S T A T E O F N E W Y O R K

5394

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed 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:

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

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

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

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

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

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

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

HOWEVER, A COURT SHALL NOT DENY OR WITHHOLD CLASS CERTIFICATION SOLELY BECAUSE THE ACTION INVOLVES GOVERNMENTAL OPERATIONS.

S 2. This act shall take effect immediately.

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

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