

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 47

AN ACT

To amend supreme court rule 52.08, relating to class actions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Supreme court rule 52.08 is amended, to read as follows:

52.08. Class Actions

[(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the

adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action to Be Maintained - Notice - Judgment - Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this Rule 52.08(c) (1) may be conditional and may be altered or amended before the decision on the merits.

(2) In any class action maintained under Rule 52.08(b) (3), the court shall direct to the members of the class the best notice practicable under the circumstances,

including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that: (A) the court will exclude the member from the class if requested by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if desired, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under Rule 52.08(b) (1) or Rule 52.08(b) (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under Rule 52.08(b) (3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in Rule 52.08(c) (2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate an action may be brought or maintained as a class action with respect to particular issues or a class may be divided into subclasses and each subclass treated as a class, and the provisions of this Rule 52.08 shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this Rule applies, the court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of

the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) imposing conditions on the representative parties or on intervenors;

(4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(5) dealing with similar procedural matters.

The orders may be combined with an order under Rule 62, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(f) Appeals. An appellate court may permit an appeal from an order of a circuit court granting or denying class action certification under this Rule 52.08 if a petition is timely filed as provided in Rule 84.035. The filing of a petition shall not stay the proceedings in the trial court unless the trial judge or the appellate court so orders.]

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 52.08(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) Certification Order - Notice to Class Members - Judgment - Issues Classes - Subclasses.

(1) Certification Order.

(A) Time to Issue. At an early practicable time after a person sues or is sued as a class representative, the court shall determine by order whether to certify the action as a class action.

(B) Defining the Class - Appointing Class Counsel. An order that certifies a class action shall define the class and the class claims, issues, or defenses, and shall appoint class counsel under Rule 52.08(g).

(C) Altering or Amending the Order. An order that grants or denies class certification may be altered or amended before final judgment.

(2) Notice.

(A) For (b) (1) or (b) (2) Classes. For any class certified under Rule 52.08(b) (1) or Rule 52.08(b) (2), the court may direct appropriate notice to the class.

(B) For (b) (3) Classes. For any class certified under Rule 52.08(b) (3), or upon ordering notice under Rule 52.08(e) (1) to a class proposed to be certified for purposes of settlement under Rule 52.08(b) (3), the court shall direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice shall clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;
(iii) the class claims, issues, or defenses;
(iv) that a class member may enter an appearance
through an attorney if the member so desires;
(v) that the court will exclude from the class any
member who requests exclusion;
(vi) the time and manner for requesting exclusion; and
(vii) the binding effect of a class judgment on members
under Rule 52.08(c) (3).

(3) Judgment. Whether or not favorable to the class,
the judgment in a class action shall:

(A) for any class certified under Rule 52.08(b) (1) or
Rule 52.08(b) (2), include and describe those whom the court
finds to be class members; and

(B) for any class certified under Rule 52.08(b) (3),
include and specify or describe those to whom the notice
under Rule 52.08(c) (2) was directed, who have not requested
exclusion, and whom the court finds to be class members.

(4) Particular Issues. When appropriate, an action may
be brought or maintained as a class action with respect to
particular issues.

(5) Subclasses. When appropriate, a class may be
divided into subclasses that are each treated as a class
under this Rule 52.08.

(d) Conducting the Action.

(1) In General. In conducting an action under this Rule
52.08, the court may issue orders that:

(A) determine the course of proceedings or prescribe
measures to prevent undue repetition or complication in
presenting evidence or argument;

(B) require, to protect class members and fairly
conduct the action, giving appropriate notice to some or all
class members of:

(i) any step in the action;
(ii) the proposed extent of the judgment; or
(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) Combining and Amending Orders. An order under Rule 52.08(d) (1) may be altered or amended from time to time and may be combined with an order under Rule 62.01.

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class, or a class proposed to be certified for purposes of settlement, may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) Notice to the Class.

(A) Information That Parties Shall Provide to the Court. The parties shall provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.

(B) Grounds for a Decision to Give Notice. The court shall direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:

(i) approve the proposal under Rule 52.08(e) (2); and

(ii) certify the class for purposes of judgment on the proposal.

(2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 52.08(e) (3); and

(D) the proposal treats class members equitably relative to each other.

(3) Identifying Agreements. The parties seeking approval shall file a statement identifying any agreement made in connection with the proposal.

(4) New Opportunity to Be Excluded. If the class action was previously certified under Rule 52.08(b) (3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Class-Member Objections.

(A) In General. Any class member may object to the proposal if it requires court approval under this Rule

52.08(e). The objection shall state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.

(B) Court Approval Required for Payment in Connection with an Objection. Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:

(i) forgoing or withdrawing an objection; or

(ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

(f) Appeals. A court of appeals may permit an appeal from an order granting or denying class-action certification under this Rule 52.08, but not from an order under Rule 52.08(e)(1). An appeal does not stay the proceedings in the trial court unless the trial judge or the court of appeals so orders.

(g) Class Counsel.

(1) Appointing Class Counsel. Unless a statute provides otherwise, a court that certifies a class shall appoint class counsel. In appointing class counsel, the court:

(A) shall consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 52.08(h); and

(E) may make further orders in connection with the appointment.

(2) Standard for Appointing Class Counsel. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 52.08(g) (1) and Rule 52.08(g) (4). If more than one adequate applicant seeks appointment, the court shall appoint the applicant best able to represent the interests of the class.

(3) Interim Counsel. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) Duty of Class Counsel. Class counsel shall fairly and adequately represent the interests of the class.

(h) Attorney's Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award shall be made by motion under Rule 74.16, subject to the provisions of this Rule 52.08(h), at a time the court sets. Notice of the motion shall be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and shall find the facts and state its legal conclusions.

(4) The court may refer issues related to the amount of the award to a special master.