

BILL TEXT:**STATE OF NEW YORK**

1271

2005-2006 Regular Sessions

IN ASSEMBLY

January 19, 2005

Introduced by M. of A. JOHN, WEINSTEIN, A. COHEN, GLICK, PAULIN, ENGLE-BRIGHT, PERALTA -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to exempting parties liable for failure to obey or enforce certain orders of protection or temporary orders of protection in domestic violence or domestic relations matters from the provisions of article sixteen of such law, entitled "limited liability of persons jointly liable"

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

- 1 Section 1. Section 1602 of the civil practice law and rules is amended
 2 by adding a new subdivision 13 to read as follows:
 3 13. not apply to any party held liable for claims arising from the
 4 failure to obey or enforce (a) an order of protection or a temporary
 5 order of protection issued or modified pursuant to article four, five,
 6 six, eight, or ten of the family court act, section 530.12 of the crimi-
 7 nal procedure law, section two hundred forty or two hundred fifty-two of
 8 the domestic relations law, or (b) an order of protection or temporary
 9 order of protection issued or modified by a court of competent jurisdic-
 10 tion in another state, territorial, or tribal jurisdiction.
 11 § 2. This act shall take effect immediately.

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

LBD03658-01-5

SPONSORS MEMO:

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

BILL NUMBER: A1271

SPONSOR: John (MS)

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to exempting parties liable for failure to obey or enforce certain orders of protection or temporary orders of protection in domestic violence or domestic relations matters from the provisions of arti-

cle sixteen of such law, entitled "limited liability of persons jointly liable"

PURPOSE OR GENERAL IDEA OF BILL: This bill would exempt parties liable for failure to obey or enforce domestic violence orders of protection or temporary orders of protection from limited liability provisions.

SUMMARY OF SPECIFIC PROVISIONS: Adds a new paragraph to section 1602 of the civil practice law and rules to exempt domestic violence from apportionment of non-economic damages and restore the rule of joint liability to defendants found liable for failure to obey or enforce an order of protection.

JUSTIFICATION: This bill re-enforces New York's zero-tolerance policy about domestic violence. In the last decade New York State has enacted legislation to give force and effect to orders of protection - a critical tool against domestic violence. The family court act, domestic relations laws and criminal procedure laws all have been amended to compel public intervention to prevent domestic violence, protect against violence between family members and punish those who abuse their families. This is a priority for New York State.

Each year thousands of domestic violence victims go to court in New York State to seek justice and protection. Orders of protection, however, are effective only if they are enforced. New York has enacted laws and adopted policies to encourage, even mandate, police involvement in domestic violence. The Family Court Act gives the police the authority to investigate and arrest a person who violates an order of protection. FCA . The 1994 Family Protection and Domestic Violence Intervention Act goes further: it mandates arrest for violations of orders of protection as well as felony and some misdemeanor violence among family members. CPL .10. As a result, the police have explicit authority and "non-delegable" responsibility to enforce court orders of protection.

This bill permits the victim to recover non-economic as well as economic damages from any or all defendants found liable by a court or jury after a trial on the merits of the action. Current law, as interpreted by the New York State Court of Appeals, does not.

RANGOLAN V COUNTY OF

NASSAU, 725 NYS2d 611(2001);

MORALES V COUNTY OF NASSAU, 94 NYS2d 218

(1999). The Court of Appeals has stated that CPLR 1602 does not establish an exemption from apportionment of damages for domestic violence. It further says that courts cannot by judicial fiat create such an exemption, the legislature must do so.

This bill accepts the Court of Appeals invitation to give domestic violence victims the civil remedies to make them whole. It gives victims the same access to any liable defendant for full compensation for serious psychological and social harm that the law now allows for medical expenses and lost wages. To deny victims of domestic violence recovery for all of the injuries that they suffer lessens the deterrent effect of domestic violence statutes. In light of the strong public policy against domestic violence expressed by the state legislature, this result is untenable. Public institutions charged with enforcement of orders of protection must be held accountable.

It has been a long struggle to establish domestic violence as a crime and compel police intervention. New York changed the common law rules about joint and several liability in 1986 before New York passed the legislation and funded the programs and services to prevent domestic violence and protect family members against abuse. The legislature,

RETRIEVE BILL

however, did retain joint and several liability as a matter of public policy for worker's compensation, automobile accidents, intentional torts and environmental hazards. Victims of domestic violence deserve the same consideration. Since 1986, much of the legislation about domestic violence included initiatives to support and promote enforcement of orders of protection to secure a safe environment for families plagued by violence. This bill incorporates these recent policies into the rules and procedures of civil law in personal injury cases.

This bill deals only with damages after liability has been established and accepted by a court or jury. It does not change tort laws; in negligence, a plaintiff must still prove that a defendant owed her duty of care which was breached and which breach caused her injuries. This bill does not change the proof required to establish liability for personal injuries nor does it shift the burden of such proof. Furthermore, this bill does not remove immunity specifically granted to the police or public officers by statute. And, it does not assign liability to municipalities for performance of governmental functions. The bill only allows a plaintiff who has proven her case and won damages for her injuries to collect those damages from any and all defendants.

PRIOR LEGISLATIVE HISTORY: A.10497 of 2002: Third Reading
A.33 of 2003-04: Third Reading

FISCAL IMPLICATIONS: None

EFFECTIVE DATE: This act shall take effect immediately.
