

1 ENGROSSED SENATE
2 BILL NO. 704

By: Johnson (Rob) of the Senate

3 and

4 Sullivan of the House

5
6 [class actions - modifying procedures - effective
7 date]
8

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

10 SECTION 1. AMENDATORY 12 O.S. 2001, Section 2023, as
11 amended by Section 16, Chapter 228, O.S.L. 2009 (12 O.S. Supp. 2010,
12 Section 2023), is amended to read as follows:

13 Section 2023.

14 CLASS ACTIONS

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

18 1. The class is so numerous that joinder of all members is
19 impracticable;

20 2. There are questions of law or fact common to the class;

21 3. The claims or defenses of the representative parties are
22 typical of the claims or defenses of the class; and

23 4. The representative parties will fairly and adequately
24 protect the interests of the class.

1 B. CLASS ACTIONS MAINTAINABLE. An action may be maintained as
2 a class action if the prerequisites of subsection A of this section
3 are satisfied ~~and in addition~~, if the petition in the class action
4 contains factual allegations sufficient to demonstrate a plausible
5 claim for relief and:

6 1. The prosecution of separate actions by or against individual
7 members of the class would create a risk of:

8 a. inconsistent or varying adjudications with respect to
9 individual members of the class which would establish
10 incompatible standards of conduct for the party
11 opposing the class, or

12 b. adjudications with respect to individual members of
13 the class which would as a practical matter be
14 dispositive of the interests of the other members not
15 parties to the adjudications or substantially impair
16 or impede their ability to protect their interests; or

17 2. The party opposing the class has acted or refused to act on
18 grounds generally applicable to the class, thereby making
19 appropriate final injunctive relief or corresponding declaratory
20 relief with respect to the class as a whole; or

21 3. The court finds that the questions of law or fact common to
22 the members of the class predominate over any questions affecting
23 only individual members, and that a class action is superior to

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1 other available methods for the fair and efficient adjudication of
2 the controversy. The matters pertinent to the findings include:

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

14 C. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE
15 MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS
16 ACTIONS.

17 1. As soon as practicable after the commencement of an action
18 brought as a class action, the court shall determine by order
19 whether it is to be so maintained. An order entered on or after
20 November 1, 2009, that certifies a class action shall define the
21 class and the class claims, issues or defenses, and shall appoint
22 class counsel under subsection F of this section. An order under
23 this subsection may be conditional, and may be altered or amended
24 before the decision on the merits.

1 2. The order described in paragraph 1 of this subsection shall
2 be subject to a de novo standard of review by any appellate court
3 reviewing the order. While the appeal of the order on class
4 certification is pending, the trial court shall retain sufficient
5 jurisdiction over the case to consider and implement a settlement of
6 the action should one be reached between the parties and discovery
7 as to the class claims shall be stayed pending resolution of the
8 appeal.

9 3. For any class certified under paragraph 1 or 2 of subsection
10 B of this section, the court may direct appropriate notice to the
11 class.

12 4. In any class action maintained under paragraph 3 of
13 subsection B of this section, the court shall direct to the members
14 of the class the best notice practicable under the circumstances,
15 including individual notice to all members who can be identified
16 through reasonable effort. The notice shall clearly and concisely
17 state in plain, easily understood language:

- 18 a. the nature of the action,
- 19 b. the definition of the class certified,
- 20 c. the class claims, issues or defenses,
- 21 d. that a class member may enter an appearance through an
22 attorney if the member so desires,

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- 1 e. that the court will exclude ~~him~~ the member from the
2 class if ~~he~~ the member so requests by a specified
3 date,
- 4 f. that the judgment, whether favorable or not, will
5 include all members who do not request exclusion, and
- 6 g. that any member who does not request exclusion may, if
7 ~~he~~ the member desires, enter an appearance through ~~his~~
8 counsel.

9 Members to whom individual notice is not directed shall be given
10 notice in such manner as the court shall direct, which may include
11 publishing notice in newspapers, magazines, trade journals or other
12 publications, posting it in appropriate places, and taking other
13 steps that are reasonably calculated to bring the notice to the
14 attention of such members, provided that the cost of giving such
15 notice shall be reasonable in view of the amounts that may be
16 recovered by the class members who are being notified. Members to
17 whom individual notice was not directed may request exclusion from
18 the class at any time before the issue of liability is determined,
19 and commencing an individual action before the issue of liability is
20 determined shall be the equivalent of requesting exclusion from the
21 class.

22 5. The judgment in an action maintained as a class action under
23 paragraph 1 or 2 of subsection B of this section, whether or not
24 favorable to the class, shall include and describe those whom the

1 court finds to be members of the class. The judgment in an action
2 maintained as a class action under paragraph 3 of subsection B of
3 this section, whether or not favorable to the class, shall include
4 and specify or describe those to whom the notice provided in
5 paragraph 4 of this subsection was directed, and who have not
6 requested exclusion, and whom the court finds to be members of the
7 class.

8 6. When appropriate:

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

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

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

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

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

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

3 3. For actions filed after November 1, 2009, class membership
4 shall be limited, unless otherwise agreed to by the defendant, only
5 to individuals or entities who are:

6 a. residents of this state, or

7 b. nonresidents of this state who:

8 (1) own an interest in property located in this state
9 where the property is relevant to the class
10 action, or

11 (2) have a significant portion of the nonresident's
12 cause of action arising from conduct occurring
13 within the state;

14 4. Requiring, for the sole purpose of class notice upon
15 certification of a class, that parties to the action provide such
16 names and addresses of potential members of the class as they
17 possess, subject to an appropriate protective order;

18 5. Imposing conditions on the representative parties or on
19 intervenors;

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

23 7. Dealing with similar procedural matters.
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1 The orders may be combined with an order under Section 2016 of this
2 title and may be altered or amended as may be desirable from time to
3 time.

4 E. DISMISSAL OR COMPROMISE. The claims, issues or defenses of
5 a certified class may be settled, voluntarily dismissed, or
6 compromised only with the court's approval. For motions filed after
7 November 1, 2009, the following procedures apply to a proposed
8 settlement, voluntary dismissal, or compromise:

9 1. The court shall direct notice in a reasonable manner to all
10 class members who would be bound by the proposal;

11 2. If the proposal would bind class members, the court may
12 approve it only after a hearing and on finding that it is fair,
13 reasonable and adequate;

14 3. The parties seeking approval shall file a statement
15 identifying any agreement made in connection with the proposal;

16 4. If the class action was previously certified under paragraph
17 3 of subsection B of this section, the court may refuse to approve a
18 settlement unless it affords a new opportunity to request exclusion
19 to individual class members who had an earlier opportunity to
20 request exclusion but did not do so; and

21 5. Any class member may object to the proposal if it requires
22 court approval under this subsection.

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1 F. CLASS COUNSEL. 1. Unless a statute provides otherwise, a
2 court that certifies a class shall appoint class counsel. In
3 appointing class counsel after November 1, 2009, the court:

4 a. shall consider:

5 (1) the work counsel has done in identifying or

6 investigating potential claims in the action,

7 (2) counsel's experience in handling class actions,

8 other complex litigation, and the types of claims

9 asserted in the action,

10 (3) counsel's knowledge of the applicable law, and

11 (4) the resources that counsel will commit to

12 representing the class,

13 b. may consider any other matter pertinent to counsel's

14 ability to fairly and adequately represent the

15 interests of the class,

16 c. may order potential class counsel to provide

17 information on any subject pertinent to the

18 appointment and to propose terms for attorney fees or

19 nontaxable costs,

20 d. may include in the appointing order provisions about

21 the award of attorney fees or nontaxable costs, and

22 e. may make further orders in connection with the

23 appointment;

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1 2. When one applicant seeks appointment as class counsel, the
2 court may appoint that applicant only if the applicant is adequate
3 under paragraphs 1 and 4 of this subsection. If more than one
4 adequate applicant seeks appointment, the court shall appoint the
5 applicant best able to represent the interests of the class.

6 3. The court may designate interim counsel to act on behalf of
7 a putative class before determining whether to certify the action as
8 a class action.

9 4. Class counsel shall fairly and adequately represent the
10 interests of the class.

11 G. ATTORNEY FEES AND NONTAXABLE COSTS. 1. In a certified
12 class action, the court may award reasonable attorney fees and
13 nontaxable costs that are authorized by law or by the parties'
14 agreement.

15 2. A claim for an award shall be made by motion, subject to the
16 provisions of this subsection, at a time set by the court. Notice
17 of the motion shall be served on all parties and, for motions by
18 class counsel, directed to class members in a reasonable manner.

19 3. A class member, or a party from whom payment is sought, may
20 object to the motion.

21 4. In considering a motion for attorney fees filed after
22 November 1, 2009:

23 a. the court shall conduct an evidentiary hearing to
24 determine a fair and reasonable fee for class counsel,

- 1 b. the court shall act in a fiduciary capacity on behalf
2 of the class in making such determination,
- 3 c. the court may appoint an attorney to represent the
4 class upon the request by any members of the class in
5 a hearing on the issue of the amount of attorney fees
6 or the court may refer the matter to a referee
7 pursuant to Section 613 et seq. of this title,
- 8 d. if the court appoints an attorney to represent the
9 class for the fee hearing pursuant to subparagraph c
10 of this paragraph or refers the matter to a referee,
11 the attorney or referee shall be independent of the
12 attorney or attorneys seeking attorney fees in the
13 class action, and said independent attorney or referee
14 shall be awarded reasonable fees by the court on an
15 hourly basis out of the proceeds awarded to the class,
- 16 e. in arriving at a fair and reasonable fee for class
17 counsel, the court shall consider the following
18 factors:
- 19 (1) time and labor required,
20 (2) the novelty and difficulty of the questions
21 presented by the litigation,
22 (3) the skill required to perform the legal service
23 properly,
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- (4) the preclusion of other employment by the attorney due to acceptance of the case,
 - (5) the customary fee,
 - (6) whether the fee is fixed or contingent,
 - (7) time limitations imposed by the client or the circumstances,
 - (8) the amount in controversy and the results obtained,
 - (9) the experience, reputation and ability of the attorney,
 - (10) whether or not the case is an undesirable case,
 - (11) the nature and length of the professional relationship with the client,
 - (12) awards in similar causes, and
 - (13) the risk of recovery in the litigation, and
- f. if any portion of the benefits recovered for the class in an action maintained pursuant to paragraph 3 of subsection B of this section are in the form of coupons, discounts on future goods or services or other similar types of 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. This act shall become effective November 1, 2011.

