Regulatory Class Action Reform Act

Summary

Regulatory class actions—in which plaintiff attorneys seek not only to win large monetary awards, but also to regulate the marketplace and manage relations between regulated firms and consumers—empower private attorneys with personal agendas to act as de facto regulators. Recognizing the threat to democratic principles and public accountability posed by regulatory class actions, the Texas legislature in 2003 enacted comprehensive class action reform legislation that contains a specific provision designed to ensure that regulatory authority statutorily invested in administrative agencies will not be usurped by courts through regulatory class actions.

The Regulatory Class Action Reform Act mimics this provision in the Texas law by providing that before deciding a motion to certify a class action, the court shall rule on all pending motions asserting lack of jurisdiction because an agency of the state has exclusive or primary jurisdiction over the action or a part of the action, or asserting that a party has failed to exhaust administrative remedies. It further provides that the ruling of the court shall be reflected in a written order. If a motion provided for in the Act is denied and a class is subsequently certified, a person may obtain immediate appellate review of the order denying the motion.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title.}
This act shall be known and may be cited as the Regulatory Class Action Reform Act.

Section 2. Before hearing or deciding a motion to certify a class action, a trial court must hear and rule on all pending pleas to the jurisdiction asserting that an agency of this state has exclusive or primary jurisdiction of the action or a part of the action, or asserting that a party has failed to exhaust administrative remedies. The court’s ruling must be reflected in a written order.

Section 3. If a plea to the jurisdiction described by Subsection (a) is denied and a class is subsequently certified, a person may, as part of an appeal of the order certifying the class action, obtain immediate appellate review of the order denying the plea to the jurisdiction.

Section 4. This section does not alter or abrogate a person’s right to appeal or pursue an original proceeding in an appellate court in regard to a trial court’s order granting or denying a plea to the jurisdiction if the right exists under statutory or common law in effect at the time review is sought.

Section 5. {Effective date.}

Adopted by ALEC’s Civil Justice Task Force at the Spring Task Force Summit, April 21, 2006. Approved by the ALEC Board of Directors May, 2006.