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DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

Class Actions Improvements Act

Summary

This Act makes several revisions to the basic class action statute or rule that has been adopted in some form by most states (*i.e.*, Rule 23 of the Federal Rule of Civil Procedure).^[1] For the most part, the revisions clarify Rule 23 by making more explicit key interpretations of the rule that have been offered in recent years by federal (as some state) courts. In particular, the Act tracks Rule 23, principally making five changes that states could adopt in an effort to achieve modest (but significant) improvements to their statutes and/or court rules governing the use of the class action device:

1. The Act would authorize appellate review of trial court orders certifying or denying certification of proposed classes (tracking a recent similar change to federal Rule 23).
2. The Act would establish a rule limiting the scope of plaintiff class actions to residents of the state in which the class action is filed (emulating the view of some state courts that they should devote their limited resources primarily to resolving the claims of their own citizens, not the thousands of out-of-state residents' claims typically asserted in interstate class actions). This aspect of the act would not apply in a mass accident occurring in a state where persons who were injured included non-residents of the state.
3. The Act would adopt an explicit "classwide proof" prerequisite for class certification (embracing a prevailing policy of federal courts to ensure that the due process rights of unnamed class members and defendants are protected at trial).
4. The Act would add a "maturity" factor to the class certification prerequisites (adopting another prevailing policy of federal courts to ensure that class actions are not employed prematurely).
5. Finally, the Act would add a "administrative process" factor to the class certification prerequisites (codifying the federal court policy are not needed where the allegations asserted are within the purview of a federal or state regulatory agency).

In addition, the Act (i) would eliminate defendant class actions (that is, instances in which a plaintiff seeks to sue a class of defendants), (ii) would require that the trial court consider whether the expense and effort required to litigate the case on a class basis is justified by the amount of the recovery that each class member is likely to obtain (a provision that has been included in Michigan's class action rule); (iii) would codify the federal court policy that (b)(2) class actions are not available where monetary relief is sought, (iv) would make clear that the appropriate timing for trial court consideration of class certification issues varies from case to case (tracking a proposed amendment to the Federal Rules of Civil Procedure), (v) would require that a trial court give a written explanation of a decision to certify (or not to certify) a proposed class, (vi) would establish that class certification may be granted only where there is a full record and where the proponents have proffered clear and convincing evidence that the certification prerequisites have been satisfied, (vii) would codify the federal court view that there should be no presumption in favor of class certification, (viii) would establish a rebuttable presumption against the certification of classes asserting claims about which the class members would have to prove knowledge, reliance, or causation on an individual basis, (ix) would add language stressing that class certification does not excuse each class member's burden to prove each element of his/her claim; (x) would add specifications concerning the categories of information that should be included in any notices sent to the unnamed class members; (xi) would clarify that the proponents of class certification have the exclusive burden of paying for any class notice (consistent with federal court policy); (xii) would clarify that the rule does not authorize "issues" class actions (cases in which proponents seek to have out-of-context trials on issues that favor their position, depriving the jury of the opportunity to judge the "whole story"); (xiii) would specify basic procedures that a trial court should follow in reviewing a proposed class action settlement; and (xiv) would confirm that unnamed class members may be subject to court-approved discovery regarding their individual claims.

These provisions may be implemented as a statute or as a change in state rules of civil procedure, as appropriate. If the state has adopted a state court rule governing class actions, the legislature's ability to change that rule may be limited under the state constitution or rules enabling act-type statute.

The provisions of the Act assume that the state presently has adopted Fed. R. Civ. P. 23 (or a similar rule) as its class action rule. If the state has adopted another class action rule, some adaptation may be necessary.

Suggested Provisions

[Title, enacting clause, etc.]

Section 1. Title. The following Act shall be known and may be cited as the Class Action Improvements Act.

Section 2. Revisions to Class Action [Statute/Rule]. [Section/Rule ____ of the ____] shall be deleted and replaced in its entirety with the following:

(a) Prerequisites to a Class Action. One or more members of a class of [name of state] residents may sue as representative parties on behalf of all members of the class only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact as to which the court or jury could reasonably reach conclusions or findings applicable to all class members, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, (4) the representative parties will fairly and adequately protect the interests of the class, and (5) the class is defined so as to permit the identification of class members before any merits adjudications occur, and (6) non-residents may join in the class in case of a sudden accident or natural event culminating in an accident that results in death or injury incurred at a specific location.

(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 seeking to maintain the class action does not seek any monetary relief and 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 (i) that the questions of law or fact as to which the court or jury could reasonably reach conclusions or findings applicable to all class members predominate over any questions affecting only individual members, (ii) that the evidence likely to be admitted at trial regarding the elements of the claims for which certification is sought and of the defenses thereto is substantially the same as to all class members, and (iii) 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 individually controlling the prosecution or defense of separate actions; (B) the extent, nature, and maturity of any litigation concerning the controversy already commenced by or against members of the class; (C) whether it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify maintaining the case as a class action; (D) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (E) the difficulties likely to be encountered in the management of a class action; and (F) the extent to which the allegations at issue are subject to the jurisdiction of federal or state regulatory agencies.

(c) Determination by Order Whether Class Action to be Maintained; Notice; Judgment.

(1) When practicable after the commencement of an action brought as a class action, the court shall, after hearing, determine by order whether it is to be so maintained. An order under this subsection may be altered, amended, or withdrawn at any time before the decision on the merits.

(2) If the court finds that the action should be maintained as a class action, it shall certify the action accordingly on the basis of a written decision setting forth all reasons why the action may be so maintained and describing all evidence in support of the determination.

(3) A court shall not certify that an action may be maintained as a class action unless, on the basis of a full record on the relevant issues, the proponents proffer clear and convincing evidence that the action complies with all requirements for such certification. Any doubt as to whether this burden has been met shall be resolved in favor of denying class certification. The court shall decertify a class action upon any showing that an action has ceased to satisfy the applicable prerequisites for maintaining the case as a class action.

(4) There shall be a rebuttable presumption against the maintenance of a class action as to claims for which class members would have to prove knowledge, reliance, or causation on an individual basis.

(5) The determination that an action may be maintained as a class action shall not relieve any member of the class from the burden of proving all elements of the member's cause of action, including individual injury and the amount of damages.

(6) 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 include:

(i) a general description of the action, including the relief sought, and the names of the representative parties;

(ii) a statement of the right of a member of the class to be excluded from the action by submitting an election to be excluded, including the manner and time for exercising the election;

(iii) a description of possible financial consequences for the class;

(iv) a general description of any counterclaim or notice of intent to assert a counterclaim by or against members of the class, including the relief sought;

(v) a statement that the judgment, whether favorable or not, will bind members of the class who are not excluded from the action;

(vi) a statement that any member of the class may intervene in the action and designate separate counsel;

(vii) the address of counsel to whom members of the proposed class may direct inquiries; and

(viii) other information that the court deems appropriate.

(7) The plaintiff shall bear the expense of the notification required by the foregoing subsection. The court may require other parties to the litigation to cooperate in securing the names and addresses of the persons within the class for the purpose of providing individual notice, but any costs incurred by the party in providing such cooperation shall be paid initially by the party claiming the class action. Upon termination of the action, the court may allow as taxable costs all or part of the expenses incurred by the prevailing party.

(8) The judgment in an action maintained as a class action under subsections (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 subdivision (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.

Exposed

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(9) When appropriate, a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(e) Orders in Conduct of Actions. In the conduct of actions to which this [section/rule] applies, the court may make appropriate 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 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 entry of judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims and 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, and that the action proceed accordingly; (5) dealing with similar procedural matters.

(f) Dismissal or Compromise.

(1) 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.

(2) Before approving the dismissal or a compromise of an action that the court has determined may be maintained as a class action, the court shall hold a hearing to determine whether the terms of the proposed dismissal or compromise are fair, reasonable and adequate for the class. At such hearing, all parties to the action, including members of the class, shall be permitted an opportunity to be heard as the court may direct.

(g) Discovery. Representative parties and intervenors are subject to discovery in the same manner as parties in other civil actions. Other class members are subject to discovery in the same manner as persons who are not parties, but may be required by the court to submit to discovery procedures applicable to the representative parties and intervenors.

(h) Appeals. The courts of appeals shall hear appeals from orders of district courts granting or denying class action certification or denying a motion to decertify a class action under this section if a notice of appeal is filed within ten days after entry of the order. While an appeal under this subdivision is pending, all discovery and other proceedings in the district court shall be stayed."

Section 3. [Severability clause.]

Section 4. [Repealer clause.]

Section 5. [Effective date.]

*Originally approved by the American Legislative Exchange Council (ALEC) Board of Directors
September 13, 2000.*

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[1] There is substantial uniformity among the state statutes and state court rules that govern class certification. Forty states have adopted (sometimes with minor modifications) the current (1966) version of Fed. R. Civ. P. 23. Two states (Mississippi and Virginia) have no formal class action statutes or rules at all.

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ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Corporate Board --in recent past or present

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- For more on these corporations, search at www.SourceWatch.org.

From CMD: This bill greatly limits class action lawsuits, a major vehicle for confronting a large corporation's widespread practices that cause injury or are discriminatory. In particular, this bill specifies that class actions can only be maintained if the plaintiffs are not seeking any money (see Sect 2(b)(2)). It also makes it much more difficult to maintain a class action if it involves plaintiffs from multiple states, and adds a series of other presumptions against the maintenance of the class. This bill would have the effect of protecting large manufacturers of goods and large service providers from liability.

From CMD, also: This "model" bill seeks to replace state statutes and judicial decisions to make it more difficult for Americans to file and maintain class action lawsuits in state court. The ability to file a class action can help individual Americans aggregate and strengthen their case and leverage in claims against corporations whose products or actions have injured multiple people. Through this legislation, corporations are trying to consolidate gains they have made in the federal court system under judges that are often selected from law firms that have primarily represented corporate defendants and not injured plaintiffs. In so doing, this proposed legislation seeks to supplant state procedures and rulings that may be more sympathetic to injured Americans than the federal system. Among other things, the proposed bill attempts to limit the ability of a state court to handle a class action that involves citizens of its own state along with citizens of other states who have been injured or killed by products sold nationally. This aids companies and limits injured Americans' rights.