

SENATE BILL NO. 1218

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR HEGEMAN.

5808S.01H

ADRIANE D. CROUSE, 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 **members** only if:

5 (1) the class is so numerous that joinder of all
6 members is impracticable**[,]**;

7 (2) there are questions of law or fact common to the
8 class**[,]**;

9 (3) the claims or defenses of the representative
10 parties are typical of the claims or defenses of the
11 class**[,]**; and

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

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

18 (1) **[the prosecution of] prosecuting** separate actions
19 by or against individual **class** members **[of the class]** would
20 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.

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

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

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

36 (3) the court finds that the questions of law or fact
37 common to [the members of the] class **members** predominate
38 over any questions affecting only individual members, and
39 that a class action is superior to other available methods
40 for [the fair and efficient adjudication of] **fairly and**
41 **efficiently adjudicating** the controversy. The matters
42 pertinent to [the] **these** findings include:

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

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

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

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

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

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

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

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

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

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

75 (2) [In any class action maintained under Rule
76 52.08(b) (3), the court shall direct to the members of the
77 class the best notice practicable under the circumstances,
78 including individual notice to all members who can be
79 identified through reasonable effort. The notice shall
80 advise each member that: (A) the court will exclude the
81 member from the class if requested by a specified date; (B)
82 the judgment, whether favorable or not, will include all
83 members who do not request exclusion; and (C) any member who

84 does not request exclusion may, if desired, enter an
85 appearance through counsel.] Notice.

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

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

- 100 (i) the nature of the action;
101 (ii) the definition of the class certified;
102 (iii) the class claims, issues, or defenses;
103 (iv) that a class member may enter an appearance
104 through an attorney if the member so desires;
105 (v) that the court will exclude from the class any
106 member who requests exclusion;
107 (vi) the time and manner for requesting exclusion; and
108 (vii) the binding effect of a class judgment on members
109 pursuant to Rule 52.08(c) (3).

110 (3) [The judgment in an action maintained as a class
111 action under Rule 52.08(b) (1) or Rule 52.08(b) (2), whether
112 or not favorable to the class, shall include and describe
113 those whom the court finds to be members of the class. The
114 judgment in an action maintained as a class action under
115 Rule 52.08(b) (3), whether or not favorable to the class,

116 shall include and specify or describe those to whom the
117 notice provided in Rule 52.08(c)(2) was directed, and who
118 have not requested exclusion, and whom the court finds to be
119 members of the class.] **Judgment. Whether or not favorable to**
120 **the class, the judgment in a class action shall:**

121 (A) for any class certified pursuant to Rule
122 52.08(b)(1) or Rule 52.08(b)(2), include and describe whom
123 the court finds to be class members; and

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

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

134 **Particular Issues. When appropriate, an action may be**
135 **brought or maintained as a class action with respect to**
136 **particular issues.**

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

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

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

145 (A) **determine** the course of proceedings or
146 [prescribing] **prescribe** measures to prevent undue repetition

147 or complication in [the presentation of] **presenting** evidence
148 or argument;

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

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

160 (i) any step in the action;

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

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

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

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

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

173 **(E) deal** with similar procedural matters.

174 [The orders may be combined with an order under Rule
175 62, and] **(2) Amending Orders. An order under Rule**
176 **52.08(d) (1)** may be altered or amended [as may be desirable]
177 from time to time.

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

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

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

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

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

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

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

205 (A) the class representatives and class counsel have
206 adequately represented the class;

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

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

210 (i) the costs, risks, and delay of trial and appeal;
211 (ii) the effectiveness of any proposed method of
212 distributing relief to the class, including the method of
213 processing class member claims;

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

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

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

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

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

229 (5) Class Member Objections.

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

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

240 (i) forgoing or withdrawing an objection, or

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

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

251 (g) Class Counsel.

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

255 (A) shall consider:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

302 (i) Legal Standard - Burden of Proof. The party seeking
303 class certification has the burden of proving every
304 requirement of this Rule 52.08 by a preponderance of the

305 evidence. The court shall not err in favor of certification,
306 but shall be satisfied, based on a rigorous analysis, that
307 the requirements of this Rule 52.08 have been met. This Rule
308 52.08 shall not be satisfied in whole or in part based on
309 allegations in the petition.

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