

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 704

By: Johnson (Rob)

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6 AS INTRODUCED

7 An Act relating to class actions; amending 12 O.S.  
8 2001, Section 2023, as amended by Section 16, Chapter  
9 228, O.S.L. 2009 (12 O.S. Supp. 2010, Section 2023),  
10 which relates to class actions; modifying procedures  
11 for inclusion in certain class; and providing an  
12 effective date.

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

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

17 Section 2023.

18 CLASS ACTIONS

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

22 1. The class is so numerous that joinder of all members is  
23 impracticable;

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

1           3. The claims or defenses of the representative parties are  
2 typical of the claims or defenses of the class; and

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

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

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

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

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

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

23           3. The court finds that the questions of law or fact common to  
24 the members of the class predominate over any questions affecting

1 only individual members, and that a class action is superior to  
2 other available methods for the fair and efficient adjudication of  
3 the controversy. The matters pertinent to the findings include:

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

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

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

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

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

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

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

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

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

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

11           6. When appropriate:

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

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

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

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

23           2. Requiring, for the protection of the members of the class or  
24 otherwise for the fair conduct of the action, that notice be given

1 in such manner as the court may direct to some or all of the members  
2 of any step in the action, or of the proposed extent of the  
3 judgment, or of the opportunity of members to signify whether they  
4 consider the representation fair and adequate, to intervene and  
5 present claims or defenses, or otherwise to come into the action;

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

9 a. residents of this state, or

10 b. nonresidents of this state who:

11 (1) own an interest in property located in this state  
12 where the property is relevant to the class  
13 action, or

14 (2) have a significant portion of the nonresident's  
15 cause of action arising from conduct occurring  
16 within the state;

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

21 5. Imposing conditions on the representative parties or on  
22 intervenors;

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

4           7. Dealing with similar procedural matters.

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

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

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

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

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

20           4. If the class action was previously certified under paragraph  
21 3 of subsection B of this section, the court may refuse to approve a  
22 settlement unless it affords a new opportunity to request ~~exclusion~~  
23 inclusion to individual class members who had an earlier opportunity  
24 to request ~~exclusion~~ inclusion but did not do so; and

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

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

6           a. shall consider:

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

8               investigating potential claims in the action,

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

10              other complex litigation, and the types of claims

11              asserted in the action,

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

13              (4) the resources that counsel will commit to

14              representing the class,

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

16           ability to fairly and adequately represent the

17           interests of the class,

18           c. may order potential class counsel to provide

19           information on any subject pertinent to the

20           appointment and to propose terms for attorney fees or

21           nontaxable costs,

22           d. may include in the appointing order provisions about

23           the award of attorney fees or nontaxable costs, and

24

1 e. may make further orders in connection with the  
2 appointment;

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

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

11 4. Class counsel shall fairly and adequately represent the  
12 interests of the class.

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

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

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

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

- 1 a. the court shall conduct an evidentiary hearing to  
2 determine a fair and reasonable fee for class counsel,  
3 b. the court shall act in a fiduciary capacity on behalf  
4 of the class in making such determination,  
5 c. the court may appoint an attorney to represent the  
6 class upon the request by any members of the class in  
7 a hearing on the issue of the amount of attorney fees  
8 or the court may refer the matter to a referee  
9 pursuant to Section 613 et seq. of this title,  
10 d. if the court appoints an attorney to represent the  
11 class for the fee hearing pursuant to subparagraph c  
12 of this paragraph or refers the matter to a referee,  
13 the attorney or referee shall be independent of the  
14 attorney or attorneys seeking attorney fees in the  
15 class action, and said independent attorney or referee  
16 shall be awarded reasonable fees by the court on an  
17 hourly basis out of the proceeds awarded to the class,  
18 e. in arriving at a fair and reasonable fee for class  
19 counsel, the court shall consider the following  
20 factors:  
21 (1) time and labor required,  
22 (2) the novelty and difficulty of the questions  
23 presented by the litigation,  
24

- 1 (3) the skill required to perform the legal service
- 2 properly,
- 3 (4) the preclusion of other employment by the
- 4 attorney due to acceptance of the case,
- 5 (5) the customary fee,
- 6 (6) whether the fee is fixed or contingent,
- 7 (7) time limitations imposed by the client or the
- 8 circumstances,
- 9 (8) the amount in controversy and the results
- 10 obtained,
- 11 (9) the experience, reputation and ability of the
- 12 attorney,
- 13 (10) whether or not the case is an undesirable case,
- 14 (11) the nature and length of the professional
- 15 relationship with the client,
- 16 (12) awards in similar causes, and
- 17 (13) the risk of recovery in the litigation, and

18 f. if any portion of the benefits recovered for the class  
19 in an action maintained pursuant to paragraph 3 of  
20 subsection B of this section are in the form of  
21 coupons, discounts on future goods or services or  
22 other similar types of noncash common benefits, the  
23 attorney fees awarded in the class action shall be in  
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1 cash and noncash amounts in the same proportion as the  
2 recovery for the class.

3 SECTION 2. This act shall become effective November 1, 2011.  
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