



## H.R. 1927—Fairness in Class Action Litigation Act of 2015 (Rep. Goodlatte, R-VA)

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### FLOOR SCHEDULE:

Scheduled for consideration on January 8, 2016, under a structured [rule](#).

### TOPLINE SUMMARY:

[H.R.1927](#) would amend the federal judicial code to prevent federal courts from certifying a class seeking monetary relief for economic loss or personal injury, unless the party maintaining the class action suit certifies each member of the class action has suffered a similar injury in type and scope as the injury of the named representative. This legislation would also amend the Bankruptcy Code to provide for transparency from bankruptcy trusts created to pay asbestos claims.

### COST:

The Congressional Budget Office (CBO) [estimates](#) that implementing H.R. 1927 would not cause significant costs to federal courts.

The CBO [estimates](#) that implementing the asbestos trust provisions of the bill would have no significant effect on the federal budget.

### CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### DETAILED SUMMARY AND ANALYSIS:

According to the Committee [report](#), federal class action rules presently require that the class in question have questions of law and fact in common, and that the claims and defenses of the class are “typical” for the class. Despite this requirement, courts have at times allowed classes to be certified when they do not actually share a comparable injury of the same type and scope. Combining uninjured and injured parties greatly expands the class size, increases the pressure to settle, and often creates higher prices for consumers, who are essentially forced to bear the brunt of companies offsetting the cost of litigation. Lumping parties together also often decreases recovery for actually injured parties, as resources get directed to the uninjured.

H.R. 1927 would prohibit a federal court from certifying any class seeking monetary damages from personal injury or economic loss, unless the parties of the class demonstrate each member shares the same type and scope of injury as the named representative of the class. Uninjured or lesser injured parties can still file class action suits, they will just have to do so separately.

An order issued under [Rule 23\(c\)\(1\) of the Federal Rules of Civil Procedure](#) that certifies a class seeking monetary damages for economic loss or personal injury would be required to include a determination, using an analysis of the evidence presented, that the requirements of this legislation are met. To do so, the plaintiff would be required to present evidence of a common, class-wide injury. The plaintiff would be permitted to use discovery to seek basic information from the defendant, which could then be used to show that class members share a similar injury. Expert testimony would then be used to demonstrate that the injury is common across the entire class.

Section 3 of this legislation, the text of H.R. 526, the [Furthering Asbestos Claim Transparency \(FACT\) Act of 2015](#), would amend [Title 11, section 524](#) of the U.S. Code to require a trust created to address asbestos claims to file a public report with the bankruptcy court each quarter, detailing the name and exposure history of any one that has filed a claim with such trust, and any payments made to any claimants, including the basis for making payments. It would also require each trust to provide upon written request, any information related to demands for payment to any party in an action involving asbestos exposure in addition to information on payment form.

According to the Committee [report](#), asbestos litigation is the longest-running mass tort litigation in the United States. In the past, those exposed only had recourse through worker's compensation claims, however, following a Fifth Circuit decision in 1973 allowing liability suits, the volume of asbestos litigation exploded. Though this volume does include those grievously injured by asbestos exposure, it has also given rise to a number of suits by individuals with nonmalignant injuries, including those with little-to-no functional impairment. Comprehensive resolution to asbestos litigation has yet to be reached.

## **AMENDMENTS:**

1. [Deutch \(R-FL\)](#) — This amendment would create an exception for claims brought by gun owners who are seeking relief for defective design or manufacturing of a gun.
2. [Nadler \(D-NY\)](#) — This amendment would replace the requirement for asbestos trusts to disclose detailed personal information with aggregate reports of demands received and payments issued by the trust.
3. [Cohen \(D-TN\)](#) — This amendment would create an exception from the bill's required showings for class certification for victims seeking monetary damages against perpetrators of terrorist attacks.
4. [Cohen \(D-TN\)](#) — This amendment would make an exception from the bill's required showings for class certification for claims arising from foreign-made products.
5. [Conyers \(D-MI\)](#) — This legislation would make an exception from the bill's required showings for class certification for claims pursuant to [Title VII](#) of the Civil Rights Act.
6. [Johnson \(D-GA\)](#) — This amendment would strike the language referring to "scope" and "economic loss" from the legislation.
7. [Moore \(D-WI\)](#) — This amendment would exempt causes of action stemming from the [Fair Housing Act](#) or the [Equal Credit Opportunity Act](#) from the requirements of the legislation.
8. [Moore \(D-WI\)](#) — This amendment would exempt causes of action stemming from pay equity claims under [Title VII](#) of the Civil Rights Act or the [Equal Pay Act](#) from the requirements of the legislation.
9. [Jackson Lee \(D-TX\)](#) — This amendment would provide litigants that are in pending class action suits access to information held in a trust that is directly related to a plaintiff's claim for asbestos exposure.
10. [Waters \(D-CA\)](#) — This amendment would exempt claims brought by service members, students, and veterans who are seeking relief from higher education institutions that have engaged in unfair practices and fraudulent activities.

## **GROUPS IN SUPPORT**

Institute for Legal Reform

## **COMMITTEE ACTION:**

H.R. 1927 was introduced on April 22, 2015 and was referred to the House Committee on the Judiciary, where it was reported favorably on November 5, 2015. H.R. 526 was introduced on January 26, 2015, and was referred to the House Committee on the Judiciary, where it was reported favorably on November 30, 2015.

## **ADMINISTRATION POSITION:**

A Statement of Administration Policy can be found [here](#).

## **CONSTITUTIONAL AUTHORITY:**

According to the sponsor, Congress has the power to enact H.R. 1927 pursuant to: Article I, Section 8, Clause 9; Article III, Section 1, Clause 1; and Article III, Section 2, Clause 2 of the Constitution, which grant Congress authority over federal courts.

According to the sponsor, Congress has the power to enact H.R. 526 pursuant to the following: Article I, Section 8, clause 3 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause "to regulate Commerce with foreign Nations, and among the several States, and with Indian tribes;" Article I, Section 8, clause 4 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause "to establish . . . uniform Laws on the subject of Bankruptcies throughout the United States;" and Article I, Section 8, clause 18 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

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