

Regular Session, 2013

HOUSE BILL NO. 472

BY REPRESENTATIVE JAY MORRIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/ACTIONS: Provides relative to class actions

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 591(A)(2) and (5) and
3 (B)(3)(introductory paragraph), 592(A)(3)(b), (c), and (d), and (E)(5) and to enact
4 Code of Civil Procedure Article 592(A)(3)(e), relative to class actions; to provide
5 relative to prerequisites required to maintain a class action; to provide for burden of
6 proof to establish prerequisites; to prohibit courts from ordering class-wide trial on
7 certain issues; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Civil Procedure Articles 591(A)(2) and (5) and
10 (B)(3)(introductory paragraph), 592(A)(3)(b), (c), and (d), and (E)(5) are hereby amended
11 and reenacted and Code of Civil Procedure Article 592(A)(3)(e) is hereby enacted to read
12 as follows:

13 Art. 591. Prerequisites; maintainable class actions

14 A. One or more members of a class may sue or be sued as representative
15 parties on behalf of all, only if:

16 * * *

17 (2) There are questions of law ~~or~~ and fact common to the class.

18 * * *

19 (5) The class is or may be defined objectively in terms of ascertainable
20 criteria, such that the court may determine the constituency of the class for purposes

1 of the conclusiveness of any judgment that may be rendered in the case. This
2 prerequisite shall not be satisfied if it is necessary for the court to inquire into the
3 merits of each potential class member's cause of action to determine whether an
4 individual falls within the defined class.

5 B. An action may be maintained as a class action only if all of the
6 prerequisites of Paragraph A of this Article are satisfied, and in addition:

7 * * *

8 (3) The court finds that the questions of law ~~or~~ and fact common to the
9 members of the class predominate over any questions affecting only individual
10 members, and that a class action is superior to other available methods for the fair
11 and efficient adjudication of the controversy. The matters pertinent to these findings
12 include:

13 * * *

14 Art. 592. Certification procedure; notice; judgment; orders

15 A.

16 * * *

17 (3)

18 * * *

19 (b) At the hearing on the motion to certify an action as a class action, the
20 proponent of the class shall have the burden of proof to establish that all
21 requirements of Article 591 of this Code have been satisfied.

22 ~~(b)~~(c) If the court finds that the action should be maintained as a class action,
23 it shall certify the action accordingly. If the court finds that the action should not be
24 maintained as a class action, the action may continue between the named parties. In
25 either event, the court shall give in writing its findings of fact and reasons for
26 judgment provided a request is made not later than ten days after notice of the order
27 or judgment. A suspensive or devolutive appeal, as provided in Article 2081 et seq.
28 of the Code of Civil Procedure, may be taken as a matter of right from an order or
29 judgment provided for herein.

Proposed law retains present law except it changes prerequisite of commonality to require common questions of law and fact, and it provides that the prerequisite regarding ascertainability shall not be satisfied if the court has to inquire in to each member's cause of action to determine whether they are members of the class.

Present law provides procedures for certifying an action as a class action.

Proposed law retains present law and adds that the proponent of the class has the burden of proof to establish that all prerequisites have been satisfied to maintain a class action.

Present law provides the court with discretion to make certain procedural orders pertaining to the class.

Proposed law prohibits the court from ordering a trial on an issue that would require proof that is individual to a member of the class when the outcome of the trial would have an effect on the entire class.

(Amends C.C.P. Arts. 591(A)(2) and (5) and (B)(3)(intro. para.), 592(A)(3)(b), (c), and (d), and (E)(5); Adds C.C.P. Art. 592(A)(3)(e))