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

8316

2009-2010 Regular Sessions

I N A S S E M B L Y

May 14, 2009

Introduced by M. of A. PRETLOW -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to disclosure in New York state in an action pending in another jurisdiction

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

Section 1. Short title. This act shall be known and may be cited as the "uniform interstate depositions and discovery act".

S 2. The civil practice law and rules is amended by adding a new section 3119 to read as follows:

S 3119. UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY. (A) DEFINITIONS. FOR PURPOSES OF THIS SECTION:

(1) "OUT-OF-STATE SUBPOENA" MEANS A SUBPOENA ISSUED UNDER AUTHORITY OF A COURT OF RECORD OF A STATE OTHER THAN THIS STATE.

(2) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT VENTURE, PUBLIC CORPORATION, GOVERNMENT, OR GOVERNMENTAL SUBDIVISION, AGENCY OR INSTRUMENTALITY, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

(3) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

(4) "SUBPOENA" MEANS A DOCUMENT, HOWEVER DENOMINATED, ISSUED UNDER AUTHORITY OF A COURT OF RECORD REQUIRING A PERSON TO:

(I) ATTEND AND GIVE TESTIMONY AT A DEPOSITION;

(II) PRODUCE AND PERMIT INSPECTION AND COPYING OF DESIGNATED BOOKS, DOCUMENTS, RECORDS, ELECTRONICALLY STORED INFORMATION, OR TANGIBLE THINGS IN THE POSSESSION, CUSTODY OR CONTROL OF THE PERSON; OR

(III) PERMIT INSPECTION OF PREMISES UNDER THE CONTROL OF THE PERSON.

(B) ISSUANCE OF SUBPOENA. (1) TO REQUEST ISSUANCE OF A SUBPOENA UNDER THIS SECTION, A PARTY MUST SUBMIT AN OUT-OF-STATE SUBPOENA TO THE COUNTY CLERK IN THE COUNTY IN WHICH DISCOVERY IS SOUGHT TO BE CONDUCTED IN THIS

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

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STATE. A REQUEST FOR THE ISSUANCE OF A SUBPOENA UNDER THIS SECTION DOES NOT CONSTITUTE AN APPEARANCE IN THE COURTS OF THIS STATE.

(2) WHEN A PARTY SUBMITS AN OUT-OF-STATE SUBPOENA TO THE COUNTY CLERK, THE CLERK, IN ACCORDANCE WITH THAT COURT'S PROCEDURE AND SUBJECT TO THE PROVISIONS OF ARTICLE TWENTY-THREE OF THIS CHAPTER, SHALL PROMPTLY ISSUE A SUBPOENA FOR SERVICE UPON THE PERSON TO WHICH THE OUT-OF-STATE SUBPOENA IS DIRECTED.

(3) A SUBPOENA UNDER PARAGRAPH TWO OF THIS SUBDIVISION MUST:

(I) INCORPORATE THE TERMS USED IN THE OUT-OF-STATE SUBPOENA; AND

(II) CONTAIN OR BE ACCOMPANIED BY THE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF ALL COUNSEL OF RECORD IN THE PROCEEDING TO WHICH THE SUBPOENA RELATES AND OF ANY PARTY NOT REPRESENTED BY COUNSEL.

(4) NOTWITHSTANDING PARAGRAPH ONE OF THIS SUBDIVISION, IF A PARTY TO AN OUT-OF-STATE PROCEEDING RETAINS AN ATTORNEY LICENSED TO PRACTICE IN THIS STATE, AND THAT ATTORNEY RECEIVES THE ORIGINAL OR A TRUE COPY OF AN OUT-OF-STATE SUBPOENA, THE ATTORNEY MAY ISSUE A SUBPOENA UNDER THIS SECTION.

(C) SERVICE OF SUBPOENA. A SUBPOENA ISSUED UNDER THIS SECTION MUST BE SERVED IN COMPLIANCE WITH SECTIONS TWO THOUSAND THREE HUNDRED TWO AND TWO THOUSAND THREE HUNDRED THREE OF THIS CHAPTER.

(D) DEPOSITION, PRODUCTION AND INSPECTION. SECTIONS TWO THOUSAND THREE HUNDRED THREE, TWO THOUSAND THREE HUNDRED FIVE, TWO THOUSAND THREE HUNDRED SIX, TWO THOUSAND THREE HUNDRED SEVEN, TWO THOUSAND THREE HUNDRED EIGHT AND THIS ARTICLE APPLY TO SUBPOENAS ISSUED UNDER SUBDIVISION (B) OF THIS SECTION.

(E) APPLICATION TO COURT. AN APPLICATION TO THE COURT FOR A PROTECTIVE ORDER OR TO ENFORCE, QUASH, OR MODIFY A SUBPOENA ISSUED UNDER THIS SECTION MUST COMPLY WITH THE RULES OR STATUTES OF THIS STATE AND BE SUBMITTED TO THE COURT IN THE COUNTY IN WHICH DISCOVERY IS TO BE CONDUCTED.

(F) UNIFORMITY OF APPLICATION AND CONSTRUCTION. IN APPLYING AND CONSTRUCTING THIS UNIFORM ACT, CONSIDERATION SHALL BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

S 3. Subdivision (e) of section 3102 of the civil practice law and rules is amended to read as follows:

(e) Action pending in another jurisdiction. [When] EXCEPT AS PROVIDED IN SECTION THREE THOUSAND ONE HUNDRED NINETEEN OF THIS ARTICLE, WHEN under any mandate, writ or commission issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness in the state, he OR SHE may be compelled to appear and testify in the same manner and by the same process as may be employed for the purpose of taking testimony in actions pending in the state. The supreme court or a county court shall make any appropriate order in aid of taking such a deposition.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to requests for discovery in cases pending on or after such effective date.