



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5290

by Rep. Dan Brady

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-801	from Ch. 110, par. 2-801
735 ILCS 5/2-802	from Ch. 110, par. 2-802
735 ILCS 5/2-803	from Ch. 110, par. 2-803
735 ILCS 5/2-808 new	
735 ILCS 5/2-809 new	
735 ILCS 5/2-810 new	

Amends the Code of Civil Procedure in relation to class actions. Adds additional requirements concerning: prerequisites to the maintenance of a class action (including provisions that a class action may be certified only if: the plurality of the class members are residents of Illinois or if the plurality of the class members were physically in Illinois when the cause of action arose; and a class action is superior to other available methods for the fair and efficient adjudication of the controversy); where a class action may be brought; preliminary determinations to be made by the court; notice to the class; coupon and other noncash settlements; loss by class members under a proposed settlement; and attorney's fees.

LRB095 17023 AJO 43071 b

1 AN ACT concerning civil procedure.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Sections 2-801, 2-802, and 2-803 and adding Sections
6 2-808, 2-809, and 2-810 as follows:

7 (735 ILCS 5/2-801) (from Ch. 110, par. 2-801)

8 Sec. 2-801. Prerequisites for the maintenance of a class
9 action.

10 (a) An action may be maintained as a class action only in
11 the ~~any~~ court sitting in the county of this State in which (i)
12 the defendant's principal office is located, (ii) the plurality
13 of class members who are Illinois residents reside, or (iii)
14 the cause of action arose for the plurality of class members.
15 ~~and~~ A party may sue or be sued as a representative party of the
16 class only if the court finds:

17 (1) The class is so numerous that joinder of all
18 members is impracticable.

19 (2) There are questions of fact or law common to the
20 class, which common questions predominate over any
21 questions affecting only individual members and a class
22 action is superior to other available methods for the fair
23 and efficient adjudication of the controversy. The matters

1 pertinent to the findings include: (A) the interest of
2 members of the class in individually controlling the
3 prosecution or defense of separate actions; (B) the extent
4 and nature of any litigation concerning the controversy
5 already commenced by or against members of the class; (C)
6 the desirability or undesirability of concentrating the
7 litigation of the claims in the particular forum; (D) the
8 difficulties likely to be encountered in the management of
9 a class action.

10 (3) The representative parties will fairly and
11 adequately protect the interest of the class.

12 (4) The class action is an appropriate method for the
13 fair and efficient adjudication of the controversy.

14 (b) Notwithstanding the provisions of subsection (a), a
15 class action may be certified only if the plurality of the
16 class members are residents of Illinois or if the plurality of
17 the class members were physically in Illinois when the cause of
18 action arose.

19 (Source: P.A. 82-280.)

20 (735 ILCS 5/2-802) (from Ch. 110, par. 2-802)

21 Sec. 2-802. Order and findings relative to the class.

22 (a) Preliminary determinations. Before making any of the
23 determinations set forth in subsections (b) and (c), the court
24 shall determine whether the action which has been brought as a
25 class action has been commenced in the court sitting in the

1 County of this State in which (i) the defendant's principal
2 office is located, (ii) the plurality of class members who are
3 Illinois residents reside, or (iii) the cause of action arose
4 for the plurality of class members, and, if the court
5 determines that it has not been commenced in such county, the
6 court may not permit the action to be maintained as a class
7 action pursuant to subsections (b) and (c).

8 (b) Determination of Class. As soon as practicable after
9 the commencement of an action brought as a class action, the
10 court shall determine by order whether it may be so maintained
11 and describe those whom the court finds to be members of the
12 class. This order may be conditional and may be amended before
13 a decision on the merits.

14 (c) ~~(b)~~ Class Action on Limited Issues and Sub-classes.
15 When appropriate, an action may be brought or maintained as a
16 class action with respect to particular issues, or divided into
17 sub-classes and each sub-class treated as a class. The
18 provisions of this rule shall then be construed and applied
19 accordingly.

20 (Source: P.A. 82-280.)

21 (735 ILCS 5/2-803) (from Ch. 110, par. 2-803)

22 Sec. 2-803. Notice to class members.

23 (a) For any class certified under this Part 8, the court
24 may direct appropriate notice to the class.

25 (b) For any class certified under this Part 8, the court

1 must direct to class members the best notice practicable under
2 the circumstances, including individual notice to all members
3 who can be identified through reasonable effort. The notice
4 must concisely and clearly state in plain, easily understood
5 language:

6 (1) the nature of the action;

7 (2) the definition of the class certified;

8 (3) the class claims, issues, or defenses;

9 (4) that a class member may enter an appearance through
10 counsel if the member so desires;

11 (5) that the court will exclude from the class any
12 member who requests exclusion, stating when and how members
13 may elect to be excluded; and

14 (6) the binding effect of a class judgment on class
15 members under this Part 8. ~~in class cases. Upon a~~
16 ~~determination that an action may be maintained as a class~~
17 ~~action, or at any time during the conduct of the action,~~
18 ~~the court in its discretion may order such notice that it~~
19 ~~deems necessary to protect the interests of the class and~~
20 ~~the parties.~~

21 ~~An order entered under subsection (a) of Section 2-802 of~~
22 ~~this Act, determining that an action may be maintained as a~~
23 ~~class action, may be conditioned upon the giving of such notice~~
24 ~~as the court deems appropriate.~~

25 (Source: P.A. 83-707.)

1 (735 ILCS 5/2-808 new)

2 Sec. 2-808. Judicial scrutiny of coupon and other noncash
3 settlements. The court may approve a proposed settlement under
4 which the class members would receive coupons or other similar
5 noncash benefits or would otherwise be required to expend funds
6 to obtain part or all of the proposed benefits only after a
7 hearing to determine whether, and making a written finding
8 that, the settlement is fair, reasonable, and adequate for
9 class members.

10 (735 ILCS 5/2-809 new)

11 Sec. 2-809. Protection against loss by class members. The
12 court may approve a proposed settlement under which any class
13 member is obligated to pay sums to class counsel that would
14 result in a net loss to the class member only if the court
15 makes a written finding that nonmonetary benefits to the class
16 member outweigh the monetary loss.

17 (735 ILCS 5/2-810 new)

18 Sec. 2-810. Attorney's fees. Any attorney representing any
19 member or members of the plaintiff class in a class action may
20 seek payment of attorney's fees and costs pursuant to a
21 petition filed with the court of jurisdiction. The court shall
22 make a determination based on findings of fact that the amount
23 awarded for attorney's fees and costs is reasonable and
24 commensurate with the benefits conferred upon the members of

1 the class represented by the attorney or attorneys who are the
2 petitioners for fees and costs.