

2138

2009-2010 Regular Sessions

I N S E N A T E

February 11, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to duty of directors and available relief for breach thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Section 402 of the not-for-profit corporation law is
2 amended by adding a new paragraph (d) to read as follows:
3 (D) THE CERTIFICATE OF INCORPORATION MAY SET FORTH A PROVISION ELIMI-
4 NATING OR LIMITING THE PERSONAL LIABILITY OF DIRECTORS TO THE CORPO-
5 RATION OR ITS MEMBERS, IF ANY, FOR DAMAGES FOR ANY BREACH OF DUTY IN
6 SUCH CAPACITY, PROVIDED THAT NO SUCH PROVISION SHALL ELIMINATE OR LIMIT
7 THE LIABILITY OF ANY DIRECTOR IF A JUDGMENT OR OTHER FINAL ADJUDICATION
8 ADVERSE TO SUCH PERSON ESTABLISHES THAT SUCH PERSON'S ACTS OR OMISSIONS
9 WERE IN BAD FAITH OR INVOLVED INTENTIONAL MISCONDUCT OR A KNOWING
10 VIOLATION OF LAW OR THAT SUCH PERSON PERSONALLY GAINED IN FACT A FINAN-
11 CIAL PROFIT OR OTHER ADVANTAGE TO WHICH SUCH PERSON WAS NOT LEGALLY
12 ENTITLED OR THAT SUCH PERSON'S ACTS VIOLATED SECTION 719 (LIABILITY OF
13 DIRECTORS IN CERTAIN CASES). THE PROVISIONS OF THIS PARAGRAPH SHALL NOT
14 APPLY TO CORPORATIONS ORGANIZED PURSUANT TO ARTICLE FORTY-THREE OF THE
15 INSURANCE LAW.
16 S 2. The opening paragraph of subdivision 1 of paragraph (a) of
17 section 720 of the not-for-profit corporation law is amended to read as
18 follows:
19 [To] SUBJECT TO ANY PROVISION OF THE CERTIFICATE OF INCORPORATION
20 AUTHORIZED PURSUANT TO PARAGRAPH (D) OF SECTION 402 (CERTIFICATE OF
21 INCORPORATION; CONTENTS), TO compel the defendant to account for his
22 official conduct in the following cases:
23 S 3. This act shall take effect immediately.

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

LBD08815-01-9