

2677

2011-2012 Regular Sessions

I N   S E N A T E

January 28, 2011

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Introduced by Sen. RIVERA -- 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:

1     Section 1. The business corporation law is amended by adding a new  
2     section 631 to read as follows:  
3     S 631. ACTION BY CERTAIN MUTUAL FUNDS AND OTHER INSTITUTIONAL INVESTORS.  
4     (A) ANY MUTUAL FUND OR OTHER INSTITUTIONAL INVESTOR INCORPORATED UNDER  
5     THE LAWS OF THIS STATE OR WHICH MAINTAINS ITS PRINCIPAL PLACE OF BUSI-  
6     NESS IN THIS STATE, THAT IS DAMAGED IN CONNECTION WITH THE PURCHASE OR  
7     SALE OF A SECURITY AS A RESULT OF THE COMMISSION OF ANY ACT PROHIBITED  
8     BY SECTION THREE HUNDRED FIFTY-TWO-C OF THE GENERAL BUSINESS LAW, MAY  
9     BRING AN ACTION FOR DAMAGES AGAINST ANY PERSON, PARTNERSHIP, CORPO-  
10    RATION, COMPANY, LIMITED LIABILITY COMPANY, TRUST, OR ASSOCIATION THAT  
11    COMMITTED OR PARTICIPATED IN THE COMMISSION OF SUCH PROHIBITED ACT.  
12    (B) NO MUTUAL FUND OR OTHER INSTITUTIONAL INVESTOR THAT HAD FEWER THAN  
13    FIVE HUNDRED BENEFICIARIES AT THE TIME OF THE PURCHASE OR SALE OF THE  
14    SECURITY MAY BRING AN ACTION UNDER THIS SECTION.  
15    (C) WITH RESPECT TO ALLEGATIONS THAT A REPRESENTATION OR STATEMENT WAS  
16    FALSE, THE PLAINTIFF WITH RESPECT TO ALLEGATIONS REQUIRED TO PLEAD AND  
17    PROVE THAT THE PERSON WHO MADE SUCH STATEMENT: (I) KNEW THE TRUTH; (II)  
18    WITH REASONABLE EFFORT COULD HAVE KNOWN THE TRUTH; (III) MADE NO REASON-  
19    ABLE EFFORT TO ASCERTAIN THE TRUTH; OR (IV) DID NOT HAVE KNOWLEDGE  
20    CONCERNING THE REPRESENTATION OR STATEMENT MADE. WITH RESPECT TO ALLEGA-  
21    TIONS OF ANY OTHER NATURE, THE PLAINTIFF IS REQUIRED TO PLEAD AND PROVE  
22    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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1 (D) NO SUCH ACTION MAY BE BROUGHT MORE THAN SIX YEARS FROM THE TIME  
2 THE PLAINTIFF DISCOVERED THE ALLEGEDLY PROHIBITED ACT OR COULD, WITH  
3 REASONABLE DILIGENCE, HAVE DISCOVERED IT.

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

8 S 2. Section 179-a of the retirement and social security law, as  
9 renumbered by chapter 868 of the laws of 1975, is renumbered section  
10 179-b and a new section 179-a is added to read as follows:

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

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

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

31 4. NO SUCH ACTION MAY BE BROUGHT MORE THAN SIX YEARS FROM THE TIME THE  
32 PLAINTIFF DISCOVERED THE ALLEGEDLY PROHIBITED ACT OR COULD, WITH REASON-  
33 ABLE DILIGENCE, HAVE DISCOVERED IT.

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

38 S 3. This act shall take effect immediately and shall apply to causes  
39 of action accruing and actions pending before, on, or after its effec-  
40 tive date.