

SECOND REGULAR SESSION

SENATE BILL NO. 1004

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

Read 1st time February 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6025S.011

AN ACT

To amend supreme court rule 52.08, for the purpose of prohibiting political subdivisions from participating in certain class actions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Supreme court rule 52.08, is amended, to read as follows:

2 RULE 52.08 CLASS ACTIONS

3 (a) Prerequisites to a Class Action. One or more members of a class may
4 sue or be sued as representative parties on behalf of all only if (1) the class is so
5 numerous that joinder of all members is impracticable, (2) there are questions of
6 law or fact common to the class, (3) the claims or defenses of the representative
7 parties are typical of the claims or defenses of the class, and (4) the
8 representative parties will fairly and adequately protect the interests of the class.

9 (b) Class Actions Maintainable. An action may be maintained as a class
10 action if the prerequisites of subdivision (a) are satisfied, and in addition:

11 (1) The prosecution of separate actions by or against individual members
12 of the class would create a risk of

13 (A) inconsistent or varying adjudications with respect to individual
14 members of the class which would establish incompatible standards of conduct for
15 the party opposing the class, or

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

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

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

28 (A) the interest of members of the class in individually controlling the
29 prosecution or defense of separate actions;

30 (B) the extent and nature of any litigation concerning the controversy
31 already commenced by or against members of the class;

32 (C) the desirability or undesirability of concentrating the litigation of the
33 claims in the particular forum;

34 (D) the difficulties likely to be encountered in the management of a class
35 action.

36 (c) Determination by Order Whether Class Action to Be Maintained -
37 Notice - Judgment - Actions Conducted Partially as Class Actions.

38 (1) As soon as practicable after the commencement of an action brought
39 as a class action, the court shall determine by order whether it is to be so
40 maintained. An order under this Rule 52.08(c)(1) may be conditional and may be
41 altered or amended before the decision on the merits.

42 (2) In any class action maintained under Rule 52.08(b)(3), the court shall
43 direct to the members of the class the best notice practicable under the
44 circumstances, including individual notice to all members who can be identified
45 through reasonable effort. The notice shall advise each member that: (A) the
46 court will exclude the member from the class if requested by a specified date; (B)
47 the judgment, whether favorable or not, will include all members who do not
48 request exclusion; and (C) any member who does not request exclusion may, if
49 desired, enter an appearance through counsel.

50 (3) The judgment in an action maintained as a class action under Rule
51 52.08(b)(1) or Rule 52.08(b)(2), whether or not favorable to the class, shall include
52 and describe those whom the court finds to be members of the class. The
53 judgment in an action maintained as a class action under Rule 52.08(b)(3),
54 whether or not favorable to the class, shall include and specify or describe those
55 to whom the notice provided in Rule 52.08(c)(2) was directed, and who have not
56 requested exclusion, and whom the court finds to be members of the class.

57 (4) When appropriate an action may be brought or maintained as a class
58 action with respect to particular issues or a class may be divided into subclasses

59 and each subclass treated as a class, and the provisions of this Rule 52.08 shall
60 then be construed and applied accordingly.

61 (d) Orders in Conduct of Actions. In the conduct of actions to which this
62 Rule applies, the court may make appropriate orders:

63 (1) determining the course of proceedings or prescribing measures to
64 prevent undue repetition or complication in the presentation of evidence or
65 argument;

66 (2) requiring, for the protection of the members of the class or otherwise
67 for the fair conduct of the action, that notice be given in such manner as the court
68 may direct to some or all of the members of any step in the action, or of the
69 proposed extent of the judgment, or of the opportunity of members to signify
70 whether they consider the representation fair and adequate, to intervene and
71 present claims or defenses, or otherwise to come into the action;

72 (3) imposing conditions on the representative parties or on intervenors;

73 (4) requiring that the pleadings be amended to eliminate therefrom
74 allegations as to representation of absent persons, and that the action proceed
75 accordingly;

76 (5) dealing with similar procedural matters. The orders may be combined
77 with an order under Rule 62, and may be altered or amended as may be desirable
78 from time to time.

79 (e) Dismissal or Compromise. A class action shall not be dismissed or
80 compromised without the approval of the court, and notice of the proposed
81 dismissal or compromise shall be given to all members of the class in such
82 manner as the court directs.

83 (f) Appeals. An appellate court may permit an appeal from an order of a
84 circuit court granting or denying class action certification under this Rule 52.08
85 if a petition is timely filed as provided in Rule 84.035. The filing of a petition
86 shall not stay the proceedings in the trial court unless the trial judge or the
87 appellate court so orders.

88 **(g) Political subdivisions. No county, city, village, town, or other**
89 **political subdivision of the state of Missouri shall participate in any**
90 **action in Missouri state court under this rule as a representative or**
91 **member of a class to enforce or collect any tax.**

✓