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CHAPTER 394

LAWS OF 20 04

SENATE BILL \_\_\_\_\_

ASSEMBLY BILL 7244-C

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**

DATE RECEIVED BY GOVERNOR:

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AUG 5 2004  
ACTION MUST BE TAKEN BY:

AUG 17 2004

DATE GOVERNOR'S ACTION TAKEN:

AUG 17 2004

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SENATE VOTE     \_\_\_ Y \_\_\_ N

HOME RULE MESSAGE     \_\_\_ Y \_\_\_ N

DATE \_\_\_\_\_

ASSEMBLY VOTE     \_\_\_ Y \_\_\_ N

DATE \_\_\_\_\_



JOHN J. MARCHI  
24TH DISTRICT  
ASSISTANT MAJORITY WHIP

THE SENATE  
STATE OF NEW YORK  
ALBANY 12247

A7244

PLEASE RESPOND TO:  
 ALBANY OFFICE:  
ROOM 416  
STATE CAPITOL  
ALBANY, NY 12247  
(518) 455-3215  
 DISTRICT OFFICE:  
358 ST. MARKS PLACE  
STATEN ISLAND, NY 10301  
(718) 447-1723

July 29, 2004

*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*Enactment of this legislation would put New York in line with 46 other states that have either repealed or overruled champerty as a doctrine.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

JJM:hs  
Enclosure

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NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(e)

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.

PRIOR LEGISLATIVE HISTORY: S.7609A of 2002.

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: Immediately.

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B-203

BUDGET REPORT ON BILLS

Session Year 2004

SENATE:  
No.


NO RECOMMENDATION  
M. of A. John

ASSEMBLY:  
No. #7244-C

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

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

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

1 Section 1. Section 489 of the judiciary law, as added by chapter 1031  
 2 of the laws of 1965, is amended to read as follows:  
 3 § 489. Purchase of claims by corporations or collection agencies. 1.  
 4 No person or co-partnership, engaged directly or indirectly in the busi-  
 5 ness of collection and adjustment of claims, and no corporation or asso-  
 6 ciation, directly or indirectly, itself or by or through its officers,  
 7 agents or employees, shall solicit, buy or take an assignment of, or be  
 8 in any manner interested in buying or taking an assignment of a bond,  
 9 promissory note, bill of exchange, book debt, or other thing in action,  
 10 or any claim or demand, with the intent and for the purpose of bringing  
 11 an action or proceeding thereon; provided however, that bills receiv-  
 12 able, notes receivable, bills of exchange, judgments or other things in  
 13 action may be solicited, bought, or assignment thereof taken, from any  
 14 executor, administrator, assignee for the benefit of creditors, trustee  
 15 or receiver in bankruptcy, or any other person or persons in charge of  
 16 the administration, settlement or compromise of any estate, through  
 17 court actions, proceedings or otherwise. Nothing herein contained shall  
 18 affect any assignment heretofore or hereafter taken by any moneyed  
 19 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.

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1 nominee pursuant to a subrogation agreement or a salvage operation, or  
2 by any corporation organized for religious, benevolent or charitable  
3 purposes. Any corporation or association violating the provisions of  
4 this section shall be liable to a fine of not more than five thousand  
5 dollars; any person or co-partnership, violating the provisions of this  
6 section, and any officer, trustee, director, agent or employee of any  
7 person, co-partnership, corporation or association violating this  
8 section who, directly or indirectly, engages or assists in such  
9 violation, is guilty of a misdemeanor.

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

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

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

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