

CHAMBER ACTION

1 The State Administration Council recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to class action lawsuits; creating s.  
7 774.01, F.S.; providing requirements for capacity to file  
8 a class action; limiting actions to Florida residents;  
9 providing exceptions; providing requirements for monetary  
10 relief; eliminating private class action recovery of  
11 statutory penalties and other forms of monetary relief  
12 other than actual damages; providing monetary relief;  
13 providing for availability of nonmonetary relief; creating  
14 s. 774.02, F.S.; requiring a specified demand to cure  
15 notice prior to filing a class action; providing for a  
16 cure period; providing for inspection of goods or evidence  
17 relevant to a claim; requiring that a plaintiff plead and  
18 prove specified elements relating to the cure period;  
19 providing specified defenses to a cause of action;  
20 providing an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

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24 Section 1. Section 774.01, Florida Statutes, is created to  
25 read:

26 774.01 Capacity to sue.--

27 (1)(a) In any action asserting the right to class action  
28 status, the claimant class with capacity to sue shall be limited  
29 to residents of this state at the time of the alleged  
30 misconduct, except as provided in paragraph (b).

31 (b) Prior to issuance of the certification order, the  
32 court may expand a class to include any nonresident whose claim  
33 is recognized within the claimant's state of residence and is  
34 not time barred, but whose rights cannot be asserted because the  
35 claimant's state of residence lacks personal jurisdiction over  
36 the defendant or defendants. In addition, the claimant class may  
37 include nonresidents if the conduct giving rise to the claim  
38 occurred in this state.

39 (2) Notwithstanding any law to the contrary, in order to  
40 maintain a class action seeking monetary relief, the class must  
41 allege and prove actual damages. In any such class action, the  
42 monetary recovery shall be limited to the amount of actual  
43 damages. Nothing in this section shall be construed to limit or  
44 restrict the ability of the Attorney General to bring a class  
45 action for the recovery of statutory penalties, if otherwise  
46 authorized by law. However, class action claimants may seek to  
47 obtain, if appropriate, nonmonetary relief, including injunctive  
48 relief and orders or declaratory relief and orders or judgments  
49 enjoining wrongful conduct, regardless of whether the class  
50 action claimants can prove any actual monetary damages. Nothing

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51 in this section or in s. 774.02 shall be construed to in any way  
 52 limit or restrict the availability of such nonmonetary relief.

53 Section 2. Section 774.02, Florida Statutes, is created to  
 54 read:

55 774.02 Demand to cure notice; opportunity to cure.--

56 (1) As a prerequisite to filing a lawsuit seeking class  
 57 action status, a complainant shall provide the person alleged to  
 58 have committed the alleged misconduct with a demand to cure  
 59 notice advising the person of the specific complaint in  
 60 reasonable detail and:

61 (a) If the complainant will seek damages, the amount of  
 62 the loss suffered by the complainant as a result of the alleged  
 63 misconduct.

64 (b) If the complainant will seek any nonmonetary relief,  
 65 the remedy the complainant is seeking.

66  
 67 The required demand to cure notice must be provided in writing  
 68 and provided at least 60 days prior to filing suit.

69 (2) The complainant submitting the demand to cure notice  
 70 must state at the time of giving notice that the complainant  
 71 seeks to act on behalf of a class. No class action shall be  
 72 filed unless the person alleged to have committed the misconduct  
 73 is given the required demand to cure notice.

74 (3) During the 60-day period, the person provided with a  
 75 demand to cure notice may request in writing that the  
 76 complainant permit inspection of the goods or other evidence  
 77 relevant to the claim in a reasonable manner and at a reasonable  
 78 time and place. The complainant must grant any reasonable

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79 | request to inspect in order to satisfy the obligation to permit  
80 | a reasonable opportunity to cure.

81 | (4) Any settlement by a complainant purporting to affect  
82 | the rights of any member of a putative class shall be approved  
83 | by a court of competent jurisdiction pursuant to applicable  
84 | federal or state rules of civil procedure.

85 | (5) In addition to any requirements of the applicable  
86 | rules of civil procedure and the underlying action, when suit is  
87 | filed the plaintiff must plead and prove the following elements:

88 | (a) That the plaintiff provided the defendant with the  
89 | required demand to cure notice.

90 | (b) That the defendant failed to cure within the time  
91 | allowed.

92 | (6) A defendant shall have an absolute defense in an  
93 | action seeking class action status if:

94 | (a) The complainant did not provide the defendant with a  
95 | demand to cure notice;

96 | (b) The complainant denied the defendant a reasonable  
97 | opportunity to inspect; or

98 | (c) The defendant tendered to the complainant the damages  
99 | sought or the remedy proposed.

100 | Section 3. This act shall take effect July 1, 2005.