

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 47

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

0064S.04P

KRISTINA MARTIN, Secretary

## 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  
2 as follows:

52.08. Class Actions

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

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

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

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

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

20 (B) adjudications with respect to individual members of  
21 the class which would as a practical matter be dispositive  
22 of the interests of the other members not parties to the  
23 adjudications or substantially impair or impede their  
24 ability to protect their interests; or

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

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

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

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

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

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

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

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

53 (2) In any class action maintained under Rule  
54 52.08(b) (3), the court shall direct to the members of the  
55 class the best notice practicable under the circumstances,  
56 including individual notice to all members who can be  
57 identified through reasonable effort. The notice shall  
58 advise each member that: (A) the court will exclude the  
59 member from the class if requested by a specified date; (B)  
60 the judgment, whether favorable or not, will include all  
61 members who do not request exclusion; and (C) any member who  
62 does not request exclusion may, if desired, enter an  
63 appearance through counsel.

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

74 (4) When appropriate an action may be brought or  
75 maintained as a class action with respect to particular  
76 issues or a class may be divided into subclasses and each  
77 subclass treated as a class, and the provisions of this Rule  
78 52.08 shall then be construed and applied accordingly.

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

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

85 (2) requiring, for the protection of the members of the  
86 class or otherwise for the fair conduct of the action, that  
87 notice be given in such manner as the court may direct to  
88 some or all of the members of any step in the action, or of  
89 the proposed extent of the judgment, or of the opportunity  
90 of members to signify whether they consider the  
91 representation fair and adequate, to intervene and present  
92 claims or defenses, or otherwise to come into the action;

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

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

98 (5) dealing with similar procedural matters.

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

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

107 (f) Appeals. An appellate court may permit an appeal  
108 from an order of a circuit court granting or denying class  
109 action certification under this Rule 52.08 if a petition is

110 timely filed as provided in Rule 84.035. The filing of a  
111 petition shall not stay the proceedings in the trial court  
112 unless the trial judge or the appellate court so orders.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

157 (1) Certification Order.

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

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

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

169 (2) Notice.

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

173 (B) For (b) (3) Classes. For any class certified under  
174 Rule 52.08(b) (3), or upon ordering notice under Rule  
175 52.08(e) (1) to a class proposed to be certified for purposes  
176 of settlement under Rule 52.08(b) (3), the court shall direct  
177 to class members the best notice that is practicable under  
178 the circumstances, including individual notice to all  
179 members who can be identified through reasonable effort. The  
180 notice may be by one or more of the following: United States  
181 mail, electronic means, or other appropriate means. The  
182 notice shall clearly and concisely state in plain, easily  
183 understood language:

- 184 (i) the nature of the action;  
185 (ii) the definition of the class certified;  
186 (iii) the class claims, issues, or defenses;  
187 (iv) that a class member may enter an appearance  
188 through an attorney if the member so desires;  
189 (v) that the court will exclude from the class any  
190 member who requests exclusion;  
191 (vi) the time and manner for requesting exclusion; and  
192 (vii) the binding effect of a class judgment on members  
193 under Rule 52.08(c) (3).

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

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

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

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

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

209           (d) Conducting the Action.

210           (1) In General. In conducting an action under this Rule  
211 52.08, the court may issue orders that:

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

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

218           (i) any step in the action;

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

220           (iii) the members' opportunity to signify whether they  
221 consider the representation fair and adequate, to intervene  
222 and present claims or defenses, or to otherwise come into  
223 the action;

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

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

229           (E) deal with similar procedural matters.

230           (2) Combining and Amending Orders. An order under Rule  
231 52.08(d) (1) may be altered or amended from time to time and  
232 may be combined with an order under Rule 62.01.

233           (e) Settlement, Voluntary Dismissal, or Compromise. The  
234 claims, issues, or defenses of a certified class, or a class



235 proposed to be certified for purposes of settlement, may be  
236 settled, voluntarily dismissed, or compromised only with the  
237 court's approval. The following procedures apply to a  
238 proposed settlement, voluntary dismissal, or compromise:

239 (1) Notice to the Class.

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

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

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

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

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

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

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

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

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

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

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

267 (iv) any agreement required to be identified under Rule  
268 52.08(e) (3); and

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

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

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

280 (5) Class-Member Objections.

281 (A) In General. Any class member may object to the  
282 proposal if it requires court approval under this Rule  
283 52.08(e). The objection shall state whether it applies only  
284 to the objector, to a specific subset of the class, or to  
285 the entire class, and also state with specificity the  
286 grounds for the objection.

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

291 (i) forgoing or withdrawing an objection; or

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

294 (f) Appeals. A court of appeals may permit an appeal  
295 from an order granting or denying class-action certification  
296 under this Rule 52.08, but not from an order under Rule  
297 52.08(e) (1). An appeal does not stay the proceedings in the

298 trial court unless the trial judge or the court of appeals  
299 so orders.

300 (g) Class Counsel.

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

304 (A) shall consider:

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

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

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

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

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

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

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

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

324 (2) Standard for Appointing Class Counsel. When one  
325 applicant seeks appointment as class counsel, the court may  
326 appoint that applicant only if the applicant is adequate  
327 under Rule 52.08(g)(1) and Rule 52.08(g)(4). If more than  
328 one adequate applicant seeks appointment, the court shall

329 appoint the applicant best able to represent the interests  
330 of the class.

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

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

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

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

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

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

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

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