

**BILL TEXT:****STATE OF NEW YORK**

7297

**IN SENATE**

April 11, 2006

Introduced by Sen. VOLKER -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to declaratory judgment action against an insurer

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

1 Section 1. Section 3001 of the civil practice law and rules is amended  
 2 to read as follows:  
 3 § 3001. Declaratory judgment. The supreme court may render a declara-  
 4 tory judgment having the effect of a final judgment as to the rights and  
 5 other legal relations of the parties to a justiciable controversy wheth-  
 6 er or not further relief is or could be claimed. If the court declines  
 7 to render such a judgment it shall state its grounds. A party who has  
 8 interposed a claim against another party may bring a declaratory judg-  
 9 ment action for a determination of the existence or extent of coverage  
 10 owed by an insurer to the party against whom the original claim is  
 11 interposed.  
 12 § 2. This act shall take effect immediately.

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

LBD14950-02-6

**SPONSORS MEMO:**

**NEW YORK STATE SENATE  
 INTRODUCER'S MEMORANDUM IN SUPPORT  
 submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S7297

SPONSOR: VOLKER

TITLE OF BILL:

An act to amend the civil practice law and rules, in relation to declaratory judgment action against an insurer

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.

This measure proposes an amendment to CPLR 3001 to allow an injured party to bring a declaratory judgment action directly against an insurance company before the injured party secures a judgment against the tortfeasor-insured.

Often, the party most interested in an early determination of the extent of insurance coverage is the injured plaintiff. A defendant tortfeasor who has limited resources may lack the means or the incentive to seek a declaratory judgment of coverage from an insurer. The plaintiff has an interest in determining before final determination of liability in a tort action whether the defendant has sufficient insurance coverage to make such litigation worthwhile. In *Lang v Hanover Ins. Co.*, 3 N.Y.3d 350 (2004), the Court of Appeals held that such a direct action was not allowed at common law and that section 3420 of the Insurance Law, which grants an injured plaintiff the right to sue a tortfeasor's insurance company to satisfy a judgment obtained against the tortfeasor, does not authorize an action for declaratory relief before the plaintiffs obtain such a judgment. The purpose of this amendment is to remedy that gap in the law.

This measure, which would have no fiscal impact on the State, would take effect immediately.

**LEGISLATIVE HISTORY:**

None. New proposal.