HLS 13RS-273 ORIGINAL

Regular Session, 2013

HOUSE BILL NO. 472

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## BY REPRESENTATIVE JAY MORRIS

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

AN ACT

CIVIL/ACTIONS: Provides relative to class actions

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

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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.

1	(c)(d) In the process of class certification, or at any time thereafter before a
2	decision on the merits of the common issues, the court may alter, amend, or recall
3	its initial ruling on certification and may enlarge, restrict, or otherwise redefine the
4	constituency of the class or the issues to be maintained in the class action.
5	(d)(e) No order contemplated in this Subparagraph shall be rendered after a
6	judgment or partial judgment on the merits of common issues has been rendered
7	against the party opposing the class and over such party's objection.
8	* * *
9	E. In the conduct of actions to which Article 591 and this Article apply, the
10	court may make any of the following appropriate orders:
11	* * *
12	(5) Dealing with similar procedural matters, including but not limited to case
13	management orders providing for consolidation, duties of counsel, the extent and the
14	scheduling of and the delays for pre-certification and post-certification discovery,
15	and other matters which affect the general order of proceedings; however, the court
16	may shall not order the class-wide trial of issues dependent for their resolution on
17	proof individual to a member of the class, including but not limited to the causation
18	of the member's injuries, the amount of the member's special or general damages, the
19	individual knowledge or reliance of the member, or the applicability to the member
20	of individual claims or defenses.
21	* * *

## **DIGEST**

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Jay Morris HB No. 472

Abstract: Provides relative to class action certification procedures and burden of proof in establishing satisfaction of certification prerequisites.

Present law requires that five prerequisites be satisfied to maintain an action as a class action. Requires numerosity of the class, commonality of law or facts, typicality of the claims or defenses, adequate protection of the interests of the class, and ascertainability of the class.

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ORIGINAL HB NO. 472

<u>Proposed law</u> retains <u>present law</u> except it changes prerequisite of commonality to require common questions of law <u>and</u> 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.

<u>Proposed law</u> retains <u>present law</u> 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.

<u>Present law</u> provides the court with discretion to make certain procedural orders pertaining to the class.

<u>Proposed law</u> 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))