

**BILL TEXT:****STATE OF NEW YORK**

6929

2005-2006 Regular Sessions

**IN ASSEMBLY**

March 31, 2005

Introduced by M. of A. P. RIVERA, J. RIVERA -- Multi-Sponsored by -- M. of A. A. COHEN, GOTTFRIED, PERALTA -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to certification of class actions in cases involving governmental operations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 902 of the civil practice law and rules, as amended  
2 by chapter 474 of the laws of 1975, is amended to read as follows:

3 § 902. Order allowing class action. Within sixty days after the time  
4 to serve a responsive pleading has expired for all persons named as  
5 defendants in an action brought as a class action, the plaintiff shall  
6 move for an order to determine whether it is to be so maintained. An  
7 order under this section may be conditional, and may be altered or  
8 amended before the decision on the merits on the court's own motion or  
9 on motion of the parties. The action may be maintained as a class  
10 action only if the court finds that the prerequisites under section 901  
11 have been satisfied. Among the matters which the court shall consider  
12 in determining whether the action may proceed as a class action are:

13 1. the interest of members of the class in individually controlling  
14 the prosecution or defense of separate actions;

15 2. the impracticability or inefficiency of prosecuting or defending  
16 separate actions;

17 3. the extent and nature of any litigation concerning the controversy  
18 already commenced by or against members of the class;

19 4. the desirability or undesirability of concentrating the litigation  
20 of the claim in the particular forum;

21 5. the difficulties likely to be encountered in the management of a  
22 class action.

23 However, a court shall not deny or withhold class certification solely  
24 because the action involves governmental operations.

25 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD05468-01-5

**SPONSORS MEMO:**

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(e)**

## RETRIEVE BILL

**BILL NUMBER:** A6929

**SPONSOR:** Rivera P (MS)

**TITLE OF BILL:** An act to amend the civil practice law and rules, in relation to certification of class actions in cases involving governmental operations

**PURPOSE OR GENERAL IDEA OF BILL:**

Section 902 of the Civil Practice Law and Rules is amended to provide that a court may not deny or withhold class certification solely because the action involves governmental operations. This bill will not require the court to certify a class. More importantly, this bill will specify once the requirements of Article 9 are satisfied, certification cannot be denied solely because the case involves governmental operations.

**SUMMARY OF SPECIFIC PROVISIONS:**

The bill amends Civil Practice Law and Rules, Section 902(5) to prevent the withholding of "class certification" by a court merely because an action may involve governmental operations.

**JUSTIFICATION:** Legal Services for New York City, a not-for-profit organization that provides legal service for low-income people, supports this bill. Courts generally have been unwilling to certify a class when governmental operations are involved. The courts reason that a class action is not superior to other available methods (and thus fails to satisfy the requirement of § 901 (a) (5)) because the doctrine of

**STARE**

**DECISIS** provides adequate protection to putative class members.

**JONES**

**V. BERMAN**, 37 N.Y. 2d 42, 57 (1975).

A judgement in favor of the plaintiff may protect

**SUBSEQUENT** or

**FUTURE** litigants under the doctrine of

**STARE DECISIS**.ct. However,

it will have no effect whatsoever on persons who already have been and will be adversely affected by an agency's policies from the date the action was filed until a final determination.

**SEE TINDELL V. KOCH**, 154

A.D. 2nd 689, 565 N.Y.S. 2nd 789, 792 (1st Dep't 1991).

**STARE DECISIS**

applies only after the final determination has been reached in an action that has not been certified as a class action. Potential class members already adversely affected by the agency's policy while the lawsuit is still pending would obtain no relief at all, unless they commenced individual actions before a final determination in order to preserve their rights to the relief sought in a similar proceeding.

**SEE ALSO LAMBOY V. GROSS**, 129 Misc. 2nd 564, 493 N.Y.S. 2nd 709,

**AFF'D** 126 A.D. 2nd 265, 513 N.Y.S. 2nd 393 (1st Dep't 1987).

Thus, class certification is superior to this doctrine of

**STARE**

**DECISIS** to insure relief to members of a proposed class who have already been or will be affected by a governmental agency's policy before a final decision is issued in a lawsuit.

Moreover, it is often the case that persons who are similarly situated to the plaintiff in a lawsuit already filed are individuals who are poor, elderly, or disabled, who would be hard pressed because of their physical and financial condition to commence individual actions. Class action is the best method to protect these potential class members.

Finally, even if poor, elderly, or disabled persons succeed in obtaining free legal representation for their individual claims, the multiplicity

**RETRIEVE BILL**

of lawsuits seeking the identical relief can give rise to inconsistent rulings by various state courts. This results, in unnecessary expenditure of energy and judicial resources, forcing the legal service bar, the Attorney General's office and the courts repeatedly to litigate and decide the same issues of law.

Despite the court's assumption that governmental agencies follow the rules of law laid down by court decisions, potential class members continually confront the reality that successes in non-class actions are applied only to the individually named plaintiffs rather than to all those similarly situated.

In sum, § 902 of the CPLR should be amended to specify that once the requirements of the class action provisions of Article 9 are satisfied, certification cannot be denied on the grounds that because the case involves a governmental agency, the court's decision will be applied to all individuals similarly situated.

**PRIOR LEGISLATIVE HISTORY:**

1995-1996- A.4933 held in Codes  
1997- 1998 - A.3289 Passed Assembly  
1999-2000 - A.3299 Passed Assembly  
2001-2002 - A.7700 Passed Assembly  
2003-2004 - A.5942 Passed Assembly

**FISCAL IMPLICATIONS:** None.

**EFFECTIVE DATE:** This bill will take effect immediately upon enactment.

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