

5212

2011-2012 Regular Sessions

I N   S E N A T E

May 3, 2011

---

Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to appellate review of an ex parte order or applications for provisional remedies

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

1     Section 1. Paragraph 3 of subdivision (a) of section 5701 of the civil  
2     practice law and rules is amended and a new paragraph 4 is added to read  
3     as follows:  
4     3. from an order, where the motion it decided was made upon notice,  
5     refusing to vacate or modify a prior order, if the prior order would  
6     have been appealable as of right under paragraph two had it decided a  
7     motion made upon notice[.]; OR  
8     4. FROM AN ORDER DENYING IN WHOLE OR IN PART AN APPLICATION FOR WHICH,  
9     BY ITS NATURE, THERE IS NOT AN ADVERSE PARTY.  
10    S 2. Subdivision (b) of section 5701 of the civil practice law and  
11    rules is amended to read as follows:  
12    (b) Orders not appealable as of right. An order is not appealable to  
13    the appellate division as of right where it:  
14    1. [is made in a proceeding against a body or officer pursuant to  
15    article 78; or  
16    2.] requires or refuses to require a more definite statement in a  
17    pleading; or  
18    [3.] 2. orders or refuses to order that scandalous or prejudicial  
19    matter be stricken from a pleading.  
20    S 3. Section 5704 of the civil practice law and rules, as added by  
21    chapter 730 of the laws of 1963, subdivision (a) as amended by chapter  
22    435 of the laws of 1972 and subdivision (b) as amended by chapter 577 of  
23    the laws of 1966, is amended to read as follows:

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

LBD11395-01-1

1 S 5704. Review of ex parte orders OR EX PARTE APPLICATIONS FOR PROVI-  
2 SIONAL REMEDIES. (a) By appellate division. The appellate division or  
3 a justice thereof may vacate or modify any order granted without notice  
4 to the adverse party by any court or a judge thereof from which an  
5 appeal would lie to such appellate division; and the appellate division  
6 OR A JUSTICE THEREOF may grant any order or provisional remedy applied  
7 for without notice to the adverse party and refused by any court or a  
8 judge thereof from which an appeal would lie to such appellate division.  
9 IN THE EVENT A JUSTICE OF THE APPELLATE DIVISION ISSUES AN ORDER PURSU-  
10 ANT TO THIS SUBDIVISION, OR REFUSES TO DO SO, UPON REQUEST THE APPELLATE  
11 DIVISION, WITHIN SEVEN DAYS OR AS SOON THEREAFTER AS POSSIBLE, SHALL  
12 REVIEW SUCH ORDER OR REFUSAL DE NOVO.

13 (b) By appellate term. The appellate term in the first or second judi-  
14 cial department or a justice thereof may vacate or modify any order  
15 granted without notice to the adverse party by any court or a judge  
16 thereof from which an appeal would lie to such appellate term; and such  
17 appellate term OR A JUSTICE THEREOF may grant any order or provisional  
18 remedy applied for without notice to the adverse party and refused by  
19 any court or a judge thereof from which an appeal would lie to such  
20 appellate term. IN THE EVENT A JUSTICE OF THE APPELLATE TERM ISSUES AN  
21 ORDER PURSUANT TO THIS SUBDIVISION, OR REFUSES TO DO SO, UPON REQUEST  
22 THE APPELLATE DIVISION, WITHIN SEVEN DAYS OR AS SOON THEREAFTER AS  
23 POSSIBLE, SHALL REVIEW SUCH ORDER OR REFUSAL DE NOVO.

24 S 4. Subdivision (a) of section 6313 of the civil practice law and  
25 rules, as amended by chapter 235 of the laws of 1982, is amended to read  
26 as follows:

27 (a) Generally. If, on a motion for a preliminary injunction, the  
28 plaintiff shall show that immediate and irreparable injury, loss or  
29 damages will result unless the defendant is restrained before a hearing  
30 can be had, a temporary restraining order may be granted without notice.  
31 Upon granting a temporary restraining order, the court shall set the  
32 hearing for the preliminary injunction at the earliest possible time.  
33 THE TEMPORARY RESTRAINING ORDER SHALL EXPIRE AT THE TIME SET BY THE  
34 COURT, NOT TO EXCEED FOURTEEN DAYS FROM THE GRANTING OF THE ORDER,  
35 UNLESS BEFORE SUCH EXPIRATION THE COURT, FOR GOOD CAUSE, EXTENDS IT FOR  
36 NO MORE THAN ONE ADDITIONAL FOURTEEN DAY PERIOD OR THE ADVERSE PARTY  
37 CONSENTS TO A LONGER EXTENSION. THE REASONS FOR AN EXTENSION MUST BE  
38 ENTERED IN THE RECORD. No temporary restraining order may be granted in  
39 an action arising out of a labor dispute as defined in section eight  
40 hundred seven of the labor law, nor against a public officer, board or  
41 municipal corporation of the state to restrain the performance of statu-  
42 tory duties.

43 S 5. This act shall take effect immediately and shall apply to orders  
44 entered on or after such effective date.