



Consumer Federation of America



February 5, 2003

Dear Senator,

We are writing to you as organizations dedicated to working on behalf of the rights and interests of consumers to express our opposition to S. 274, the "Class Action Fairness Act of 2003." This legislation will deny consumers access to adequate redress against corporate wrongdoers and will undermine the ability of state courts to hear cases primarily concerned with their own citizens. While class actions are an important and efficient legal tool for consumers to use in order to obtain redress from wrong doing, we are concerned about abuses of the class action process and agree that these abuses should be curtailed. However, S. 274 will not eliminate these abuses, but rather would create barriers to a consumer's effort to obtain redress. S. 274 is unfair to consumers and we urge you to oppose it.

Congress should work to prevent unjust enrichment by lawyers at the expense of consumers in class action settlements. This legislation however, will not solve this problem. Instead, while purporting to curtail class action abuses, S. 274 will virtually wipe out state class actions and thus remove an important venue for redress of injury or fraud for consumers. The bill will make it more difficult for consumers to obtain effective and efficient judicial relief for injuries caused by defective products, fraud in the marketplace, or discrimination.

Congress should seek to hold negligent wrongdoers accountable for their actions. Yet this bill does just the opposite: it places obstacles to accountability by providing fewer incentives for companies to keep their products safe and their actions fair.

S. 274 will create numerous barriers to participating in class actions by permitting defendants to remove most state class action suits to federal court. This removal from state court to federal court would leave consumers shuttling back and forth between state and federal court because while a consumers' class could meet state law class certification requirements, it could fail to meet the class certification requirements set forth in federal law. This will result in the federal courts' denial of class certification and dismissal (not remand) of the case. A consumer would now have two options, none of which would result in access to a court proceeding. A consumer could bring the claim in state court as an individual action. However, individual cases would be impractical to litigate, would not have the same deterrent effect, and would have the potential to overwhelm state courts. In the alternative, consumers could re-file an amended class certification in state court. This re-filing again opens the door created by S. 274 for the defendant to remove the case to federal court.

S. 274 will also clog an already overburdened and understaffed federal judiciary and slow the pace of certifying class action cases. This considerable delay will likely result in the denial of justice to injured consumers. In addition, this removal to federal court takes away an important and traditional function of state courts and will slow — and in some cases thwart — the continual interpretation of state law. Federal court decisions on issues of state law solve the narrow legal issue of the particular case without providing legal precedent for future state court cases of the particular state law in question. Further, class actions are among the most resource-intensive cases before the federal judiciary. U.S. Supreme Court Chief Justice William Rehnquist has expressed concern that this bill will result in further overloading an already-backlogged federal docket.

We agree that class actions can be made a more effective means of consumer redress; we support changes to the class action system that would prevent unjust enrichment and act as a deterrent to future wrongdoing, including modification of notice requirements and simplification of certification procedures and standards;

but the jurisdictional changes mandated by S. 274 are designed to impede class actions, not to make them fairer or more efficient.

This class action “reform” legislation is especially inappropriate in light of recent events. Just last year in the scandals of Enron, WorldCom and others, we saw how corporations need to be held accountable for their actions. Class actions effectively hold corporations accountable.

S. 274 does not provide the right solution to a class action system in need of reform; rather it makes it more difficult for consumers to obtain redress, to hold bad actors accountable for the harms they caused, and to deter future misconduct. The Class Action Fairness Act will substantially reduce the effectiveness of one of the most important legal tools consumers now have

We strongly urge you to oppose S. 274. We urge you to do the right thing for American consumers.

Sincerely,



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