

BILL TEXT:**STATE OF NEW YORK**

2677

2007-2008 Regular Sessions

IN SENATE

February 8, 2007

Introduced by Sen. VOLKER -- 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 termination of an action

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

1 Section 1. Subdivision (a) of section 205 of the civil practice law
2 and rules, as amended by chapter 216 of the laws of 1992, is amended to
3 read as follows:

4 (a) New action by plaintiff. If an action is timely commenced and is
5 terminated in any other manner than by a voluntary discontinuance, a
6 failure to obtain personal jurisdiction over the defendant, a dismissal
7 of the complaint for neglect to prosecute the action, or a final judg-
8 ment upon the merits, the plaintiff, or, if the plaintiff dies, and the
9 cause of action survives, his or her executor or administrator, may
10 commence a new action upon the same transaction or occurrence or series
11 of transactions or occurrences within six months after the termination
12 provided that the new action would have been timely commenced at the
13 time of commencement of the prior action and that service upon defendant
14 is effected within such six-month period. Where a dismissal is one for
15 neglect to prosecute the action made pursuant to rule thirty-two hundred
16 sixteen of this chapter or otherwise, the judge shall set forth on the
17 record the specific conduct constituting the neglect, which conduct
18 shall demonstrate a general pattern of delay in proceeding with the
19 litigation.

20 § 2. This act shall take effect immediately.

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

LBD01439-01-7

SPONSORS MEMO:

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

BILL NUMBER: S2677

SPONSOR: VOLKER

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to termination of an action

PURPOSE: Establishes a requirement that when a dismissal is one for neglect to prosecute an action the judge must set forth on the record the specific conduct constituting the neglect. The conduct specified must demonstrate a general pattern of delay in proceeding with the action before a neglect to prosecute dismissal is warranted.

SUMMARY OF PROVISIONS: Amends Subdivision (a) of Section 205 of the Civil Practice Law and Rules, as amended by Chapter 216 of the Laws of 1992.

JUSTIFICATION: This bill sets forth a resolution to a persistent problem within our courts regarding dismissal for neglect to prosecute the action.

The intent of CPLR §205(a) has been misconstrued allowing for many cases to be dismissed on the basis of neglect to prosecute. The law is presently unclear with respect to what specifically constitutes a neglect to prosecute particularly where it falls outside Rule 3216.

Amending CPLR §205(a) to provide uniformity would reestablish the original legislative intent of this chapter.

LEGISLATIVE HISTORY:

2005-06, S.1187/A.2612, passed Assembly; 2004, S.5819/A.1620, Passed Assembly; 2001-02, A.6217; 1999-00, A.6328; 1997-98, A.3469; 1995-96, A.4369; 1993-94, A.11680.

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act shall take effect immediately.
