

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 2564

SPONSOR: Judiciary Committee and Senator Webster and others

SUBJECT: Civil Actions

DATE: April 25, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siebert</u>	<u>Cooper</u>	<u>CM</u>	Favorable
2.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute limits class actions filed in Florida courts to Florida residents, nonresidents whose home states have no jurisdiction over a Florida defendant, and nonresidents whose cause of action accrued in Florida. The amendment also requires actual damages in class actions be proven and limits damages awarded to actual damages.

This committee substitute creates section 774.01, Florida Statutes.

II. Present Situation:

Class Action Lawsuits

Currently, Florida does not limit class membership to Florida residents in class actions filed in Florida state courts. The Florida Supreme Court has adopted procedural requirements for class action litigation, including prerequisites for class certification, pleading and notice requirements, and dismissal or compromise.¹ The Florida Rules of Civil Procedure establish four prerequisites for a class action:

- The class is so numerous as to make joinder of the parties impracticable.
- The representative's claim or defense raises questions of law or fact common to the questions of law or fact raised by each class member.
- The class representative's claim or defense is typical of that of each class member.

¹ Fla. R. Civ. Pro. 1.220.

- The representative can fairly and adequately protect and represent the interests of each class member.²

A class action may be maintained if the four prerequisites above are satisfied, and the court concludes that the class fits into one of three categories: 1) that the prosecution of separate claims would create a risk of inconsistent or varying adjudications resulting in incompatible standards of conduct for the party opposing the class, or, as a practical matter, adjudications dispositive of the interests of other class members; 2) the party opposing the class has acted or refused to act on grounds generally applicable to all class members, making relief appropriate for the class as a whole; or 3) the claim is not maintainable under 1) or 2), but the common questions of law or fact predominate over any question affecting only individual members of the class.³

If the class is certified, due process requires class members to be notified for a resolution of the matter to be binding on a particular class member. These class members may be included in the class or take steps to “opt out.”⁴

Florida currently only requires proof of nominal damages, not actual damages, for the recovery of monetary relief. Nominal damages are damages “where there is no substantial loss or injury to be compensated...or in cases where, although there has been a real injury, the plaintiff’s evidence entirely fails to show its amount.”⁵ In contrast, “actual damages” are damages awarded for “actual and real loss or injury.”⁶

Recently, the federal Class Action Fairness Act of 2005 was signed into law. As a result, federal courts were granted diversity jurisdiction over these actions when the amount in controversy exceeds \$5 million in the aggregate, there are at least 100 class members (if a non-federal question class action), and any class member is a citizen of a state different from any defendant. The exercise of jurisdiction by the court is tied to the number of class members from the forum state.

III. Effect of Proposed Changes:

The committee substitute limits class actions for monetary relief filed in Florida courts to Florida residents, nonresidents whose home states have no jurisdiction over a Florida defendant, and nonresidents whose cause of action accrued in Florida. The amendment also requires actual damages in class actions be proven and limits damages awarded to actual damages. Additionally, the committee substitute does not limit the authority of the Attorney General to bring class actions for statutory penalties.

The committee substitute takes effect July 1, 2005.

² Fla. R. Civ. Pro. 1.220(a).

³ Fla. R. Civ. Pro. 1.220(b).

⁴ *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811 (1985).

⁵ Black’s Law Dictionary, 6th Ed., at 392.

⁶ *Id.* at 390.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:**Access to Courts**

Placing limits on the use of Florida courts by nonresidents in a class action could implicate the right to access the courts.

Section 21, Art. I, of the State Constitution preserves a person's right to litigate in court. The Florida Supreme Court has provided that, where a right of access to the courts for redress for a particular injury has been provided by statutory or common law predating the 1968 Florida Constitution, the Legislature may not abolish a cause of action without providing a reasonable alternative, or overpowering public necessity for the abolishment is shown and there is no alternative method for meeting that public necessity.⁷

The Legislature may not unduly or unreasonably burden or restrict access. The Florida Constitution protects only rights that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution.⁸ In order to make a colorable claim of denial of access to courts, an aggrieved party must demonstrate that the Legislature has abolished a common-law right previously enjoyed by the people of Florida and, if so, that it has provided a reasonable alternative for redress, unless there is an "overpowering public necessity" for eliminating the right and no alternative method exists.⁹

In this committee substitute, nonresidents are not barred completely from asserting their rights. The committee substitute neither limits their ability to file an individual action in Florida or in their state of residence, nor file a separate class action in their state of residence. Further, the federal courts are now available to serve as a forum for many of the nationwide class action lawsuits.

⁷*Kluger v. White*, 281 So.2d 1 (Fla. 1973) (the court invalidated a statute requiring a minimum of \$550 in property damages arising from an automobile accident before bringing an action); *Smith v. Department of Insurance*, 507 So.2d 1080 (Fla. 1987) (the court ruled that a section of Tort Reform and Insurance Act, which placed an absolute, \$450,000 cap on damages that tort victim could recover for noneconomic losses, violated victim's constitutional right to access to courts).

⁸ *Id.*

⁹ *Id.*

Separation of Powers

This committee substitute could violate the state constitution's separation of powers between the legislative and judicial branches of government. The resolution of this issue will turn on whether the provisions affecting class membership are substantive or procedural. If considered to be substantive, the committee substitute would likely survive a separation of powers challenge. If procedural, it may not.

Section 3, Art. II, State Const., provides:

No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Section 1, Art. III, State Const., vests "legislative power" in the Legislature. Section 2(a), Art. V, of the Florida Constitution, directs the Supreme Court to adopt rules of "practice and procedure" for all courts.¹⁰ The Legislature does have the power to repeal court rules. In *In re Rules of Criminal Procedure*, Justice Adkins defined "practice and procedure" to encompass the course, form, manner, means, method, mode, order, process, or steps by which a party enforces substantive rights or obtains redress.¹¹ Rules of practice and procedure include all rules governing the parties, their counsel and courts throughout the progress of the case from the time of its initiation until final judgment and its execution.¹² In contrast, Justice Adkins defined substantive law as consisting of the "rules and principles which fix and declare the primary rights of individuals as respects their persons and property."¹³ "Capacity to sue" is an absence of legal disability which would deprive a party of the right to come into court. It is considered a substantive right within the purview of the Legislature.¹⁴

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although indeterminate, there is a potentially recurring negative fiscal impact for the court system, if the committee substitute leads to a greater number of suits brought as individual actions rather than consolidated into class actions.

¹⁰ Section 2(a), Art. V, State Const.

¹¹ *Allen v. Butterworth*, 756 So. 2d 52, 60 (Fla. 2000), (citing *In Re Florida Rules of Criminal Procedure*, 272 So. 2d 65, 66 (Fla. 1972).

¹² *Id.*

¹³ *Id.*

¹⁴ *The Florida Bar, In Re Rule 1.220(b), Florida Rules of Civil Procedure*, 353 So. 2d 95, 97 (Fla. 1977).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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