

BILL TEXT:

STATE OF NEW YORK

2612

2005-2006 Regular Sessions

IN ASSEMBLY

January 27, 2005

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

AN ACT to amend the civil practice law and rules, in relation to termination of an action

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

1 Section 1. Subdivision (a) of section 205 of the civil practice law
2 and rules, as amended by chapter 216 of the laws of 1992, is amended to
3 read as follows:

4 (a) New action by plaintiff. If an action is timely commenced and is
5 terminated in any other manner than by a voluntary discontinuance, a
6 failure to obtain personal jurisdiction over the defendant, a dismissal
7 of the complaint for neglect to prosecute the action, or a final judg-
8 ment upon the merits, the plaintiff, or, if the plaintiff dies, and the
9 cause of action survives, his or her executor or administrator, may
10 commence a new action upon the same transaction or occurrence or series
11 of transactions or occurrences within six months after the termination
12 provided that the new action would have been timely commenced at the
13 time of commencement of the prior action and that service upon defendant
14 is effected within such six-month period. Where a dismissal is one for
15 neglect to prosecute the action made pursuant to rule thirty-two hundred
16 sixteen of this chapter or otherwise, the judge shall set forth on the
17 record the specific conduct constituting the neglect, which conduct
18 shall demonstrate a general pattern of delay in proceeding with the
19 litigation.

20 § 2. This act shall take effect immediately.

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

LBD03744-01-5

SPONSORS MEMO:

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

BILL NUMBER: A2612

SPONSOR: Wright

RETRIEVE BILL

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to termination of an action

PURPOSE OR GENERAL IDEA OF BILL:

Establishes a requirement that when a dismissal is one for neglect to prosecute an action the judge must set forth on the record the specific conduct constituting the neglect. The conduct specified must demonstrate a general pattern of delay in proceeding with the action before a neglect to prosecute dismissal is warranted.

SUMMARY OF PROVISIONS:

Amends Subdivision (a) of section 205 of the civil practice law and rules, as amended by chapter 216 of the laws of 1992.

JUSTIFICATION:

This bill sets forth a resolution to a persistent problem within our courts regarding dismissal for neglect to prosecute the action.

The intent of CPLR (a) has been misconstrued allowing for many cases to be dismissed on the basis of neglect to prosecute. The law is presently unclear with respect to what specifically constitutes a neglect to prosecute particularly where it falls outside Rule 3216.

Amending CPLR (a) to provide uniformity would reestablish the original legislative intent of this chapter.

FISCAL IMPLICATIONS:

None.

LEGISLATIVE HISTORY:

1993-1994: A.11680
1995-1996: A.4369
1997-1998: A.3469
1999-2000: A.6328
2001-2002: A.6217

EFFECTIVE DATE:

This act shall take effect immediately.
