

Bill No. SB 2564

Barcode 601498

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Webster) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

774.01 Capacity to sue.--

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

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

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1 giving rise to the claim occurred in this state.

2 (2) Notwithstanding any law to the contrary, in order
3 to maintain a class action seeking monetary relief, the class
4 must allege and prove actual damages. In any such class
5 action, the monetary recovery shall be limited to the amount
6 of actual damages. Nothing in this section shall be construed
7 to limit or restrict the ability of the Attorney General to
8 bring a class action for the recovery of statutory penalties,
9 if otherwise authorized by law. However, class action
10 claimants may seek to obtain, if appropriate, nonmonetary
11 relief, including injunctive relief and orders or declaratory
12 relief and orders or judgments enjoining wrongful conduct,
13 regardless of whether the class action claimants can prove any
14 actual monetary damages. Nothing in this section or in s.
15 774.02 shall be construed to in any way limit or restrict the
16 availability of such nonmonetary relief.

17 Section 2. Section 774.02, Florida Statutes, is
18 created to read:

19 774.02 Demand to cure notice; opportunity to cure.--

20 (1) As a prerequisite to filing a lawsuit seeking
21 class action status, a complainant shall provide the person
22 alleged to have committed the alleged misconduct with a demand
23 to cure notice advising the person of the specific complaint
24 in reasonable detail and:

25 (a) If the complainant will seek damages, the amount
26 of the loss suffered by the complainant as a result of the
27 alleged misconduct.

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

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31 The required demand to cure notice must be provided in writing

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1 and provided at least 60 days prior to filing suit.

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

7 (3) During the 60-day period, the person provided with
8 a demand to cure notice may request in writing that the
9 complainant permit inspection of the goods or other evidence
10 relevant to the claim in a reasonable manner and at a
11 reasonable time and place. The complainant must grant any
12 reasonable request to inspect in order to satisfy the
13 obligation to permit a reasonable opportunity to cure.

14 (4) Any settlement by a complainant purporting to
15 affect the rights of any member of a putative class shall be
16 approved by a court of competent jurisdiction pursuant to
17 applicable federal or state rules of civil procedure.

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

22 (a) That the plaintiff provided the defendant with the
23 required demand to cure notice.

24 (b) That the defendant failed to cure within the time
25 allowed.

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

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

30 (b) The complainant denied the defendant a reasonable
31 opportunity to inspect; or

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1 (c) The defendant tendered to the complainant the
2 damages sought or the remedy proposed.

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

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6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 Delete everything before the enacting clause

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

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