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

5768

2009-2010 Regular Sessions

I N S E N A T E

June 4, 2009

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

AN ACT to amend the business corporation law and the retirement and social security law, in relation to authorizing certain actions by institutional investors

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

Section 1. The business corporation law is amended by adding a new section 631 to read as follows:

S 631. ACTION BY CERTAIN MUTUAL FUNDS AND OTHER INSTITUTIONAL INVESTORS.

(A) ANY MUTUAL FUND OR OTHER INSTITUTIONAL INVESTOR INCORPORATED UNDER THE LAWS OF THIS STATE OR WHICH MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE, THAT IS DAMAGED IN CONNECTION WITH THE PURCHASE OR SALE OF A SECURITY AS A RESULT OF THE COMMISSION OF ANY ACT PROHIBITED BY SECTION THREE HUNDRED FIFTY-TWO-C OF THE GENERAL BUSINESS LAW, MAY BRING AN ACTION FOR DAMAGES AGAINST ANY PERSON, PARTNERSHIP, CORPORATION, COMPANY, LIMITED LIABILITY COMPANY, TRUST, OR ASSOCIATION THAT COMMITTED OR PARTICIPATED IN THE COMMISSION OF SUCH PROHIBITED ACT.

(B) NO MUTUAL FUND OR OTHER INSTITUTIONAL INVESTOR THAT HAD FEWER THAN FIVE HUNDRED BENEFICIARIES AT THE TIME OF THE PURCHASE OR SALE OF THE SECURITY MAY BRING AN ACTION UNDER THIS SECTION.

(C) WITH RESPECT TO ALLEGATIONS THAT A REPRESENTATION OR STATEMENT WAS FALSE, THE PLAINTIFF WITH RESPECT TO ALLEGATIONS REQUIRED TO PLEAD AND PROVE THAT THE PERSON WHO MADE SUCH STATEMENT: (I) KNEW THE TRUTH; (II) WITH REASONABLE EFFORT COULD HAVE KNOWN THE TRUTH; (III) MADE NO REASONABLE EFFORT TO ASCERTAIN THE TRUTH; OR (IV) DID NOT HAVE KNOWLEDGE CONCERNING THE REPRESENTATION OR STATEMENT MADE. WITH RESPECT TO ALLEGATIONS OF ANY OTHER NATURE, THE PLAINTIFF IS REQUIRED TO PLEAD AND PROVE THAT THE PERSON ACTED WITH NEGLIGENCE.

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

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(D) NO SUCH ACTION MAY BE BROUGHT MORE THAN SIX YEARS FROM THE TIME THE PLAINTIFF DISCOVERED THE ALLEGEDLY PROHIBITED ACT OR COULD, WITH REASONABLE DILIGENCE, HAVE DISCOVERED IT.

(E) AFTER SUCH ACTION HAS BEEN BROUGHT, NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, DISCLOSURE AND RELATED PROCEEDINGS SHALL NOT BE STAYED DURING THE PENDENCY OF ANY MOTION TO DISMISS, UNLESS THE COURT SO DIRECTS.

S 2. Section 179-a of the retirement and social security law, as renumbered by chapter 868 of the laws of 1975, is renumbered section 179-b and a new section 179-a is added to read as follows:

S 179-A. ACTION BY CERTAIN PUBLIC PENSION PLAN OR FUND OR RETIREMENT SYSTEM INVESTORS. 1. A PUBLIC RETIREMENT SYSTEM AS DEFINED IN SUBDIVISION TWENTY-THREE OF SECTION FIVE HUNDRED ONE OF THIS CHAPTER, THAT IS DAMAGED IN CONNECTION WITH THE PURCHASE OR SALE OF A SECURITY AS A RESULT OF THE COMMISSION OF ANY ACT PROHIBITED BY SECTION THREE HUNDRED FIFTY-TWO-C OF THE GENERAL BUSINESS LAW, MAY BRING AN ACTION FOR DAMAGES AGAINST ANY PERSON, PARTNERSHIP, CORPORATION, COMPANY, LIMITED LIABILITY COMPANY, TRUST, OR ASSOCIATION THAT COMMITTED OR PARTICIPATED IN THE COMMISSION OF SUCH PROHIBITED ACT.

2. NO SUCH PUBLIC PENSION PLAN OR FUND OR RETIREMENT SYSTEM INVESTOR THAT HAD FEWER THAN FIVE HUNDRED BENEFICIARIES AT THE TIME OF THE PURCHASE OR SALE OF THE SECURITY MAY BRING AN ACTION UNDER THIS SECTION.

3. WITH RESPECT TO ALLEGATIONS THAT A REPRESENTATION OR STATEMENT WAS FALSE, THE PLAINTIFF IS REQUIRED TO PLEAD AND PROVE THAT THE PERSON WHO MADE SUCH STATEMENT: (A) KNEW THE TRUTH; (B) WITH REASONABLE EFFORT COULD HAVE KNOWN THE TRUTH; (C) MADE NO REASONABLE EFFORT TO ASCERTAIN THE TRUTH; OR (D) DID NOT HAVE KNOWLEDGE CONCERNING THE REPRESENTATION OR STATEMENT MADE. WITH RESPECT TO ALLEGATIONS OF ANY OTHER NATURE, THE PLAINTIFF IS REQUIRED TO PLEAD AND PROVE THAT THE PERSON ACTED WITH NEGLIGENCE.

4. NO SUCH ACTION MAY BE BROUGHT MORE THAN SIX YEARS FROM THE TIME THE PLAINTIFF DISCOVERED THE ALLEGEDLY PROHIBITED ACT OR COULD, WITH REASONABLE DILIGENCE, HAVE DISCOVERED IT.

5. AFTER SUCH ACTION HAS BEEN BROUGHT, NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, DISCLOSURE AND RELATED PROCEEDINGS SHALL NOT BE STAYED DURING THE PENDANCY OF ANY MOTION TO DISMISS, UNLESS THE COURT SO DIRECTS.

S 3. This act shall take effect immediately and shall apply to causes of action accruing and actions pending before, on, or after its effective date.

FISCAL NOTE.--This bill would authorize any mutual fund or other institutional investor incorporated under the laws of New York state that is damaged in the connection with the purchase or sale of a security to bring an action for damages against the entity that committed or participated in the commission of actions prohibited by section 352-c of the General Business Law.

If this bill is enacted, insofar as it would affect the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System, there would not be any costs.

This estimate, dated March 23, 2009, and intended for use only during the 2009 Legislative Session, is Fiscal Note No. 2009-198, prepared by the Actuary for the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

FISCAL NOTE.--This bill would renumber section 179-a of the Retirement and Social Security Law to section 179-b and add a new section 179-a

which would allow the New York State Teachers' Retirement System to bring an action for damages against any person, partnership, corporation, company, limited liability company, trust, or association which commits or participates in any act prohibited by section 352-c of the General Business Law in connection with the purchase or sale of a security.

It is estimated that there will be no annual cost to the employers of members of the New York State Teachers' Retirement System if this bill is enacted.

The source of this estimate is Fiscal Note 2009-69 dated May 27, 2009 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2009 Legislative Session.

FISCAL NOTE.--This bill would provide the authority to institutional investors, including the State and City of New York retirement systems, to bring actions for damages with respect to violations of the State's securities laws.

With respect to the City of New York, there are no budgetary costs associated with enactment of this bill. This bill would permit the City to seek financial remedies and recoveries to the extent that certain securities violations occurred.

This fiscal note is intended solely for the 2009 legislative session and was prepared by Andrew G. Dowling, Assistant Director, New York City Office of Management and Budget.