

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1260

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## AN ACT

To amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Securities Litigation  
5 Uniform Standards Act of 1998”.

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1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) the Private Securities Litigation Reform  
4 Act of 1995 sought to prevent abuses in private se-  
5 curities fraud lawsuits;

6 (2) since enactment of that legislation, consid-  
7 erable evidence has been presented to Congress that  
8 a number of securities class action lawsuits have  
9 shifted from Federal to State courts;

10 (3) this shift has prevented that Act from fully  
11 achieving its objectives;

12 (4) State securities regulation is of continuing  
13 importance, together with Federal regulation of se-  
14 curities, to protect investors and promote strong fi-  
15 nancial markets; and

16 (5) in order to prevent certain State private se-  
17 curities class action lawsuits alleging fraud from  
18 being used to frustrate the objectives of the Private  
19 Securities Litigation Reform Act of 1995, it is ap-  
20 propriate to enact national standards for securities  
21 class action lawsuits involving nationally traded se-  
22 curities, while preserving the appropriate enforce-  
23 ment powers of State securities regulators and not  
24 changing the current treatment of individual law-  
25 suits.

1 **SEC. 3. LIMITATION ON REMEDIES.**

2 (a) AMENDMENTS TO THE SECURITIES ACT OF  
3 1933.—

4 (1) AMENDMENT.—Section 16 of the Securities  
5 Act of 1933 (15 U.S.C. 77p) is amended to read as  
6 follows:

7 **“SEC. 16. ADDITIONAL REMEDIES; LIMITATION ON REM-  
8 EDIES.**

9 “(a) REMEDIES ADDITIONAL.—Except as provided in  
10 subsection (b), the rights and remedies provided by this  
11 title shall be in addition to any and all other rights and  
12 remedies that may exist at law or in equity.

13 “(b) CLASS ACTION LIMITATIONS.—No class action  
14 based upon the statutory or common law of any State or  
15 subdivision thereof may be maintained in any State or  
16 Federal court by any private party alleging—

17 “(1) an untrue statement or omission of a ma-  
18 terial fact in connection with the purchase or sale of  
19 a covered security; or

20 “(2) that the defendant used or employed any  
21 manipulative or deceptive device or contrivance in  
22 connection with the purchase or sale of a covered se-  
23 curity.

24 “(c) REMOVAL OF CLASS ACTIONS.—Any class action  
25 brought in any State court involving a covered security,  
26 as set forth in subsection (b), shall be removable to the

1 Federal district court for the district in which the action  
2 is pending, and shall be subject to subsection (b).

3 “(d) PRESERVATION OF CERTAIN ACTIONS.—

4 “(1) IN GENERAL.—Notwithstanding subsection  
5 (b), a class action described in paragraph (2) of this  
6 subsection that is based upon the statutory or com-  
7 mon law of the State in which the issuer is incor-  
8 porated (in the case of a corporation) or organized  
9 (in the case of any other entity) may be maintained  
10 in a State or Federal court by a private party.

11 “(2) PERMISSIBLE ACTIONS.—A class action is  
12 described in this paragraph if it involves—

13 “(A) the purchase or sale of securities by  
14 the issuer or an affiliate of the issuer exclu-  
15 sively from or to holders of equity securities of  
16 the issuer; or

17 “(B) any recommendation, position, or  
18 other communication with respect to the sale of  
19 securities of the issuer that—

20 “(i) is made by or on behalf of the  
21 issuer or an affiliate of the issuer to hold-  
22 ers of equity securities of the issuer; and

23 “(ii) concerns decisions of those equity  
24 holders with respect to voting their securi-  
25 ties, acting in response to a tender or ex-

1 change offer, or exercising dissenters' or  
2 appraisal rights.

3 “(e) PRESERVATION OF STATE JURISDICTION.—The  
4 securities commission (or any agency or office performing  
5 like functions) of any State shall retain jurisdiction under  
6 the laws of such State to investigate and bring enforce-  
7 ment actions.

8 “(f) STATE ACTIONS.—

9 “(1) IN GENERAL.—Notwithstanding any other  
10 provision of this section, nothing in this section may  
11 be construed to preclude a State or political subdivi-  
12 sion thereof or a State pension plan from bringing  
13 an action involving a covered security on its own be-  
14 half, or as a member of a class comprised solely of  
15 other States, political subdivisions, or State pension  
16 plans similarly situated.

17 “(2) STATE PENSION PLAN DEFINED.—For  
18 purposes of this paragraph, the term ‘State pension  
19 plan’ means a pension plan established and main-  
20 tained for its employees by the government of the  
21 State or political subdivision thereof, or by any  
22 agency or instrumentality thereof.

23 “(g) DEFINITIONS.—For purposes of this section the  
24 following definitions shall apply:

1           “(1) AFFILIATE OF THE ISSUER.—The term  
2           ‘affiliate of the issuer’ means a person that directly  
3           or indirectly, through 1 or more intermediaries, con-  
4           trols or is controlled by or is under common control  
5           with, the issuer.

6           “(2) CLASS ACTION.—

7           “(A) IN GENERAL.—The term ‘class ac-  
8           tion’ means—

9           “(i) any single lawsuit (other than a  
10           derivative action brought by 1 or more  
11           shareholders on behalf of a corporation) in  
12           which—

13           “(I) damages are sought on be-  
14           half of more than 50 persons or pro-  
15           spective class members, and questions  
16           of law or fact common to those per-  
17           sons or members of the prospective  
18           class, without reference to issues of  
19           individualized reliance on an alleged  
20           misstatement or omission, predomi-  
21           nate over any questions affecting only  
22           individual persons or members; or

23           “(II) 1 or more named parties  
24           seek to recover damages on a rep-  
25           resentative basis on behalf of them-

1                   selves and other unnamed parties  
2                   similarly situated, and questions of  
3                   law or fact common to those persons  
4                   or members of the prospective class  
5                   predominate over any questions af-  
6                   fecting only individual persons or  
7                   members; or

8                   “(ii) any group of lawsuits (other than  
9                   derivative suits brought by 1 or more  
10                  shareholders on behalf of a corporation)  
11                  filed in or pending in the same court and  
12                  involving common questions of law or fact,  
13                  in which—

14                         “(I) damages are sought on be-  
15                         half of more than 50 persons; and

16                         “(II) the lawsuits are joined, con-  
17                         solidated, or otherwise proceed as a  
18                         single action for any purpose.

19                   “(B) COUNTING OF CERTAIN CLASS MEM-  
20                  BERS.—For purposes of this paragraph, a cor-  
21                  poration, investment company, pension plan,  
22                  partnership, or other entity, shall be treated as  
23                  1 person or prospective class member, but only  
24                  if the entity is not established for the purpose  
25                  of participating in the action.

1           “(3) COVERED SECURITY.—The term ‘covered  
2 security’ means a security that satisfies the stand-  
3 ards for a covered security specified in paragraph  
4 (1) or (2) of section 18(b) at the time during which  
5 it is alleged that the misrepresentation, omission, or  
6 manipulative or deceptive conduct occurred.”.

7           (2) CONFORMING AMENDMENTS.—Section  
8 22(a) of the Securities Act of 1933 (15 U.S.C.  
9 77v(a)) is amended—

10           (A) by inserting “except as provided in  
11 section 16 with respect to class actions,” after  
12 “Territorial courts,”; and

13           (B) by striking “No case” and inserting  
14 “Except as provided in section 16(c), no case”.

15           (b) AMENDMENTS TO THE SECURITIES EXCHANGE  
16 ACT OF 1934.—Section 28 of the Securities Exchange Act  
17 of 1934 (15 U.S.C. 78bb) is amended—

18           (1) in subsection (a), by striking “The rights  
19 and remedies” and inserting “Except as provided in  
20 subsection (f), the rights and remedies”; and

21           (2) by adding at the end the following new sub-  
22 section:

23           “(f) LIMITATIONS ON REMEDIES.—

24           “(1) CLASS ACTION LIMITATIONS.—No class ac-  
25 tion based upon the statutory or common law of any

1 State or subdivision thereof may be maintained in  
2 any State or Federal court by any private party  
3 alleging—

4 “(A) a misrepresentation or omission of a  
5 material fact in connection with the purchase or  
6 sale of a covered security; or

7 “(B) that the defendant used or employed  
8 any manipulative or deceptive device or contriv-  
9 ance in connection with the purchase or sale of  
10 a covered security.

11 “(2) REMOVAL OF CLASS ACTIONS.—Any class  
12 action brought in any State court involving a cov-  
13 ered security, as set forth in paragraph (1), shall be  
14 removable to the Federal district court for the dis-  
15 trict in which the action is pending, and shall be  
16 subject to paragraph (1).

17 “(3) PRESERVATION OF CERTAIN ACTIONS.—

18 “(A) IN GENERAL.—Notwithstanding para-  
19 graph (1), a class action described in subpara-  
20 graph (B) of this paragraph that is based upon  
21 the statutory or common law of the State in  
22 which the issuer is incorporated (in the case of  
23 a corporation) or organized (in the case of any  
24 other entity) may be maintained in a State or  
25 Federal court by a private party.

1           “(B) PERMISSIBLE ACTIONS.—A class ac-  
2           tion is described in this subparagraph if it in-  
3           volves—

4                   “(i) the purchase or sale of securities  
5                   by the issuer or an affiliate of the issuer  
6                   exclusively from or to holders of equity se-  
7                   curities of the issuer; or

8                   “(ii) any recommendation, position, or  
9                   other communication with respect to the  
10                  sale of securities of an issuer that—

11                           “(I) is made by or on behalf of  
12                           the issuer or an affiliate of the issuer  
13                           to holders of equity securities of the  
14                           issuer; and

15                           “(II) concerns decisions of such  
16                           equity holders with respect to voting  
17                           their securities, acting in response to  
18                           a tender or exchange offer, or exercis-  
19                           ing dissenters’ or appraisal rights.

20           “(4) PRESERVATION OF STATE JURISDIC-  
21           TION.—The securities commission (or any agency or  
22           office performing like functions) of any State shall  
23           retain jurisdiction under the laws of such State to  
24           investigate and bring enforcement actions.

25           “(5) STATE ACTIONS.—

1           “(A) IN GENERAL.—Notwithstanding any  
2 other provision of this subsection, nothing in  
3 this subsection may be construed to preclude a  
4 State or political subdivision thereof or a State  
5 pension plan from bringing an action involving  
6 a covered security on its own behalf, or as a  
7 member of a class comprised solely of other  
8 States, political subdivisions, or State pension  
9 plans similarly situated.

10           “(B) STATE PENSION PLAN DEFINED.—  
11 For purposes of this paragraph, the term ‘State  
12 pension plan’ means a pension plan established  
13 and maintained for its employees by the govern-  
14 ment of a State or political subdivision thereof,  
15 or by any agency or instrumentality thereof.

16           “(6) DEFINITIONS.—For purposes of this sub-  
17 section the following definitions shall apply:

18           “(A) AFFILIATE OF THE ISSUER.—The  
19 term ‘affiliate of the issuer’ means a person  
20 that directly or indirectly, through 1 or more  
21 intermediaries, controls or is controlled by or is  
22 under common control with, the issuer.

23           “(B) CLASS ACTION.—The term ‘class ac-  
24 tion’ means—

1           “(i) any single lawsuit (other than a  
2           derivative action brought by 1 or more  
3           shareholders on behalf of a corporation) in  
4           which—

5                   “(I) damages are sought on be-  
6                   half of more than 50 persons or pro-  
7                   spective class members, and questions  
8                   of law or fact common to those per-  
9                   sons or members of the prospective  
10                  class, without reference to issues of  
11                  individualized reliance on an alleged  
12                  misstatement or omission, predomi-  
13                  nate over any questions affecting only  
14                  individual persons or members; or

15                  “(II) 1 or more named parties  
16                  seek to recover damages on a rep-  
17                  resentative basis on behalf of them-  
18                  selves and other unnamed parties  
19                  similarly situated, and questions of  
20                  law or fact common to those persons  
21                  or members of the prospective class  
22                  predominate over any questions af-  
23                  fecting only individual persons or  
24                  members; or

1           “(ii) any group of lawsuits (other than  
2           derivative suits brought by 1 or more  
3           shareholders on behalf of a corporation)  
4           filed in or pending in the same court and  
5           involving common questions of law or fact,  
6           in which—

7                       “(I) damages are sought on be-  
8                       half of more than 50 persons; and

9                       “(II) the lawsuits are joined, con-  
10                      solidated, or otherwise proceed as a  
11                      single action for any purpose.

12           “(C) COUNTING OF CERTAIN CLASS MEM-  
13           BERS.—For purposes of this paragraph, a cor-  
14           poration, investment company, pension plan,  
15           partnership, or other entity, shall be treated as  
16           1 person or prospective class member, but only  
17           if the entity is not established for the purpose  
18           of participating in the action.

19           “(D) COVERED SECURITY.—The term ‘cov-  
20           ered security’ means a security that satisfies  
21           the standards for a covered security specified in  
22           paragraph (1) or (2) of section 18(b) of the Se-  
23           curities Act of 1933, at the time during which  
24           it is alleged that the misrepresentation, omis-

1           sion, or manipulative or deceptive conduct oc-  
2           curred.”.

3 **SEC. 4. APPLICABILITY.**

4           The amendments made by this Act shall not affect  
5 or apply to any action commenced before and pending on  
6 the date of enactment of this Act.

Passed the Senate May 13, 1998.

Attest:

*Secretary.*

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1260**

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**AN ACT**

To amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes.