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

5212--A

Cal. No. 1080

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 -- 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

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:

Section 1. Paragraph 3 of subdivision (a) of section 5701 of the civil practice law and rules is amended and a new paragraph 4 is added to read as follows:

3. from an order, where the motion it decided was made upon notice, refusing to vacate or modify a prior order, if the prior order would have been appealable as of right under paragraph two had it decided a motion made upon notice[.]; OR

4. FROM AN ORDER DENYING IN WHOLE OR IN PART AN APPLICATION FOR WHICH, BY ITS NATURE, THERE IS NOT AN ADVERSE PARTY.

S 2. Subdivision (b) of section 5701 of the civil practice law and rules is amended to read as follows:

(b) Orders not appealable as of right. An order is not appealable to the appellate division as of right where it:

1. is made in a proceeding against a body or officer pursuant to article 78 EXCEPT AN ORDER THAT GRANTS, REFUSES, CONTINUES, OR MODIFIES A PRELIMINARY INJUNCTION; or

2. requires or refuses to require a more definite statement in a pleading; or

3. orders or refuses to order that scandalous or prejudicial matter be stricken from a pleading.

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

LBD11395-02-1

S 3. Section 5704 of the civil practice law and rules, as added by chapter 730 of the laws of 1963, subdivision (a) as amended by chapter 435 of the laws of 1972 and subdivision (b) as amended by chapter 577 of the laws of 1966, is amended to read as follows:

S 5704. Review of ex parte orders. (a) By appellate division. The appellate division or a justice thereof may vacate or modify any order granted without notice to the adverse party by any court or a judge thereof from which an appeal would lie to such appellate division; and the appellate division OR A JUSTICE THEREOF may grant any order or provisional remedy applied for without notice to the adverse party and refused by any court or a judge thereof from which an appeal would lie to such appellate division. IN THE EVENT A JUSTICE OF THE APPELLATE DIVISION ISSUES AN ORDER PURSUANT TO THIS SUBDIVISION, OR REFUSES TO DO SO, UPON EXPEDITED MOTION THE APPELLATE DIVISION SHALL REVIEW SUCH ORDER OR REFUSAL DE NOVO.

(b) By appellate term. The appellate term in the first or second judicial department or a justice thereof may vacate or modify any order granted without notice to the adverse party by any court or a judge thereof from which an appeal would lie to such appellate term; and such appellate term OR A JUSTICE THEREOF may grant any order or provisional remedy applied for without notice to the adverse party and refused by any court or a judge thereof from which an appeal would lie to such appellate term. IN THE EVENT A JUSTICE OF THE APPELLATE TERM ISSUES AN ORDER PURSUANT TO THIS SUBDIVISION, OR REFUSES TO DO SO, UPON EXPEDITED MOTION THE APPELLATE DIVISION SHALL REVIEW SUCH ORDER OR REFUSAL DE NOVO.

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

(a) Generally. If, on a motion for a preliminary injunction, the plaintiff shall show that immediate and irreparable injury, loss or damages will result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. Upon granting a temporary restraining order, the court shall set the hearing for the preliminary injunction at the earliest possible time. THE TEMPORARY RESTRAINING ORDER SHALL EXPIRE AT THE TIME SET BY THE COURT, NOT TO EXCEED FOURTEEN DAYS FROM THE GRANTING OF THE ORDER, UNLESS BEFORE SUCH EXPIRATION THE COURT, FOR GOOD CAUSE, EXTENDS IT FOR NO MORE THAN ONE ADDITIONAL FOURTEEN DAY PERIOD OR FOR A LONGER PERIOD UPON CONSENT OR TO THE EXTENT ANY DELAY IN THE CONSIDERATION OF THE MOTION FOR A PRELIMINARY INJUNCTION IS ATTRIBUTABLE TO THE DEFENDANT. THE REASONS FOR ANY EXTENSION MUST BE ENTERED IN THE RECORD. No temporary restraining order may be granted in an action arising out of a labor dispute as defined in section eight hundred seven of the labor law, nor against a public officer, board or municipal corporation of the state to restrain the performance of statutory duties.

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