

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 450

BY SENATOR TRUMP

[Introduced February 27, 2017; Referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new
 2 sections, designated §55-7-31 and §55-7-32; and to amend and reenact §58-5-1 of said
 3 code, all relating to class action safeguards; ensuring that the class action mechanism is
 4 not used to eliminate required elements of proof and precluding statutory damages in class
 5 actions; relating to awards of attorneys' fees in class actions; providing for courts to
 6 consider the overall benefit of the settlement or judgment to the class and the ratio of the
 7 proposed fee to the overall benefit when evaluating whether a proposed fee is reasonable;
 8 relating to when an appeal lies; and providing for appeal of orders granting or denying
 9 class certification.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto two
 2 new sections, designated §55-7-31 and §55-7-32; and that §58-5-1 of said code be amended and
 3 reenacted, all to read as follows:

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-31. Class action safeguards.

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

4 (b) A class member may recover actual damages. Statutory damages are not available in
 5 a class action.

§55-7-32. Awards of attorneys' fees in class actions.

6 (a) In a certified class action, the court may award reasonable attorneys' fees and
 7 nontaxable costs that are authorized by law or the parties' agreement.

8 (b) In evaluating whether a requested attorneys' fee in a certified class action is

9 reasonable, the court shall consider:

10 (1) The overall benefit of the settlement or judgment to the class, computed as the sum of
11 the actual monetary value of: (A) Claims filed by class members; (B) vouchers, if any, that class
12 members redeemed or reasonable estimate of vouchers that class members will redeem; (C) any
13 product or service provided to class members; and (D) injunctive relief if such injunctive relief
14 provides a substantial benefit to class members. The overall benefit to the class does not include
15 the costs of notice and administration of the class settlement;

16 (2) The complexity of the litigation, including the length of the litigation and time spent by
17 class counsel; and

18 (3) The ratio of the requested fee to the overall benefit that class members will receive,
19 calculated as the requested attorneys' fee divided by the overall benefit to the class plus the
20 requested attorneys' fee.

21 (c) A requested attorneys' fee is presumptively unreasonable if the ratio established by
22 subdivision (3), subsection (b) of this section, exceeds twenty-five percent.

23 (d) This section does not authorize an award of attorneys' fees where not authorized by
24 law or the parties' agreement.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

§58-5-1. When appeal lies.

1 (a) A party to a civil action may appeal to the Supreme Court of Appeals from:

2 (1) A final judgment of any circuit court; ~~or from~~

3 (2) An order of any circuit court constituting a final judgment as to one or more but fewer
4 than all claims or parties upon an express determination by the circuit court that there is no just
5 reason for delay and upon an express direction for the entry of judgment as to ~~such~~ the claims or
6 parties; or

7 (3) An order of any circuit court granting or denying class action certification, during which
8 further proceedings in the case shall be stayed until the appeal is decided, except that the circuit
9 court shall retain sufficient jurisdiction over the case to consider and implement a settlement of
10 the action should one be reached between the parties.

11 (b) The defendant in a criminal action may appeal to the Supreme Court of Appeals from
12 a final judgment of any circuit court in which there has been a conviction or which affirms a
13 conviction obtained in an inferior court.

NOTE: The purpose of this bill is to provide class action safeguards. It attempts to ensure that the class action mechanism is not used to eliminate required elements of proof and precludes statutory damages in class actions. It addresses awards of attorneys' fees in class actions by requiring courts to consider the overall benefit of the settlement or judgment to the class and the ratio of the proposed fee to the overall benefit. It also addresses when an appeal lies from an order granting or denying class certification.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.