

BILL TEXT:**STATE OF NEW YORK**

8363

2005-2006 Regular Sessions

IN ASSEMBLY

May 19, 2005

Introduced by M. of A. LENTOL -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to increasing the maximum penalty for failure to obey a judicial subpoena

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

1 Section 1. Subdivision (a) of section 2308 of the civil practice law
2 and rules is amended to read as follows:

3 (a) Judicial. Failure to comply with a subpoena issued by a judge,
4 clerk or officer of the court shall be punishable as a contempt of
5 court. If the witness is a party the court may also strike his or her
6 pleadings. A subpoenaed person shall also be liable to the person on
7 whose behalf the subpoena was issued for a penalty not exceeding one
8 hundred fifty dollars and damages sustained by reason of the failure to
9 comply. A court may issue a warrant directing a sheriff to bring the
10 witness into court. If a person so subpoenaed attends or is brought
11 into court, but refuses without reasonable cause to be examined, or to
12 answer a legal and pertinent question, or to produce a book, paper or
13 other thing which he or she was directed to produce by the subpoena, or
14 to subscribe his or her deposition after it has been correctly reduced
15 to writing, the court may forthwith issue a warrant directed to the
16 sheriff of the county where the person is, committing him or her to
17 jail, there to remain until he or she submits to do the act which he or
18 she was so required to do or is discharged according to law. Such a
19 warrant of commitment shall specify particularly the cause of the
20 commitment and, if the witness is committed for refusing to answer a
21 question, the question shall be inserted in the warrant.

22 § 2. This act shall take effect on the first of January next succeed-
23 ing the date on which it shall have become a law.

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

LBD09671-01-5

SPONSORS MEMO:

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

BILL NUMBER: A8363SPONSOR: Lentol

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to increasing the maximum penalty for failure to obey a judicial subpoena

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of his Advisory Committee on Civil Practice.

Many of the fines and penalties set forth in the original enactment of the CPLR, in 1962, have remained unchanged over the ensuing 40 years. Because of significant economic changes during this period, many of these fines and penalties have become woefully inadequate and should be revised. One of the most important of the penalties is one for failure to obey a judicial subpoena. At present, that penalty is capped at \$50 - hardly a deterrent to anyone, much less a well-heeled party.

This measure would amend CPLR 2308(a) to increase the maximum penalty for disobeying a judicial subpoena to \$150. This amount is significant, but not one which would be unduly burdensome for an impecunious party.{1}

This measure, which would have no fiscal impact on the State, would take effect January first after becoming law.

2002 LEGISLATIVE HISTORY: OCA 2002-156

2003-04 LEGISLATIVE HISTORY: Senate 5199-A (Volker)

Codes

Assembly 8083-A (Rules, at request of M. of A. Lentol)

Passed

{1} Last year, we recommended an increase to \$500. Our proposal this year is in response to criticism that such an amount was too high.