

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3300

By: Osborn of the House

and

Treat of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to civil procedure; amending 12 O.S.
12 2011, Section 2023, as last amended by Section 5,
13 Chapter 10, 1st Extraordinary Session, O.S.L. 2013,
14 which relates to class action lawsuits; modifying
15 procedure for determination of whether class action
16 may be maintained; and providing an effective date.

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

18 SECTION 1. AMENDATORY 12 O.S. 2011, Section 2023, as
19 last amended by Section 5, Chapter 10, 1st Extraordinary Session,
20 O.S.L. 2013, is amended to read as follows:

21 Section 2023.

22 CLASS ACTIONS

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

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

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

4 3. The claims or defenses of the representative parties are
5 typical of the claims or defenses of the class; and

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

8 B. CLASS ACTIONS MAINTAINABLE. An action may be maintained as
9 a class action if the prerequisites of subsection A of this section
10 are satisfied, if the petition in the class action contains factual
11 allegations sufficient to demonstrate a plausible claim for relief
12 and:

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

15 a. inconsistent or varying adjudications with respect to
16 individual members of the class which would establish
17 incompatible standards of conduct for the party
18 opposing the class, or

19 b. adjudications with respect to individual members of
20 the class which would as a practical matter be
21 dispositive of the interests of the other members not
22 parties to the adjudications or substantially impair
23 or impede their ability to protect their interests; or

24

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

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

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

21 C. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE
22 MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS
23 ACTIONS.
24

1 1. As soon as practicable after the commencement of an action
2 brought as a class action, the court shall ~~determine by order~~
3 ~~whether it is to be so maintained~~ perform a rigorous analysis to
4 determine whether the prerequisites of subsections A and B of this
5 section are satisfied such that the action may be maintained. The
6 court's determination shall be made by order and shall be consistent
7 with decisions of the United States Supreme Court interpreting the
8 provisions of Federal Rule of Civil Procedure 23. An order entered
9 on or after November 1, 2011, that certifies a class action shall
10 define the class and the class claims, issues or defenses, and shall
11 appoint class counsel under subsection F of this section. An order
12 under this subsection may be conditional, and may be altered or
13 amended before the decision on the merits.

14 2. The order described in paragraph 1 of this subsection shall
15 be subject to a de novo standard of review by any appellate court
16 reviewing the order. While the appeal of the order on class
17 certification is pending, the trial court shall retain sufficient
18 jurisdiction over the case to consider and implement a settlement of
19 the action should one be reached between the parties and discovery
20 as to the class claims shall be stayed pending resolution of the
21 appeal.

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

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

- 7 a. the nature of the action,
- 8 b. the definition of the class certified,
- 9 c. the class claims, issues or defenses,
- 10 d. that a class member may enter an appearance through an
11 attorney if the member so desires,
- 12 e. that the court will exclude the member from the class
13 if the member so requests by a specified date,
- 14 f. that the judgment, whether favorable or not, will
15 include all members who do not request exclusion, and
16 g. that any member who does not request exclusion may, if
17 the member desires, enter an appearance through
18 counsel.

19 Members to whom individual notice is not directed shall be given
20 notice in such manner as the court shall direct, which may include
21 publishing notice in newspapers, magazines, trade journals or other
22 publications, posting it in appropriate places, and taking other
23 steps that are reasonably calculated to bring the notice to the
24 attention of such members, provided that the cost of giving such

1 notice shall be reasonable in view of the amounts that may be
2 recovered by the class members who are being notified. Members to
3 whom individual notice was not directed may request exclusion from
4 the class at any time before the issue of liability is determined,
5 and commencing an individual action before the issue of liability is
6 determined shall be the equivalent of requesting exclusion from the
7 class.

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

18 6. When appropriate:

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

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

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

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

6 2. Requiring, for the protection of the members of the class or
7 otherwise for the fair conduct of the action, that notice be given
8 in such manner as the court may direct to some or all of the members
9 of any step in the action, or of the proposed extent of the
10 judgment, or of the opportunity of members to signify whether they
11 consider the representation fair and adequate, to intervene and
12 present claims or defenses, or otherwise to come into the action;

13 3. For actions filed after November 1, 2011, class membership
14 shall be limited, unless otherwise agreed to by the defendant, only
15 to individuals or entities who are:

16 a. residents of this state, or

17 b. nonresidents of this state who:

18 (1) own an interest in property located in this state
19 where the property is relevant to the class
20 action, or

21 (2) have a significant portion of the nonresident's
22 cause of action arising from conduct occurring
23 within the state;

24

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

5 5. Imposing conditions on the representative parties or on
6 intervenors;

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

10 7. Dealing with similar procedural matters.

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

14 E. DISMISSAL OR COMPROMISE. The claims, issues or defenses of
15 a certified class may be settled, voluntarily dismissed, or
16 compromised only with the court's approval. For motions filed after
17 November 1, 2011, the following procedures apply to a proposed
18 settlement, voluntary dismissal, or compromise:

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

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

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

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

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

10 F. CLASS COUNSEL. 1. Unless a statute provides otherwise, a
11 court that certifies a class shall appoint class counsel. In
12 appointing class counsel after November 1, 2011, the court:

13 a. shall consider:

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

15 investigating potential claims in the action,

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

17 other complex litigation, and the types of claims

18 asserted in the action,

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

20 (4) the resources that counsel will commit to

21 representing the class,

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

23 ability to fairly and adequately represent the

24 interests of the class,

- 1 c. may order potential class counsel to provide
2 information on any subject pertinent to the
3 appointment and to propose terms for attorney fees or
4 nontaxable costs,
5 d. may include in the appointing order provisions about
6 the award of attorney fees or nontaxable costs, and
7 e. may make further orders in connection with the
8 appointment.

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

14 3. The court may designate interim counsel to act on behalf of
15 a putative class before determining whether to certify the action as
16 a class action.

17 4. Class counsel shall fairly and adequately represent the
18 interests of the class.

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

23 2. A claim for an award shall be made by motion, subject to the
24 provisions of this subsection, at a time set by the court. Notice

1 of the motion shall be served on all parties and, for motions by
2 class counsel, directed to class members in a reasonable manner.

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

5 4. In considering a motion for attorney fees filed after the
6 effective date of this act:

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

9 b. the court shall act in a fiduciary capacity on behalf
10 of the class in making such determination,

11 c. the court may appoint an attorney to represent the
12 class upon the request by any members of the class in
13 a hearing on the issue of the amount of attorney fees
14 or the court may refer the matter to a referee
15 pursuant to Section 613 et seq. of this title,

16 d. if the court appoints an attorney to represent the
17 class for the fee hearing pursuant to subparagraph c
18 of this paragraph or refers the matter to a referee,
19 the attorney or referee shall be independent of the
20 attorney or attorneys seeking attorney fees in the
21 class action, and said independent attorney or referee
22 shall be awarded reasonable fees by the court on an
23 hourly basis out of the proceeds awarded to the class,
24

1 e. in arriving at a fair and reasonable fee for class
2 counsel, the court shall consider the following
3 factors:

- 4 (1) time and labor required,
- 5 (2) the novelty and difficulty of the questions
6 presented by the litigation,
- 7 (3) the skill required to perform the legal service
8 properly,
- 9 (4) the preclusion of other employment by the
10 attorney due to acceptance of the case,
- 11 (5) the customary fee,
- 12 (6) whether the fee is fixed or contingent,
- 13 (7) time limitations imposed by the client or the
14 circumstances,
- 15 (8) the amount in controversy and the results
16 obtained,
- 17 (9) the experience, reputation and ability of the
18 attorney,
- 19 (10) whether or not the case is an undesirable case,
- 20 (11) the nature and length of the professional
21 relationship with the client,
- 22 (12) awards in similar causes, and
- 23 (13) the risk of recovery in the litigation, and
24

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

9 SECTION 2. This act shall become effective November 1, 2014.

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11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/19/2014 - DO
12 PASS, As Amended and Coauthored.