

AMENDED IN ASSEMBLY MARCH 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 271

Introduced by Assembly Member Nestande

February 7, 2011

An act to amend Section 904.1 of the Code of Civil Procedure, relating to appeals.

LEGISLATIVE COUNSEL'S DIGEST

AB 271, as amended, Nestande. Appeals: class actions.

Existing law specifies the judgments and orders from which an appeal may be taken to the court of appeal. *Existing law also provides that, if the consent of any person who should have been joined as a plaintiff cannot be obtained, the person may be made a defendant.*

~~This bill would add an order granting or denying class action certification, allowing appeal from the order at the discretion of the court of appeal. The bill would specify various factors the court would be required to consider in determining whether to allow the appeal require an appellate court to permit an appeal from an order granting or denying class action certification to join a defendant pursuant to those provisions if the petition to appeal is filed within 14 days of entry of the order.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 904.1 of the Code of Civil Procedure is
2 amended to read:

1 904.1. (a) An appeal, other than in a limited civil case, is to
2 the court of appeal. An appeal, other than in a limited civil case,
3 may be taken from any of the following:

4 (1) From a judgment, except (A) an interlocutory judgment,
5 other than as provided in paragraphs (8), (9), and (11), or (B) a
6 judgment of contempt that is made final and conclusive by Section
7 1222.

8 (2) From an order made after a judgment made appealable by
9 paragraph (1).

10 (3) From an order granting a motion to quash service of
11 summons or granting a motion to stay the action on the ground of
12 inconvenient forum, or from a written order of dismissal under
13 Section 581d following an order granting a motion to dismiss the
14 action on the ground of inconvenient forum.

15 (4) From an order granting a new trial or denying a motion for
16 judgment notwithstanding the verdict.

17 (5) From an order discharging or refusing to discharge an
18 attachment or granting a right to attach order.

19 (6) From an order granting or dissolving an injunction, or
20 refusing to grant or dissolve an injunction.

21 (7) From an order appointing a receiver.

22 (8) From an interlocutory judgment, order, or decree, hereafter
23 made or entered in an action to redeem real or personal property
24 from a mortgage thereof, or a lien thereon, determining the right
25 to redeem and directing an accounting.

26 (9) From an interlocutory judgment in an action for partition
27 determining the rights and interests of the respective parties and
28 directing partition to be made.

29 (10) From an order made appealable by the provisions of the
30 Probate Code or the Family Code.

31 (11) From an interlocutory judgment directing payment of
32 monetary sanctions by a party or an attorney for a party if the
33 amount exceeds five thousand dollars (\$5,000).

34 (12) From an order directing payment of monetary sanctions
35 by a party or an attorney for a party if the amount exceeds five
36 thousand dollars (\$5,000).

37 (13) From an order granting or denying a special motion to
38 strike under Section 425.16.

39 (b) Sanction orders or judgments of five thousand dollars
40 (\$5,000) or less against a party or an attorney for a party may be

1 reviewed on an appeal by that party after entry of final judgment
2 in the main action, or, at the discretion of the court of appeal, may
3 be reviewed upon petition for an extraordinary writ.

4 (c) A court of appeal ~~may~~ *shall* permit an appeal from an order
5 granting or denying class action certification *under Section 382* if
6 the petition to appeal is filed within 14 days of the entry of the
7 order. ~~In reviewing a petition to determine whether to permit an~~
8 ~~appeal under this subdivision, the court shall consider the following~~
9 ~~circumstances:~~

10 (1) ~~Whether the trial court's order denying class status would~~
11 ~~effectively end the litigation and any reasonable possibility of~~
12 ~~prosecuting individual claims.~~

13 (2) ~~Whether the trial court's order granting class status would~~
14 ~~place substantial pressure on the defendant to settle without regard~~
15 ~~to the merits of the case.~~

16 (3) ~~Whether an interlocutory appeal of the order would facilitate~~
17 ~~the development of the law pertaining to class actions.~~

18 (4) ~~Whether the order granting or denying class certification is~~
19 ~~clearly erroneous.~~

20 (5) ~~Whether any other special circumstances exist that are~~
21 ~~sufficient to justify an interlocutory appeal.~~