STATE OF NEW YORK

412--A

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to permitting a plaintiff to recover against a third party defendant in certain cases

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The civil practice law and rules is amended by adding a new section 1405 to read as follows:

§ 1405. Permitting plaintiff, as judgment creditor against defendant, to recover and collect unsatisfied judgment or portion of judgment against third-party defendant or co-defendant liable for contribution or indemnification. (a) Where a plaintiff has entered a judgment against a defendant and the judgment remains unsatisfied thirty days after it has been served on the defendant-judgment debtor, and where judgment has been entered in favor of the defendant-judgment debtor against a co-defendant or third-party defendant on a cause of action for contribution or for contractual or common law indemnification, the plaintiff-judgment creditor may collect any unsatisfied amount of the plaintiff's judgment against the defendant from the co-defendant or third-party defendant up to the amount awarded on the cause of action for contribution or indemnification.

(b) Where the plaintiff's judgment remains unsatisfied thirty days after it has been served on the defendant-judgment debtor, and where the defendant-judgment debtor has a cause of action for contribution or for contractual or common law indemnification which has not been reduced to judgment, the plaintiff-judgment creditor may attach, or take an assign-

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

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ment from the defendant-judgment debtor of, the cause of action for contribution or indemnification, and prosecute the cause of action in the plaintiff's own name or in the name of the defendant-judgment debtor, and recover a judgment therein for the same amount of contribution or indemnification as would be awarded to the defendant-judgment debtor if the defendant-judgment debtor had satisfied plaintiff's original judgment in full. Such remedy is in addition to any other means available to the plaintiff-judgment debtor for enforcement of the judgment. This section shall not authorize direct recovery against a third-party defendant in those circumstances in which the third-party claim against that third-party defendant would have been barred by the provisions of section eleven of the workers' compensation law, and does not otherwise permit a plaintiff to bring a cause of action against a third party if such third party was the plaintiff's employer at the time of the incident or injury.

(c) The plaintiff-judgment creditor may enforce the rights provided in subdivisions (a) and (b) of this section notwithstanding that the plaintiff-judgment creditor's judgment against defendant-judgment debtor has been or may be discharged in bankruptcy and/or the defendant-judgment debtor's cause of action for indemnity or contribution against the third-party defendant or co-defendant has been or may be extinguished by a discharge in bankruptcy granted to the defendant-judgment debtor; provided, however, that if a plaintiff-judgment creditor is enforcing the rights provided in subdivisions (a) and (b) of this section pursuant to this subdivision, he or she does not need attachment or assignment from the defendant-judgment debtor of the cause of action for contribution or indemnification.

(d) Where the plaintiff's judgment remains unsatisfied thirty days after it has been served on the defendant-judgment debtor, and where the defendant-judgment debtor's cause of action for contribution or for contractual or common law indemnification can no longer be prosecuted or reduced to judgment, the plaintiff-judgment creditor may enforce its judgment against the defendant-judgment debtor in a direct action against the third-party defendant or co-defendant liable for contribution or indemnification, and recover a judgment therein for the same amount of contribution or indemnification as would be awarded to the defendant-judgment debtor if the defendant-judgment debtor had satisfied plaintiff's original judgment in full.

§ 2. This act shall take effect immediately, and shall apply to all unexpired judgments that have not been fully satisfied as of such effective date.