

4256

2009-2010 Regular Sessions

I N   S E N A T E

April 20, 2009

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Introduced by Sens. SCHNEIDERMAN, DIAZ, PARKER -- (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 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:

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

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

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

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

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

13     (3) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUM-  
14     BIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY TERRITORY OR  
15     INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

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

18     (I) ATTEND AND GIVE TESTIMONY AT A DEPOSITION;

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

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

23     (B) ISSUANCE OF SUBPOENA. (1) TO REQUEST ISSUANCE OF A SUBPOENA UNDER  
24     THIS SECTION, A PARTY MUST SUBMIT AN OUT-OF-STATE SUBPOENA TO THE COUNTY

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

LBD10090-01-9

1 CLERK IN THE COUNTY IN WHICH DISCOVERY IS SOUGHT TO BE CONDUCTED IN THIS  
2 STATE. A REQUEST FOR THE ISSUANCE OF A SUBPOENA UNDER THIS SECTION DOES  
3 NOT CONSTITUTE AN APPEARANCE IN THE COURTS OF THIS STATE.

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

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

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

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

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

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

22 (D) DEPOSITION, PRODUCTION AND INSPECTION. SECTIONS TWO THOUSAND THREE  
23 HUNDRED THREE, TWO THOUSAND THREE HUNDRED FIVE, TWO THOUSAND THREE  
24 HUNDRED SIX, TWO THOUSAND THREE HUNDRED SEVEN, TWO THOUSAND THREE  
25 HUNDRED EIGHT AND THIS ARTICLE APPLY TO SUBPOENAS ISSUED UNDER SUBDIVI-  
26 SION (B) OF THIS SECTION.

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

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

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

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

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