

FACT SHEET: WHAT DOES THE REPRESENT ACT DO?

The Represent Act:

- Restores the consumer protections that corporations and their allies in government have stripped away over the last five decades, and creates new rights that safeguard consumers from business abuses made possible by new technologies.
- Requires corporate wrongdoers to fully compensate consumers for thefts of their money, time, and privacy, with severe civil sanctions to discourage companies from breaking the law.
- Reinvents class actions; it establishes a streamlined, more efficient legal process that makes it easier and less costly to hold corporations and their executives responsible for misconduct in civil courts, and makes court proceedings more transparent and accessible to the public.

The Represent Act addresses only the civil justice system, and not criminal laws.

Stops 21st (and 20th) Century Corporate Abuses.

The Represent Act prohibits unlawful, unfair, or deceptive practices. It:

- Gets rid of unexpected and expensive fees that plague almost every transaction a consumer enters into.
- Ends the customer service nightmare by requiring corporations to connect consumers with a live human being to talk to within ten minutes - and designate an executive level corporate officer if the problem can't be quickly resolved.
- Prohibits the tech firms and other corporations from plundering and profiting off of our personal information.
- Stops the weaponization of people's personal information through secret algorithms that decide whether people get a job, housing, medical care, education, or even to return a defective product to the store.
- Requires manufacturers of "connected" devices like cars, toasters, or toys to give consumers the ability to turn off the surveillance.
- Prevents frustrating and expensive delivery and shipping issues when shopping online.

- Eliminates the fallacy of “consent,” barring corporations from using interminable and confusing contracts or “terms of service” to limit or take away consumers’ rights.
- Caps interest rates at 10%.
- Requires e-honesty in online reviews so consumers can make informed decisions when shopping.
- Makes sure consumers do not get scammed when signing up for subscriptions, buying warranties, or using gift cards.
- Outlaws rebates.
- Makes digital discrimination illegal – and easier to prove – in any type of consumer transaction.
- Gives consumers the right to buy parts to repair their own products.

Maximum Compensation, Bigger Civil Penalties.

The Represent Act proposes strong remedies and civil punishment that will fully compensate consumers and deter corporations from breaking the law.

- **Compensate people in full – including for wasted time.** When businesses violate the Represent Act, they have to pay consumers not just for the money they lost, but also punitive damages for deliberate violations of the law, compensation for emotional distress, and the return of profits. And consumers often spend hours, days, or weeks trying to resolve problems through customer service – at a cost that corporations never reimburse. The Represent Act recognizes that time itself is a scarce resource for average people: it makes a defendant liable for the time (at \$100 per hour) a consumer has to spend trying to fix a problem.
- **Automatic minimum payments every time a company violates the law.** Court decisions allow corporations to escape financial responsibility when their victims lose small sums of money or their harm is not easily quantified (for example, in privacy invasions, data breaches, or the secret application of unfair algorithms). The Represent Act requires payment of “statutory damages” – a minimum of at least \$1,000 per person – that must be paid by the wrongdoer.

- **Holds corporate executives personally liable in civil court for corporate misconduct.** Even under today's laws, corporate executives are at least theoretically responsible for their decisions and the actions of a corporation. In practice, however, corporate decisionmakers, and the personnel who enable their actions, are rarely held accountable when they cause harm. The Represent Act requires civil courts to hold such individuals personally liable.
- **Limits unjust corporate defenses.** Corporations accused of wrongdoing are allowed to assert a variety of defenses – many created by courts, not the legislature – to escape civil liability. The Represent Act prevents corporations from invoking unjust defenses to shield themselves from accountability. In particular, it greatly limits the ability of corporations to get lawsuits thrown out on the ground that a government agency regulates their industry.
- **Encourages and compensates corporate whistleblowers.** Whistleblower employees play an important role in exposing dangerous and harmful corporate conduct. Workers at big corporations may not come forward with proof of corporate lawbreaking because they are afraid of retribution. The Represent Act protects whistleblowers from retaliation by the corporation and incentivizes them to speak out by compensating them.

Guarantees “Justice for All.”

- **Makes it easier for citizens and nonprofits to hold corporations accountable in court, even if they are not harmed.** So-called “standing” requirements – often created by the courts, not legislatures - restrict who can bring a lawsuit and on what grounds. They have served to shield corporate misconduct and government malfeasance for decades. By empowering *all* citizens and nonprofit organizations to bring lawsuits challenging corporate abuse – regardless of whether they themselves were harmed – The Represent Act will allow consumers, workers, environmentalists, human rights activists, individuals with disabilities, seniors, and other vulnerable and marginalized groups to bring lawsuits to enforce the law, stop illegal activity, and remedy those who have been harmed. No longer will consumers need to rely exclusively on underfunded or disinterested government agencies.
- **Restores the cherished right to a trial by jury.** With the U.S. Supreme Court's blessing, almost all corporations ban consumers from bringing a class action lawsuit in court and instead require them to bring their cases individually against the company in a private arbitration proceeding overseen by a judge chosen and paid by the company. The Represent Act calls for the restoration of Americans' right to their

day in court, on behalf of themselves or a group of other consumers. (The Act also requires companies to disclose information regarding the arbitration proceedings they sponsor, lifting the veil on the data that reveals the notorious advantage that private judging gives corporations.)

- **Requires public transparency and access to court proceedings.** Obtaining information about court proceedings online can be costly and confusing process for the public. The Represent Act opens judicial proceedings to public scrutiny: virtually all documents filed in court cases must be made public and free to access online. It requires corporate defendants to fully disclose records of their wrongdoing to protect public health and safety.

Class Actions Rebooted.

Lawsuits for violations of The Represent Act brought on behalf of a group of consumers are called “Representative Actions.” Representative Actions reconceive class action litigation.

- **Eliminates barriers to litigation on behalf of groups of injured consumers.** Courts and legislatures have made legal standards to prosecute a case on behalf of a group difficult to meet, undermining the strength of the case and forcing consumers into flawed settlements – or preventing meritorious cases from moving forward at all. The Represent Act eliminates one of the most inefficient and onerous procedural hurdles to class actions today: the “class certification” process. It defines new, more easily met standards for obtaining compensation on behalf of groups of injured people and proposes streamlined court procedures for these new Representative Actions.
- **Outlaws “red flag” provisions in settlements.** The Represent Act prohibits specific terms in settlements that discourage consumer participation and undermine public confidence in class actions, such as:
 - Requiring a consumer to fill out unnecessary paperwork to receive compensation from the settlement;
 - Giving consumers a “coupon” that can only be used to purchase products from the defendant;
 - Allowing defendants to keep unclaimed or unpaid money intended for consumers; and
 - Granting defendants immunity from liability beyond what they were sued for.

- **Ensures everyone gets paid by settlements.** Defendants often try to negotiate settlements that require consumers to submit a “claim form” in order to receive their compensation. It is not unusual for only a small fraction of the total number of affected consumers to submit these forms: most participation rates range between zero and roughly 20%. The Represent Act requires that settlement money be sent directly to consumers without making them fill out paperwork if the affected consumers can be identified and located. In situations where paperwork is truly necessary in order to get payments to consumers, The Represent Act mandates participation rate benchmarks so that the maximum number of victims get the compensation to which they are entitled.
- **Improve settlement notices.** A key element of any class action settlement is notifying the consumers who were victimized about the terms of the proposed settlement. Many notices are written in incomprehensible legal jargon, or formatted so poorly that they are ignored. The Represent Act mandates detailed rules for the language used in notices, how notices are sent to consumers, and the form and content of notices – so that consumers know how to get compensation they are entitled to, and the rights they may be giving up by participating in a settlement.
- **Encourages diversity and participation in representative actions.** Research has shown that the same plaintiffs’ lawyers are chosen to lead most class action cases in the United States. The Represent Act provides a new procedure that will ensure fairness, broaden participation in the process, and encourage diversity when courts decide who is in charge of group litigation.
- **Provides people with more opportunities to voice their concerns about settlements.** Consumers who tell the court what they do not like about a settlement (a.k.a. “objectors”) can play an important role in ensuring that settlements are fair, but a small number of objectors abuse the process. The Represent Act destigmatizes and incentivizes objectors who legitimately seek to improve a settlement, giving these “concerned parties” greater latitude to voice disagreements or suggestions to improve a settlement. It also encourages courts to invite nonprofits with expertise in the subject of the litigation to review settlements.
- **Requires disclosure of compliance with settlements.** Currently, once a court gives its final approval of a settlement, the parties (and their lawyers) usually move on from the dispute. There is rarely any follow-up to ensure the corporation is complying with the terms of the agreement. The Represent Act requires defendants to publicly report

their compliance with the settlement for six years after the conclusion of the proceeding, and provides penalties if the reports aren't filed.

- **Ensures consumers can get the best legal representation by requiring courts to fully compensate attorneys who have secured benefits for consumers.** The Represent Act requires that attorneys who have secured benefits for persons who are harmed by corporate misconduct are fully compensated and incentivized to do the best job they can – just like corporate lawyers are. And it eliminates potential conflicts of interest when attorneys for consumers request compensation by barring lawyers from negotiating their compensation at the same time they are negotiating compensation for their class member clients.

The Represent Act would apply to companies with gross annual revenues over \$25 million.

About #REPRESENT

#REPRESENT is a project of the Consumer Education Foundation, a California nonprofit consumer advocacy organization. Visit our website at www.representconsumers.org.