

## Union Calendar No. 11

115<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 985

[Report No. 115-25]

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.

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### IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 2017

Mr. GOODLATTE introduced the following bill; which was referred to the Committee on the Judiciary

MARCH 7, 2017

Additional sponsors: Mr. SESSIONS and Mr. GROTHMAN

MARCH 7, 2017

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

# **A BILL**

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,*

3 **SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CON-**  
4 **TENTS.**

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

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

12        (c) **TABLE OF CONTENTS.**—The table of contents of  
13 this Act is as follows:

- Sec. 1. Short title; reference; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Class action procedures.
- Sec. 4. Misjoinder of plaintiffs in personal injury and wrongful death actions.
- Sec. 5. Multidistrict litigation proceedings procedures.
- Sec. 6. Rulemaking authority of Supreme Court and Judicial Conference.
- Sec. 7. Effective date.

14 **SEC. 2. PURPOSES.**

15        The purposes of this Act are to—

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

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

1           (3) restore the intent of the framers of the  
2           United States Constitution by ensuring Federal  
3           court consideration of interstate controversies of na-  
4           tional importance consistent with diversity jurisdic-  
5           tion principles.

6 **SEC. 3. CLASS ACTION PROCEDURES.**

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

9 **“§ 1716. Class action injury allegations**

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

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

23 **“§ 1717. Conflicts of interest**

24           “(a) REQUIRED DISCLOSURES.—In a class action  
25           complaint, class counsel shall state whether any proposed

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

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

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

22 **“§ 1718. Class member benefits**

23 “(a) DISTRIBUTION OF BENEFITS TO CLASS MEM-  
24 BERS.—A Federal court shall not issue an order granting  
25 certification of a class action seeking monetary relief un-

1 less the class is defined with reference to objective criteria  
2 and the party seeking to maintain such a class action af-  
3 firmatively demonstrates that there is a reliable and ad-  
4 ministratively feasible mechanism (a) for the court to de-  
5 termine whether putative class members fall within the  
6 class definition and (b) for distributing directly to a sub-  
7 stantial majority of class members any monetary relief se-  
8 cured for the class.

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

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

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

1       ceed the total amount of money directly distributed  
2       to and received by all class members.

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

11   **“§ 1719. Money distribution data**

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

1 other person (including class counsel) and the purpose of  
2 the payment. In stating the amounts paid to class mem-  
3 bers, no individual class member shall be identified. No  
4 attorneys' fees may be paid to class counsel pursuant to  
5 Rule 23(h) of the Federal Rules of Civil Procedure until  
6 the accounting has been submitted.

7       “(b) ANNUAL SETTLEMENT DISTRIBUTION RE-  
8 PORTS.—Commencing not later than 12 months after the  
9 date of enactment of this Act, the Judicial Conference of  
10 the United States, with the assistance of the Director of  
11 the Federal Judicial Center and the Director of the Ad-  
12 ministrative Office of the United States Courts, shall an-  
13 nually prepare and transmit to the Committees on the Ju-  
14 diciary of the Senate and the House of Representatives  
15 for public dissemination a report summarizing how funds  
16 paid by defendants in class actions have been distributed,  
17 based on the settlement accountings submitted pursuant  
18 to subsection (a).

19 **“§ 1720. Issues classes**

20       “(a) IN GENERAL.—A Federal court shall not issue  
21 an order granting certification of a class action with re-  
22 spect to particular issues pursuant to Rule 23(c)(4) of the  
23 Federal Rules of Civil Procedure unless the entirety of the  
24 cause of action from which the particular issues arise sat-



1 isfies all the class certification prerequisites of Rule 23(a)  
2 and Rule 23(b)(1), Rule 23(b)(2), or Rule 23(b)(3).

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

9 **“§ 1721. Stay of discovery**

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

17 **“§ 1722. Third-party litigation funding disclosure**

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

1 **“§ 1723. Appeals**

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

5 **SEC. 4. MISJOINDER OF PLAINTIFFS IN PERSONAL INJURY**  
6 **AND WRONGFUL DEATH ACTIONS.**

7 Section 1447 is amended—

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

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

12 (3) by inserting after subsection (e) the fol-  
13 lowing:

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

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

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

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

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

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

6           “(3) The court shall sever the claims that do  
7 not satisfy the jurisdictional requirements of section  
8 1332(a) and shall remand those claims to the State  
9 court from which the action was removed. The court  
10 shall retain jurisdiction over the claims that satisfy  
11 the jurisdictional requirements of section 1332(a).”.

12 **SEC. 5. MULTIDISTRICT LITIGATION PROCEEDINGS PROCE-**  
13 **DURES.**

14           (a) IN GENERAL.—Chapter 87 is amended by adding  
15 to section 1407 the following:

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

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

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

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 an immediate appeal from the order  
2 may materially advance the ultimate termination of  
3 one or more civil actions in the proceedings.

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

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

1 **SEC. 6. RULEMAKING AUTHORITY OF SUPREME COURT**  
2 **AND JUDICIAL CONFERENCE.**

3 Nothing in this Act 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. 7. EFFECTIVE DATE.**

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



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115<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 985**

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