

BILL TEXT:

STATE OF NEW YORK

6773

2005-2006 Regular Sessions

IN ASSEMBLY

March 23, 2005

Introduced by M. of A. HAYES, CALHOUN, NESBITT, KOLB -- Multi-Sponsored by -- M. of A. ACAMPORA, BACALLES, BARCLAY, BARRA, BURLING, FINCH, McDONOUGH, TOWNSEND -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to establishing a complete bar to recovery by persons injured while committing a crime

The People of the State of New York, represented in Senate and Assembly, 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 persons convicted of a crime. 1. In
4 any action to recover damages for personal injury or injury to property,
5 in the event that the personal injury or injury to property occurred
6 while the claimant was engaged in conduct constituting a crime as
7 defined in subdivision six of section 10.00 of the penal law or immedi-
8 ate flight therefrom and thereafter a conviction for an offense arising
9 out of such conduct was obtained against the claimant, the culpable
10 conduct attributable to the claimant, including contributory negligence
11 or assumption of risk shall bar recovery from the person or other entity
12 who was the object of the claimant's criminal conduct.

13 2. If the claimant does not prevail in a civil action pursuant to this
14 section, the court shall award reasonable expenses, including but not
15 limited to attorneys' fees and disbursements, to the person who was the
16 object of the claimant's criminal conduct.

17 § 2. This act shall take effect immediately and shall apply to inju-
18 ries occurring on or after such effective date.

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

LBD06038-01-5

SPONSORS MEMO:

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

BILL NUMBER: A6773

SPONSOR: Hayes (MS)

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

PURPOSE OR GENERAL IDEA OF BILL:

Enacts the Crime Victims' Protection Act, which establishes a complete bar to recovery by persons injured while committing a crime.

SUMMARY OF SPECIFIC PROVISIONS:

Section one adds a new section 1411-a to the civil practice law and rules to establish a complete bar to recovery by persons injured while committing a crime.

Section two specifies that this act shall take effect immediately.

JUSTIFICATION:

The Crime Victims' Protection Act is an important legislative initiative which says, in effect, that if you use legitimate self-defense in defense of yourself and your family -- criminals, if injured during the attempt to commit that crime, can't sue. A modern legal approach to the indemnification of victims of crime based on a 1995 Minnesota law, the Crime Victims' Protection Act rightly places the assumption of risk of injury during the course of criminal trespass exactly where it belongs -- with the criminal. This important piece of legislation will help provide innocent victims of crime with some piece of mind during the difficult time in the aftermath of a crime.

The Crime Victims' Prevention Act is a preventative measure, so that the law abiding citizens don't have to risk being sued by criminals. Consider these examples:

* Clarence Sparks, a Colorado grocer, had been the victim of numerous burglaries. In a desperate attempt to save his livelihood, Sparks armed himself and began sleeping in his store. One night, five would be burglars kicked down his door. When the intruders confronted Sparks, he fired and wounded one of them. The intruder sued Sparks for damages. A jury awarded the criminal \$56,180 as compensation. A Colorado appeals court increased that amount to \$308,880, plus interest and court costs.

* In Ballston Spa, New York, a tavern owner was found liable for a robber's injuries resulting from the late night break-in. Hearing a sound from the tavern below his apartment, the business owner grabbed his licensed firearm and found a man attempting to smash the back door. Firing a warning shot, the tavern owner ran toward the criminal, who fled. In his flight, the robber fell through some rotted stairs and broke several bones. He sued the tavern owner, and the tavern owner's insurance company settled.

The passage of the Crime Victims' Protection Act will put a stop to these kinds of miscarriages of justice before they happen here. The current situation, in addition to these horror stories, is most intolerable for the victims of crime. Imagine the turmoil a victim must endure when such a suit is brought. After having been victimized once by the criminal's action, now the victim's livelihood and family security are threatened a second time, with the acquiescence of government. This legislation would shield the victim from this unwarranted victimization.

The Crime Victims' Protection Act will provide protection to victims of crime during the most vulnerable time. It will provide protection for

RETRIEVE BILL

individuals who use legitimate force, within pre-existing parameters, to protect their own lives.

PRIOR LEGISLATIVE HISTORY:

A.6954 of 1997-98

A.5104 of 1999-00

A.5208 of 2001-02

A.4460 of 2003-04

FISCAL IMPLICATIONS: None to the state.

EFFECTIVE DATE: This act shall take effect immediately and shall apply to injuries occurring on or after such effective date.
