

## BILL TEXT:

## STATE OF NEW YORK

3042

2005-2006 Regular Sessions

## IN ASSEMBLY

January 31, 2005

Introduced by M. of A. SEMINERIO -- read once and referred to the  
Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to estab-  
lishing a bar to recovery by persons injured while committing a felony

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

1 Section 1. The civil practice law and rules is amended by adding a new  
2 section 1411-a to read as follows:

3 § 1411-a. Assumption of risk by person engaged in a felonious act, or  
4 in flight therefrom. Notwithstanding any other provision of law, there  
5 shall be no right to recover damages for any personal injury, injury to  
6 property or wrongful death, sustained by a claimant or decedent while  
7 engaged in the commission of any act or acts that would constitute a  
8 felony under the penal law, or in flight therefrom. The provisions of  
9 this section shall apply to all claims brought by or on behalf of the  
10 claimant or decedent, all derivative claims by the spouse or other fami-  
11 ly members of such claimant or decedent, and all claims for contribution  
12 or common-law indemnification, whether brought in the same, or another,  
13 action.

14 § 2. This act shall take effect immediately and shall apply to all  
15 actions and proceedings pending on or commenced on or after such effec-  
16 tive date.

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

LBD07372-01-5

## SPONSORS MEMO:

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

**BILL NUMBER:** A3042

**SPONSOR:** Seminerio

**TITLE OF BILL:** An act to amend the civil practice law and rules, in  
relation to establishing a bar to recovery by persons injured while

committing a felony

**PURPOSE OR GENERAL IDEA OF BILL:** The bill seeks to control the burgeoning costs of personal injury suits against public entities by precluding recovery in tort by any individual who is injured during the commission of felonious acts.

**SUMMARY OF SPECIFIC PROVISIONS:** This bill adds a new CPLR Article 14-B to bar recovery of damages from a public entity, deemed to include the state, counties, cities, public authorities and certain others, for any injury which occurs while the claimant is committing felonious acts, or in flight therefrom. Under existing law, persons who are injured as a result of their committing felonious acts may, in general, recover damages like any other claimant.

**JUSTIFICATION:** This bill bars recovery in tort against a public entity by a person injured while such person was engaged in the commission of felonious acts. The genesis of this measure is the large recovery against the Transit Authority in *McCummings v. New York City Transit Authority*, 81 N.Y.2d 923, cert. den., 510 U.S. 991 (1993). There, the Court of Appeals sustained a judgment of \$4.3 million against the Transit Authority, of which \$1.8 million was for medical expenses and \$2.5 million of pain and suffering, in favor of a convicted subway mugger who was injured while fleeing from the scene of his crime. Cases like this are offensive to all law-abiding members of society.

**PRIOR LEGISLATIVE HISTORY:** 2004: A9922 Died in Judiciary

**FISCAL IMPLICATIONS:** None

**EFFECTIVE DATE:** This act shall take effect immediately and shall apply to all actions and proceedings pending on or commenced on or after such effective date.

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