

MARCH 1, 2017

RULES COMMITTEE PRINT 115–5
TEXT OF H.R. 985, FAIRNESS IN CLASS ACTION
LITIGATION AND FURTHERING ASBESTOS
CLAIM TRANSPARENCY ACT OF 2017

[Showing the text of H.R. 985 as ordered reported and H.R. 906 as reported by the Committee on the Judiciary; with conforming changes.]

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.

1 **TITLE I—FAIRNESS IN CLASS**
2 **ACTION LITIGATION**

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

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

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

11 (c) TABLE OF CONTENTS.—The table of contents of
12 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.

13 **SEC. 102. PURPOSES.**

14 The purposes of this title are to—

15 (1) assure fair and prompt recoveries for class
16 members and multidistrict litigation plaintiffs with
17 legitimate claims;

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

21 (3) restore the intent of the framers of the
22 United States Constitution by ensuring Federal

1 court consideration of interstate controversies of na-
2 tional importance consistent with diversity jurisdic-
3 tion principles.

4 **SEC. 103. CLASS ACTION PROCEDURES.**

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

7 **“§ 1716. Class action injury allegations**

8 “(a) IN GENERAL.—A Federal court shall not issue
9 an order granting certification of a class action seeking
10 monetary relief for personal injury or economic loss unless
11 the party seeking to maintain such a class action affirma-
12 tively demonstrates that each proposed class member suf-
13 fered the same type and scope of injury as the named class
14 representative or representatives.

15 “(b) CERTIFICATION ORDER.—An order issued under
16 Rule 23(c)(1) of the Federal Rules of Civil Procedure that
17 certifies a class seeking monetary relief for personal injury
18 or economic loss shall include a determination, based on
19 a rigorous analysis of the evidence presented, that the re-
20 quirement in subsection (a) of this section is satisfied.

21 **“§ 1717. Conflicts of interest**

22 “(a) REQUIRED DISCLOSURES.—In a class action
23 complaint, class counsel shall state whether any proposed
24 class representative or named plaintiff in the complaint
25 is a relative of, is a present or former employee of, is a

1 present or former client of (other than with respect to the
2 class action), or has any contractual relationship with
3 (other than with respect to the class action) class counsel.
4 In addition, the complaint shall describe the circumstances
5 under which each class representative or named plaintiff
6 agreed to be included in the complaint and shall identify
7 any other class action in which any proposed class rep-
8 resentative or named plaintiff has a similar role.

9 “(b) PROHIBITION OF CONFLICTS.—A Federal court
10 shall not issue an order granting certification of any class
11 action in which any proposed class representative or
12 named plaintiff is a relative of, is a present or former em-
13 ployee of, is a present or former client of (other than with
14 respect to the class action), or has any contractual rela-
15 tionship with (other than with respect to the class action)
16 class counsel.

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

20 **“§ 1718. Class member benefits**

21 “(a) DISTRIBUTION OF BENEFITS TO CLASS MEM-
22 BERS.—A Federal court shall not issue an order granting
23 certification of a class action seeking monetary relief un-
24 less the class is defined with reference to objective criteria
25 and the party seeking to maintain such a class action af-

1 affirmatively demonstrates that there is a reliable and ad-
2 ministratively feasible mechanism (a) for the court to de-
3 termine whether putative class members fall within the
4 class definition and (b) for distributing directly to a sub-
5 stantial majority of class members any monetary relief se-
6 cured for the class.

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

8 “(1) FEE DISTRIBUTION TIMING.—In a class
9 action seeking monetary relief, no attorneys’ fees
10 may be determined or paid pursuant to Rule 23(h)
11 of the Federal Rules of Civil Procedure or otherwise
12 until the distribution of any monetary recovery to
13 class members has been completed.

14 “(2) FEE DETERMINATIONS BASED ON MONE-
15 TARY AWARDS.—Unless otherwise specified by Fed-
16 eral statute, if a judgment or proposed settlement in
17 a class action provides for a monetary recovery, the
18 portion of any attorneys’ fee award to class counsel
19 that is attributed to the monetary recovery shall be
20 limited to a reasonable percentage of any payments
21 directly distributed to and received by class mem-
22 bers. In no event shall the attorneys’ fee award ex-
23 ceed the total amount of money directly distributed
24 to and received by all class members.

1 “(3) FEE DETERMINATIONS BASED ON EQUI-
2 TABLE RELIEF.—Unless otherwise specified by Fed-
3 eral statute, if a judgment or proposed settlement in
4 a class action provides for equitable relief, the por-
5 tion of any attorneys’ fee award to class counsel that
6 is attributed to the equitable relief shall be limited
7 to a reasonable percentage of the value of the equi-
8 table relief, including any injunctive relief.

9 **“§ 1719. Money distribution data**

10 “(a) SETTLEMENT ACCOUNTINGS.—In any settle-
11 ment of a class action that provides for monetary benefits,
12 the court shall order class counsel to submit to the Direc-
13 tor of the Federal Judicial Center and the Director of the
14 Administrative Office of the United States Courts an ac-
15 counting of the disbursement of all funds paid by the de-
16 fendant pursuant to the settlement agreement. The ac-
17 counting shall state the total amount paid directly to all
18 class members, the actual or estimated total number of
19 class members, the number of class members who received
20 payments, the average amount (both mean and median)
21 paid directly to all class members, the largest amount paid
22 to any class member, the smallest amount paid to any
23 class member and, separately, each amount paid to any
24 other person (including class counsel) and the purpose of
25 the payment. In stating the amounts paid to class mem-

bers, no individual class member shall be identified. No attorneys' fees may be paid to class counsel pursuant to Rule 23(h) of the Federal Rules of Civil Procedure until the accounting has been submitted.

“(b) ANNUAL SETTLEMENT DISTRIBUTION REPORTS.—Commencing not later than 12 months after the date of enactment of this section, 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 annually prepare and transmit to the Committees on the Judiciary of the Senate and the House of Representatives for public dissemination a report summarizing how funds paid by defendants in class actions have been distributed, based on the settlement accountings submitted pursuant to subsection (a).

“§ 1720. Issues classes

“(a) IN GENERAL.—A Federal court shall not issue an order granting certification of a class action with respect to particular issues pursuant to Rule 23(c)(4) of the Federal Rules of Civil Procedure unless the entirety of the cause of action from which the particular issues arise satisfies all the class certification prerequisites of Rule 23(a) and Rule 23(b)(1), Rule 23(b)(2), or Rule 23(b)(3).

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

7 **“§ 1721. Stay of discovery**

8 “In any class action, all discovery and other pro-
9 ceedings shall be stayed during the pendency of any mo-
10 tion to transfer, motion to dismiss, motion to strike class
11 allegations, or other motion to dispose of the class allega-
12 tions, unless the court finds upon the motion of any party
13 that particularized discovery is necessary to preserve evi-
14 dence or to prevent undue prejudice to that party.

15 **“§ 1722. Third-party litigation funding disclosure**

16 “In any class action, class counsel shall promptly dis-
17 close in writing to the court and all other parties the iden-
18 tity of any person or entity, other than a class member
19 or class counsel of record, who has a contingent right to
20 receive compensation from any settlement, judgment, or
21 other relief obtained in the action.

22 **“§ 1723. Appeals**

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

1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions for such chapter is amended by inserting after the
3 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.”.

4 **SEC. 104. MISJOINDER OF PLAINTIFFS IN PERSONAL IN-**
5 **JURY AND WRONGFUL DEATH ACTIONS.**

6 Section 1447 is amended—

7 (1) by redesignating subsection (d) as sub-
8 section (e);

9 (2) by redesignating subsection (e) as sub-
10 section (f); and

11 (3) by inserting after subsection (c) the fol-
12 lowing:

13 “(d) MISJOINDER OF PLAINTIFFS IN PERSONAL IN-
14 JURY AND WRONGFUL DEATH ACTIONS.—

15 “(1) This subsection shall apply to any civil ac-
16 tion in which—

17 “(A) two or more plaintiffs assert personal
18 injury or wrongful death claims;

19 “(B) the action is removed on the basis of
20 the jurisdiction conferred by section 1332(a);
21 and

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

4 “(2) In deciding the remand motion in any such
5 case, the court shall apply the jurisdictional require-
6 ments of section 1332(a) to the claims of each plain-
7 tiff individually, as though that plaintiff were the
8 sole plaintiff in the action.

9 “(3) The court shall sever the claims that do
10 not satisfy the jurisdictional requirements of section
11 1332(a) and shall remand those claims to the State
12 court from which the action was removed. The court
13 shall retain jurisdiction over the claims that satisfy
14 the jurisdictional requirements of section 1332(a).”.

15 **SEC. 105. MULTIDISTRICT LITIGATION PROCEEDINGS PRO-**
16 **CEDURES.**

17 Section 1407 is amended by adding at the end the
18 following:

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

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

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

23 “(k) REVIEW OF ORDERS.—

24 “(1) IN GENERAL.—The Court of Appeals hav-
25 ing jurisdiction over the transferee district shall per-

1 mit an appeal to be taken from any order issued in
2 the conduct of coordinated or consolidated pretrial
3 proceedings conducted pursuant to subsection (b),
4 provided that an immediate appeal from the order
5 may materially advance the ultimate termination of
6 one or more civil actions in the proceedings.

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

15 “(1) ENSURING PROPER RECOVERY FOR PLAIN-
16 TIFFS.—The claimants in any civil action asserting a
17 claim for personal injury transferred to or directly filed
18 in coordinated or consolidated pretrial proceedings con-
19 ducted pursuant to subsection (b) shall receive not less
20 than 80 percent of any monetary recovery obtained in that
21 action by settlement, judgment or otherwise. The judge
22 or judges to whom the coordinated or consolidated pretrial
23 proceedings have been assigned shall have jurisdiction over
24 any disputes regarding compliance with this require-
25 ment.”.

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.

