

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2661:

Adair of the House

and

Hobson of the Senate

AS INTRODUCED

An Act relating to civil procedure; requiring attorney fees in class actions to include noncash benefits in certain circumstances; authorizing the court to decline to exercise jurisdiction in class actions under the doctrine of forum non conveniens; providing factors the court may consider in making the determination; amending 12 O.S. 2001, Section 993, which relates to interlocutory appeals from certain orders; modifying grounds for interlocutory appeal; providing effect of interlocutory appeal in class actions; amending 12 O.S. 2001, Section 2023, which relates to class actions; requiring the court to hear and rule on certain motions before making a determination on certifying a class; providing civil immunity from liability for health care providers in certain circumstances; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

If any portion of the benefits recovered for the class in a class action are in the form of coupons or other noncash common benefits, the attorney fees awarded in the class action shall be in cash and noncash amounts in the same proportion as the recovery for the class.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 144 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. In class actions, if the court, upon motion by a party, finds that in the interest of justice and for the convenience of the parties a claim or action would be more properly heard in another forum, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action.

B. In determining whether to grant a motion to stay or dismiss an action pursuant to this section, the court may consider:

1. Whether an alternate forum exists in which the claim or action may be tried;

2. Whether the alternate forum provides an adequate remedy;

3. Whether maintenance of the claim in the court in which the case is filed would work a substantial injustice to the moving party;

4. Whether the alternate forum can exercise jurisdiction over all the defendants properly joined in the claim of the plaintiff;

5. Whether the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and

6. Whether the stay or dismissal would prevent unreasonable duplication or proliferation of litigation.

SECTION 3. AMENDATORY 12 O.S. 2001, Section 993, is amended to read as follows:

Section 993. A. When an order:

1. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment;

2. Denies a temporary or permanent injunction, grants a temporary or permanent injunction except where granted at an ex parte hearing, or discharges, vacates, or modifies or refuses to discharge, vacate, or modify a temporary or permanent injunction;

3. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of a party;

4. Appoints a receiver except where the receiver was appointed at an ex parte hearing, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver;

5. Directs the payment of money pendente lite except where granted at an ex parte hearing, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite;

6. Certifies or refuses to certify an action to be maintained as a class action; ~~or~~

7. Denies a motion in a class action asserting lack of jurisdiction because an agency of this state has exclusive or primary jurisdiction of the action or a part of the action, or asserting that a party has failed to exhaust administrative remedies; or

8. Grants a new trial or opens or vacates a judgment or order, the party aggrieved thereby may appeal the order to the Supreme Court without awaiting the final determination in said cause, by filing the petition in error and the record on appeal with the Supreme Court within thirty (30) days after the order prepared in conformance with Section 696.3 of this title, is filed with the court clerk. If the appellant did not prepare the order, and Section 696.2 of this title required a copy of the order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the order, the petition in error may be filed within thirty (30) days after the earliest date on which the court records show that a copy of the order was mailed to the appellant. The Supreme Court may extend the time for filing the record upon good cause shown.

B. If the order discharges or modifies an attachment or temporary injunction and it becomes operative, the undertaking given upon the allowance of an attachment or temporary injunction shall stay the enforcement of said order and remain in full force until final order of discharge shall take effect.

C. Where a receiver shall be or has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, in such sum as may have been required of the receiver by the court or a judge thereof, conditioned for the due prosecution of the appeal and the payment of all costs or damages that may accrue to the state or any officer or person by reason thereof, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

D. The filing of an appeal pursuant to paragraph 6 or 7 of subsection A of this section, the failure to file such an appeal, or the certification or denial of certification of a class shall not affect the right of any party, after the entry of final judgment, to appeal the earlier certification or denial of certification. During the pendency of an appeal pursuant to paragraph 6 or 7 of subsection A of this section, the action in the trial court shall be stayed in all respects. Following adjudication on appeal, if the class is not certified, the stay in the trial court shall automatically dissolve and the trial court may proceed to adjudicate any remaining individual claims or defenses. If after such appeal, the class is to be certified, the stay shall dissolve and the trial court shall proceed with adjudication on the merits; provided, the trial court shall at all times prior to entry of a final order retain jurisdiction to revisit the certification issues, upon motion of a party, and to order decertification of the class if during the

litigation of the case it becomes evident to the court that the action is no longer reasonably maintainable as a class action.

SECTION 4. AMENDATORY 12 O.S. 2001, Section 2023, is amended to read as follows:

Section 2023. CLASS ACTIONS

A. PREREQUISITES TO A CLASS ACTION. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

1. The class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
4. The representative parties will fairly and adequately protect the interests of the class.

B. CLASS ACTIONS MAINTAINABLE. An action may be maintained as a class action if the prerequisites of subsection A of this section are satisfied and in addition:

1. The prosecution of separate actions by or against individual members of the class would create a risk of:
 - a. inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or
 - b. adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
2. The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making

appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

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

- a. the interest of members of the class in individually controlling the prosecution or defense of separate actions,
- b. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class,
- c. the desirability or undesirability of concentrating the litigation of the claims in the particular forum, and
- d. the difficulties likely to be encountered in the management of a class action.

C. CLASS ACTIONS INVOLVING JURISDICTION OF STATE AGENCY; STATE AGENCY WITH EXCLUSIVE OR PRIMARY JURISDICTION.

Before hearing or deciding a motion to certify a class action, the court shall hear and rule on all pending motions asserting lack of jurisdiction because an agency of this state has exclusive or primary jurisdiction of the action or a part of the action, or asserting that a party has failed to exhaust administrative remedies. The ruling of the court shall be reflected in a written order. If a motion provided for in this subsection is denied and a class is subsequently certified, a person may obtain appellate review of the order denying the motion as part of an appeal of the order certifying the class action.

D. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS ACTIONS.

1. As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits.

2. In any class action maintained under paragraph 3 of subsection B of this section, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that:

- a. the court will exclude him from the class if he so requests by a specified date,
- b. the judgment, whether favorable or not, will include all members who do not request exclusion, and
- c. any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

Where the class contains more than five hundred (500) members who can be identified through reasonable effort, it shall not be necessary to direct individual notice to more than five hundred (500) members, but the members to whom individual notice is not directed shall be given notice in such manner as the court shall direct, which may include publishing notice in newspapers, magazines, trade journals or other publications, posting it in appropriate places, and taking other steps that are reasonably calculated to bring the notice to the attention of such members, provided that the cost of giving such notice shall be reasonable in view of the amounts that may be recovered by the class members who are being notified. Members to whom individual notice was not

directed may request exclusion from the class at any time before the issue of liability is determined, and commencing an individual action before the issue of liability is determined shall be the equivalent of requesting exclusion from the class.

3. The judgment in an action maintained as a class action under paragraphs 1 or 2 of subsection B of this section, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under paragraph 3 of subsection B of this section, whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in paragraph 2 of subsection ~~C~~ D of this section was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

4. When appropriate:

- a. an action may be brought or maintained as a class action with respect to particular issues, or
- b. a class may be divided into subclasses and each subclass treated as a class.

The provisions of this section shall then be construed and applied accordingly.

~~D.~~ E. ORDERS IN CONDUCT OF ACTIONS. In the conduct of actions to which this section applies, the court may make appropriate orders:

1. Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

2. Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they

consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

3. Imposing conditions on the representative parties or on intervenors;

4. Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; and

5. Dealing with similar procedural matters.

The orders may be combined with an order under Section ~~16~~ 2016 of this ~~act~~ title and may be altered or amended as may be desirable from time to time.

~~E.~~ F. DISMISSAL OR COMPROMISE. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1H of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A health care provider performing voluntary health care services, or a health care provider providing facilities, without expectation of compensation, shall not be liable for civil damages on the basis of any act or omission in providing the medical services if:

1. The health care provider was acting in good faith and within the scope of the license issued to the health care provider pursuant to Title 59 or 63 of the Oklahoma Statutes;

2. The acts or omissions were not caused by gross negligence or willful and wanton misconduct; and

3. The acts or omissions were allegedly committed in the course of providing health care services.

B. The voluntary medical services provided without expectation of compensation on the part of a health care provider may be provided at any location.

C. The civil immunity for the health care provider provided in subsection A of this section does not apply unless the person receiving the volunteer health care services, or the legal representative of the person receiving the volunteer health care services, provides informed consent that:

1. The health care services are being provided with no expectation of compensation on the part of the health care provider, and;

2. The health care services are governed by this section providing immunity from civil damages for the health care provider.

D. The civil immunity provided for in subsection A of this section applies only to the actions taken by the health care provider during the provision of the health care services and does not confer any immunity for actions taken prior to or subsequent to the provision of health care services.

E. In any civil action in which a health care provider prevails based upon the civil immunity provided for in subsection A of this section, the court shall award all reasonable attorney fees incurred by the health care provider in defending the action.

F. For purposes of this section, the terms "health care provider" and "health care services" shall have the meanings assigned to them in Section 1-1708.1C of Title 63 of the Oklahoma Statutes.

SECTION 6. This act shall become effective November 1, 2004.

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