

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 366

By: Holt

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5  
6 AS INTRODUCED

7 An Act relating to class actions; amending 12 O.S.  
8 2011, Section 2023, as last amended by Section 5,  
9 Chapter 10, 1st Extraordinary Session, O.S.L. 2013  
10 (12 O.S. Supp. 2016, Section 2023), which relates to  
11 class actions; modifying prerequisites to a class  
12 action; prohibiting certain settlement payments;  
13 providing exception; adding grounds for removal of  
14 class counsel; providing for replacement of certain  
15 counsel; prohibiting receipt of certain fee or award  
16 to removed counsel; updating statutory reference; and  
17 providing an effective date.

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

19 SECTION 1. AMENDATORY 12 O.S. 2011, Section 2023, as  
20 last amended by Section 5, Chapter 10, 1st Extraordinary Session,  
21 O.S.L. 2013 (12 O.S. Supp. 2016, Section 2023), is amended to read  
22 as follows:

23 Section 2023.

24 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 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 and the type and scope of injury of  
5 the representative parties are typical of the claims or defenses and  
6 the type and scope of injury of the class; ~~and~~

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

9 5. The members of the class are objectively verifiable by  
10 reliable and feasible means without individual testimony from  
11 putative class members and without substantial administrative  
12 burden.

13 B. CLASS ACTIONS MAINTAINABLE. An action may be maintained as  
14 a class action if the prerequisites of subsection A of this section  
15 are satisfied, if the petition in the class action contains factual  
16 allegations sufficient to demonstrate a plausible claim for relief  
17 and:

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

20 a. inconsistent or varying adjudications with respect to  
21 individual members of the class which would establish  
22 incompatible standards of conduct for the party  
23 opposing the class, or  
24

1           b. adjudications with respect to individual members of  
2           the class which would as a practical matter be  
3           dispositive of the interests of the other members not  
4           parties to the adjudications or substantially impair  
5           or impede their ability to protect their interests; or

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

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

15           a. the interest of members of the class in individually  
16           controlling the prosecution or defense of separate  
17           actions,

18           b. the extent and nature of any litigation concerning the  
19           controversy already commenced by or against members of  
20           the class,

21           c. the desirability or undesirability of concentrating  
22           the litigation of the claims in the particular forum,  
23           and

1           d.    the difficulties likely to be encountered in the  
2                   management of a class action.

3           C.    DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE  
4 MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS  
5 ACTIONS.

6           1.    As soon as practicable after the commencement of an action  
7 brought as a class action, the court shall determine by order  
8 whether it is to be so maintained. An order entered on or after  
9 November 1, 2011, that certifies a class action shall define the  
10 class and the class claims, issues or defenses, and shall appoint  
11 class counsel under subsection F of this section. An order under  
12 this subsection may be conditional, and may be altered or amended  
13 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;

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; and

10 6. a. except as provided in subsection G of this section, no  
11 settlement under this section shall allow any payment  
12 to a charitable organization or to other persons who  
13 are not members of the class as defined in the final  
14 settlement. No settlement proposal providing for  
15 payments in violation of this subsection may be  
16 approved by the court.

17 b. notwithstanding subparagraph a of this paragraph, a  
18 settlement under this section may allow payment to a  
19 governmental entity responsible for the enforcement of  
20 any statute or regulation that the settling defendant  
21 or defendants allegedly violated.

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

1 a. shall consider:

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

3 investigating potential claims in the action,

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

5 other complex litigation, and the types of claims

6 asserted in the action,

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

8 (4) the resources that counsel will commit to

9 representing the class,

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

11 ability to fairly and adequately represent the

12 interests of the class,

13 c. may order potential class counsel to provide

14 information on any subject pertinent to the

15 appointment and to propose terms for attorney fees or

16 nontaxable costs,

17 d. may include in the appointing order provisions about

18 the award of attorney fees or nontaxable costs, and

19 e. may make further orders in connection with the

20 appointment.

21 2. When one applicant seeks appointment as class counsel, the  
22 court may appoint that applicant only if the applicant is adequate  
23 under paragraphs 1 and 4 of this subsection. If more than one  
24

1 adequate applicant seeks appointment, the court shall appoint the  
2 applicant best able to represent the interests of the class.

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

6 4. Class counsel shall fairly and adequately represent the  
7 interests of the class.

8 5. Class counsel proposing a settlement in violation of  
9 paragraph 6 of subsection E of this section shall be deemed  
10 inadequate to represent the class under subsection A of this section  
11 and shall be replaced. Pursuant to this subsection, the court may  
12 replace counsel on its own motion, or upon motion by any party or by  
13 any member of the putative class. Replacement counsel shall not be  
14 a member of the same firm or contractual consortium as counsel who  
15 were removed. Class counsel removed pursuant to this subsection  
16 shall have no right to receive any fee or quantum meruit award.

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

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

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

3 4. In considering a motion for attorney fees filed after ~~the~~  
4 ~~effective date of this act~~ September 10, 2013:

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

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

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

14 d. if the court appoints an attorney to represent the  
15 class for the fee hearing pursuant to subparagraph c  
16 of this paragraph or refers the matter to a referee,  
17 the attorney or referee shall be independent of the  
18 attorney or attorneys seeking attorney fees in the  
19 class action, and ~~said~~ the independent attorney or  
20 referee shall be awarded reasonable fees by the court  
21 on an hourly basis out of the proceeds awarded to the  
22 class,  
23  
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, 2017.

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