

FIRST REGULAR SESSION

HOUSE BILL NO. 534

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DIEHL.

1497H.011

DANA RADEMAN MILLER, Chief Clerk

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

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

4 (1) the class is so numerous that joinder of all members is impracticable~~[-]~~ ;

5 (2) there are questions of law or fact common to the class~~[-]~~ ;

6 (3) the claims or defenses of the representative parties are typical of the claims or
7 defenses of the class~~[-]~~ ; and

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

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

12 (1) ~~[the prosecution of]~~ **prosecuting** separate actions by or against individual **class**
13 members ~~[of the class]~~ would create a risk of:

14 (A) inconsistent or varying adjudications with respect to individual **class** members ~~[of~~
15 ~~the class which]~~ **that** would establish incompatible standards of conduct for the party opposing
16 the class~~[-]~~ ; or

17 (B) adjudications with respect to individual **class** members ~~[of the class which would]~~
18 **that**, as a practical matter, **would** be dispositive of the interests of the other members not parties

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

19 to the **individual** adjudications or **would** substantially impair or impede their ability to protect
20 their interests; ~~[or]~~

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

25 (3) the court finds that the questions of law or fact common to ~~[the members of the]~~ class
26 **members** predominate over any questions affecting only individual members, and that a class
27 action is superior to other available methods for ~~[the fair and efficient adjudication of]~~ **fairly**
28 **and efficiently adjudicating** the controversy. The matters pertinent to ~~[the]~~ **these** findings
29 include:

30 (A) ~~[the interest of members of]~~ the class **members' interests** in individually controlling
31 the prosecution or defense of separate actions;

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

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

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

38 (c) ~~[Determination by Order Whether Class Action to Be Maintained - Notice -~~
39 ~~Judgment - Actions Conducted Partially as Class Actions]~~ **Certification Order - Notice to**
40 **Class Members - Judgment - Issues Classes - Subclasses.**

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

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

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

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

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

54 (2) [~~In any class action maintained under Rule 52.08(b)(3), the court shall direct to the~~
55 ~~members of the class the best notice practicable under the circumstances, including individual~~
56 ~~notice to all members who can be identified through reasonable effort. The notice shall advise~~
57 ~~each member that:~~

58 ~~—— (A) the court will exclude the member from the class if requested by a specified date;~~

59 ~~—— (B) the judgment, whether favorable or not, will include all members who do not request~~
60 ~~exclusion; and~~

61 ~~—— (C) any member who does not request exclusion may, if desired, enter an appearance~~
62 ~~through counsel.] Notice.~~

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

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

72 (i) the nature of the action;

73 (ii) the definition of the class certified;

74 (iii) the class claims, issues, or defenses;

75 (iv) that a class member may enter an appearance through an attorney if the
76 member so desires;

77 (v) that the court will exclude from the class any member who requests exclusion;

78 (vi) the time and manner for requesting exclusion; and

79 (vii) the binding effect of a class judgment on members pursuant to Rule 52.08(c)(3).

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

86 Whether or not favorable to the class, the judgment in a class action shall:

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

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

92 ~~(4) [When appropriate an action may be brought or maintained as a class action with~~
93 ~~respect to particular issues or a class may be divided into subclasses and each subclass treated~~
94 ~~as a class, and the provisions of this Rule 52.08 shall then be construed and applied accordingly.]~~
95 **Particular Issues. When appropriate, an action may be brought or maintained as a class**
96 **action with respect to particular issues.**

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

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

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

103 **(A) determine** the course of proceedings or ~~[prescribing]~~ **prescribe** measures to prevent
104 undue repetition or complication in ~~[the presentation of]~~ **presenting** evidence or argument;

105 ~~[(2) requiring, for the protection of the members of the class or otherwise for the fair~~
106 ~~conduct of the action, that notice be given in such manner as the court may direct to some or all~~
107 ~~of the members of any step in the action, or of the proposed extent of the judgment, or of the~~
108 ~~opportunity of members to signify whether they consider the representation fair and adequate,~~
109 ~~to intervene and present claims or defenses, or otherwise to come into the action;—~~

110 ~~———(3) imposing]~~ **(B) require, to protect class members and fairly conduct the action,**
111 **giving appropriate notice to some or all class members of:**

112 **(i) any step in the action;**

113 **(ii) the proposed extent of the judgment; or**

114 **(iii) the members' opportunity to signify whether they consider the representation**
115 **fair and adequate, to intervene and present claims or defenses, or to otherwise come into**
116 **the action;**

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

118 ~~[(4) requiring]~~ **(D) require** that the pleadings be amended to eliminate ~~[therefrom]~~
119 ~~allegations [as to] about~~ representation of absent persons~~;~~ and that the action proceed
120 accordingly;

121 ~~[(5) dealing]~~ **or**

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

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

126 (e) **Settlement, Voluntary Dismissal or Compromise.** [~~A class action shall not be~~
127 ~~dismissed or compromised without the approval of the court, and notice of the proposed~~
128 ~~dismissal or compromise shall be given to all members of the class in such manner as the court~~
129 ~~directs.] **The claims, issues, or defenses of a certified class, or a class proposed to be**
130 **certified for purposes of settlement, may be settled, voluntarily dismissed, or compromised**
131 **only with the court's approval. The following procedures apply to a proposed settlement,**
132 **voluntary dismissal, or compromise:**~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

162 (5) **Class Member Objections.**

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

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

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

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

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

178 **(g) Class Counsel.**

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

181 **(A) shall consider:**

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

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

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

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

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

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

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

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

196 **(2) Standard for Appointing Class Counsel.** When one applicant seeks appointment
197 as class counsel, the court may appoint that applicant only if the applicant is adequate
198 pursuant to Rule 52.08(g)(1) and Rule 52.08(g)(4). If more than one adequate applicant

199 seeks appointment, the court shall appoint the applicant best able to represent the interests
200 of the class.

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

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

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

208 (1) A claim for an award shall be made by motion at a time the court sets. Notice
209 of the motion shall be served on all parties and, for motions by class counsel, directed to
210 class members in a reasonable manner.

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

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

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

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

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