

House Bill 792 (COMMITTEE SUBSTITUTE)

By: Representatives Porter of the 119th and Buck of the 112th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 11 of Title 9 of the Official Code of Georgia Annotated, known as the "Georgia Civil Practice Act," so as to provide for the comprehensive revision of provisions regarding class actions; to provide for procedures, conditions, and limitations; to change a cross-reference in Code Section 9-11-41, relating to dismissal and recommencement of actions; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 11 of Title 9 of the Official Code of Georgia Annotated, known as the "Georgia Civil Practice Act," is amended by striking Code Section 9-11-23, relating to class actions, and inserting in its place a new Code Section 9-11-23 to read as follows:

~~"9-11-23:~~

~~(a) *Representation.* If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly ensure the adequate representation of all may, on behalf of all, bring or defend an action when the character of the right sought to be enforced for or against the class is:~~

~~(1) Joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it; or~~

~~(2) Several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action.~~

~~(b) *Secondary action by shareholders.* In an action brought to enforce a secondary right on the part of one or more shareholders in an association, incorporated or unincorporated, because the association refuses to enforce rights which may properly be asserted by it, the complaint shall be verified by oath and shall aver that the plaintiff was a shareholder at the time of the transaction of which he or she complains or that his or her share thereafter devolved on him or her by operation of law. The complaint shall also set forth with~~

~~particularity the efforts of the plaintiff to secure from the managing directors or trustees such actions as the plaintiff desires and the reasons for his or her failure to obtain such action or the reasons why irreparable injury to the association, incorporated or unincorporated, would result by waiting for 90 days from the date of the demand upon the managing directors or trustees. This Code section is cumulative of Code Section 14-2-831.~~

~~(c) *Dismissal or compromise.* A class action shall not be dismissed or compromised without the approval of the court. If the right sought to be enforced is one defined in paragraph (1) of subsection (a) of this Code section, notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. If the right is one defined in paragraph (2) of subsection (a) of this Code section, notice shall be given only if the court requires it.~~

9-11-23.

(a) 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) An action may be maintained as a class action if the prerequisites of subsection (a) of this Code section 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;

(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:

1 (A) The interest of members of the class in individually controlling the prosecution or
2 defense of separate actions;

3 (B) The extent and nature of any litigation concerning the controversy already
4 commenced by or against members of the class;

5 (C) The desirability or undesirability of concentrating the litigation of the claims in the
6 particular forum; and

7 (D) The difficulties likely to be encountered in the management of a class action.

8 (c)(1) As soon as practicable after the commencement of an action brought as a class
9 action, the court shall determine by order whether it is to be so maintained. An order
10 under this subsection may be conditional, and may be altered or amended before the
11 decision on the merits.

12 (2) In any class action maintained under paragraph (3) of subsection (b) of this Code
13 section, the court shall direct to the members of the class the best notice practicable under
14 the circumstances, including individual notice to all members who can be identified
15 through reasonable effort. The notice shall advise each member that:

16 (A) The court will exclude the member from the class if the member so requests by a
17 specified date;

18 (B) The judgment, whether favorable or not, will include all members who do not
19 request exclusion; and

20 (C) Any member who does not request exclusion may, if the member desires, enter an
21 appearance through counsel.

22 (3) The judgment in an action maintained as a class action under paragraph (1) or (2) of
23 subsection (b) of this Code section, whether or not favorable to the class, shall include
24 and describe those whom the court finds to be members of the class. The judgment in an
25 action maintained as a class action under paragraph (3) of subsection (b) of this Code
26 section, whether or not favorable to the class, shall include and specify or describe those
27 to whom the notice provided in paragraph (2) of subsection (b) of this Code section was
28 directed, and who have not requested exclusion, and whom the court finds to be members
29 of the class.

30 (4) When appropriate:

31 (A) An action may be brought or maintained as a class action with respect to particular
32 issues; or

33 (B) A class may be divided into subclasses and each subclass treated as a class, and the
34 provisions of this rule shall then be construed and applied accordingly.

35 (d) In the conduct of actions to which this rule applies, the court may make appropriate
36 orders;

(1) 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; and

(4) Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly.

The orders may be combined with other orders, and may be altered or amended by the court as may be desirable from time to time.

(e) 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) The appropriate appellate court may in its discretion permit an appeal from an order of a trial court granting or denying class action certification under this Code section if application is made to it within ten days after entry of the order. An appeal does not stay proceedings in the trial court unless the trial judge or the appellate court so orders."

SECTION 2.

Said chapter is further amended by striking subsection (a) of Code Section 9-11-41, relating to dismissal and recommencement of actions, and inserting in lieu thereof the following:

"(a) *Voluntary dismissal; effect.* Subject to the provisions of subsection ~~(e)~~ (e) of Code Section 9-11-23, of Code Section 9-11-66, and of any statute, an action may be dismissed by the plaintiff, without order or permission of court, by filing a written notice of dismissal at any time before the plaintiff rests his or her case. After the plaintiff rests his or her case, permission and an order of the court must be obtained before dismissal. If a counterclaim has been pleaded by a defendant prior to the service upon him or her of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. A dismissal under this subsection is without prejudice, except that the filing of a third notice of dismissal operates as an adjudication upon the merits."

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