SENATE BILL 7244--C

ASSEMBLY BILL 7244--C

2003-2004 Regular Sessions

IN ASSEMBLY

March 25, 2003

Introduced by M. of A. JOHN -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the judiciary law, in relation to the purchase of claims for valuable consideration

82992-C - MARCH 1
SENATE VOTE  ______ Y ______ N  HOME RULE MESSAGE  ______ Y ______ N

DATE ______________________

ASSEMBLY VOTE  ______ Y ______ N

DATE ______________________
Hon. Richard Platkin  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, NY 12224

RE: A.7244-C / S.2992-C

Dear Mr. Platkin:

I introduced the above mentioned legislation in the Senate.

This legislation amends §489 of the Judiciary Law to provide that the defense of champerty may not be asserted under certain circumstances but excepts indenture trustees from such limitation.

Enactment of this legislation would put New York in line with 46 other states that have either repealed or overruled champerty as a doctrine. It will also provide meaningful and immediate relief from New York's archaic "champerty" provision.

Enclosed is a copy of the memorandum in support of this legislation.

Respectfully, I recommend favorable action.

Sincerely,

John J. Marchi

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Enclosure
BILL NUMBER: A7244C

SPONSOR: John

TITLE OF BILL: An act to amend the judiciary law, in relation to the purchase of claims for valuable consideration

PURPOSE OR GENERAL IDEA OF BILL: This bill limits the defense of champerty.

SUMMARY OF SPECIFIC PROVISIONS: This bill would amend § 489 of the Judiciary Law to provide a safe harbor for transactions involving the assignment, purchase or transfer of large amounts of claims. The safe harbor would protect a buyer of claims against an obligor so long as either the aggregate face amount of the buyer's claims against the obligor totaled at least one million dollars ($1,000,000) or the buyer had paid, in the aggregate, at least five hundred thousand dollars ($500,000) in connection with transactions for such claims against the obligor. The amendment focuses on the size of the transaction or series of transactions, which may involve both bonds and causes of action. So long as the transfers of bonds and causes of action involved, in the aggregate, the payment of more than $500,000, the transfer (and the bonds and causes of action acquired) would be subject to the safe harbor.

JUSTIFICATION: Section 489 of the Judiciary Law is the codification of the ancient rule of champerty that prohibits the purchase of lawsuits. Section 489 sought to prohibit persons from acquiring claims for the primary purpose of commencing litigation to recover legal fees and costs. This rule was initially established to prevent abusive litigation. However, it has been almost universally repealed. Today, §489 makes New York one of only four states with any champerty statute, and unfortunately a statute which was intended to prevent abusive litigation has led to abusive litigation.

Obligors who have no defense to claims in the hands of their original creditors are quick to assert a champerty defense merely because the claim has been purchased. Champerty defenses have routinely been rejected by the courts including the Court of Appeals. Buyers do not invest large sums of money on claims for the purpose of spending more money on legal fees. Claims buyers prevail but only after expensive litigation.

Markets have developed for the purchase and sale of claims including claims that are in default. The ability to collect on these claims without fear of champerty litigation is essential to the fluidity of commerce in New York. It is thus necessary to amend this section of law to achieve clarity and certainty in certain transactions and to avoid driving markets for such claims out of New York. In addition, as noted, the bill conforms to the majority of decisions issued by the judiciary in this area.


FISCAL IMPLICATIONS: None.
EFFECTIVE DATE: Immediately.

http://nyslrs.state.ny.us/NYSLBDC1/bstfrme.cgi

7/20/2004
Title: AN ACT to amend the judiciary law, in relation to the purchase of claims for valuable consideration

The above bill has been referred to the Division of the Budget for comment. After careful review, we find that the bill has no appreciable effect on State finances or programs, and/or this office does not have the technical expertise to make a recommendation on the bill.

We therefore make no recommendation.
STATE OF NEW YORK

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AN ACT to amend the judiciary law, in relation to the purchase of claims for valuable consideration

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

Section 1. Section 489 of the judiciary law, as added by chapter 1031 of the laws of 1965, is amended to read as follows:

§ 489. Purchase of claims by corporations or collection agencies. No person or co-partnership, engaged directly or indirectly in the business of collection and adjustment of claims, and no corporation or association, directly or indirectly, itself or by or through its officers, agents or employees, shall solicit, buy or take an assignment of, or be in any manner interested in buying or taking an assignment of a bond, promissory note, bill of exchange, book debt, or other thing in action, or any claim or demand, with the intent and for the purpose of bringing an action or proceeding thereon; provided however, that bills receivable, notes receivable, bills of exchange, judgments or other things in action may be solicited, bought, or assignment thereof taken, from any executor, administrator, assignee for the benefit of creditors, trustee or receiver in bankruptcy, or any other person or persons in charge of the administration, settlement or compromise of any estate, through court actions, proceedings or otherwise. Nothing herein contained shall affect any assignment heretofore or hereafter taken by any moneyminded corporation authorized to do business in the state of New York or its

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted. LBD11301-08-4
nominee pursuant to a subrogation agreement or a salvage operation, or
by any corporation organized for religious, benevolent or charitable
purposes. Any corporation or association violating the provisions of
this section shall be liable to a fine of not more than five thousand
dollars; any person or co-partnership, violating the provisions of this
section, and any officer, trustee, director, agent or employee of any
person, co-partnership, corporation or association violating this
section who, directly or indirectly, engages or assists in such
violation, is guilty of a misdemeanor.

2. Except as set forth in subdivision three of this section, the
provisions of subdivision one of this section shall not apply to any
assignment, purchase or transfer hereafter made of one or more bonds,
promissory notes, bills of exchange, book debts, or other things in
action, or any claims or demands, if such assignment, purchase or trans­
fer included bonds, promissory notes, bills of exchange and/or book
debts, issued by or enforceable against the same obligor (whether or not
also issued by or enforceable against any other obligors), having an
aggregate purchase price of at least five hundred thousand dollars, in
which event the exemption provided by this subdivision shall apply as
well to all other items, including other things in action, claims and
demands, included in such assignment, purchase or transfer (but only if
such other items are issued by or enforceable against the same obligor,
or relate to or arise in connection with such bonds, promissory notes,
bills of exchange and/or book debts or the issuance thereof).

3. The rights of an indenture trustee, its agents, and employees shall
not be affected by the provisions of subdivision two of this section.

§ 2. This act shall take effect immediately and shall apply to any
action or proceeding commenced on or after such date.