

1 A bill to be entitled
 2 An act relating to class action lawsuits; creating s.
 3 774.01, F.S.; providing legislative findings; providing
 4 requirements for capacity to file a class action; limiting
 5 actions to Florida residents; providing exceptions;
 6 providing requirements for monetary relief; eliminating
 7 private class action recovery of statutory penalties and
 8 other forms of monetary relief other than actual damages;
 9 providing monetary relief; providing for availability of
 10 nonmonetary relief; creating s. 774.02, F.S.; requiring a
 11 specified demand to cure notice prior to filing a class
 12 action; providing for a cure period; providing for
 13 inspection of goods or evidence relevant to a claim;
 14 requiring that a plaintiff plead and prove specified
 15 elements relating to the cure period; providing specified
 16 defenses to a cause of action; providing an effective
 17 date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

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 21 Section 1. Section 774.01, Florida Statutes, is created to
 22 read:

23 774.01 Capacity to sue.--

24 (1) The Legislature finds that nationwide class action
 25 lawsuits brought in Florida state courts can pose an
 26 unreasonable burden, in certain circumstances, on the judicial
 27 system at potentially great expense to Florida taxpayers with
 28 minimal benefits for Florida residents. The Legislature further

29 finds that nationwide class action lawsuits brought in Florida
30 state courts can result in cases of nationwide importance not
31 being heard in the federal courts, can result in forum shopping
32 not based on the jurisdiction with the greatest connection to
33 the controversy, and can result in one state's imposing its view
34 of the law on other states and binding the rights of the
35 residents of those states.

36 (2) (a) In any action asserting the right to class action
37 status, the claimant class with capacity to sue shall be limited
38 to residents of this state at the time of the alleged
39 misconduct, except as provided in paragraph (b).

40 (b) Prior to issuance of the certification order, the
41 court may expand a class to include any nonresident whose claim
42 is recognized within the claimant's state of residence and is
43 not time barred, but whose rights cannot be asserted because the
44 claimant's state of residence lacks personal jurisdiction over
45 the defendant or defendants. In addition, the claimant class may
46 include nonresidents if the conduct giving rise to the claim
47 occurred in this state.

48 (3) Notwithstanding any law to the contrary, in order to
49 maintain a class action seeking monetary relief, the class must
50 allege and prove actual damages. In any such class action, the
51 monetary recovery shall be limited to the amount of actual
52 damages. Nothing in this section shall be construed to limit or
53 restrict the ability of the Attorney General to bring a class
54 action for the recovery of statutory penalties, if otherwise
55 authorized by law. However, class action claimants may seek to
56 obtain, if appropriate, nonmonetary relief, including injunctive

57 relief and orders or declaratory relief and orders or judgments
 58 enjoining wrongful conduct, regardless of whether the class
 59 action claimants can prove any actual monetary damages. Nothing
 60 in this section or in s. 774.02 shall be construed to in any way
 61 limit or restrict the availability of such nonmonetary relief.

62 Section 2. Section 774.02, Florida Statutes, is created to
 63 read:

64 774.02 Demand to cure notice; opportunity to cure.--

65 (1) As a prerequisite to filing a lawsuit seeking class
 66 action status, a complainant shall provide the person alleged to
 67 have committed the alleged misconduct with a demand to cure
 68 notice advising the person of the specific complaint in
 69 reasonable detail and:

70 (a) If the complainant will seek damages, the amount of
 71 the loss suffered by the complainant and the members of the
 72 putative class as a result of the alleged misconduct, and the
 73 damages sought.

74 (b) If, on behalf of the complainant and members of the
 75 putative class, the complainant will seek any nonmonetary
 76 relief, the remedy sought.

77
 78 The required demand to cure notice must be provided in writing
 79 and provided at least 60 days prior to filing suit.

80 (2) The complainant submitting the demand to cure notice
 81 must state at the time of giving notice that the complainant
 82 seeks to act on behalf of a class. No class action shall be
 83 filed unless the person alleged to have committed the misconduct
 84 is given the required demand to cure notice.

85 (3) During the 60-day period, the person provided with a
86 demand to cure notice may request in writing that the
87 complainant permit inspection of the goods or other evidence
88 relevant to the claim in a reasonable manner and at a reasonable
89 time and place. The complainant must grant any reasonable
90 request to inspect in order to satisfy the obligation to permit
91 a reasonable opportunity to cure.

92 (4) Any settlement by a complainant purporting to affect
93 the rights of any member of a putative class shall be approved
94 by a court of competent jurisdiction pursuant to applicable
95 federal or state rules of civil procedure and this section.

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

99 (a) That the plaintiff provided the defendant with the
100 required demand to cure notice.

101 (b) That the defendant failed to cure within the time
102 allowed.

103 (6) A defendant shall have an absolute defense in an
104 action seeking class action status if:

105 (a) The complainant did not provide the defendant with a
106 demand to cure notice;

107 (b) The complainant denied the defendant a reasonable
108 opportunity to inspect; or

109 (c) The defendant tendered to the complainant the damages
110 sought or the remedy proposed.

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