

VETO MESSAGE:

VETO MESSAGE - No. 6

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 8647-C, entitled:

"AN ACT to amend the civil practice law and rules, in relation to orders of attachment"

NOT APPROVED

This bill would amend Civil Practice Law and Rules (CPLR) section 6201 to authorize the issuance of post-judgment orders of attachments where a judgment creditor shows that a reasonable basis exists for delaying the issuance of an execution concerning specific identifiable property of, or debt owed to, the judgment debtor. According to the sponsors, this bill is intended to ameliorate a problem for those who have judgments involving foreign sovereigns.

In particular, under the Foreign Sovereign Immunity Act (FSIA), where a foreign sovereign either waives immunity and consents to jurisdiction to be sued in the event of a default or is exempt from immunity under the provisions of the FSIA, courts will not order the issuance of attachments or executions until they have made a determination that the property is connected with the "commercial activity" of the sovereign. During this litigation period, courts may provide restraining orders to protect against the removal of such property by the sovereign or the garnishee holding the property.

However, because restraining notices or orders do not presently afford a diligent judgment creditor priority under the CPLR, the judgment creditor may lose priority to another creditor who learns through monitoring foreign sovereign debt litigation of the existence of such property, and secures a pre-judgment attachment against it before the judgment creditor can get an order authorizing it to execute against the property. The sponsor's memorandum concludes that the bill "would remedy this unfair situation and secure priority for the judgment creditor whose time, efforts and expenditures have located the property in question by authorizing the court to issue post-judgment attachments."

Unfortunately, rather than address this narrow problem, this bill amends the CPLR provisions governing provisional remedies -- which

traditionally only apply before a judgment has been entered -- by creating an entirely new remedy of post-judgment orders of attachment. This

will allow parties in a wide range of circumstances to seek this new remedy, without any clear showing that such a remedy is needed. Indeed, in virtually all other circumstances, a judgment creditor can simply seek to execute on a judgment, and attachment normally would not be a necessary or appropriate remedy.

I recognize that there is a specific problem that may need to be addressed here -- delays in the execution of judgments against foreign

sovereigns -- and so I encourage the sponsors and other proponents of this legislation to work with my staff to determine whether there is a more narrowly-tailored way to address this specific problem, without creating other collateral consequences.

The bill is disapproved.

(signed) DAVID A. PATERSON
