

Blog Entry: The House Has Passed H.B.985: The Fairness in Class Action Litigation Act of 2017

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On March 9, 2017, at 6:53 p.m., by a vote of 220 to 201, with seven abstentions, the House of Representatives passed The Fairness in Class Action Litigation Act of 2017. All 220 “ayes” were Republicans and of the “nays,” 187 were Democrats and 14 were Republicans. As for the speed of its passage, consider this: the bill was introduced in the House on February 9, 2017.

The full text of the bill as passed by the House can be found at <https://goo.gl/41J04k>. Here are some highlights (all emphases added):

- **The bill would heighten class movant’s burden.** It would prohibit federal courts from certifying personal injury or economic loss class actions seeking monetary relief “unless the party seeking to maintain such a class action *affirmatively* demonstrates that *each* proposed class member suffered the same type *and* scope of injury as the named class representative or representatives.”
- **It would heighten the court’s duties when certifying a class.** Every class certification order issued by a federal court in a case seeking monetary relief for personal injury or economic loss “*shall* include a determination, based on a rigorous analysis of the evidence presented,” that *each* proposed class member suffered the same type *and* scope of injury as the named class representative or representatives.
- **It would impose certain disclosure requirements upon class counsel.** In every class action complaint filed in federal court, class counsel would be required to “describe the circumstances under which each class representative or named plaintiff agreed to be included in the complaint and ... identify any other class action in which any proposed class representative or named plaintiff has a similar role.”
- **It would restrict *when* class counsel can be paid.** Under the bill, no attorneys’ fees may be “determined *or* paid” in federal class actions seeking monetary relief “until the distribution of any monetary recovery to class members has been *completed*.”
- **It would restrict *how much* class counsel can be paid.** If a federal class action judgment or proposed settlement “provides for a monetary recovery,” any attorney fee award to class counsel attributable to the monetary recovery would be “limited to a reasonable percentage of any payments directly distributed to *and* received by class members.” And “in no event shall the attorneys’ fee award exceed the total amount of money directly distributed to and received by all class members.” An exception would exist in cases where another federal statute allows otherwise.
- **It would limit the court’s ability to certify “particular issues” class actions.** Federal courts would be unable to enter class certification orders on “particular issues... unless the

entirety of the cause of action from which the particular issues arise satisfies” various requirements in Rules 23(a) and (b).

- **It would stay almost all discovery and other case activity pending the disposition of certain motions.** The bill provides that “all discovery and other proceedings *shall be stayed* during the pendency of any motion to transfer, motion to dismiss, motion to strike class allegations, or other motion to dispose of the class allegations” *unless* the court determines upon either party’s motion “that particularized discovery is necessary to preserve evidence or to prevent undue prejudice.”

- **It would establish mandatory federal appellate jurisdiction over orders granting or denying class certification:** The bill provides that federal appeals court “*shall* permit an appeal from an order granting or denying class-action certification under Rule 23 of the Federal Rules of Civil Procedure.”

The bill now goes to the Senate. We’ll keep you posted.