

115TH CONGRESS
1ST SESSION

H. R. 985

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2017

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend the procedures used in Federal court class actions and multidistrict litigation proceedings to assure fairer, more efficient outcomes for claimants and defendants, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Fairness in Class Action Litigation and Furthering As-
 4 bestos Claim Transparency Act of 2017”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for
 6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FAIRNESS IN CLASS ACTION LITIGATION

Sec. 101. Short title; reference; table of contents.

Sec. 102. Purposes.

Sec. 103. Class action procedures.

Sec. 104. Misjoinder of plaintiffs in personal injury and wrongful death actions.

Sec. 105. Multidistrict litigation proceedings procedures.

Sec. 106. Rulemaking authority of Supreme Court and Judicial Conference.

Sec. 107. Effective date.

TITLE II—FURTHERING ASBESTOS CLAIM TRANSPARENCY

Sec. 201. Short title.

Sec. 202. Amendments.

Sec. 203. Effective date; application of amendments.

7 **TITLE I—FAIRNESS IN CLASS**
 8 **ACTION LITIGATION**

9 **SEC. 101. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.**

10 (a) **SHORT TITLE.**—This title may be cited as the
 11 “Fairness in Class Action Litigation Act of 2017”.

12 (b) **REFERENCE.**—Whenever, in this title, reference
 13 is made to an amendment to, or repeal of, a section or
 14 other provision, the reference shall be considered to be
 15 made to a section or other provision of title 28, United
 16 States Code.

17 (c) **TABLE OF CONTENTS.**—The table of contents of
 18 this title is as follows:

- Sec. 101. Short title; reference; table of contents.
Sec. 102. Purposes.
Sec. 103. Class action procedures.
Sec. 104. Misjoinder of plaintiffs in personal injury and wrongful death actions.
Sec. 105. Multidistrict litigation proceedings procedures.
Sec. 106. Rulemaking authority of Supreme Court and Judicial Conference.
Sec. 107. Effective date.

1 **SEC. 102. PURPOSES.**

2 The purposes of this title are to—

3 (1) assure fair and prompt recoveries for class
4 members and multidistrict litigation plaintiffs with
5 legitimate claims;

6 (2) diminish abuses in class action and mass
7 tort litigation that are undermining the integrity of
8 the U.S. legal system; and

9 (3) restore the intent of the framers of the
10 United States Constitution by ensuring Federal
11 court consideration of interstate controversies of na-
12 tional importance consistent with diversity jurisdic-
13 tion principles.

14 **SEC. 103. CLASS ACTION PROCEDURES.**

15 (a) IN GENERAL.—Chapter 114 is amended by in-
16 serting after section 1715 the following:

17 **“§ 1716. Class action injury allegations**

18 “(a) IN GENERAL.—A Federal court shall not issue
19 an order granting certification of a class action seeking
20 monetary relief for personal injury or economic loss unless
21 the party seeking to maintain such a class action affirma-
22 tively demonstrates that each proposed class member suf-

1 fered the same type and scope of injury as the named class
2 representative or representatives.

3 “(b) CERTIFICATION ORDER.—An order issued under
4 Rule 23(e)(1) of the Federal Rules of Civil Procedure that
5 certifies a class seeking monetary relief for personal injury
6 or economic loss shall include a determination, based on
7 a rigorous analysis of the evidence presented, that the re-
8 quirement in subsection (a) of this section is satisfied.

9 **“§ 1717. Conflicts of interest**

10 “(a) REQUIRED DISCLOSURES.—In a class action
11 complaint, class counsel shall state whether any proposed
12 class representative or named plaintiff in the complaint
13 is a relative of, is a present or former employee of, is a
14 present or former client of (other than with respect to the
15 class action), or has any contractual relationship with
16 (other than with respect to the class action) class counsel.
17 In addition, the complaint shall describe the circumstances
18 under which each class representative or named plaintiff
19 agreed to be included in the complaint and shall identify
20 any other class action in which any proposed class rep-
21 resentative or named plaintiff has a similar role.

22 “(b) PROHIBITION OF CONFLICTS.—A Federal court
23 shall not issue an order granting certification of any class
24 action in which any proposed class representative or
25 named plaintiff is a relative or employee of class counsel.

1 “(c) DEFINITION.—For purposes of this section, ‘rel-
2 ative’ shall be defined by reference to section 3110(a)(3)
3 of title 5, United States Code.

4 “(d) EXCEPTION.—This section shall not apply to a
5 private action brought as a class action that is subject to
6 section 27(a) of the Securities Act of 1933 (15 U.S.C.
7 77z–1(a)) or section 21D(a) of the Securities Exchange
8 Act of 1934 (15 U.S.C. 78u–4(a)).

9 **“§ 1718. Class member benefits**

10 “(a) DISTRIBUTION OF BENEFITS TO CLASS MEM-
11 BERS.—A Federal court shall not issue an order granting
12 certification of a class action seeking monetary relief un-
13 less the class is defined with reference to objective criteria
14 and the party seeking to maintain such a class action af-
15 firmatively demonstrates that there is a reliable and ad-
16 ministratively feasible mechanism (a) for the court to de-
17 termine whether putative class members fall within the
18 class definition and (b) for distributing directly to a sub-
19 stantial majority of class members any monetary relief se-
20 cured for the class.

21 “(b) ATTORNEYS’ FEES IN CLASS ACTIONS.—

22 “(1) FEE DISTRIBUTION TIMING.—In a class
23 action seeking monetary relief, no attorneys’ fees
24 may be determined or paid pursuant to Rule 23(h)
25 of the Federal Rules of Civil Procedure or otherwise

1 until the distribution of any monetary recovery to
2 class members has been completed.

3 “(2) FEE DETERMINATIONS BASED ON MONE-
4 TARY AWARDS.—Unless otherwise specified by Fed-
5 eral statute, if a judgment or proposed settlement in
6 a class action provides for a monetary recovery, the
7 portion of any attorneys’ fee award to class counsel
8 that is attributed to the monetary recovery shall be
9 limited to a reasonable percentage of any payments
10 directly distributed to and received by class mem-
11 bers. In no event shall the attorneys’ fee award ex-
12 ceed the total amount of money directly distributed
13 to and received by all class members.

14 “(3) FEE DETERMINATIONS BASED ON EQUI-
15 TABLE RELIEF.—Unless otherwise specified by Fed-
16 eral statute, if a judgment or proposed settlement in
17 a class action provides for equitable relief, the por-
18 tion of any attorneys’ fee award to class counsel that
19 is attributed to the equitable relief shall be limited
20 to a reasonable percentage of the value of the equi-
21 table relief, including any injunctive relief.

22 **“§ 1719. Money distribution data**

23 “(a) SETTLEMENT ACCOUNTINGS.—In any settle-
24 ment of a class action that provides for monetary benefits,
25 the court shall order class counsel to submit to the Direc-

1 tor of the Federal Judicial Center and the Director of the
2 Administrative Office of the United States Courts an ac-
3 counting of the disbursement of all funds paid by the de-
4 fendant pursuant to the settlement agreement. The ac-
5 counting shall state the total amount paid directly to all
6 class members, the actual or estimated total number of
7 class members, the number of class members who received
8 payments, the average amount (both mean and median)
9 paid directly to all class members, the largest amount paid
10 to any class member, the smallest amount paid to any
11 class member and, separately, each amount paid to any
12 other person (including class counsel) and the purpose of
13 the payment. In stating the amounts paid to class mem-
14 bers, no individual class member shall be identified. No
15 attorneys' fees may be paid to class counsel pursuant to
16 Rule 23(h) of the Federal Rules of Civil Procedure until
17 the accounting has been submitted.

18 “(b) ANNUAL SETTLEMENT DISTRIBUTION RE-
19 PORTS.—Commencing not later than 12 months after the
20 date of enactment of this section, the Judicial Conference
21 of the United States, with the assistance of the Director
22 of the Federal Judicial Center and the Director of the Ad-
23 ministrative Office of the United States Courts, shall an-
24 nually prepare and transmit to the Committees on the Ju-
25 diciary of the Senate and the House of Representatives

1 for public dissemination a report summarizing how funds
2 paid by defendants in class actions have been distributed,
3 based on the settlement accountings submitted pursuant
4 to subsection (a).

5 **“§ 1720. Issues classes**

6 “(a) IN GENERAL.—A Federal court shall not issue
7 an order granting certification of a class action with re-
8 spect to particular issues pursuant to Rule 23(c)(4) of the
9 Federal Rules of Civil Procedure unless the entirety of the
10 cause of action from which the particular issues arise sat-
11 isfies all the class certification prerequisites of Rule 23(a)
12 and Rule 23(b)(1), Rule 23(b)(2), or Rule 23(b)(3).

13 “(b) CERTIFICATION ORDER.—An order issued under
14 Rule 23(c)(4) of the Federal Rules of Civil Procedure that
15 certifies a class with respect to particular issues shall in-
16 clude a determination, based on a rigorous analysis of the
17 evidence presented, that the requirement in subsection (a)
18 of this section is satisfied.

19 **“§ 1721. Stay of discovery**

20 “In any class action, all discovery and other pro-
21 ceedings shall be stayed during the pendency of any mo-
22 tion to transfer, motion to dismiss, motion to strike class
23 allegations, or other motion to dispose of the class allega-
24 tions, unless the court finds upon the motion of any party
25 that particularized discovery is necessary to preserve evi-

1 dence or to prevent undue prejudice to that party. This
2 section shall not apply to a private action brought as a
3 class action that is subject to section 27(a) of the Securi-
4 ties Act of 1933 (15 U.S.C. 77z–1(a)) or section 21D(a)
5 of the Securities Exchange Act of 1934 (15 U.S.C. 78u–
6 4(a)).

7 **“§ 1722. Third-party litigation funding disclosure**

8 “In any class action, class counsel shall promptly dis-
9 close in writing to the court and all other parties the iden-
10 tity of any person or entity, other than a class member
11 or class counsel of record, who has a contingent right to
12 receive compensation from any settlement, judgment, or
13 other relief obtained in the action.

14 **“§ 1723. Appeals**

15 “A court of appeals shall permit an appeal from an
16 order granting or denying class-action certification under
17 Rule 23 of the Federal Rules of Civil Procedure.”.

18 (b) CONFORMING AMENDMENT.—The table of sec-
19 tions for such chapter is amended by inserting after the
20 item pertaining to section 1715 the following:

“Sec. 1716. Class action injury allegations.

“Sec. 1717. Conflicts of interest.

“Sec. 1718. Class member benefits.

“Sec. 1719. Money distribution data.

“Sec. 1720. Issues classes.

“Sec. 1721. Stay of discovery.

“Sec. 1722. Third-party litigation funding disclosure.

“Sec. 1723. Appeals.”.

1 **SEC. 104. MISJOINDER OF PLAINTIFFS IN PERSONAL IN-**
2 **JURY AND WRONGFUL DEATH ACTIONS.**

3 Section 1447 is amended by inserting after sub-
4 section (e) the following:

5 “(f) MISJOINDER OF PLAINTIFFS IN PERSONAL IN-
6 JURY AND WRONGFUL DEATH ACTIONS.—

7 “(1) This subsection shall apply to any civil ac-
8 tion commenced in a State court in which—

9 “(A) two or more plaintiffs assert personal
10 injury or wrongful death claims;

11 “(B) the action is removed on the basis of
12 the jurisdiction conferred by section 1332(a);
13 and

14 “(C) a motion to remand is made on the
15 ground that one or more plaintiffs are citizens
16 of the same State as one or more defendants.

17 “(2) In deciding the remand motion in any such
18 case, the court shall apply the jurisdictional require-
19 ments of section 1332(a) to the claims of each plain-
20 tiff individually, as though that plaintiff were the
21 sole plaintiff in the action.

22 “(3) Except as provided in paragraph (4), the
23 court shall sever the claims that do not satisfy the
24 jurisdictional requirements of section 1332(a) and
25 shall remand those claims to the State court from
26 which the action was removed. The court shall retain

1 jurisdiction over the claims that satisfy the jurisdic-
2 tional requirements of section 1332(a).

3 “(4) The court shall retain jurisdiction over a
4 claim that does not satisfy the jurisdictional require-
5 ments of section 1332(a) if—

6 “(A) the claim is so related to the claims
7 that satisfy the jurisdictional requirements of
8 section 1332(a) that they form part of the same
9 case or controversy under Article III of the
10 United States Constitution; and

11 “(B) the plaintiff consents to the removal
12 of the claim.”.

13 **SEC. 105. MULTIDISTRICT LITIGATION PROCEEDINGS PRO-**
14 **CEDURES.**

15 Section 1407 is amended by adding at the end the
16 following:

17 “(i) ALLEGATIONS VERIFICATION.—In any coordi-
18 nated or consolidated pretrial proceedings conducted pur-
19 suant to subsection (b), counsel for a plaintiff asserting
20 a claim seeking redress for personal injury whose civil ac-
21 tion is assigned to or directly filed in the proceedings shall
22 make a submission sufficient to demonstrate that there
23 is evidentiary support (including but not limited to medical
24 records) for the factual contentions in plaintiff’s complaint
25 regarding the alleged injury, the exposure to the risk that

1 allegedly caused the injury, and the alleged cause of the
2 injury. The submission must be made within the first 45
3 days after the civil action is transferred to or directly filed
4 in the proceedings. That deadline shall not be extended.
5 Within 90 days after the submission deadline, the judge
6 or judges to whom the action is assigned shall enter an
7 order determining whether the submission is sufficient and
8 shall dismiss the action without prejudice if the submis-
9 sion is found to be insufficient. If a plaintiff in an action
10 dismissed without prejudice fails to tender a sufficient
11 submission within the following 30 days, the action shall
12 be dismissed with prejudice.

13 “(j) TRIAL PROHIBITION.—In any coordinated or
14 consolidated pretrial proceedings conducted pursuant to
15 subsection (b), the judge or judges to whom actions are
16 assigned by the Judicial Panel on Multidistrict Litigation
17 may not conduct a trial in a civil action transferred to
18 or directly filed in the proceedings unless all parties to
19 that civil action consent.

20 “(k) REVIEW OF ORDERS.—

21 “(1) IN GENERAL.—The Court of Appeals hav-
22 ing jurisdiction over the transferee district shall per-
23 mit an appeal to be taken from any order issued in
24 the conduct of coordinated or consolidated pretrial
25 proceedings conducted pursuant to subsection (b),

1 provided that the order is applicable to one or more
2 civil actions seeking redress for personal injury and
3 that an immediate appeal from the order may mate-
4 rially advance the ultimate termination of one or
5 more civil actions in the proceedings.

6 “(2) REMAND ORDERS.—Notwithstanding sec-
7 tion 1447(d), a court of appeals may accept an ap-
8 peal from an order issued in any coordinated or con-
9 solidated proceedings conducted pursuant to sub-
10 section (b) granting or denying a motion to remand
11 a civil action to the State court from which it was
12 removed if application is made to the court of ap-
13 peals within 14 days after the order is entered.

14 “(1) ENSURING PROPER RECOVERY FOR PLAIN-
15 TIFFS.—A plaintiff who asserts personal injury claims in
16 any civil action transferred to or directly filed in coordi-
17 nated or consolidated pretrial proceedings conducted pur-
18 suant to subsection (b) shall receive not less than 80 per-
19 cent of any monetary recovery obtained for those claims
20 by settlement, judgment, or otherwise, subject to the satis-
21 faction of any liens for medical services provided to the
22 plaintiff related to those claims. The judge or judges to
23 whom the coordinated or consolidated pretrial proceedings
24 have been assigned shall have jurisdiction over any dis-
25 putes regarding compliance with this requirement.”.

1 **SEC. 106. RULEMAKING AUTHORITY OF SUPREME COURT**
2 **AND JUDICIAL CONFERENCE.**

3 Nothing in this title shall restrict in any way the au-
4 thority of the Judicial Conference and the Supreme Court
5 to propose and prescribe general rules of practice and pro-
6 cedure under chapter 131 of title 28, United States Code.

7 **SEC. 107. EFFECTIVE DATE.**

8 The amendments made by the title shall apply to any
9 civil action pending on the date of enactment of this title
10 or commenced thereafter.

11 **TITLE II—FURTHERING ASBES-**
12 **TOS CLAIM TRANSPARENCY**

13 **SEC. 201. SHORT TITLE.**

14 This title may be cited as the “Furthering Asbestos
15 Claim Transparency (FACT) Act of 2017”.

16 **SEC. 202. AMENDMENTS.**

17 Section 524(g) of title 11, United States Code, is
18 amended by adding at the end the following:

19 “(8) A trust described in paragraph (2) shall, subject
20 to section 107—

21 “(A) file with the bankruptcy court, not later
22 than 60 days after the end of every quarter, a report
23 that shall be made available on the court’s public
24 docket and with respect to such quarter—

25 “(i) describes each demand the trust re-
26 ceived from, including the name and exposure

1 history of, a claimant and the basis for any
2 payment from the trust made to such claimant;
3 and

4 “(ii) does not include any confidential med-
5 ical record or the claimant’s full social security
6 number; and

7 “(B) upon written request, and subject to pay-
8 ment (demanded at the option of the trust) for any
9 reasonable cost incurred by the trust to comply with
10 such request, provide in a timely manner any infor-
11 mation related to payment from, and demands for
12 payment from, such trust, subject to appropriate
13 protective orders, to any party to any action in law
14 or equity if the subject of such action concerns li-
15 ability for asbestos exposure.”.

16 **SEC. 203. EFFECTIVE DATE; APPLICATION OF AMEND-**
17 **MENTS.**

18 (a) **EFFECTIVE DATE.**—Except as provided in sub-
19 section (b), this title and the amendments made by this
20 title shall take effect on the date of the enactment of this
21 title.

22 (b) **APPLICATION OF AMENDMENTS.**—The amend-
23 ments made by this title shall apply with respect to cases

1 commenced under title 11 of the United States Code be-
2 fore, on, or after the date of the enactment of this title.

Passed the House of Representatives March 9,
2017.

Attest:

KAREN L. HAAS,

Clerk.