

# 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.)

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Prepared By: Judiciary Committee

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BILL: CS/SB 2304

INTRODUCER: Judiciary Committee and Senator Baker

SUBJECT: Class Action Lawsuits

DATE: April 21, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	JU	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill generally limits class action lawsuits filed in Florida courts to Florida residents. However, a nonresident may be included in the plaintiff class if the nonresident's claim is recognized in the nonresident's home state and the nonresident's state lacks personal jurisdiction over a defendant or defendants. Additionally, a nonresident may be included in a plaintiff class if the conduct giving rise to the cause of action occurred in or emanated from this state.

Under the bill, class action plaintiffs must allege and prove actual damages if seeking statutory penalties under chs. 320, 501, 520, and 521, F.S. These chapters pertain to motor vehicles, consumer protection, retail installment sales, and motor vehicle lease disclosure. This requirement appears to prohibit class actions for monetary relief for technical violations of the law that do not cause an injury.

This bill creates an unnumbered section of the Florida Statutes.

## II. Present Situation:

### Class Action Lawsuits

Currently, class action lawsuits filed in Florida are not limited to Florida residents. 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.<sup>1</sup> The Florida Rules of Civil Procedure establish four prerequisites for a class action:

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<sup>1</sup> Fla. R. Civ. Pro. 1.220.

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

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.<sup>3</sup>

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."<sup>4</sup>

Florida currently only requires proof of nominal damages, not actual damages, for the recovery of monetary relief. Nominal damages are damages for a legal injury "when there is no substantial loss or injury to be compensated."<sup>5</sup> In contrast, "actual damages" are "damages that repay actual losses."<sup>6</sup>

Recently, the federal Class Action Fairness Act of 2005 (act) was signed into law.<sup>7</sup> The act granted federal courts with diversity jurisdiction, with some exceptions, over class action lawsuits 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. As a result of the federal act, many class actions filed in state courts are removable to federal court.

### III. Effect of Proposed Changes:

This bill generally limits class action lawsuits filed in Florida courts to Florida residents. However, a nonresident may be included in the plaintiff class if the nonresident's claim is recognized in the nonresident's home state and the nonresident's state lacks personal jurisdiction over a defendant or defendants. Additionally, a nonresident may be included in a plaintiff class if the conduct giving rise to the cause of action occurred in or emanated from this state.

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<sup>2</sup> Fla. R. Civ. Pro. 1.220(a).

<sup>3</sup> Fla. R. Civ. Pro. 1.220(b).

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

<sup>5</sup> Black's Law Dictionary (8th ed. 2004).

<sup>6</sup> *Id.*

<sup>7</sup> Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat 4.

Under the bill, class action plaintiffs must allege and prove actual damages if seeking statutory penalties under chs. 320, 501, 520, and 521, F.S. These chapters pertain to motor vehicles, consumer protection, retail installment sales, and motor vehicle lease disclosure. This requirement appears to prohibit class actions for monetary relief for technical violations of the law that do not cause an injury.

The bill takes effect on July 1, 2006.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may make Florida courts unattractive to plaintiff's attorneys seeking to file nationwide-class action lawsuits.

This bill may eliminate class action lawsuits based on technical violations of law and for which no person suffered damages.

C. Government Sector Impact:

This bill may reduce court workloads.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

For clarity, the Legislature may wish to replace the effective date section with the following: "This act shall take effect on July 1, 2006, and shall apply to causes of action that accrue on or after the effective date."

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

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## **VIII. Summary of Amendments:**

None.

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