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

421

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sens. BRESLIN, HASSELL-THOMPSON, KRUGER, ONORATO, SAMPSON, STACHOWSKI, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law and the civil practice law and rules, in relation to the accrual of a cause of action for a declaratory judgment of libel or slander of a decedent

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

Section 1. The civil rights law is amended by adding a new section 78-a to read as follows:

S 78-A. CAUSE OF ACTION FOR A DECLARATORY JUDGMENT OF LIBEL OR SLANDER OF A DECEDENT. A CAUSE OF ACTION FOR A DECLARATORY JUDGMENT SHALL ACCRUE TO THE SPOUSE, PARENT OR CHILD OF A DECEDENT AS A RESULT OF A LIBEL OR SLANDER THAT OCCURRED AFTER, BUT WITHIN FIVE YEARS OF THE DECEDENT'S DEATH. ANY SUCH ACTION MUST BE COMMENCED WITHIN ONE YEAR PURSUANT TO SECTION TWO HUNDRED FIFTEEN OF THE CIVIL PRACTICE LAW AND RULES. PRIOR TO THE COMMENCEMENT OF SUCH ACTION, THE PLAINTIFF MUST REQUEST A RETRACTION OF SUCH ALLEGED LIBELOUS OR SLANDEROUS STATEMENTS BY A REGISTERED OR CERTIFIED LETTER, RETURN RECEIPT REQUESTED FROM THE DEFENDANT. IN SUCH LETTER, THE PLAINTIFF MUST SET FORTH, IN GENERAL TERMS, THEIR OBJECTIONS TO THE ALLEGED LIBELOUS OR SLANDEROUS STATEMENTS. NO ACTION MAY BE COMMENCED UNTIL THIRTY DAYS AFTER SUCH LETTER IS RECEIVED. IF THE DEFENDANT IS A NEWSPAPER OR A RADIO OR TELEVISION STATION, A COPY OF SUCH LETTER MUST ALSO BE SENT TO ONE NATIONAL WIRE SERVICE AND ONE NEWSPAPER OF GENERAL CIRCULATION IN THE SAME COUNTY AS SUCH ALLEGED LIBELOUS OR SLANDEROUS STATEMENTS WERE PUBLISHED OR SPOKEN.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, TAPE RECORDINGS WITH THE DECEASED MAY BE ADMITTED AS EVIDENCE SUBJECT TO ALL OTHER EVIDENTIARY STANDARDS.

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

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S 2. Section 215 of the civil practice law and rules is amended by adding a new subdivision 9 to read as follows:

9. AN ACT FOR A DECLARATORY JUDGMENT OF LIBEL OR SLANDER OF A DECEDENT PURSUANT TO SECTION SEVENTY-EIGHT-A OF THE CIVIL RIGHTS LAW.

S 3. This act shall take effect immediately and shall only apply to a libel or slander made on or after such effective date.