

113TH CONGRESS
2D SESSION

H. R. 5088

To amend title 38, United States Code, to establish procedures for class actions at the Court of Appeals for Veterans Claims, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2014

Mr. MURPHY of Florida (for himself and Mr. JOLLY) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to establish procedures for class actions at the Court of Appeals for Veterans Claims, 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.**

4 This Act may be cited as the “Responsive and Effi-
5 cient Appeals Courts for Heroes Act of 2014”.

6 **SEC. 2. CLASS ACTIONS BEFORE COURT OF APPEALS FOR**
7 **VETERANS CLAIMS.**

8 (a) **AUTHORITY FOR COURT OF APPEALS FOR VET-**
9 **ERANS CLAIMS TO HEAR CLASS ACTIONS.**—Subchapter

1 II of chapter 72 of title 38, United States Code, is amend-
2 ed by adding at the end the following new section:

3 **“§ 7270. Class actions**

4 “(a) IN GENERAL.—The Court, acting as a panel or
5 en banc, may hear class action appeals in accordance with
6 this section.

7 “(b) PREREQUISITES.—One or more appellants may
8 bring an action under this chapter as the representative
9 party of a class on behalf of all members of the class only
10 if the following criteria are met:

11 “(1) There is at least one question of law or
12 fact common to the class.

13 “(2) The class is likely to consist of at least 50
14 members.

15 “(3) The resolution of the common questions of
16 law or fact is likely to have a material effect on the
17 claims of the members of the class (including with
18 respect to the process by which such claims are ad-
19 judicated).

20 “(4) The representative party will fairly and
21 adequately protect the interests of the class.

22 “(c) CERTIFICATION PROCEDURE.—(1) Not later
23 than 60 days after the date on which an appellant has
24 filed an appeal, the appellant may file a motion with the
25 Court to certify the appeal as a class action with respect

1 to an issue that the appellant intends to raise on appeal.
2 Such motion shall address the prerequisites under sub-
3 section (b), including by defining the class described in
4 paragraph (2) of such subsection. The Court may waive
5 such 60-day period for good cause shown, including with
6 respect to instances where the appellant determined the
7 appropriateness of the class action procedure as a result
8 of the pleadings filed in the appeal after the filing of the
9 notice of appeal.

10 “(2)(A) Upon the filing of a motion under paragraph
11 (1), the Secretary shall—

12 “(i) make reasonable efforts to determine the
13 approximate number of individuals with pending
14 claims for benefits for whom class certification is
15 sought under such motion; and

16 “(ii) file a response to such motion that—

17 “(I) includes the approximate number of
18 individuals determined under subparagraph (A),
19 including the efforts made by the Secretary to
20 carry out such subparagraph (A); and

21 “(II) addresses the prerequisites under
22 subsection (b).

23 “(B) The appellant may file a response to the re-
24 sponse of the Secretary under subparagraph (A).

1 “(3) At an early practicable time after an appellant
2 has filed a motion under paragraph (1) to certify the ap-
3 peal as a class action and the Secretary has filed a re-
4 sponse under paragraph (2)(A), the Court, acting as a
5 panel or en banc, shall determine by order whether to
6 grant class certification with respect to an issue consid-
7 ered under the appeal and allow the appellant to act as
8 the representative party of the class. Such order shall—

9 “(A) address the prerequisites under subsection
10 (b); and

11 “(B) if such class certification is granted under
12 the order—

13 “(i) define, with specificity, the class and
14 issue for which the class is certified; and

15 “(ii) appoint counsel for the class under
16 subsection (e).

17 “(4) The Court, acting as a panel or en banc, may
18 alter or amend an order issued under this section before
19 final judgment as justice so requires.

20 “(5) An order granting class action under paragraph
21 (3) shall direct the Secretary to notify members of the
22 class who are reasonably identifiable in a form the Court
23 determines practicable. Such notice shall state clearly,
24 concisely, and in plain language—

25 “(A) a definition of the class certified;

1 “(B) a statement of the common questions of
2 law or fact that will be subject to resolution by the
3 Court on a class basis;

4 “(C) that a member of the class may enter an
5 appearance through an attorney or nonattorney
6 practitioner if the member so desires but such action
7 is not necessary;

8 “(D) any other matters the Court determines
9 appropriate.

10 “(6) In determining the class under paragraph (3),
11 the Court may only include individuals who have, as of
12 the date of the entry of judgment of the Court on the
13 class action, filed a claim and such claim has not been
14 finally resolved, including any appeals from a denial of
15 such claim.

16 “(7) Any judgment in a class action (whether favor-
17 able or unfavorable to the class) shall include a description
18 of the issue decided, the resolution of the issue, and the
19 individual to whom notice of the certification of the action
20 was directed.

21 “(d) CONDUCT OF APPEAL.—(1) In hearing a class
22 action, the Court may issue such orders as are necessary
23 for the efficient and fair resolution of the action, including
24 with respect to—

1 “(A) the determination of the manner in which
2 proceedings will be conducted in order to advance
3 the resolution of the common questions of law or
4 fact;

5 “(B) whether additional notices should be made
6 to members of the class concerning the status of the
7 appeal or any other matter the Court determines ap-
8 propriate;

9 “(C) whether the individual claims of members
10 of the class should be stayed pursuant to paragraph
11 (2) or any other orders the Court determines appro-
12 priate with respect to the maintenance of such indi-
13 viduals claims; and

14 “(D) any other matter the Court determines
15 appropriate.

16 “(2) The Court may stay, in whole or in part, the
17 individual claims of members of the class, including on a
18 case-by-case basis, during the period in which the Court
19 is considering the class action. In determining whether to
20 issue such a stay, the Court shall consider—

21 “(A) the views of the parties;

22 “(B) whether issuance of such a stay would be
23 likely to decrease the time that members of the
24 class, the representatives of the class, and the Sec-

1 retary would have to expend on the individual claims
2 subject to the stay; and

3 “(C) whether such a stay is in the interests of
4 justice in order to preserve the right of the members
5 of the class to benefit from a favorable resolution of
6 the common questions of law or fact by eliminating
7 the possibility that individual claims would be finally
8 denied during the pendency of the class action.

9 “(e) CLASS COUNSEL.—(1) If the Court certifies a
10 class action, the Court shall appoint counsel to represent
11 the members of the class. Regardless of the number of
12 applicants to serve as such a class counsel, in appointing
13 such class counsel, the Court shall consider the following
14 matters:

15 “(A) The work counsel has done in identifying
16 and preparing for adjudication of the common ques-
17 tions of law or fact of the class action.

18 “(B) The experience of counsel in and knowl-
19 edge of the law concerning benefits administered
20 under this title.

21 “(C) The general experience of counsel in ap-
22 pellate litigation.

23 “(D) The record of the counsel for profes-
24 sionalism.

1 “(E) The resources that counsel will commit to
2 representing the class.

3 “(F) If an attorney, whether the counsel is a
4 member of a bar of a State in good standing.

5 “(G) Such other factors pertinent to the ability
6 of counsel to fairly and adequately represent the in-
7 terests of the class.

8 “(2) The Court may appoint an interim class counsel
9 if the Court determines such appointment necessary to
10 protect the interests of the class during the period pre-
11 ceding an appointment under paragraph (1).

12 “(3) Class counsel appointed under paragraph (1) or
13 (2), and co-counsel appointed under paragraph (4), shall
14 fairly and adequately represent the interests of the class
15 at all times.

16 “(4) If the Court determines that there is more than
17 one applicant who is qualified under paragraph (1) to
18 serve as class counsel, the Court shall appoint the counsel
19 whom the Court determines is best able to represent the
20 interests of the class. Counsel appointed under this sub-
21 section may be counsel to an organization permitted to
22 intervene under subsection (f) if such counsel meets the
23 requirements of paragraph (1).

24 “(f) INTERVENTION.—An organization named in or
25 approved under section 5902 of this title may seek leave

1 to intervene in a class action appeal. Such organization
2 may seek to intervene during the period beginning on the
3 date on which the motion is filed under paragraph (1) of
4 subsection (b) and ending on the date that is 60 days after
5 the date on which the Court grants class certification
6 under paragraph (3) of such section. The Court shall
7 grant intervention if the organization has an interest in
8 the common questions of law or fact in the class action
9 but may limit the intervention to specific matters deter-
10 mined appropriate by the Court. The Court may issue
11 such other orders concerning the conduct of an intervenor
12 as the Court determines necessary for the fair and effi-
13 cient resolution of the class action.

14 “(g) SETTLEMENT, VOLUNTARY DISMISSAL, COM-
15 PROMISE, OR AGREED UPON REMAND.—The appeal of the
16 appellant and a common issue of law or fact in a class
17 action may be settled, voluntarily dismissed, compromised,
18 or remanded by agreement only with the permission of the
19 Court. The following procedures apply to a proposed set-
20 tlement, voluntary dismissal, compromise, or agreed upon
21 remand:

22 “(1) The Court shall direct notice to all mem-
23 bers of the class who are reasonably identifiable and
24 would be bound or affected by the proposal to settle,
25 dismiss, compromise, or remand the matter.

1 “(2) If the proposal to settle, dismiss, com-
2 promise, or remand the matter would bind a member
3 of the class, the Court may approve such proposal
4 only after a hearing, for which notice is provided to
5 the class, and on findings that such proposal is fair,
6 reasonable, and adequate.

7 “(3) The parties seeing approval of a proposal
8 to settle, dismiss, compromise, or remand the matter
9 shall file a statement with the Court identifying any
10 agreement made in connection with such proposal.

11 “(4) Any member of the class may object to the
12 proposal to settle, dismiss, compromise, or remand
13 the matter under any reasonable means the Court
14 establishes for such objections and such objection
15 may only be withdrawn with the permission of the
16 Court.

17 “(h) ATTORNEYS’ FEES AND COSTS.—Counsel ap-
18 pointed under subsection (e) to represent the class, and
19 counsel for an intervenor under subsection (f), may seek
20 an award of fees and costs under section 2412 of title 28.
21 Nothing in this section shall affect any right of initial
22 counsel for the representative party from also seeking an
23 award of fees under such section.

24 “(i) APPEALS.—Any member of the class, or indi-
25 vidual who would be a member of the class if class certifi-

1 cation was granted under subsection (e)(3), may appeal
2 any decision of the Court issued under this section, includ-
3 ing an order granting or denying class certification, under
4 the terms set forth in section 7292 of this title. The
5 United States Court of Appeals for the Federal Circuit
6 shall have exclusive jurisdiction to review and decide any
7 such appeal and the provisions of subsections (d)(1) and
8 (e) of section 7292 of this title shall be applicable to such
9 appeal.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of such chapter is amended by inserting
12 after the item relating to section 7269 the following new
13 item:

“7270. Class actions.”.

14 **SEC. 3. SALARY OF JUDGES OF COURT OF APPEALS FOR**
15 **VETERANS CLAIMS.**

16 Section 7253(e) of title 38, United States Code, is
17 amended by striking “district courts” and inserting
18 “courts of appeals”.

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