

SS SCS SB 47 -- CLASS ACTIONS

This bill amends Supreme Court Rule 52.08 relating to class actions.

With certain exceptions, this bill makes changes to mirror the Federal Rules of Civil Procedure. Further, the bill provides that an order certifying a class action must define the class and the class claims, issues, or defenses and must appoint class counsel. An order that grants or denies class certification can be altered or amended before final judgment or can be combined with orders for actions taken at the case management conference.

Notices to class members for certain class actions can be sent by United States mail, electronic means, or other appropriate means. Additionally, the rule states that the notice will clearly and concisely state in plain, easily understood language:

- (1) The nature of the action;
- (2) The definition of the class certified;
- (3) The class claims, issues, or defenses;
- (4) That a class member can enter an appearance through an attorney if the member so desires;
- (5 ) That the court will exclude from the class any member who requests exclusion;
- (6) The time and manner for requesting exclusion; and
- (7) The binding effect of a class judgment on members.

Currently, a class action must not be dismissed or compromised without the approval of the court and notice of the proposed dismissal or compromise will be given to all members of the class in such manner as the court directs. This bill repeals this provision and provides that the claims, issues, or defenses of a certified class, or a proposed class, can be settled, voluntarily dismissed, or compromised only with the court's approval.

Furthermore, the bill states that the parties will provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class and that the court must 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 approve the

proposal and certify the class for purposes of judgment on the proposal.

If the proposal would bind class members, the court can approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

- (1) The class representatives and class counsel have adequately represented the class;
- (2) The proposal was negotiated at arm's length;
- (3) The relief provided for the class is adequate, taking into account the costs, risks, and delay of trial and appeal, the effectiveness of any proposed method of distributing relief to the class, the terms of any proposed award of attorney's fees, and any agreement required to be identified by the rule; and
- (4) The proposal treats class members equitably relative to each other.

Additionally, the bill requires the parties seeking approval to file a statement identifying any agreement made in connection with the proposal. If the class action was previously certified, the court can 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. Any class member can object to the proposal if it requires court approval and such objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class. The grounds for the objection must be specified. Unless approved by the court after a hearing, no payment or other consideration will be provided in connection with forgoing or withdrawing an objection, or forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

Unless a statute provides otherwise, the bill provides that a court certifying a class must appoint class counsel and in appointing such counsel, the court will consider:

- (1) The work that the counsel has done in identifying or investigating potential claims in the action;
- (2) The counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (3) The counsel's knowledge of the applicable law; and

(4) The resources that counsel will commit to representing the class.

Additionally, the court can consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class and can 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.

Furthermore, the court can include in the appointing order provisions about the award of attorney's fees or nontaxable costs and can make any further orders in connection with the appointment.

If more than one adequate applicant seeks appointment as class counsel, the court will appoint the applicant best able to represent the interests of the class. Additionally, the rule provides that the court can designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action. The rule requires that class counsel fairly and adequately represent the interests of the class.

In a certified class action, the court can award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The bill provides the following procedures for an award of fees and costs:

(1) A claim for an award must be made by motion at a time the court sets and notice of the motion will 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, can object to the motion;

(3) The court can hold a hearing and must find the facts and state its legal conclusions; and

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

This bill is similar to SB 313 (2025).