
14 court, may be sealed or made subject to a protective order
15 unless the court finds—

16 “(1) that the sealing or protective order is nar-
17 rowly tailored and necessary to protect the confiden-
18 tiality of a particular trade or business secret of one
19 or more of the settling parties and is in the public
20 interest; or

21 “(2) that—

22 “(A) the sealing or protective order is nar-
23 rowly tailored, consistent with the protection of
24 public health and safety, and is in the public in-
25 terest; and



1 “(B) if the action by the court would pre-
2 vent the disclosure of information, disclosing
3 the information is clearly outweighed by a spe-
4 cific and substantial interest in maintaining the
5 confidentiality of such information.

6 “(b) DESTRUCTION OF DOCUMENTS PROHIBITED.—
7 All parties filing or receiving service of a class action shall
8 maintain all documents, including those in electronic for-
9 mat, related to the subject matter of the class action. Any
10 person who knowingly alters, destroys, mutilates, conceals,
11 or falsifies any record, document, or tangible object with
12 the intent to impede, obstruct, or influence the outcome
13 of a class action shall be fined not more than \$5,000 for
14 each record, document, or object destroyed, imprisoned
15 not more than 5 years, or both.

16 **“§ 1716. Interlocutory appeals**

17 “A court of appeals may in its discretion permit an
18 appeal from an order of a district court granting or deny-
19 ing class action certification under Rule 23 of the Federal
20 Rules of Civil Procedure if application is made to the court
21 within 10 days after entry of the order. An appeal does
22 not stay proceedings in the district court unless the dis-
23 trict court or the court of appeals so orders.

24 **“§ 1717. Definitions**

25 “In this chapter—

1 “(1) CLASS ACTION.—The term ‘class action’
2 means—

3 “(A) any civil action filed in a district
4 court of the United States pursuant to Rule 23
5 of the Federal Rules of Civil Procedure; and

6 “(B) any civil action that is removed to a
7 district court of the United States that was
8 originally filed pursuant to a State statute or
9 rule of judicial procedure authorizing an action
10 to be brought by one or more representatives on
11 behalf of a class;

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

16 “(3) CLASS MEMBERS.—The term ‘class mem-
17 bers’ means the persons who fall within the defini-
18 tion of the proposed or certified class in a class ac-
19 tion.

20 “(4) PROPOSED SETTLEMENT.—The term ‘pro-
21 posed settlement’ means an agreement that resolves
22 any or all claims in a class action, that is subject to
23 court approval, and that, if approved, would be bind-
24 ing on each class member, except to the extent that



1 a class member has requested to be excluded from
2 the class action.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—

4 The table of chapters for part V is amended by inserting
5 after the item relating to chapter 113 the following:

“114. Class Actions 1711”.

6 **SEC. 3. ENACTMENT OF JUDICIAL CONFERENCE REC-**
7 **COMMENDATIONS.**

8 Notwithstanding any other provision of law, the
9 amendments to Rule 23 of the Federal Rules of Civil Pro-
10 cedure, relating to notice to members of a class, which
11 are embraced by the order entered by the Supreme Court
12 of the United States on March 27, 2003, shall take effect
13 on the date of the enactment of this Act or on December
14 1, 2003 (as specified in that order), whichever occurs first.

15 **SEC. 4. ESTABLISHMENT OF STATE COURT MULTIDISTRICT**
16 **LITIGATION PANEL.**

17 (a) CREATION OF MULTIDISTRICT LITIGATION
18 PANEL.—The National Center for State Courts is author-
19 ized to develop and implement, in coordination with the
20 Conference of Chief Judges, a State court multidistrict
21 litigation panel for class actions, to be called the “State
22 Court Panel on Multidistrict Litigation”, in accordance
23 with the following:

24 (1) CONSOLIDATION OF CLASS ACTIONS.—The
25 SCPML shall allow State court judges, or parties



1 with class actions pending in State courts, to seek
2 to consolidate within one State court for pretrial
3 proceedings related class actions pending in different
4 States. No pending class action may be consolidated
5 without the approval of the State court judge han-
6 dling the pending action.

7 (2) FOR PRETRIAL PROCEEDINGS.—When class
8 actions involving one or more common questions of
9 fact are pending in the courts of different States,
10 such actions may be transferred, with permission of
11 the court, to any of these State courts for coordi-
12 nated or consolidated pretrial proceedings. Such
13 transfers shall be made by the SCPML upon its de-
14 termination that transfers for such proceedings will
15 be for the convenience of the parties and witnesses
16 and will promote the just and efficient conduct of
17 such actions. Each action so transferred shall be re-
18 manded by the SCPML at or before the conclusion
19 of such pretrial proceedings to the State court from
20 which it was transferred unless it has been pre-
21 viously terminated, except that the SCPML may
22 separate any claim, cross-claim, counter-claim, or
23 third-party claim and remand any such claim before
24 the remainder of the action is remanded.



1 (3) JUDICIAL ASSIGNMENTS.—Coordinated or
2 consolidated pretrial proceedings under paragraph
3 (2) shall be conducted by a judge or judges to whom
4 such actions are assigned by the SCPML. With the
5 consent of the transferee court or courts, such ac-
6 tions may be assigned by the SCPML to a judge or
7 judges from any relevant State court. The judge or
8 judges to whom such actions are assigned and the
9 members of the SCPML may exercise the powers of
10 a trial court judge of any of the relevant State
11 courts for the purpose of conducting pretrial deposi-
12 tions in such coordinated or consolidated pretrial
13 proceedings.

14 (4) COMPOSITION OF SCPML.—The SCPML
15 shall consist of nine judges designated from time to
16 time by the CCJ, no two of whom shall be from the
17 same State. The concurrence of five members shall
18 be necessary to any action by the SCPML. The
19 members of the SCPML shall each serve for a term
20 of three years. The CCJ is urged to develop a sys-
21 tem to ensure that States from varying regions and
22 States of different sizes are equitably represented on
23 the SCPML.

24 (5) ESTABLISHMENT OF RULES.—The SCPML
25 may prescribe procedural rules for the conduct of its



1 business not inconsistent with Federal law and the
2 Federal Rules of Civil Procedure, including rules es-
3 tablishing procedures for initiating the transfer of a
4 class action under this section, providing notice to
5 all affected parties, determining whether such trans-
6 fer shall be made, issuing orders either directing or
7 denying such transfer, and providing notice of and
8 appealing any order of the SCPML under this sec-
9 tion.

10 (b) AUTHORIZATION.—There are authorized to be ap-
11 propriated to the National Center for State Courts for the
12 establishment and administration of the State Court Panel
13 on Multidistrict Litigation \$1,000,000 for fiscal year 2004
14 and such sums as may be necessary for fiscal year 2005
15 and thereafter.

16 (c) DEFINITIONS.—In this section:

17 (1) CLASS ACTION.—The term “class action”
18 means any civil action that—

19 (A) is brought in a State court pursuant to
20 a State statute or rule of judicial procedure au-
21 thorizing an action be brought by one or more
22 representatives on behalf of a class; and

23 (B) is not removed to a court of the
24 United States.



1 (2) CCJ.—The term “CCJ” means the Con-
2 ference of Chief Justices.

3 (3) NCSC.—The term “NCSC” means the Na-
4 tional Centers for State Courts.

5 (4) SCPML.—The term “SCPML” means the
6 State Court Panel on Multidistrict Litigation estab-
7 lished pursuant to subsection (b).

8 **SEC. 5. ESTABLISHMENT OF PROCEDURE FOR TRANSFER-**
9 **RING CERTAIN ACTIONS TO FEDERAL COURT.**

10 (a) ESTABLISHMENT OF PROCEDURE.—The National
11 Center for State Courts is authorized to develop and im-
12 plement, in coordination with the Conference of Chief
13 Judges, a procedure by which the applicable State court
14 or the SCMPML shall have the authority to transfer a class
15 action to the appropriate Federal court if the matter in
16 controversy of the civil action exceeds the sum or value
17 of \$5,000,000, exclusive of interest and costs, and is a
18 class action in which—

19 (1) any member of a class of plaintiffs is a cit-
20 izen of a State different from any defendant;

21 (2) any member of a class of plaintiffs is a for-
22 eign state or a citizen or subject of a foreign state
23 and any defendant is a citizen of a State; or

1 (3) any member of a class of plaintiffs is a cit-
2 izen of a State and any defendant is a foreign state
3 or a citizen or subject of a foreign state.

4 (b) DISCRETION TO DECLINE TO TRANSFER JURIS-
5 DICTION.—The applicable State court or the SCMPL may,
6 in the interests of justice, decline to transfer jurisdiction
7 under subsection (a) over a class action in which greater
8 than one-third but less than two-thirds of the members
9 of all proposed plaintiff classes in the aggregate and the
10 primary defendants are citizens of the State in which the
11 action was originally filed, based on consideration of the
12 following factors:

13 (A) Whether the claims asserted involve matters
14 of national or interstate interest.

15 (B) Whether the claims asserted will be gov-
16 erned by laws other than those of the State in which
17 the action was originally filed.

18 (C) Whether the class action has been pleaded
19 in a manner that seeks to avoid Federal jurisdiction.

20 (D) Whether the number of citizens of the
21 State in which the action was originally filed in all
22 proposed plaintiff classes in the aggregate is sub-
23 stantially larger than the number of citizens from
24 any other State, and the citizenship of the other



1 members of the proposed class is dispersed among a
2 substantial number of States.

3 (E) Whether one or more class actions assert-
4 ing the same or similar claims on behalf of the same
5 or other persons have been or may be filed.

6 (c) CASES IN WHICH JURISDICTION MAY NOT BE
7 TRANSFERRED.—The applicable State court or the
8 SCMPL shall not transfer jurisdiction under subsection
9 (a) over a class action in which—

10 (A) two-thirds or more of the members of all
11 proposed plaintiff classes in the aggregate and the
12 primary defendants are citizens of the State in
13 which the action was originally filed;

14 (B) the primary defendants are States, State
15 officials, or other governmental entities against
16 whom the district court may be foreclosed from or-
17 dering relief; or

18 (C) the number of members of all proposed
19 plaintiff classes in the aggregate is less than 100.

20 (d) JURISDICTION OF FEDERAL COURTS.—Any Fed-
21 eral court to which a class action is transferred under sub-
22 section (a) shall have, and exercise, jurisdiction of the
23 case.

1 (e) DEFINITIONS.—In this section, the terms “class
2 action” and “SCMPL” have the meanings given those
3 terms in section 4.

4 **SEC. 6. BEST PRACTICES STUDY.**

5 The National Center for State Courts is authorized
6 and requested to—

7 (1) conduct a study for the purpose of identi-
8 fying problems that arise in the litigation of State
9 class actions;

10 (2) develop recommendations on ways to ad-
11 dress the problems so identified; and

12 (3) report to the Congress, within 1 year after
13 the date of the enactment of this Act, on the results
14 of such study and recommendations.

