

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

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Civil Procedure Articles 591(A)(5) and 592(A)(3)(b) through (d)  
9 and (E)(5) are hereby amended and reenacted and Code of Civil Procedure Article  
10 592(A)(3)(e) is hereby enacted to read as follows:

11 Art. 591. Prerequisites; maintainable class actions

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

14 \* \* \*

15 (5) The class is or may be defined objectively in terms of ascertainable  
16 criteria, such that the court may determine the constituency of the class for purposes  
17 of the conclusiveness of any judgment that may be rendered in the case. This  
18 prerequisite shall not be satisfied if it is necessary for the court to inquire into the  
19 merits of each potential class member's cause of action to determine whether an  
20 individual falls within the defined class.

21 \* \* \*

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

2 A.

3 \* \* \*

4 (3)

5 \* \* \*

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

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

17 ~~(c)~~(d) In the process of class certification, or at any time thereafter before a  
18 decision on the merits of the common issues, the court may alter, amend, or recall  
19 its initial ruling on certification and may enlarge, restrict, or otherwise redefine the  
20 constituency of the class or the issues to be maintained in the class action.

21 ~~(d)~~(e) No order contemplated in this Subparagraph shall be rendered after a  
22 judgment or partial judgment on the merits of common issues has been rendered  
23 against the party opposing the class and over such party's objection.

24 \* \* \*

25 E. In the conduct of actions to which Article 591 and this Article apply, the  
26 court may make any of the following appropriate orders:

27 \* \* \*

28 (5) Dealing with similar procedural matters, including but not limited to case  
29 management orders providing for consolidation, duties of counsel, the extent and the

1 scheduling of and the delays for pre-certification and post-certification discovery,  
 2 and other matters which affect the general order of proceedings; however, the court  
 3 ~~may~~ shall not order the class-wide trial of issues dependent for their resolution on  
 4 proof individual to a member of the class, including but not limited to the causation  
 5 of the member's injuries, the amount of the member's special or general damages, the  
 6 individual knowledge or reliance of the member, or the applicability to the member  
 7 of individual claims or defenses.

8 \* \* \*

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.

Proposed law retains present law except 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)(5) and 592(A)(3)(b)-(d) and (E)(5); Adds C.C.P. Art. 592(A)(3)(e))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Deleted proposed law change to the prerequisite of commonality that would require common questions of law and fact.