

SENATE BILL NO. 313

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

0414S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 490.065, RSMo, and to enact in lieu thereof one new section, and to amend supreme court rule 52.08, relating to court procedures.

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

Section A. Section 490.065, RSMo, is repealed, and one
2 new section enacted in lieu thereof, to be known as section
3 490.065, to read as follows:

490.065. 1. In actions brought under chapter 451,
2 452, 453, 454, or 455 or in actions adjudicated in juvenile
3 courts under chapter 211 or in family courts under chapter
4 487, or in all proceedings before the probate division of
5 the circuit court, or in all actions or proceedings in which
6 there is no right to a jury trial:

7 (1) If scientific, technical or other specialized
8 knowledge will assist the trier of fact to understand the
9 evidence or to determine a fact in issue, a witness
10 qualified as an expert by knowledge, skill, experience,
11 training, or education may testify thereto in the form of an
12 opinion or otherwise;

13 (2) Testimony by such an expert witness in the form of
14 an opinion or inference otherwise admissible is not
15 objectionable because it embraces an ultimate issue to be
16 decided by the trier of fact;

17 (3) The facts or data in a particular case upon which
18 an expert bases an opinion or inference may be those

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 perceived by or made known to him at or before the hearing
20 and must be of a type reasonably relied upon by experts in
21 the field in forming opinions or inferences upon the subject
22 and must be otherwise reasonably reliable;

23 (4) If a reasonable foundation is laid, an expert may
24 testify in terms of opinion or inference and give the
25 reasons therefor without the use of hypothetical questions,
26 unless the court believes the use of a hypothetical question
27 will make the expert's opinion more understandable or of
28 greater assistance to the jury due to the particular facts
29 of the case.

30 2. In all actions except those to which subsection 1
31 of this section applies:

32 (1) A witness who is qualified as an expert by
33 knowledge, skill, experience, training, or education may
34 testify in the form of an opinion or otherwise if **the**
35 **proponent demonstrates to the court that it is more likely**
36 **than not that:**

37 (a) The expert's scientific, technical, or other
38 specialized knowledge will help the trier of fact to
39 understand the evidence or to determine a fact in issue;

40 (b) The testimony is based on sufficient facts or data;

41 (c) The testimony is the product of reliable
42 principles and methods; and

43 (d) The [expert has reliably applied] **expert's opinion**
44 **reflects a reliable application of** the principles and
45 methods to the facts of the case;

46 (2) An expert may base an opinion on facts or data in
47 the case that the expert has been made aware of or
48 personally observed. If experts in the particular field
49 would reasonably rely on those kinds of facts or data in
50 forming an opinion on the subject, they need not be

51 admissible for the opinion to be admitted. But if the facts
52 or data would otherwise be inadmissible, the proponent of
53 the opinion may disclose them to the jury only if their
54 probative value in helping the jury evaluate the opinion
55 substantially outweighs their prejudicial effect;

56 (3) (a) An opinion is not objectionable just because
57 it embraces an ultimate issue.

58 (b) In a criminal case, an expert witness shall not
59 state an opinion about whether the defendant did or did not
60 have a mental state or condition that constitutes an element
61 of the crime charged or of a defense. Those matters are for
62 the trier of fact alone;

63 (4) Unless the court orders otherwise, an expert may
64 state an opinion and give the reasons for it without first
65 testifying to the underlying facts or data. But the expert
66 may be required to disclose those facts or data on cross-
67 examination.

68 3. The provisions of this section shall not prevent a
69 person, partnership, association, or corporation, as owner,
70 from testifying as to the reasonable market value of the
71 owner's land.

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

3 52.08. Class Actions

4 (a) Prerequisites **[to a Class Action]**. One or more
5 members of a class may sue or be sued as representative
6 parties on behalf of all **members** only if:

7 (1) the class is so numerous that joinder of all
8 members is impracticable~~[,]~~;

9 (2) there are questions of law or fact common to the
10 class~~[,]~~;

11 (3) the claims or defenses of the representative
12 parties are typical of the claims or defenses of the
13 class[,]; and

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

16 (b) [Class Actions Maintainable] **Types of Class**
17 **Actions.** [An] **A class** action may be maintained [as a class
18 action if the prerequisites of subdivision (a) are] **if Rule**
19 **52.08(a) is** satisfied, and [in addition] **if:**

20 (1) [the prosecution of] **prosecuting** separate actions
21 by or against individual **class** members [of the class] would
22 create a risk of:

23 (A) inconsistent or varying adjudications with respect
24 to individual **class** members [of the class which] **that** would
25 establish incompatible standards of conduct for the party
26 opposing the class[,]; or

27 (B) adjudications with respect to individual **class**
28 members [of the class which would] **that**, as a practical
29 matter, **would** be dispositive of the interests of the other
30 members not parties to the **individual** adjudications or **would**
31 substantially impair or impede their ability to protect
32 their interests; [or]

33 (2) the party opposing the class has acted or refused
34 to act on grounds **that apply** generally [applicable] to the
35 class, [thereby making appropriate] **so that** final injunctive
36 relief or corresponding declaratory relief [with respect to]
37 **is appropriate respecting** the class as a whole; or

38 (3) the court finds that the questions of law or fact
39 common to [the members of the] **class members** predominate
40 over any questions affecting only individual members, and
41 that a class action is superior to other available methods
42 for [the fair and efficient adjudication of] **fairly and**

43 **efficiently adjudicating** the controversy. The matters
44 pertinent to [the] **these** findings include:

45 (A) [the interest of members of] the class **member's**
46 **interests** in individually controlling the prosecution or
47 defense of separate actions;

48 (B) the extent and nature of any litigation concerning
49 the controversy already [commenced] **begun** by or against
50 [members of the] class **members**;

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

53 (D) the **likely** difficulties [likely to be encountered
54 in the management of] **in managing** a class action.

55 (c) [Determination by Order Whether Class Action to Be
56 Maintained - Notice - Judgment - Actions Conducted Partially
57 as Class Actions] **Certification Order - Notice to Class**
58 **Members - Judgment - Issues Classes - Subclasses.**

59 (1) [As soon as practicable after the commencement of
60 an action brought as a class action] **Certification Order.**

61 (A) **Time to Issue. At an early practicable time after a**
62 **person sues or is sued as a class representative,** the court
63 shall determine by order whether [it is to be so maintained.
64 An order under this Rule 52.08(c)(1) may be conditional and
65 may be altered or amended before the decision on the merits]
66 **to certify the action as a class action.**

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

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

74 (D) **Specific Findings.** In its order, the court shall
75 **make specific findings and conclusions to support its**
76 **decision.**

77 (2) [In any class action maintained under Rule
78 52.08(b)(3), the court shall direct to the members of the
79 class the best notice practicable under the circumstances,
80 including individual notice to all members who can be
81 identified through reasonable effort. The notice shall
82 advise each member that: (A) the court will exclude the
83 member from the class if requested by a specified date; (B)
84 the judgment, whether favorable or not, will include all
85 members who do not request exclusion; and (C) any member who
86 does not request exclusion may, if desired, enter an
87 appearance through counsel.] **Notice.**

88 (A) **For (b)(1) or (b)(2) Classes.** For any class
89 certified pursuant to Rule 52.08(b)(1) or Rule 52.08(b)(2),
90 the court may direct appropriate notice to the class.

91 (B) **For (b)(3) Classes.** For any class certified
92 pursuant to Rule 52.08(b)(3), or upon ordering notice
93 pursuant to Rule 52.08(e)(1) to a class proposed to be
94 certified for purposes of settlement pursuant to Rule
95 52.08(b)(3), the court shall direct to class members the
96 best notice that is practicable under the circumstances,
97 including individual notice to all members who can be
98 identified through reasonable effort. The notice may be by
99 one or more of the following: United States mail, electronic
100 means, or other appropriate means. The notice shall clearly
101 and concisely state in plain, easily understood language:

- 102 (i) the nature of the action;
103 (ii) the definition of the class certified;
104 (iii) the class claims, issues, or defenses;

- 105 (iv) that a class member may enter an appearance
106 through an attorney if the member so desires;
107 (v) that the court will exclude from the class any
108 member who requests exclusion;
109 (vi) the time and manner for requesting exclusion; and
110 (vii) the binding effect of a class judgment on members
111 pursuant to Rule 52.08(c)(3).

112 (3) [The judgment in an action maintained as a class
113 action under Rule 52.08(b)(1) or Rule 52.08(b)(2), whether
114 or not favorable to the class, shall include and describe
115 those whom the court finds to be members of the class. The
116 judgment in an action maintained as a class action under
117 Rule 52.08(b)(3), whether or not favorable to the class,
118 shall include and specify or describe those to whom the
119 notice provided in Rule 52.08(c)(2) was directed, and who
120 have not requested exclusion, and whom the court finds to be
121 members of the class.] **Judgment. Whether or not favorable to
122 the class, the judgment in a class action shall:**

123 (A) for any class certified pursuant to Rule
124 52.08(b)(1) or Rule 52.08(b)(2), include and describe whom
125 the court finds to be class members; and

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

131 (4) [When appropriate an action may be brought or
132 maintained as a class action with respect to particular
133 issues or a class may be divided into subclasses and each
134 subclass treated as a class, and the provisions of this Rule
135 52.08 shall then be construed and applied accordingly.]

136 **Particular Issues. When appropriate, an action may be**

137 brought or maintained as a class action with respect to
138 particular issues.

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

142 (d) [Orders in Conduct of Actions. In the conduct of
143 actions to which this Rule applies, the court may make
144 appropriate orders:] **Conducting the Action.**

145 (1) [determining] **In General. In conducting an action**
146 **under this Rule 52.08, the court may issue orders that:**

147 (A) **determine** the course of proceedings or
148 [prescribing] **prescribe** measures to prevent undue repetition
149 or complication in [the presentation of] **presenting** evidence
150 or argument;

151 [(2) requiring, for the protection of the members of
152 the class or otherwise for the fair conduct of the action,
153 that notice be given in such manner as the court may direct
154 to some or all of the members of any step in the action, or
155 of the proposed extent of the judgment, or of the
156 opportunity of members to signify whether they consider the
157 representation fair and adequate, to intervene and present
158 claims or defenses, or otherwise to come into the action;

159 (3) imposing] (B) **require, to protect class members and**
160 **fairly conduct the action, giving appropriate notice to some**
161 **or all class members of:**

162 (i) any step in the action;

163 (ii) the proposed extent of the judgment; or

164 (iii) the members' opportunity to signify whether they
165 consider the representation fair and adequate, to intervene
166 and present claims or defenses, or to otherwise come into
167 the action;

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

170 [(4) requiring] **(D) require** that the pleadings be
171 amended to eliminate [therefrom] allegations [as to] **about**
172 representation of absent persons[,] and that the action
173 proceed accordingly;

174 [(5) dealing] **or**

175 **(E) deal** with similar procedural matters. [The orders
176 may be combined with an order under Rule 62, and]

177 **(2) Amending Orders. An order under Rule 52.08(d) (1)**
178 may be altered or amended [as may be desirable] from time to
179 time.

180 (e) **Settlement, Voluntary Dismissal or Compromise.** [A
181 class action shall not be dismissed or compromised without
182 the approval of the court, and notice of the proposed
183 dismissal or compromise shall be given to all members of the
184 class in such manner as the court directs.] **The claims,**
185 **issues, or defenses of a certified class, or a class**
186 **proposed to be certified for purposes of settlement, may be**
187 **settled, voluntarily dismissed, or compromised only with the**
188 **court's approval. The following procedures apply to a**
189 **proposed settlement, voluntary dismissal, or compromise:**

190 **(1) Notice to the Class.**

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

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

200 (i) approve the proposal under Rule 52.08(e) (2); and
201 (ii) certify the class for purposes of judgment on the
202 proposal.

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

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

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

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

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

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

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

218 (iv) any agreement required to be identified pursuant
219 to Rule 52.08(e) (3); and

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

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

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

231 (5) Class Member Objections.

232 **(A) In General.** Any class member may object to the
233 proposal if it requires court approval under this Rule
234 52.08(e). The objection shall state whether it applies only
235 to the objector, to a specific subset of the class, or to
236 the entire class, and also state with specificity the
237 grounds for the objection.

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

242 **(i) forgoing or withdrawing an objection; or**

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

245 **(f) Appeals.** An appellate court **[may]** **shall** permit an
246 appeal from an order of a circuit court granting or denying
247 class action certification under this Rule 52.08 **[if a**
248 **petition is timely filed as provided in Rule 84.035. The**
249 **filing of a petition]**, **but not from an order pursuant to**
250 **Rule 52.08(e) (1).** An appeal shall not stay the proceedings
251 in the trial court unless the trial judge or the appellate
252 court so orders.

253 **(g) Class Counsel.**

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

257 **(A) shall consider:**

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

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

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

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

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

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

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

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

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

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

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

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

294 (1) A claim for an award shall be made by motion at a
295 time the court sets. Notice of the motion shall be served on

296 all parties and, for motions by class counsel, directed to
297 class members in a reasonable manner.

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

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

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

304 (i) Legal Standard - Burden of Proof. The party seeking
305 class certification has the burden of proving every
306 requirement of this Rule 52.08 by a preponderance of the
307 evidence. The court shall not err in favor of certification,
308 but shall be satisfied, based on a rigorous analysis, that
309 the requirements of this Rule 52.08 have been met. This Rule
310 52.08 shall not be satisfied in whole or in part based on
311 allegations in the petition.

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