

Bill No. 1801

Page 1 of 5

Referred to Committee on GENERAL LAW

LCO No. 6022

Introduced by SEN. SMITH - 2ND DIST.

General Assembly,

January Session, A.D., 1971

AN ACT CONCERNING CONSUMER CLASS ACTIONS.

CONNECTICUT  
STATE LIBRARY  
LEGISLATIVE REFERENCE  
SECTION

Be it enacted by the Senate and House of Representatives in

General Assembly convened:

Section 1. The provisions of this act shall apply to any consumer transaction made in this state and to modifications of any consumer transaction. For purposes of this act, a consumer transaction is made in this state: (a) If the buyer's agreement or offer to purchase or to modify is received in this state; (b) if a lessee's agreement or offer to lease or to modify is received by a lessor in this state; (c) if a writing signed by a debtor or purchaser and evidencing a debt or receipt of goods is received by a lender or seller in this state.

Sec. 2. For purposes of this act, "consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of goods, a service, or an intangible, except securities, with or without an extension of credit, to an individual for purposes that are primarily personal, family or household, or a solicitation to supply any of these things.

Sec. 3. One or more members of a class may sue or be sued as representative parties on behalf of all only if (a) the class is so numerous that joinder of all members is impracticable, (b) there are questions of law or fact common to the class, (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (d) the representative parties will fairly and adequately protect the interests of the class.

Sec. 4. An action may be maintained as a class action if the prerequisites of section 1 of this act are satisfied, and in addition: (a) The prosecution of separate actions by or against individual members of the class would create a risk of 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 (2) 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 (b) 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 (c) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and 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 and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undersirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action; or (d) the parties seeking to establish the class shall allege in their complaint both the prerequisites to a class action under section 1 of this act and the additional grounds necessary to maintain an action under this section.

Sec. 5. (a) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended

before the decision on the merits. (b) In any class action 72  
maintained under subsection (c) of section 2 of this act the 73  
court shall direct to the members of the class the best notice 74  
practicable and reasonable under the circumstances; this may 75  
include individual notice to all members who can be identified 76  
through reasonable effort. In determining the reasonableness of 77  
the notice, the court may consider, among other factors, the 78  
following: (1) The number of members in the class; (2) the total 79  
cost of providing notice; (3) the amount of damages alleged by 80  
each member and by the class as a whole. The court may allocate 82  
the cost of any notice it orders as it deems proper. The notice 84  
shall advise each member that (A) the court will exclude him from 85  
the class if he so requests by a specified date; (B) the 86  
judgment, whether favorable or not, will include all members who 87  
do not request exclusion; and (C) any member who does not request 88  
exclusion may, if he desires, enter an appearance through his 89  
counsel. (c) The judgment in an action maintained as a class 90  
action under subsections (a) and (b) of section 2 of this act 91  
whether or not favorable to the class, shall include and describe 92  
those whom the court finds to be members of the class. The 94  
judgment in an action maintained as a class action under 95  
subsection (c) of section 2 of this act, whether or not favorable 96  
to the class, shall include and specify or describe those to whom 97  
the notice provided in subsection (b) of this section was 98  
directed, and who have not requested exclusion, and whom the 99  
court finds to be members of the class. (d) When appropriate (1) 100  
an action may be brought or maintained as a class action with 101  
respect to particular issues, or (2) a class may be divided into 102  
subclasses and each subclass treated as a class, and the 103  
provisions of this rule shall then be construed and applied 104  
accordingly.

Sec. 6. In the conduct of actions to which this rule 105  
applies, the court may make appropriate orders: (a) Determining 106  
the course of proceedings or prescribing measures to prevent 107  
undue repetition or complication in the presentation of evidence 108

or argument; (b) requiring, for the protection of the 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 extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (c) imposing conditions on the representative parties or on intervenors; (d) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (e) requiring an evidentiary hearing to determine the existence of common questions of law and fact, or the adequacy of representation of the class, before making its determination under subsection (a) of section 3 of this act; (f) dealing with similar procedural matters. The orders may be combined with an order under Connecticut Practice Book, section 178 et seq. regarding pretrial procedures and may be altered or amended as may be desirable from time to time.

Sec. 7. 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.

Sec. 8. In a class action brought pursuant to this section, the court may award reasonable attorneys' fees. Any such award shall be determined by the value of the amount of time reasonably expended by the attorney for the class and not by the amount of the recovery on behalf of the class.

Sec. 9. (a) Damages owed to members of the class who cannot be located with due diligence shall escheat to the state of Connecticut, or shall be applied in such other manner as the court may deem appropriate. (b) Whether or not the representatives of the class are entitled to recover damages or have an adequate remedy at law, they may obtain declaratory, injunctive or other appropriate ancillary equitable relief on

their own behalf and on behalf of others similarly situated. 145  
Sec. 10. Section 52-105 of the general statutes is 147  
repealed.

STATEMENT OF PURPOSE: To make it easier for persons to sue or be 150  
sued when there are numerous parties. The provision is designed 152  
to protect the due process rights of all interested and affected 153  
parties to a proceeding which is in some way related to a 154  
consumer transaction.

[Proposed deletions are enclosed in brackets and proposed 156  
additions are all capitalized, or underlined where appropriate.] 158