

BILL TEXT:**STATE OF NEW YORK**

4245

2007-2008 Regular Sessions

IN SENATE

April 2, 2007

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 issuance of a subpoena to compel the attendance of an incarcerated person in certain cases

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

1 Section 1. Subdivision (b) of section 2302 of the civil practice law
2 and rules, as amended by chapter 336 of the laws of 2004, is amended to
3 read as follows:

4 (b) Issuance by court. A subpoena to compel production of an original
5 record or document where a certified transcript or copy is admissible in
6 evidence, or to compel attendance of any person confined in a penitenti-
7 ary or jail, shall be issued by the court. Unless the court orders
8 otherwise, a motion for such subpoena shall be made on at least one
9 day's notice to the person having custody of the record, document or
10 person confined. A subpoena to produce a prisoner so confined shall be
11 issued by a judge to whom a petition for habeas corpus could be made
12 under subdivision (b) of section seven thousand two of this chapter or a
13 judge of the court of claims, if the matter is pending before the court
14 of claims, or a judge of the surrogate's court, if the matter is pending
15 before the surrogate's court, or a judge or support magistrate of the
16 family court, if the matter is pending before the family court, or a
17 judge of the New York city civil court, if the matter is pending before
18 the New York city civil court and it has been removed thereto from the
19 supreme court pursuant to subdivision (d) of section three hundred twen-
20 ty-five of this chapter.

21 § 2. This act shall take effect immediately.

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

LBD10516-01-7

SPONSORS MEMO:

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

BILL NUMBER: S4245

SPONSOR: VOLKER

TITLE OF BILL:

An act to amend the civil practice law and rules, in relation to issuance of a subpoena to compel the attendance of an incarcerated person in certain cases

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

This measure would amend CPLR 2302(b) to permit a New York City Civil Court judge to compel the courtroom attendance of an incarcerated person in a case that has come before the Civil Court on transfer down from the Supreme Court pursuant to CPLR 325(d).

CPLR 325(d) permits the transfer of a civil case commenced in Supreme Court to the NYC Civil Court under circumstances where it appears the amount of damages sustained may be less than that which was demanded. Upon such a transfer, the Civil Court is not subject to its regular \$25,000 jurisdictional ceiling, but may make a monetary damages award in any amount. It has been brought to our attention that, occasionally, Civil Court judges, presiding over such 325(d) cases, need to subpoena an incarcerated person -- usually to appear as a witness.

A Supreme Court justice has authority to compel the attendance of a prisoner pursuant to a writ of habeas corpus under CPLR 7002, but other judges do not. To insure that other types of judges with more limited jurisdiction are able to do so, the Legislature, in CPLR 2302(d), has extended comparable authority to judges of the Court of Claims, Surrogate's Court, and Family Court in connection with matters before their respective courts" However, it has not, as of this time, done so with respect to New York City Civil Court judges.

Since the need for an incarcerated witness or party to testify in a CPLR 325(d) case in Civil Court may be every bit as legitimate as the need for an incarcerated person to testify in those other courts, we recommend that CPLR 2302(b) be amended to confer the requisite subpoena power upon judges of that Court.

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

2005-06 LEGISLATIVE HISTORY:

OCA 2005-14

Assembly 8791 (Rules, Titus) (Codes

