

By: Representative Howell

To: Judiciary A

HOUSE BILL NO. 856

1 AN ACT TO CREATE THE CLASS ACTION IMPROVEMENTS ACT; TO
2 PROVIDE PREREQUISITES TO A CLASS ACTION SUIT; TO PROVIDE WHEN A
3 CLASS ACTION IS MAINTAINABLE; TO PROVIDE FOR PROCEDURES FOR CLASS
4 ACTION SUITS; TO PROVIDE FOR APPEALS; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** The following act shall be known and may be cited
7 as the "Class Action Improvements Act."

8 **SECTION 2.** (1) One or more members of a class of
9 Mississippi residents may sue as representative parties on behalf
10 of all members of the class only if (a) the class is so numerous
11 that joinder of all members is impracticable, (b) there are
12 questions of law or fact as to which the court or jury could
13 reasonably reach conclusions or findings applicable to all class
14 members, (c) the claims or defenses of the representative parties
15 are typical of the claims or defenses of the class, (d) the
16 representative parties will fairly and adequately protect the
17 interests of the class, and (e) the class is defined so as to
18 permit the identification of class members before any merits
19 adjudications occur.

20 (2) An action may be maintained as a class action if the
21 prerequisites of subsection (1) are satisfied, and in addition:

22 (a) The prosecution of separate actions by or against
23 individual members of the class would create a risk of:

24 (i) Inconsistent or varying adjudications with
25 respect to individual members of the class which would establish
26 incompatible standards of conduct for the party opposing the
27 class, or



28 (ii) Adjudications with respect to individual
29 members of the class which would, as a practical matter, be
30 dispositive of the interests of the other members not parties to
31 the adjudications or substantially impair or impede their ability
32 to protect their interests; or

33 (b) The party seeking to maintain the class action does
34 not seek any monetary relief and the party opposing the class has
35 acted or refused to act on grounds generally applicable to the
36 class, thereby making appropriate final injunctive relief or
37 corresponding declaratory relief with respect to the class as a
38 whole; or

39 (c) The court finds (i) that the questions of law or
40 fact as to which the court or jury could reasonably reach
41 conclusions or findings applicable to all class members
42 predominate over any questions affecting only individual members,
43 (ii) that the evidence likely to be admitted at trial regarding
44 the elements of the claims for which certification is sought and
45 of the defenses thereto is substantially the same as to all class
46 members, and (iii) that a class action is superior to other
47 available methods for the fair and efficient adjudication of the
48 controversy. The matters pertinent to the findings include the
49 interest of members of the class in individually controlling the
50 prosecution or defense of separate actions; the extent, nature and
51 maturity of any litigation concerning the controversy already
52 commenced by or against members of the class; whether it is
53 probable that the amount which may be recovered by individual
54 class members will be large enough in relation to the expense and
55 effort of administering the action to justify maintaining the case
56 as a class action; the desirability or undesirability of
57 concentrating the litigation of the claims in the particular
58 forum; the difficulties likely to be encountered in the management
59 of a class action; and the extent to which the allegations at



60 issue are subject to the jurisdiction of federal or state
61 regulatory agencies.

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

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

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

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

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

89 (f) In any class action maintained under subsection
90 (2)(c), the court shall direct to the members of the class the
91 best notice practicable under the circumstances, including



92 individual notice to all members who can be identified through
93 reasonable effort. The notice shall include:

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

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

100 (iii) A description of possible financial
101 consequences for the class;

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

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

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

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

112 (viii) Other information that the court deems
113 appropriate.

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

123 (h) The judgment in an action maintained as a class
124 action under subsection (2)(a) or (2)(b), whether or not favorable



125 to the class, shall include and describe those whom the court
126 finds to be members of the class. The judgment in an action
127 maintained as a class action under subsection (2)(c), whether or
128 not favorable to the class, shall include and specify or describe
129 those to whom the notice provided in subsection (3)(b) was
130 directed, and who have not requested exclusion, and whom the court
131 finds to be members of the class.

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

136 (4) In the conduct of actions to which this section applies,
137 the court may make appropriate orders:

138 (a) Determining the course of proceedings or prescribing
139 measures to prevent undue repetition or complication in the
140 presentation of evidence or argument;

141 (b) Requiring, for the protection of members of the
142 class or otherwise for the fair conduct of the action, that notice
143 be given in such manner as the court may direct to some or all of
144 the members of any step in the action, or of the proposed entry of
145 judgment, or of the opportunity of members to signify whether they
146 consider the representation fair and adequate, to intervene and
147 present claims and defenses, or otherwise to come into the action;

148 (c) Imposing conditions on the representative parties
149 or on intervenors;

150 (d) Requiring that the pleadings be amended to
151 eliminate therefrom allegations as to representation of absent
152 persons, and that the action proceed accordingly;

153 (e) Dealing with similar procedural matters.

154 (5) (a) A class action shall not be dismissed or
155 compromised without the approval of the court, and notice of the
156 proposed dismissal or compromise shall be given to all members of
157 the class in such manner as the court directs.



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

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

171 (7) The Supreme Court shall hear appeals from orders of
172 courts granting or denying class action certification under this
173 section if a notice of appeal is filed within ten (10) days after
174 entry of the order.

175 **SECTION 3.** This act shall take effect and be in force from
176 and after July 1, 2002.

