

BILL TEXT:**STATE OF NEW YORK**

1252

2005-2006 Regular Sessions

IN ASSEMBLY

January 19, 2005

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to when third-party practice is allowed

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 1007 of the civil practice law and rules, as
2 amended by chapter 216 of the laws of 1992, is amended to read as
3 follows:

4 § 1007. When third-party practice allowed. After the service of [~~his~~]
5 the answer but no later than ninety days after the completion of exam-
6 inations before trial of the original parties to the action, unless
7 consented to by the parties or, upon written application of any of the
8 original parties, the court, in its discretion, extends such time for
9 good cause, a defendant may [~~proceed against a person not a party who is~~
10 ~~or may be liable to that defendant for all or part of the plaintiff's~~
11 ~~claim against that defendant,~~] implead a third party by filing pursuant
12 to section three hundred four of this chapter a third-party summons and
13 complaint with the clerk of the court in the county in which the main
14 action is pending, for which a separate index number shall not be issued
15 but a separate index number fee shall be collected. The third-party
16 summons and complaint and all prior pleadings served in the action shall
17 be served upon such person within one hundred twenty days of the filing.
18 A defendant serving a third-party complaint shall be styled a third-par-
19 ty plaintiff and the person so served shall be styled a third-party
20 defendant. The defendant shall also serve a copy of such third-party
21 complaint upon the plaintiff's attorney simultaneously upon issuance for
22 service of the third-party complaint on the third-party defendant.

23 § 2. This act shall take effect on the first of September next
24 succeeding the date on which it shall have become a law and shall be
25 applicable to all actions commenced on and after such date.

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

LBD02828-01-5

SPONSORS MEMO:

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)

BILL NUMBER: A1252

SPONSOR: Dinowitz

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to when third-party practice is allowed

PURPOSE OR GENERAL IDEA OF BILL: Establishes a time limit on utilizing third-party practice of no later than ninety days after completion of examinations before trial of the original parties.

SUMMARY OF SPECIFIC PROVISIONS: Amends section 1007 of the civil practice law and rules.

JUSTIFICATION: A defendant in a lawsuit is currently allowed to proceed against a person not a party who is or may be liable to that defendant for all or part of the plaintiff's claim against that defendant. However, many times defendants wait until the eve of trial to bring in another defendant to the detriment of everyone else involved. This bill would establish a time limit on utilizing third-party practice of no later than ninety days after completion of examinations before trial of the original parties.

The bill allows for an exception to the 90 day rule if both parties consent or, upon written application, the court determines good cause is shown.

PRIOR LEGISLATIVE HISTORY: 2001-2002: A.8831b/S.6337 - Passed Assembly
2003-2004: A.1160 - Passed Assembly, Delivered to Senate, Referred to Codes

FISCAL IMPLICATIONS: None

EFFECTIVE DATE: This act shall take effect on September 1 next succeeding the date on which it becomes law and shall be applicable to all actions commenced on and after that date.
