

Bill No. SB 2564

Barcode 904960

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Aronberg) recommended the following **substitute for amendment** (601498):

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) As a prerequisite to filing a class action lawsuit under Rule 1.220, Florida Rules of Civil Procedure, the claimant class with capacity to sue shall be limited to residents of this state at the time of the alleged misconduct, unless the defendant is a Florida corporation or is a Florida resident or has its principle place of business in Florida or the alleged injury or conduct of the defendant emanated from Florida, except as provided in subsection (2).

(2) Prior to issuance of the certification order, the court may expand the class to include any nonresident whose rights cannot be asserted because the claimant's state of

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1 residence lacks personal jurisdiction over the defendant.

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

4 774.02 Class action lawsuit presuit requirement.--

5 (1) As a prerequisite to filing a class action lawsuit
6 under Rule 1.220, Florida Rules of Civil Procedure, a claimant
7 shall present the person who is alleged to have committed the
8 misconduct with a demand-to-cure notice. For purposes of this
9 section, the term "putative defendant" means the person who is
10 alleged to have committed the misconduct. The required
11 demand-to-cure notice must be submitted in writing and served
12 at least 60 days prior to filing suit. The demand-to-cure
13 notice must provide the following information in reasonable
14 detail:

15 (a) If the claimant seeks monetary damages, the
16 estimated amount of the loss suffered by the claimant, a
17 description of the loss or a reasonable method for calculating
18 the loss, and whether the claimant contends that the putative
19 class has been damaged in a similar manner or as a result of
20 the same alleged misconduct; and

21 (b) If the claimant seeks any nonmonetary relief on
22 behalf of the claimant and the putative class, the remedy the
23 claimant is seeking individually and on behalf of the class.

24 (2) The demand-to-cure notice must state that the
25 claimant is acting on behalf of a class. A class action may
26 not be filed unless the putative defendant is given the
27 required demand-to-cure notice.

28 (3) During the 60-day period, the putative defendant
29 may request in writing that the claimant permit inspection of
30 the goods or other evidence relevant to the claim in a
31 reasonable manner and at a reasonable time and place. The

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1 claimant must grant any reasonable request to inspect in order
2 to satisfy the obligation to permit a reasonable opportunity
3 to cure.

4 (4) During the 60-day period the putative defendant
5 may choose to resolve the claim made in the demand-to-cure
6 notice by:

7 (a) Identifying all persons who the claimant asserts
8 constitute the class so that the relief requested in the
9 demand-to-cure notice can be provided;

10 (b) Giving reasonable notice as applicable under Rule
11 1.220, Florida Rules of Civil Procedure, and in accordance
12 with due process, to all persons identified pursuant to
13 paragraph (a), that the putative defendant has offered to make
14 the appropriate correction, repair, replacement, payment, or
15 other remedy;

16 (c) Offering to provide the correction, repair,
17 replacement, payment, or other remedy requested by the
18 demand-to-cure notice, at the putative defendant's cost and
19 expense, to the claimant and all putative class members;

20 (d) Immediately ceasing from engaging in, or if
21 immediate cessation is impossible or unreasonably expensive
22 under the circumstances, within a reasonable time ceasing to
23 engage in, the methods, act, or practices for which relief is
24 sought and otherwise implementing corrective measures to
25 ensure the claims and injuries alleged in the demand-to-cure
26 notice do not continue; and

27 (e) Presenting jointly with the claimant to the court
28 a stipulated settlement agreement to request the court to:

29 1. Preliminarily approve the putative defendant's
30 notice sent under paragraph (b);

31 2. Implement any remedial, corrective, or injunctive

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1 actions or relief;

2 3. Supervise the payment of damages and supervise any
3 other relief agreed to in the settlement; and

4 4. Enter a final order or judgment approving the
5 settlement and finding that the requirements of this
6 subsection and Rule 1.220, Florida Rules of Civil Procedure,
7 have been met.

8 (5) A class action may not be maintained by the
9 claimant if a putative defendant can demonstrate that he or
10 she has fully complied with subsection (4). However, if a
11 putative defendant fails to fully comply with subsection (4),
12 the class claim may be filed in court and the putative
13 defendant may not be permitted to eliminate the class
14 representative's standing by attempting to pay the individual
15 claimant's damages or agreeing to provide any other type of
16 individual relief to the claimant prior to the court's ruling
17 on a motion for class certification.

18 (6) When suit is filed, the plaintiff must plead the
19 following elements:

20 (a) That the party gave the defendant a reasonable
21 opportunity to cure the alleged misconduct; and

22 (b) That the defendant failed to cure in the manner
23 provided in subsection (4).

24 (7) It is an absolute defense to a cause of action
25 under this section if:

26 (a) The claimant did not provide the defendant with a
27 demand-to-cure notice;

28 (b) The claimant denied the defendant a reasonable
29 opportunity to inspect; or

30 (c) The defendant complied with subsection (4) and
31 tendered to the claimant and the putative class the damages

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1 sought or the remedy proposed by the claimant on behalf of the
2 putative class in the manner provided in subsection (4),
3 provided such relief is approved and supervised by a circuit
4 court where the claimant could have otherwise brought the
5 action.

6 (8) The circuit courts of this state have jurisdiction
7 to protect the due process rights of all class members, to
8 supervise the implementation of any remedy or cure proposed by
9 any members, to supervise the implementation of any remedy or
10 cure proposed by any members, to supervise the implementation
11 of any remedy or cure proposed by any defendant and agreed to
12 by the claimant and putative class members, to determine
13 compliance with this section, and to otherwise ensure that the
14 provisions of Rule 1.220, Florida Rules of Civil Procedure,
15 have been met.

16 (9) Unless otherwise specified in this section, this
17 section may not be deemed to alter or affect existing common
18 law or the provisions of Rule 1.220, Florida Rules of Civil
19 Procedure.

20 Section 3. Section 774.03, Florida Statutes, is
21 created to read:

22 774.03 Proof of damages in class action lawsuits.--

23 (1) Class action claimants must allege and may have to
24 prove individual damages or injury in fact to a legally
25 cognizable interest in order to obtain a final judgment for
26 any monetary relief. However, class action claimants may
27 obtain, if appropriate, statutory civil penalties or relief,
28 nonmonetary relief, including injunctive relief and orders, or
29 declaratory relief, and orders or judgments enjoining wrongful
30 conduct, regardless of whether the class action claimants can
31 prove individual monetary damages.

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1 (2) Prior to the entry of a judgment awarding monetary
2 relief against a defendant, the court may require each class
3 member claiming entitlement to monetary relief pursuant to a
4 class action notice to submit a statement to a class action
5 administrator or other person approved by the court in a form
6 prescribed by the court identifying the approximate amount of
7 monetary injury the claimant suffered and verifying his or her
8 membership in the class.

9 (3) Prior to submitting the form described in
10 subsection (2), the defendant may be required to answer
11 interrogatories and provide documentation in the defendant's
12 possession or control to the class action claimant relating to
13 class members' claims and the class action notice, as required
14 by the court.

15 (4) The court may use alternative dispute resolution
16 mechanisms, including, but not limited to, arbitration,
17 special masters, mediation, or similar proceedings, to
18 determine damages on an individual basis.

19 Section 4. This section shall take effect July 1,
20 2005, and apply to all causes of action accruing on or after
21 that date.

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

25 And the title is amended as follows:

26 Delete everything before the enacting clause

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28 and insert:

29 A bill to be entitled
30 An act relating to class action lawsuits;
31 creating s. 774.01, F.S.; providing for

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1 capacity to file a class action; creating s.
2 774.02, F.S.; requiring a specified
3 demand-to-cure notice prior to filing a class
4 action; providing for a cure period; providing
5 for inspection of goods or evidence relevant to
6 a claim; providing for resolution of a claim
7 during the cure period; prohibiting a class
8 action upon a certain demonstration relating to
9 resolution of a claim; prohibiting a specified
10 challenge to the standing of the class
11 representative absent certain demonstration
12 relating to resolution of a claim; requiring
13 that a plaintiff plead specified elements
14 relating to the demand to cure or response to
15 the demand to cure; providing an absolute
16 defense to a class action suit under
17 circumstances relating to such demand and
18 response; providing for jurisdiction of the
19 circuit courts relating to class action suits;
20 providing for continued application of common
21 law and certain court rules; creating s.
22 774.03, F.S.; providing for proof of damages
23 and remedies in class actions; providing
24 requirements for monetary relief; authorizing
25 the court to require a defendant to respond to
26 certain questions or provide certain
27 documentation; authorizing alternative dispute
28 resolution; providing an effective date.

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