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Class action bill would burden Minnesota courts

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By David Cialkowski

Plaintiffs' class action attorneys are occasionally labeled as promoters of lawsuits designed to advance their self-interest over the interests of their client class. Fortunately, the courts have numerous mechanisms to prevent such inappropriate conduct. Unfortunately, the Legislature imposes fewer restraints on industry-driven legislation designed to abrogate the rights of ordinary citizens.

Working its way through the Minnesota State Legislature is S.F. 2880 — "A bill for an act relating to civil actions; providing requirements for certification of a class action." This bill would circumvent the District Court judge's discretion in managing class actions and overload the appellate courts with appeals.

Affront to the judiciary

The bill stands contrary to the express policy of the judiciary to avoid litigation by "piecemeal," and will encourage delays in proceedings, clearly contravening the mandate found in Minn. R. Civ. P. 1 to have judicial matters administered in a "just, speedy and inexpensive" fashion.

The bill is a serious affront to the judiciary, which has historically tended its own garden through the development and implementation of its own rules. It seeks to impose "process" on the judiciary by directing its management of class action cases.

The bill would also redefine the manner in which class action litigation is handled in a number of ways. One section of the bill would automatically "stay discovery" of merit-related issues pending a decision on class certification.

Historically, if a party believes the complainant has not stated a sufficient claim, that party brings a motion to dismiss and frequently moves to stay certain discovery. This bill would eliminate judicial discretion over the management of a case by requiring a complete stay of "merits" discovery.

Further, the bill's attempt to artificially impose a line between merits- and class-related discovery is like separating oil from water, as most courts determine whether common issues on the merits are appropriate for class certification.

Unnecessary rules

Another section of S.F. 2880 sets out unnecessary rules prescribing the precise form of a court's order. This is as insulting as it is impractical.

When orders are issued, District Court judges have access to the facts and issues of a case and need not address every issue the parties may dredge up. The language of S.F. 2880 will reduce the judge's role to filling out a form.

Another section of S.F. 2880 requires class members to have suffered at least one dollar of damages. The reason for this provision appears to be a thinly veiled effort by industry lobbyists to eliminate class cases involving injunctive relief. This provision threatens to halt cases in which plaintiffs seek relief, for example, to change a business's illegal practices.

Finally, the bill makes *every* class-certification order immediately appealable as of right.

This provision goes far beyond the current practice involving interlocutory appeals of class-certification orders in federal court, where a petition citing extraordinary circumstances must be filed.

The bill also undercuts the Minnesota Supreme Court's 1992 decision in *Gordon v. Microsoft*

Corp. In *Gordon*, the Supreme Court affirmed the Court of Appeals' denial of interlocutory review in a class action antitrust suit. The high court outlined the limited circumstances under which the Court of Appeals could grant a petition for discretionary review of an order granting or denying certification of a class. Those circumstances are:

• when a questionable denial of class certification is the "death knell" of the plaintiffs' case,

• when a questionable grant of class certification places inordinate pressure on the defendant to settle, and

• whether the appeal will permit resolution of an important legal issue that is also important to the particular litigation.

The bill, S.F. 2880, will eliminate these factors and *mandate* review in every case.

While certification of a class (or its denial) can have a major impact on the litigation, such orders have never been lightly considered by District Court judges.

In addition, as the *Gordon* opinion demonstrates, interlocutory appeals are already granted where the expense of the litigation would outweigh a fair defense or prosecution of the merits of the case. This factor is more than sufficient to allay industry concerns.

Long history

The state rule allowing class actions, Minn. R. Civ. P. 23, enjoys a long history in its development and should not be whimsically overhauled. There is no shortage of cases and studies rigorously analyzing the factors included in the rule. As U.S. District Court Chief Judge James Rosenbaum recently commented from the bench: "This court and every other United States District Court facing a class certification application is given the opportunity to write a lengthy opinion. It is fair to say that amidst the plethora of opinions which have resulted you can find a brilliant district judge who's made almost every declaration known to western man."

Likewise, Minnesota courts have adopted federal decisional law relating to class actions in near lockstep. The courts clearly have Rule 23 under control and need no imposition by the Legislature regarding class action procedures.

The bill, S.F. 2880, does not propose to "tinker" with Rule 23. It alters the rule dramatically. It also makes no attempt to balance the historic rights enjoyed by injured parties or to address concerns facing the use of limited judicial resources. The bill boldly and unapologetically promotes a wealthy defendant's ability to delay and delay and delay.

The passage of S.F. 2880 would:

• result in tremendous burden and expense on an already stretched court system;

• reduce the role of the District Court judge to that of a registration desk for the Court of Appeals;

• inordinately delay litigation by producing unnecessary discovery disputes because of its vague language and the creation of repetitive hearings; and

• eliminate injunctive classes.

The bill is poorly drafted and deserves the same fate it attempts to create for class actions — a quick death.

David Cialkowski is a lawyer with Zimmerman Reed in Minneapolis. He specializes in consumer class actions.