

CHAPTER 21
HOUSE BILL No. 2764

AN ACT concerning civil procedure; relating to class actions; amending K.S.A. 2003 Supp. 60-223 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2003 Supp. 60-223 is hereby amended to read as follows: 60-223. (a) *Prerequisites to a class action.* One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) *Class actions maintainable.* An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) The interest of members of the class in ~~prosecuting or defending~~ *individually controlling the prosecution or defense of separate actions*; (B) the extent and nature of any litigation concerning the controversy already ~~begun~~ *commenced* by or against members of the class; (C) ~~the appropriate place for maintaining, and the procedural measures which may be needed in conducting,~~ *desirability or undesirability of concentrating the litigation of the claims in the particular forum*; (D) *the difficulties likely to be encountered in the management of a class action.*

(c) *Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions.* (1) As soon as practicable after the commencement ~~and before the decision on the merits~~ of an action brought as a class action, the court shall determine by order whether it is to be *so* maintained ~~as such~~. ~~Where necessary for the protection of a party or of absent persons, the court, upon motion or on its own initiative at any time before the decision on the merits of an action brought as a nonclass action, may order that it be maintained as a class action.~~ An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subsection (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that: (A) The court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion, if the member desires, may enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subsection (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subsection (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection (c)(2) was directed, and who have not requested exclusion, and whom the court

finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues ~~such as the issue of liability,~~ or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this section shall then be construed and applied accordingly.

(d) *Orders in conduct of actions.* In the conduct of actions to which this section applies, the court may make appropriate orders: (1) ~~Settling~~ *Determining* the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, ~~or to include such allegations,~~ and that the action ~~in either case~~ proceed accordingly; (5) *dealing with similar procedural matters.* The orders may be combined with an order under K.S.A. 60-216 and amendments thereto, and may be altered or amended as may be desirable from time to time.

(e) *Dismissal or compromise.* A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(f) *Appeals.* ~~The court of appeals may in its discretion permit an appeal from an order of a district court granting or denying class action certification under this section if application is made to the court within 10 days after entry of the order. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.~~

Sec. 2. K.S.A. 2003 Supp. 60-223 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 29, 2004.
