92_SB1320sam001

LRB9205562WHcsam

- 1 AMENDMENT TO SENATE BILL 1320
- 2 AMENDMENT NO. ____. Amend Senate Bill 1320 by replacing
- 3 everything after the enacting clause with the following:
- 4 "Section 5. The Code of Civil Procedure is amended by
- 5 changing Section 2-802 and adding Section 2-807 as follows:
- 6 (735 ILCS 5/2-802) (from Ch. 110, par. 2-802)
- 7 Sec. 2-802. Order and findings relative to the class. (a)
- 8 Determination of Class. As soon as practicable after the
- 9 commencement of an action brought as a class action, the
- 10 court shall determine by order whether it may be so
- 11 maintained and describe those whom the court finds to be
- 12 members of the class. This order may be conditional and may
- 13 be amended before a decision on the merits.
- 14 (b) Class Action on Limited Issues and Sub-classes.
- When appropriate, an action may be brought or maintained as a
- 16 class action with respect to particular issues, or divided
- into sub-classes and each sub-class treated as a class. The
- 18 provisions of this rule shall then be construed and applied
- 19 accordingly.
- 20 (c) A motion to certify an action as a class action may
- 21 <u>not be granted before a hearing on the motion. The hearing</u>
- 22 <u>shall be held as soon as practicable, but in no event before:</u>

(1) Each named adverse party has been served with
the pleading containing the demand for class relief or
has made an appearance or, with respect to unserved
defendants who have not appeared, the proponent of the
class has made due and diligent effort to perfect service
of the pleading; and

(2) Each party has had a reasonable opportunity to obtain discovery on class certification issues, on such terms and conditions as the court deems necessary.

(Source: P.A. 82-280.)

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- 11 (735 ILCS 5/2-807 new)
- 12 <u>Sec. 2-807. Appeal of certification order.</u>
- (a) A circuit court's order certifying a class or 13 14 refusing to certify a class is appealable in the same manner 15 as a final order to the Appellate Court that would otherwise have jurisdiction over the appeal from a final order in the 16 action. The appeal must be filed within 42 days of the order 17 certifying or refusing to certify the class. The filing of 18 the appeal, the failure to file an appeal, or the affirmance 19 of the certification or denial order does not affect the 20 21 right of any party, after the entry of final judgment, to appeal the earlier certification of, or refusal to certify, 22 23 the class.
 - (b) If the appeal is not the first appeal taken by the party, the subsequent appeal shall be based upon the record at the time of final judgment and shall be considered by the court only to the extent that either the facts or controlling law relevant to certification have changed from that which existed or controlled at the time of the earlier certification or refusal to certify. During the pendency of any such appeal, the action in the circuit court shall be stayed in all respects. Following adjudication on appeal or, if the initial appeal is to the Appellate Court, adjudication

1 of the action on any leave to appeal granted by the Illinois 2 Supreme Court, if the class is not certified, the stay in the circuit court shall automatically dissolve and the circuit 3 4 court may proceed to adjudicate any remaining individual claims or defenses. If, after the appeal, the class is 5 certified, the stay shall be dissolved and the circuit court б 7 shall proceed with adjudication on the merits; except that the circuit court shall at all times before entry of a final 8 9 order retain jurisdiction to revisit the certification issues upon motion of a party and to order decertification of the 10 class if during the litigation of the case it is evident to 11 the circuit court that the action is no longer reasonably 12 maintainable as a class action under factors determined by 13 14 the circuit court to be appropriate.".