

CHAPTER TEXT:

LAWS OF NEW YORK, 2008

CHAPTER 66

AN ACT to amend the civil practice law and rules, in relation to enforceability of certain foreign judgments

Became a law April 28, 2008, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

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

Section 1. Short title. This act shall be known and may be cited as the "libel terrorism protection act".

§ 2. Section 5304 of the civil practice law and rules, as added by chapter 981 of the laws of 1970, is amended to read as follows:

§ 5304. Grounds for non-recognition. (a) No recognition. A foreign country judgment is not conclusive if:

1. the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

2. the foreign court did not have personal jurisdiction over the defendant.

(b) Other grounds for non-recognition. A foreign country judgment need not be recognized if:

1. the foreign court did not have jurisdiction over the subject matter;

2. the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

3. the judgment was obtained by fraud;

4. the cause of action on which the judgment is based is repugnant to the public policy of this state;

5. the judgment conflicts with another final and conclusive judgment;

6. the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; [~~or~~]

7. in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action[~~-~~]; or

8. the cause of action resulted in a defamation judgment obtained in a jurisdiction outside the United States, unless the court before which the matter is brought sitting in this state first determines that the defamation law applied in the foreign court's adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by both the United States and New York constitutions.

§ 3. Section 302 of the civil practice law and rules is amended by adding a new subdivision (d) to read as follows:

(d) Foreign defamation judgment. The courts of this state shall have personal jurisdiction over any person who obtains a judgment in a defamation proceeding outside the United States against any person who is a resident of New York or is a person or entity amenable to jurisdiction

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

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in New York who has assets in New York or may have to take actions in New York to comply with the judgment, for the purposes of rendering declaratory relief with respect to that person's liability for the judgment, and/or for the purpose of determining whether said judgment should be deemed non-recognizable pursuant to section fifty-three hundred four of this chapter, to the fullest extent permitted by the United States constitution, provided:

1. the publication at issue was published in New York, and
2. that resident or person amenable to jurisdiction in New York (i) has assets in New York which might be used to satisfy the foreign defamation judgment, or (ii) may have to take actions in New York to comply with the foreign defamation judgment. The provisions of this subdivision shall apply to persons who obtained judgments in defamation proceedings outside the United States prior to and/or after the effective date of this subdivision.

§ 4. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

APPROVAL MESSAGE:

APPROVAL MEMORANDUM - No. 5 Chapter 66

MEMORANDUM filed with Senate Bill Number 6687-C, entitled:

"AN ACT to amend the civil practice law and rules, in relation to enforceability of certain foreign judgments"

APPROVED

This bill addresses a matter of great public importance. With increasing frequency, individuals who believe that they have been defamed by authors of books or other publications who reside in New York are filing lawsuits in foreign jurisdictions that do not afford the same protections for speech as provided under the First Amendment. This allows individuals to "shop around" for a favorable foreign jurisdiction in which to bring a lawsuit. For example, this bill was prompted by the case of a New York-based author of a book about funding for terrorism, who was sued in England -- where libel judgments are much easier to obtain than in the United States -- even though only 23 copies of the book had been sold there.

This bill seeks to thwart the efforts of those who engage in such "libel tourism," by restricting New York jurisdiction over such judgments, and vesting New York courts with full authority to hear certain declaratory judgement actions by authors seeking to establish the unenforceability of foreign libel judgments that have the potential to chill speech. These steps are fully warranted, and have my wholehearted

support.

With the signing of this bill, New York State will have acted to protect authors to the greatest extent possible. However, there is a significant limit to what New York alone can do on this issue. Even with this legislation, New Yorkers seeking to speak out on issues of public concern will still live in fear of libel actions in foreign courts governed by restrictive doctrines inconsistent with our most basic principles, so long as a few copies of their writings may be purchased internationally via the Internet. If the author has assets in other states, or may one day move to a different State that does not afford similar protections as New York, his or her speech can still be chilled.

Ultimately, this is a problem of international scope, demanding a solution that New York State alone cannot deliver. I therefore urge Congress and the President to use all legislative and diplomatic means at their disposal to address this issue, and ensure that the speech of our citizens is not restrained by plaintiffs seeking the cover of foreign laws at odds with our constitutional protections.

The bill is approved.

(signed) DAVID A. PATERSON
