

Memorandum Urging Approval

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

CPLR #4-GOV

August 20, 2019

S. 6395

By: Senator Hoylman

A. 7500-A

By: M. of A. Dinowitz

Senate Committee: Rules

Assembly Committee: Codes

Effective Date: Immediately

AN ACT to amend the civil practice law and rules, in relation to judgment by Confession.

LAW & SECTION REFERRED TO: CPLR 3218.

THE COMMITTEE ON CIVIL PRACTICE LAW AND RULES SUPPORTS THIS LEGISLATION AND URGES ITS APPROVAL

This bill was introduced at the request of the Chief Administrative Judge upon the recommendation of the Office of Court Administration's Advisory Committee on Civil Practice. It is a response to recent press reports regarding creditors that execute confessions of judgment in New York State even though the associated agreement or debtor has no nexus to the State.

CPLR 3218 provides for a confession of judgment to be entered as a written and signed statement in the form of an affidavit. In the affidavit, the debtor admits liability and agrees to pay the confessed sum as owed to the creditor pursuant to an agreement. A confession of judgment is a legitimate tool used to facilitate commercial transactions, resolve or avoid litigation, support collection of monies owed under an equitable distribution plan, or ensure that government agencies can recover funds on behalf of victims.

CPLR 3218 allows a judgment by confession to be filed even in the absence of a pending court action. One of the main purposes of this section is to allow a confession to be filed as a judgment with the county clerk when the debtor does not perform or pay according to the agreement. Under the current provisions, a creditor may file an affidavit against a non-resident in the county in which entry is authorized. Consequently, creditors have solicited confessions of judgment, entered judgments against out of state residents in a venue far from where their underlying agreement was executed, and then used New York law and the procedure described to freeze and later seize the debtors' assets based on the judgment.

New York State should act to prevent creditors from abusing confessions of judgment by using New York courts as a tool against debtors with no New York connection. The enactment of Bill S.6395/A.7500-A is an effort to eliminate such abuse by limiting the filing of a confession of judgment to in-state debtors. The proposed amendment to CPLR 3218 will so limit the filing of a confession of judgment to a venue where the debtor resided at the time the affidavit was executed or, where s/he resides at the time of the filing of the judgment.

The legislation provides an exemption for governmental agencies engaged in the enforcement of civil or criminal judgments. A governmental agency may file an affidavit in any county within the State, even against non-residents.

While the filing of a confession of judgment is a useful tool for facilitating commercial transactions, it has been manipulated and abused by creditors to enter judgments against non-residents. The bill is properly drafted, and will assure protection to non-residents from the risk of a confession of judgment entered against them in New York State.

For the foregoing reasons, NYSBA's Committee on Civil Practice Law and Rules **SUPPORTS THIS LEGISLATION AND URGES ITS APPROVAL.**