

# STATE OF NEW YORK

5087

2017-2018 Regular Sessions

## IN ASSEMBLY

February 6, 2017

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to appeals to the court of appeals on constitutional grounds

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

1 Section 1. Subdivision (b) of section 5601 of the civil practice law  
2 and rules, paragraph 1 as amended by chapter 532 of the laws of 1963, is  
3 amended and two new subdivisions (b-1) and (b-2) are added to read as  
4 follows:

5 (b) Constitutional grounds. An appeal may be taken to the court of  
6 appeals as of right:

7 1. from an order of the appellate division which finally determines an  
8 action where there is directly involved a substantial question relating  
9 to the construction of the constitution of the state or of the United  
10 States; and

11 2. from a judgment of a court of record of original instance which  
12 finally determines an action where the only [~~question~~] issue involved on  
13 the appeal is a substantial question relating to the validity of a stat-  
14 utory provision of the state or of the United States under the constitu-  
15 tion of the state or of the United States.

16 (b-1) Substantial constitution question. A substantial question raised  
17 under subdivision (b) of this section is one calling for the  
18 construction or application of:

19 1. a provision of the United States constitution that has not been  
20 conclusively reviewed by the United States supreme court, or that has  
21 been conclusively reviewed by the United States supreme court, but the  
22 factual circumstances in the appeal are sufficiently unique and differ-  
23 ent from the federal courts' application of the constitutional  
24 provision;

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

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1 2. a provision of the state constitution that has not been conclusively  
2 reviewed by the court of appeals; or

3 3. a provision of the state constitution that has been conclusively  
4 reviewed by the court of appeals, but:

5 (A) the factual circumstances in the appeal are sufficiently unique  
6 from the case or cases determined under that provision by the court of  
7 appeals; or

8 (B) there is only one decision reviewing that provision and a dissent-  
9 ing opinion was filed and the appealing party contends that the prior  
10 decision should be reconsidered.

11 (b-2) Res judicata and collateral estoppel effect of a dismissal for  
12 failure to raise a substantial constitutional question. An appeal as of  
13 right dismissed for failure to raise a substantial constitutional ques-  
14 tion shall not be deemed an adjudication on the merits of the constitu-  
15 tional question raised on appeal in the same or any other action or  
16 court.

17 § 2. Subdivision 1 of section 5515 of the civil practice law and  
18 rules, as amended by chapter 491 of the laws of 1975, is amended to read  
19 as follows:

20 1. An appeal shall be taken by serving on the adverse party a notice  
21 of appeal and filing it in the office where the judgment or order of the  
22 court of original instance is entered except that where an order grant-  
23 ing permission to appeal is made, the appeal is taken when such order is  
24 entered. A notice shall designate the party taking the appeal, the judg-  
25 ment or order or specific part of the judgment or order appealed from  
26 and the court to which the appeal is taken. Whenever an appeal as of  
27 right is taken to the court of appeals pursuant to subdivision (b) of  
28 section five thousand six hundred one of this chapter, the notice of  
29 appeal shall also specify which ground or grounds listed in paragraph  
30 three of such subdivision apply to the appeal, and contain a brief argu-  
31 ment as to the application of said ground or grounds.

32 § 3. Subdivision (a) of rule 5522 of the civil practice law and rules,  
33 as amended by chapter 682 of the laws of 1986, is amended to read as  
34 follows:

35 (a) A court to which an appeal is taken may reverse, affirm, or modi-  
36 fy, wholly or in part, any judgment, or order before it, as to any  
37 party. The court shall render a final determination or, where necessary  
38 or proper, remit to another court for further proceedings. A court  
39 reversing or modifying a judgment or order without opinion shall briefly  
40 state the grounds of its decision. Whenever the court of appeals  
41 dismisses an appeal as of right taken pursuant to subdivision (b) of  
42 section five thousand six hundred one of this chapter for failure to  
43 raise a substantial constitutional question, the court shall briefly  
44 explain the grounds of its finding.

45 § 4. This act shall take effect immediately and shall apply to all  
46 actions pending or commenced on and after such effective date.