

SECOND REGULAR SESSION

# HOUSE BILL NO. 2242

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORNEJO.

4338H.011

D. ADAM CRUMBLISS, Chief Clerk

## AN ACT

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

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

Section A. Missouri supreme court rule 52.08 is amended to read as follows:

### RULE 52.08 CLASS ACTIONS

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

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

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

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

27 (C) the desirability or undesirability of concentrating the litigation of the claims in the  
28 particular forum;

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

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

32 (1) As soon as practicable after the commencement of an action brought as a class action,  
33 the court shall determine by order whether it is to be so maintained. An order under this Rule  
34 52.08(c)(1) may be conditional and may be altered or amended before the decision on the merits.

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

42 (3) The judgment in an action maintained as a class action under Rule 52.08(b)(1) or  
43 Rule 52.08(b)(2), whether or not favorable to the class, shall include and describe those whom  
44 the court finds to be members of the class. The judgment in an action maintained as a class  
45 action under Rule 52.08(b)(3), whether or not favorable to the class, shall include and specify  
46 or describe those to whom the notice provided in Rule 52.08(c)(2) was directed, and who have  
47 not requested exclusion, and whom the court finds to be members of the class.

48 (4) When appropriate an action may be brought or maintained as a class action with  
49 respect to particular issues or a class may be divided into subclasses and each subclass treated  
50 as a class, and the provisions of this Rule 52.08 shall then be construed and applied accordingly.

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

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

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

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

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

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

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

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

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

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