

REFERENCE TITLE: **class action lawsuits**

State of Arizona
Senate
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First Regular Session
2013

SB 1452

Introduced by
Senators Yee, Driggs, McComish, Pierce, Reagan, Ward; Representative Fann:
Senators Crandell, Griffin, Melvin, Worsley; Representatives Carter,
Goodale

AN ACT

**AMENDING TITLE 12, CHAPTER 10, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4;
RELATING TO CLASS ACTIONS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 10, Arizona Revised Statutes, is amended
3 by adding article 4, to read:

4 ARTICLE 4. CLASS ACTIONS

5 12-1871. Class action; prerequisites; nonresident class members

6 A. ONE OR MORE MEMBERS OF A CLASS OF PERSONS WHO ARE RESIDENTS OF THIS
7 STATE MAY SUE AS REPRESENTATIVE PARTIES ON BEHALF OF ALL MEMBERS OF THE CLASS
8 IF ALL OF THE FOLLOWING APPLY:

9 1. THE CLASS IS SO NUMEROUS THAT JOINDER OF ALL MEMBERS IS
10 IMPRACTICABLE.

11 2. THERE ARE QUESTIONS OF LAW OR FACT AS TO WHICH THE COURT OR A JURY
12 COULD REASONABLY REACH CONCLUSIONS OR FINDINGS THAT APPLY TO ALL CLASS
13 MEMBERS.

14 3. THE CLAIMS OR DEFENSES OF THE REPRESENTATIVE PARTIES ARE TYPICAL OF
15 THE CLAIMS OR DEFENSES OF THE CLASS.

16 4. THE REPRESENTATIVE PARTIES WILL FAIRLY AND ADEQUATELY PROTECT THE
17 INTERESTS OF THE CLASS.

18 5. THE CLASS IS DEFINED SO AS TO PERMIT THE IDENTIFICATION OF CLASS
19 MEMBERS BEFORE ANY ADJUDICATIONS ON THE MERITS OCCUR.

20 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A NONRESIDENT OF THIS
21 STATE MAY BECOME A MEMBER OF A CLASS IF THE CLAIMS OF THE CLASS ARISE FROM A
22 SUDDEN ACCIDENT OR NATURAL EVENT THAT CULMINATES IN AN ACCIDENT THAT RESULTS
23 IN A DEATH OR INJURY AT A SPECIFIC LOCATION.

24 12-1872. Class actions; maintainability

25 A. AN ACTION MAY BE MAINTAINED AS A CLASS ACTION IF BOTH SECTION
26 12-1871 AND ANY OF THE FOLLOWING APPLY:

27 1. THE PROSECUTION OF SEPARATE ACTIONS BY OR AGAINST INDIVIDUAL
28 MEMBERS OF THE CLASS WOULD CREATE A RISK OF EITHER:

29 (a) INCONSISTENT OR VARYING ADJUDICATIONS WITH RESPECT TO INDIVIDUAL
30 MEMBERS OF THE CLASS THAT WOULD ESTABLISH INCOMPATIBLE STANDARDS OF CONDUCT
31 FOR THE PARTY OPPOSING THE CLASS.

32 (b) ADJUDICATIONS WITH RESPECT TO INDIVIDUAL MEMBERS OF THE CLASS THAT
33 WOULD, AS A PRACTICAL MATTER, BE DISPOSITIVE OF THE INTERESTS OF THE OTHER
34 MEMBERS WHO ARE NOT PARTIES TO THE ADJUDICATIONS OR WOULD SUBSTANTIALLY
35 IMPAIR OR IMPEDE THEIR ABILITY TO PROTECT THEIR INTERESTS.

36 2. THE PARTY THAT SEEKS TO MAINTAIN THE CLASS ACTION DOES NOT SEEK ANY
37 MONETARY RELIEF AND THE PARTY THAT OPPOSES THE CLASS HAS ACTED OR REFUSED TO
38 ACT ON GROUNDS THAT ARE GENERALLY APPLICABLE TO THE CLASS, THEREBY MAKING
39 APPROPRIATE FINAL INJUNCTIVE RELIEF OR CORRESPONDING DECLARATORY RELIEF WITH
40 RESPECT TO THE CLASS AS A WHOLE.

41 3. THE COURT FINDS THAT ALL OF THE FOLLOWING APPLY:

42 (a) THE QUESTIONS OF LAW OR FACT AS TO WHICH THE COURT OR A JURY COULD
43 REASONABLY REACH CONCLUSIONS OR FINDINGS THAT APPLY TO ALL CLASS MEMBERS
44 PREDOMINATE OVER ANY QUESTIONS THAT AFFECT ONLY INDIVIDUAL MEMBERS.

1 (b) THE EVIDENCE THAT IS LIKELY TO BE ADMITTED AT TRIAL REGARDING THE
2 ELEMENTS OF THE CLAIMS FOR WHICH CERTIFICATION IS SOUGHT AND OF THE DEFENSES
3 TO THE CLAIMS IS SUBSTANTIALLY THE SAME AS TO ALL CLASS MEMBERS.

4 (c) A CLASS ACTION IS SUPERIOR TO OTHER AVAILABLE METHODS FOR THE FAIR
5 AND EFFICIENT ADJUDICATION OF THE CONTROVERSY.

6 B. FOR THE PURPOSES OF SUBSECTION A, PARAGRAPH 3 OF THIS SECTION,
7 MATTERS THAT ARE PERTINENT TO THE FINDINGS INCLUDE:

8 1. THE INTEREST OF MEMBERS OF THE CLASS IN INDIVIDUALLY CONTROLLING
9 THE PROSECUTION OR DEFENSE OF SEPARATE ACTIONS.

10 2. THE EXTENT, NATURE AND MATURITY OF ANY LITIGATION CONCERNING THE
11 CONTROVERSY ALREADY COMMENCED BY OR AGAINST MEMBERS OF THE CLASS.

12 3. WHETHER IT IS PROBABLE THAT THE AMOUNT THAT MAY BE RECOVERED BY
13 INDIVIDUAL CLASS MEMBERS WILL BE LARGE ENOUGH IN RELATION TO THE EXPENSE AND
14 EFFORT OF ADMINISTERING THE ACTION TO JUSTIFY MAINTAINING THE CASE AS A CLASS
15 ACTION.

16 4. THE DESIRABILITY OR UNDESIRABILITY OF CONCENTRATING THE LITIGATION
17 OF THE CLAIMS IN THE PARTICULAR FORUM.

18 5. THE DIFFICULTIES THAT ARE LIKELY TO BE ENCOUNTERED IN THE
19 MANAGEMENT OF A CLASS ACTION.

20 6. THE EXTENT TO WHICH THE ALLEGATIONS AT ISSUE ARE SUBJECT TO THE
21 JURISDICTION OF FEDERAL OR STATE REGULATORY AGENCIES.

22 12-1873. Determination of maintainability; notice; rebuttable
23 presumption; judgment; subclasses

24 A. AFTER THE COMMENCEMENT OF AN ACTION THAT IS BROUGHT AS A CLASS
25 ACTION AND AFTER A HEARING, THE COURT SHALL DETERMINE BY ORDER WHETHER THE
26 ACTION IS TO BE MAINTAINED AS A CLASS ACTION. THE COURT MAY CONDITION,
27 ALTER, AMEND OR WITHDRAW ITS ORDER AT ANY TIME BEFORE THE DECISION ON THE
28 MERITS.

29 B. IF THE COURT FINDS THAT AN ACTION SHOULD BE MAINTAINED AS A CLASS
30 ACTION, THE COURT SHALL CERTIFY THE ACTION IN WRITING, SHALL SET FORTH ITS
31 REASONS AS TO WHY THE ACTION SHOULD BE MAINTAINED AS A CLASS ACTION AND SHALL
32 DESCRIBE ALL EVIDENCE IN SUPPORT OF ITS DETERMINATION.

33 C. THE COURT SHALL NOT CERTIFY AN ACTION AS A CLASS ACTION UNLESS, ON
34 THE BASIS OF A FULL RECORD ON THE RELEVANT ISSUES, THE PROPONENTS OFFER CLEAR
35 AND CONVINCING EVIDENCE THAT THE ACTION COMPLIES WITH ALL THE REQUIREMENTS
36 FOR CERTIFICATION. IF THE COURT DOUBTS WHETHER THIS BURDEN HAS BEEN MET, THE
37 COURT SHALL DENY THE CLASS CERTIFICATION. THE COURT SHALL DECERTIFY A CLASS
38 ACTION ON ANY SHOWING THAT AN ACTION HAS CEASED TO MEET THE APPLICABLE
39 PREREQUISITES FOR MAINTAINING A CLASS ACTION UNDER SECTION 12-1871.

40 D. THERE IS A REBUTTABLE PRESUMPTION AGAINST THE MAINTENANCE OF A
41 CLASS ACTION AS TO CLAIMS FOR WHICH CLASS MEMBERS WOULD HAVE TO PROVE
42 KNOWLEDGE, RELIANCE OR CAUSATION ON AN INDIVIDUAL BASIS.

43 E. A MEMBER OF A CLASS ACTION IS NOT RELIEVED FROM THE BURDEN OF
44 PROVING ALL ELEMENTS OF THE MEMBER'S CAUSE OF ACTION, INCLUDING INDIVIDUAL
45 INJURY AND THE AMOUNT OF DAMAGES.

1 F. IN ANY CLASS ACTION THAT IS MAINTAINED PURSUANT TO SECTION 12-1872,
2 SUBSECTION A, PARAGRAPH 3, THE COURT SHALL DIRECT THE BEST NOTICE PRACTICABLE
3 TO THE MEMBERS OF THE CLASS, INCLUDING INDIVIDUAL NOTICE TO ALL MEMBERS WHO
4 CAN BE IDENTIFIED THROUGH REASONABLE EFFORT. THE NOTICE SHALL INCLUDE ALL OF
5 THE FOLLOWING:

6 1. A GENERAL DESCRIPTION OF THE ACTION, INCLUDING THE RELIEF SOUGHT
7 AND THE NAMES OF THE REPRESENTATIVE PARTIES.

8 2. A STATEMENT OF THE RIGHT OF A MEMBER OF THE CLASS TO BE EXCLUDED
9 FROM THE ACTION BY SUBMITTING AN ELECTION TO BE EXCLUDED, INCLUDING THE
10 MANNER AND TIME FOR EXERCISING THE ELECTION.

11 3. A DESCRIPTION OF POSSIBLE FINANCIAL CONSEQUENCES FOR THE CLASS.

12 4. A GENERAL DESCRIPTION OF ANY COUNTERCLAIM OR NOTICE OF INTENT TO
13 ASSERT A COUNTERCLAIM BY OR AGAINST MEMBERS OF THE CLASS, INCLUDING THE
14 RELIEF SOUGHT.

15 5. A STATEMENT THAT THE JUDGMENT, WHETHER FAVORABLE OR NOT, WILL BIND
16 MEMBERS OF THE CLASS WHO ARE NOT EXCLUDED FROM THE ACTION.

17 6. A STATEMENT THAT ANY MEMBER OF THE CLASS MAY INTERVENE IN THE
18 ACTION AND DESIGNATE SEPARATE COUNSEL.

19 7. THE ADDRESS OF COUNSEL TO WHOM MEMBERS OF THE PROPOSED CLASS MAY
20 DIRECT INQUIRIES.

21 8. ANY OTHER INFORMATION THAT THE COURT DEEMS APPROPRIATE.

22 G. THE PLAINTIFF SHALL BEAR THE EXPENSE OF THE NOTIFICATION THAT IS
23 REQUIRED BY SUBSECTION F OF THIS SECTION. THE COURT MAY REQUIRE OTHER
24 PARTIES TO THE LITIGATION TO COOPERATE IN SECURING THE NAMES AND ADDRESSES OF
25 THE PERSONS WITHIN THE CLASS FOR THE PURPOSE OF PROVIDING INDIVIDUAL NOTICE,
26 BUT ANY COSTS INCURRED BY THE PARTY IN PROVIDING THIS COOPERATION SHALL BE
27 PAID INITIALLY BY THE PARTY CLAIMING THE CLASS ACTION. ON TERMINATION OF THE
28 ACTION, THE COURT MAY ALLOW AS TAXABLE COSTS ALL OR PART OF THE EXPENSES THAT
29 ARE INCURRED BY THE PREVAILING PARTY.

30 H. WHETHER OR NOT FAVORABLE TO THE CLASS, THE JUDGMENT IN AN ACTION
31 THAT IS MAINTAINED AS A CLASS ACTION UNDER SECTION 12-1872, SUBSECTION A,
32 PARAGRAPH 1 OR 2 SHALL INCLUDE AND DESCRIBE THOSE WHOM THE COURT FINDS TO BE
33 MEMBERS OF THE CLASS. WHETHER OR NOT FAVORABLE TO THE CLASS, THE JUDGMENT IN
34 AN ACTION THAT IS MAINTAINED AS A CLASS ACTION UNDER SECTION 12-1872,
35 SUBSECTION A, PARAGRAPH 3 SHALL INCLUDE AND SPECIFY OR DESCRIBE THOSE TO WHOM
36 THE NOTICE PROVIDED IN SUBSECTION F OF THIS SECTION WAS DIRECTED AND WHO HAVE
37 NOT REQUESTED EXCLUSION AND WHOM THE COURT FINDS TO BE MEMBERS OF THE CLASS.

38 I. IF APPROPRIATE, THE COURT MAY DO EITHER OF THE FOLLOWING:

39 1. ALLOW AN ACTION TO BE MAINTAINED AS A CLASS ACTION FOR A PARTICULAR
40 ISSUE.

41 2. DIVIDE A CLASS INTO SUBCLASSES AND EACH SUBCLASS SHALL BE TREATED
42 AS A CLASS.

43 12-1874. Court orders

44 IN THE CONDUCT OF CLASS ACTIONS, THE COURT MAY MAKE ORDERS THAT:

1 1. DETERMINE THE COURSE OF THE PROCEEDINGS OR THAT PRESCRIBE MEASURES
2 TO PREVENT UNDUE REPETITION OR COMPLICATION IN THE PRESENTATION OF EVIDENCE
3 OR ARGUMENT.

4 2. FOR THE PROTECTION OF THE CLASS MEMBERS OR FOR THE FAIR CONDUCT OF
5 THE ACTION, REQUIRE THAT NOTICE BE GIVEN IN ANY MANNER THE COURT DIRECTS TO
6 SOME OR ALL OF THE MEMBERS OF ANY STEP IN THE ACTION, OF THE PROPOSED ENTRY
7 OF JUDGMENT OR OF THE OPPORTUNITY OF MEMBERS TO SIGNIFY WHETHER THEY CONSIDER
8 THE REPRESENTATION TO BE FAIR AND ADEQUATE, TO INTERVENE AND PRESENT CLAIMS
9 AND DEFENSES OR OTHERWISE TO COME INTO THE ACTION.

10 3. IMPOSE CONDITIONS ON THE REPRESENTATIVE PARTIES OR ON INTERVENORS.

11 4. REQUIRE THAT THE PLEADINGS BE AMENDED TO ELIMINATE ALLEGATIONS AS
12 TO REPRESENTATION OF ABSENT PERSONS AND THAT THE ACTION PROCEED ACCORDINGLY.

13 5. DEAL WITH SIMILAR PROCEDURAL MATTERS.

14 6. COMBINE WITH ANY OTHER APPROPRIATE PRETRIAL ORDER.

15 12-1875. Dismissal or compromise

16 A. A CLASS ACTION SHALL NOT BE DISMISSED OR COMPROMISED WITHOUT THE
17 APPROVAL OF THE COURT.

18 B. THE COURT SHALL DIRECT THE MANNER IN WHICH NOTICE OF THE PROPOSED
19 DISMISSAL OR COMPROMISE SHALL BE GIVEN TO ALL CLASS MEMBERS.

20 C. BEFORE APPROVING THE DISMISSAL OR COMPROMISE OF A CLASS ACTION, THE
21 COURT SHALL HOLD A HEARING TO DETERMINE IF THE TERMS OF THE PROPOSED
22 DISMISSAL OR COMPROMISE ARE FAIR, REASONABLE AND ADEQUATE FOR THE CLASS. THE
23 COURT SHALL PERMIT ALL PARTIES TO THE ACTION, INCLUDING MEMBERS OF THE CLASS,
24 THE OPPORTUNITY TO BE HEARD.

25 12-1876. Discovery

26 A. REPRESENTATIVE PARTIES AND INTERVENORS ARE SUBJECT TO DISCOVERY IN
27 THE SAME MANNER AS PARTIES IN OTHER CIVIL ACTIONS.

28 B. OTHER CLASS MEMBERS ARE SUBJECT TO DISCOVERY IN THE SAME MANNER AS
29 PERSONS WHO ARE NOT PARTIES BUT THE COURT MAY REQUIRE THESE MEMBERS TO SUBMIT
30 TO DISCOVERY PROCEDURES THAT ARE APPLICABLE TO THE REPRESENTATIVE PARTIES AND
31 INTERVENORS.

32 12-1877. Appeals; stay

33 A. THE COURT'S CERTIFICATION OR REFUSAL TO CERTIFY A CLASS ACTION IS
34 APPEALABLE IN THE SAME MANNER AS A FINAL ORDER OR JUDGMENT.

35 B. IF AN APPEAL IS FILED PURSUANT TO THIS SECTION, ALL DISCOVERY AND
36 OTHER PROCEEDINGS SHALL BE STAYED.