

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 534**  
**103RD GENERAL ASSEMBLY**

1497H.02C

JOSEPH ENGLER, Chief Clerk

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**AN ACT**

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

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*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 only if (1) the class is so numerous that joinder of all~~  
4 ~~members is impracticable, (2) there are questions of law or fact common to the class, (3) the~~  
5 ~~claims or defenses of the representative parties are typical of the claims or defenses of the class,~~  
6 ~~and (4) the representative parties will fairly and adequately protect the interests of the class.~~  
7       ~~—— (b) Class Actions Maintainable. An action may be maintained as a class action if the~~  
8 ~~prerequisites of subdivision (a) are satisfied, and in addition:~~  
9       ~~—— (1) the prosecution of separate actions by or against individual members of the class~~  
10 ~~would create a risk of~~  
11       ~~—— (A) inconsistent or varying adjudications with respect to individual members of the class~~  
12 ~~which would establish incompatible standards of conduct for the party opposing the class, or~~  
13       ~~—— (B) adjudications with respect to individual members of the class which would as a~~  
14 ~~practical matter be dispositive of the interests of the other members not parties to the~~  
15 ~~adjudications or substantially impair or impede their ability to protect their interests; or~~  
16       ~~—— (2) the party opposing the class has acted or refused to act on grounds generally~~  
17 ~~applicable to the class, thereby making appropriate final injunctive relief or corresponding~~  
18 ~~declaratory relief with respect to the class as a whole; or~~  
19       ~~—— (3) the court finds that the questions of law or fact common to the members of the class~~  
20 ~~predominate over any questions affecting only individual members, and that a class action is~~

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.

21 superior to other available methods for the fair and efficient adjudication of the controversy. The  
22 matters pertinent to the findings include:

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

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

27 ~~———(C) the desirability or undesirability of concentrating the litigation of the claims in the~~  
28 ~~particular forum;~~

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

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

32 ~~———(1) As soon as practicable after the commencement of an action brought as a class action,~~  
33 ~~the court shall determine by order whether it is to be so maintained. An order under this Rule~~  
34 ~~52.08(c)(1) may be conditional and may be altered or amended before the decision on the merits.~~

35 ~~———(2) In any class action maintained under Rule 52.08(b)(3), the court shall direct to the~~  
36 ~~members of the class the best notice practicable under the circumstances, including individual~~  
37 ~~notice to all members who can be identified through reasonable effort. The notice shall advise~~  
38 ~~each member that: (A) the court will exclude the member from the class if requested by a~~  
39 ~~specified date; (B) the judgment, whether favorable or not, will include all members who do not~~  
40 ~~request exclusion; and (C) any member who does not request exclusion may, if desired, enter~~  
41 ~~an appearance through counsel.~~

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

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

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

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

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

58 opportunity of members to signify whether they consider the representation fair and adequate,  
59 to intervene and present claims or defenses, or otherwise to come into the action;  
60 ———(3) imposing conditions on the representative parties or on intervenors;  
61 ———(4) requiring that the pleadings be amended to eliminate therefrom allegations as to  
62 representation of absent persons, and that the action proceed accordingly;  
63 ———(5) dealing with similar procedural matters. The orders may be combined with an order  
64 under Rule 62, and may be altered or amended as may be desirable from time to time.  
65 ———(e) Dismissal or Compromise. A class action shall not be dismissed or compromised  
66 without the approval of the court, and notice of the proposed dismissal or compromise shall be  
67 given to all members of the class in such manner as the court directs.  
68 ———(f) Appeals. An appellate court may permit an appeal from an order of a circuit court  
69 granting or denying class action certification under this Rule 52.08 if a petition is timely filed  
70 as provided in Rule 84.035. The filing of a petition shall not stay the proceedings in the trial  
71 court unless the trial judge or the appellate court so orders.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

107           **(1) Certification Order.**

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

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

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

116           **(2) Notice.**

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

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

126           **(i) the nature of the action;**

127           **(ii) the definition of the class certified;**

128           **(iii) the class claims, issues, or defenses;**

129           **(iv) that a class member may enter an appearance through an attorney if the**  
130 **member so desires;**

131 (v) that the court will exclude from the class any member who requests exclusion;  
132 (vi) the time and manner for requesting exclusion; and  
133 (vii) the binding effect of a class judgment on members under Rule 52.08(c)(3).  
134 (3) Judgment. Whether or not favorable to the class, the judgment in a class action  
135 shall:  
136 (A) for any class certified under Rule 52.08(b)(1) or Rule 52.08(b)(2), include and  
137 describe those whom the court finds to be class members; and  
138 (B) for any class certified under Rule 52.08(b)(3), include and specify or describe  
139 those to whom the notice under Rule 52.08(c)(2) was directed, who have not requested  
140 exclusion, and whom the court finds to be class members.  
141 (4) Particular Issues. When appropriate, an action may be brought or maintained  
142 as a class action with respect to particular issues.  
143 (5) Subclasses. When appropriate, a class may be divided into subclasses that are  
144 each treated as a class under this Rule 52.08.  
145 (d) Conducting the Action.  
146 (1) In General. In conducting an action under this Rule 52.08, the court may issue  
147 orders that:  
148 (A) determine the course of proceedings or prescribe measures to prevent undue  
149 repetition or complication in presenting evidence or argument;  
150 (B) require, to protect class members and fairly conduct the action, giving  
151 appropriate notice to some or all class members of:  
152 (i) any step in the action;  
153 (ii) the proposed extent of the judgment; or  
154 (iii) the members' opportunity to signify whether they consider the representation  
155 fair and adequate, to intervene and present claims or defenses, or to otherwise come into  
156 the action;  
157 (C) impose conditions on the representative parties or on intervenors;  
158 (D) require that the pleadings be amended to eliminate allegations about  
159 representation of absent persons and that the action proceed accordingly; or  
160 (E) deal with similar procedural matters.  
161 (2) Combining and Amending Orders. An order under Rule 52.08(d)(1) may be  
162 altered or amended from time to time and may be combined with an order under Rule  
163 62.01.  
164 (e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses  
165 of a certified class, or a class proposed to be certified for purposes of settlement, may be  
166 settled, voluntarily dismissed, or compromised only with the court's approval. The  
167 following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

168 (1) Notice to the Class.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

197 (5) Class-Member Objections.

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

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

205 (i) forgoing or withdrawing an objection; or  
206 (ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the  
207 proposal.

208 (f) Appeals. A court of appeals may permit an appeal from an order granting or  
209 denying class-action certification under this Rule 52.08, but not from an order under Rule  
210 52.08(e)(1). An appeal does not stay the proceedings in the trial court unless the trial judge  
211 or the court of appeals so orders.

212 (g) Class Counsel.

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

215 (A) shall consider:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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