

CHICAGO LAWYER

MAY 2017

CLIFFORD'S NOTES

N

ational Consumer Protection Week began in 1998 for the purpose of devoting a week to a series of consumer education initiatives. It was organized by a broad coalition of

public and private consumer protection advocates and was spearheaded by the Federal Trade Commission.

Every first full week of March, the president signs a proclamation declaring it National Consumer Protection Week.

In 2017, while President Donald Trump signed a pro forma proclamation that paid lip service to augmenting consumer rights, Congress was busy trying to eliminate consumers' rights in a series of bills that was being rushed through the House and on to the Senate in preparation for Trump's signature.

These bills gut laws that protect consumers from corporate wrongdoing. For example, HR 985, the so-called Fairness in Class Action Litigation Act, is an expansive bill that would eviscerate every type of class action brought in federal court, and instead, protect corporate wrongdoing. The bill, which passed the House, would permit class-action lawsuits to proceed only if every person in the class had "an injury of the same type and scope," an impossible requirement.

Instead of holding corporations accountable for when their products cause harm to consumers — whether it be talc that causes cancer in women, lead-painted toys that poison unsuspecting children or even the debacle to which Volkswagen admitted regarding cars it promoted as energy efficient that were instead intentionally rigged to beat the emissions system — all of these could no longer be filed under this proposed new law, and consumers would wind up paying the bill for corporations misleading the public.

HR 895 was introduced Feb. 9 and exactly one month later, March 9, the bill passed by a vote of 220-201 without any hearings or debate. It awaits Senate action.

Congress also seeks to cap damages at \$250,000 in medical-malpractice cases involving individuals who are insured under Medicare, Medicaid, veterans or military health plans as well as the Affordable Care Act. The House Judiciary Committee approved the legislation, HR 1215, by a close vote, 18-17, that shields negligent doctors, hospitals and nursing homes and their insurance companies. It's deceptively called the Protecting to Access to Care Act and is now heading to the full House for a vote.

Under the guise of protecting negligent health-care providers, the Republican-controlled Congress is seizing the moment to strip consumers of their constitutional right to a trial by jury to determine the amount of damages to which a plaintiff is entitled. The legislation even goes so far as to protect medical device makers who sell dangerous or defective products and pharmaceutical companies that harm patients with Food and Drug Administration-approved drugs.



WORD FROM WASHINGTON

While consumer rights get lip service, D.C. pushes another agenda

By BOB CLIFFORD

Lobbyists are taking advantage of the situation on the Hill. The *New York Times* recently reported that the health-care industry last year alone spent \$563 million on lobbying bills that further their corporate cause. Victims of malpractice do not have similar well-heeled lobbying groups. Instead, on their behalf, trial lawyers made great effort to communicate their message to Congress and have spent \$6 million last year by comparison, according to one source.

No evidence has been presented that stripping Americans of their rights when holding wrongdoers accountable actually lowers the cost of insurance. In fact, studies have concluded that limiting consumer and patient rights may actually increase costs to patients. No one is safe when negligent health-care providers, nursing homes and drug companies are allowed to injure or kill patients without consequences, without justice.

HR1215's arbitrary cap would limit a victim's recovery for pain and suffering, disability and disfigurement (so-called noneconomic damages) would most impact the elderly, minorities and children. The Illinois Supreme Court has ruled three times that a similar law was unconstitutional, as have courts in other states.

And yet another bill, HR 725 ironically named the Innocent Party Protection Act, passed on the fourth roll call vote in the House by a vote of 224-

194 on March 9. At this writing, it is in the Senate Judiciary Committee. This bill allows for corporate forum-shopping, tilting the playing field in favor of large corporate defendants and against plaintiffs who traditionally have been allowed to choose the most appropriate forum.

What the bill actually does is allow the corporate Goliaths to move cases to already overcrowded federal court dockets and away from qualified state court judges, thereby making it more difficult and more expensive for individuals to hold powerful corporations accountable for their wrongdoing, particularly when many states have enacted laws designed to protect their citizens.

Every lawyer needs to know that these bills are the most comprehensive effort at tort reform in more than a decade. And corporate America and the insurance industry aren't finished yet. More onerous bills are in the pipeline. The only way to prevent these unfair bills from becoming law is to be informed so you can show your fellow citizens and elected representatives that these bills are wrong and are bad for American citizens. [CL](#)

Bob Clifford is the founder of Clifford Law Offices. He practices personal injury and regularly handles complex damage cases.
rclifford@cliffordlaw.com