



Wednesday, August 13, 2008

Bill Text - S06687

[Back](#) | [New York State Bill Search](#) | [Assembly Home](#)

[See Bill Summary](#)

S T A T E O F N E W Y O R K

6687--C

Cal. No. 323

I N S E N A T E

(PREFILED)

January 9, 2008

Introduced by Sens. SKELOS, GOLDEN, VOLKER, BONACIC, FLANAGAN, FUSCHILLO, GRIFFO, HANNON, LARKIN, LEIBELL, LITTLE, MALTESE, MARCELLINO, MAZIARZ, MORAHAN, PADAVAN, RATH, ROBACH, TRUNZO, WINNER, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report -- ordered to a third reading, passed by Senate and delivered to the Assembly, substituted for Assembly 9652-A recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the civil practice law and rules, in relation to enforceability of certain foreign judgments

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Short title. This act shall be known and may be cited as
 2 the "libel terrorism protection act".
 3 S 2. Section 5304 of the civil practice law and rules, as added by
 4 chapter 981 of the laws of 1970, is amended to read as follows:
 5 S 5304. Grounds for non-recognition. (a) No recognition. A foreign
 6 country judgment is not conclusive if:
 7 1. the judgment was rendered under a system which does not provide
 8 impartial tribunals or procedures compatible with the requirements of
 9 due process of law;
 10 2. the foreign court did not have personal jurisdiction over the
 11 defendant.
 12 (b) Other grounds for non-recognition. A foreign country judgment need
 13 not be recognized if:

14 1. the foreign court did not have jurisdiction over the subject
15 matter;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
{ } is old law to be omitted.

LBD14685-13-8

S. 6687--C

2

1 2. the defendant in the proceedings in the foreign court did not
2 receive notice of the proceedings in sufficient time to enable him to
3 defend;

4 3. the judgment was obtained by fraud;

5 4. the cause of action on which the judgment is based is repugnant to
6 the public policy of this state;

7 5. the judgment conflicts with another final and conclusive judgment;

8 6. the proceeding in the foreign court was contrary to an agreement
9 between the parties under which the dispute in question was to be
10 settled otherwise than by proceedings in that court; {or}

11 7. in the case of jurisdiction based only on personal service, the
12 foreign court was a seriously inconvenient forum for the trial of the
13 action{.}; OR

14 8. THE CAUSE OF ACTION RESULTED IN A DEFAMATION JUDGMENT OBTAINED IN A
15 JURISDICTION OUTSIDE THE UNITED STATES, UNLESS THE COURT BEFORE WHICH
16 THE MATTER IS BROUGHT SITTING IN THIS STATE FIRST DETERMINES THAT THE
17 DEFAMATION LAW APPLIED IN THE FOREIGN COURT'S ADJUDICATION PROVIDED AT
18 LEAST AS MUCH PROTECTION FOR FREEDOM OF SPEECH AND PRESS IN THAT CASE AS
19 WOULD BE PROVIDED BY BOTH THE UNITED STATES AND NEW YORK CONSTITUTIONS.

20 S 3. Section 302 of the civil practice law and rules is amended by
21 adding a new subdivision (d) to read as follows:

22 (D) FOREIGN DEFAMATION JUDGMENT. THE COURTS OF THIS STATE SHALL HAVE
23 PERSONAL JURISDICTION OVER ANY PERSON WHO OBTAINS A JUDGMENT IN A DEFA-
24 MATION PROCEEDING OUTSIDE THE UNITED STATES AGAINST ANY PERSON WHO IS A
25 RESIDENT OF NEW YORK OR IS A PERSON OR ENTITY AMENABLE TO JURISDICTION
26 IN NEW YORK WHO HAS ASSETS IN NEW YORK OR MAY HAVE TO TAKE ACTIONS IN
27 NEW YORK TO COMPLY WITH THE JUDGMENT, FOR THE PURPOSES OF RENDERING
28 DECLARATORY RELIEF WITH RESPECT TO THAT PERSON'S LIABILITY FOR THE JUDG-
29 MENT, AND/OR FOR THE PURPOSE OF DETERMINING WHETHER SAID JUDGMENT SHOULD
30 BE DEEMED NON-RECOGNIZABLE PURSUANT TO SECTION FIFTY-THREE HUNDRED FOUR
31 OF THIS CHAPTER, TO THE FULLEST EXTENT PERMITTED BY THE UNITED STATES
32 CONSTITUTION, PROVIDED:

33 1. THE PUBLICATION AT ISSUE WAS PUBLISHED IN NEW YORK, AND

34 2. THAT RESIDENT OR PERSON AMENABLE TO JURISDICTION IN NEW YORK (I)
35 HAS ASSETS IN NEW YORK WHICH MIGHT BE USED TO SATISFY THE FOREIGN DEFA-
36 MATION JUDGMENT, OR (II) MAY HAVE TO TAKE ACTIONS IN NEW YORK TO COMPLY
37 WITH THE FOREIGN DEFAMATION JUDGMENT. THE PROVISIONS OF THIS SUBDIVISION
38 SHALL APPLY TO PERSONS WHO OBTAINED JUDGMENTS IN DEFAMATION PROCEEDINGS
39 OUTSIDE THE UNITED STATES PRIOR TO AND/OR AFTER THE EFFECTIVE DATE OF
40 THIS SUBDIVISION.

41 S 4. This act shall take effect immediately.

Contact Webmaster

Page display time = 0.0048 sec

FOR IMMEDIATE RELEASE:
May 1, 2008

GOVERNOR PATERSON SIGNS LEGISLATION PROTECTING NEW YORKERS AGAINST INFRINGEMENT OF FIRST AMENDMENT RIGHTS BY FOREIGN LIBEL JUDGMENTS

Calls upon Federal Government to Protect Writers. First Amendment Rights

Governor David A. Paterson today announced that he has signed legislation that offers New Yorkers greater protection against libel judgments in countries whose laws are inconsistent with the freedom of speech granted by the United States Constitution. This bill was prompted by the case of Rachel Ehrenfeld, a New York-based author who was sued for libel by an individual discussed in the author's book about terrorism funding. That lawsuit was brought in England — where libel judgments are much easier to obtain than in the United States — even though only 23 copies of the book had been sold there.

"New Yorkers must be able to speak out on issues of public concern without living in fear that they will be sued outside the United States, under legal standards inconsistent with our First Amendment rights," said Governor Paterson. "This legislation will help ensure the freedoms enjoyed by New York authors."

Currently, libel plaintiffs can bring suit against an author in a country where the author sold only a few books. Foreign libel laws frequently place significant and expensive burdens on authors to defend their work. The statute combats such "forum shopping" in two ways. First, it bars New York courts from enforcing a foreign libel judgment unless the country where it was decided grants the same or better protection as US standards for freedom of speech. Second, it expands an individual's ability to have a court declare a foreign libel judgment invalid in New York. Without this statute, an author could be forced to live indefinitely under the pall of a libel judgment, deterring publishers from disseminating that author's work.

Senator Dean G. Skelos said: "The truth is a critically-important component of the War on Terror. American authors, like Dr. Ehrenfeld, who expose terrorist networks and their financiers should not be subject to intimidation and lawsuits in foreign courts designed to circumvent our First Amendment rights. This is important legislation and I thank Governor Paterson for signing it into law."

Assemblyman Rory Lancman said: "Today we act to protect our journalists and authors who fearlessly expose terrorism's enablers from trumped up libel charges in courts in overseas jurisdictions which don't share our commitment to freedom of the press, and in doing so we also protect all New Yorkers against the scourge of terrorism. Today we reaffirm New York's place as the free speech capital of the world."

Manhattan District Attorney Robert M. Morgenthau said: "Terrorism and terrorist financing are matters of vital interest to all New Yorkers, in no small part because New York City remains a target of significance for international terrorists. New York authors must have the freedom to investigate, write and publish on terrorism and other matters of public importance, subject only to limitations that are consistent with the U.S. Constitution. This legislation will help to ensure such freedom."

Governor Paterson noted that this is a problem of international scope, and urged the federal government to take greater action to protect the First Amendment rights of Americans against foreign libel judgments.

"Although New York State has now done all it can to protect our authors while they live in New York, they remain vulnerable if they move to other states, or if they have assets in other states," said Governor Paterson. "We really need Congress and the President to work together and enact federal legislation that will protect authors throughout the country against the threat of foreign libel judgments."

Janice W. Shorenstein, President of the Jewish Community Relations Council of New York, said: "We welcome Governor David Paterson's action today that will offer New Yorkers greater protection of their First Amendment rights. Both Holocaust-deniers and alleged funders of terrorism have attempted to use British libel laws to compromise, or even destroy, the constitutional free speech rights of American authors. This legislation will help to liberate New York authors to expose important, yet uncomfortable, facts that some wish to keep hidden. It maintains all of the protections against libel found in American law. We laud Governor Paterson, Senator Skelos, and Assemblyman Lancman for their important role in protecting our cherished constitutional freedoms."

Roy Blount Jr., President of the Authors Guild, said: "A writer's job, generally, is to get at the truth, not to tiptoe around and pull punches so somebody in a foreign country doesn't take offense. Governor Paterson and New York's legislature have done a good thing here, and readers and writers will be better off because of it. Other states and the federal government should take note."

John Wohlstetter, Senior Vice President of the American Jewish Congress, said: "The American Jewish Congress applauds Governor Paterson for signing the "Libel Terrorism" bill that closes off a legal loophole that left New York writers and artists vulnerable to defamation judgments entered against them in foreign courts of law unsympathetic to freedom of speech. Other states should emulate New York's determination not to allow foreign judgments to suppress American's freedom to write and speak freely."