

NEW YORK STATE ASSEMBLY • SHELDON SILVER, SPEAKER



# 2014 ANNUAL REPORT



Committee on  
**Judiciary**

*Helene E. Weinstein, Chairperson*



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COMMITTEES  
Aging  
Codes  
Rules  
Ways and Means

Court Facilities Capital Review Board

December 15, 2014

The Honorable Sheldon Silver  
Speaker of the Assembly  
Room 932, Legislative Office Building  
Albany, New York 12248

**Re: Annual Report of the Committee on Judiciary – 2014**

Dear Speaker Silver:

As Chairperson of the Assembly Standing Committee on Judiciary, I am pleased to present to you the Annual Report for the 2014 Legislative Session.

The Annual Report reviews the work of the Committee on Judiciary and highlights many of its major initiatives. It also includes a brief overview of various budgetary matters that concern the courts of the state and other areas within the committee's purview.

I would like to acknowledge the hard work of the members of the Committee on Judiciary and all of the members of the Assembly for their continued commitment to its work and to progressive legislation. As always, your continued support is deeply appreciated.

Sincerely,

Helene Weinstein, Chairperson  
Assembly Standing Committee on Judiciary

## 2014 ANNUAL REPORT

### STANDING COMMITTEE ON JUDICIARY

Helene E. Weinstein, Chair

#### Committee Members

##### **Majority**

Edward Braunstein  
David Buchwald  
Jeffrey Dinowitz  
Edward Hennessey  
Charles D. Lavine  
Daniel J. O'Donnell  
Dan Quart  
Sean Ryan  
Aravella Simotas  
Phil Steck  
Michele R. Titus  
Matt Titone  
David Weprin  
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William A. Barclay  
Al Graf  
Chad Lupinacci  
Anthony H. Palumbo  
Claudia Tenney

##### **Staff**

Daniel Salvin, Assistant Secretary for Program & Policy  
Richard Ancowitz, Counsel  
Clayton Rivet, Team Counsel  
Amy Maggs, Associate Counsel  
Sarah Beaver, Committee Clerk  
Nadia Gareeb, Counsel for Helene Weinstein

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## I. COMMITTEE RESPONSIBILITIES AND PRIORITIES

The Assembly Committee on Judiciary has jurisdiction over legislation affecting all aspects of both state and local courts. It has primary jurisdiction over amendments to the State Constitution, Civil Practice Law and Rules, Judiciary Law, Uniform Court Acts, Family Court Act, Surrogate's Court and Procedure Act, Domestic Relations Law, Estates Powers and Trusts Law, Uniform Commercial Code, Lien Law, Debtor-Creditor Law, General Obligations Law, Real Property Law, Real Property Actions and Proceedings Law, Civil Rights Law, Partnership Law, and the Eminent Domain Procedure Law. The Committee also shares budgetary oversight of the Office of Court Administration and the Department of Law with the Assembly Ways and Means Committee. In addition, all proposed amendments to the New York State Constitution are considered by the Judiciary Committee.

A top priority of the Committee each year is ensuring that funding is added to the state budget for civil legal services for low-income New Yorkers. The economic crisis, the tremendous number of foreclosures and the devastation wrought by Hurricane Sandy put pressure on these resources. The Judiciary Committee remains a strong advocate for providing civil legal services to those in need. This year, the Assembly continued its support of civil legal services in New York State by continuing a \$15 million supplemental appropriation through the Judiciary budget for IOLA to continue funding its legal service grantees and an additional \$55 million appropriation through the Judiciary budget to help bridge the tremendous gap between civil legal service needs of low-income New Yorkers and the availability of services to meet these needs. As part of the SFY 2014-15 budget, the Assembly also restored its traditional funding for civil legal services in the amount of \$2.65 million and \$609,000 for domestic violence programs.

The Judiciary Committee tackled many high profile issues in 2014, including extensive revisions of the Uniform Commercial Code, mortgage foreclosure protection, consumer protection, domestic violence victim and parental rights protections, reform of spousal maintenance laws, and revisions to the Estates Powers and Trusts Law to protect families and estate beneficiaries.

The highlights that follow demonstrate the breadth, diversity, and importance of the Judiciary Committee's work in 2014.

## II. LEGISLATIVE ACCOMPLISHMENTS<sup>1</sup>

### **A. FAMILY AND MATRIMONIAL PRACTICE, AND PROTECTIONS FOR DOMESTIC VIOLENCE VICTIMS, CHILDREN AND FAMILIES**

#### **1. Protecting against identity theft in name change publications – Chapter 253 – A.3549 [Weinstein]/[S.3142 [Golden]].**

Responding to increasing concerns about domestic violence and identity theft, this law limits the amount of information that must be published to finalize a name change.

#### **2. Simplifying the process to modify child support – Chapter 373 – A.9464 [Barrett]/S.7535 [Bonacic].**

This law simplifies the pleadings required to seek a modification of child support. It will facilitate modification applications by pro se litigants without altering the grounds for modification.

#### **3. Empowering town and city clerks in cases involving marriage license applications – Chapter 415 - A.9258 [Thiele]/S.6942 [Lavelle].**

This law authorizes town and city clerks in the state to designate employees to take verified affidavits and statements from marriage license applicants in the same manner as is currently permitted by clerks in New York City.

#### **4. Marriages on Indian reservations – Chapter 450 – A.9315 [Russell]/S.7182 [Little].**

This law enlarges the class of persons authorized to solemnize marriages on Indian lands.

**The following bills were passed by the Assembly only.**

#### **5. Protecting victims from having to choose between safety and housing – A.9056 [Lavine]/S.6924 [Robach].**

This legislation prevents local nuisance ordinances from directly or indirectly jeopardizing the housing of victims of domestic violence simply for accessing police or emergency assistance. In doing so, the legislature seeks to bring a measure of stability to the lives of crime victims. A9056 – Lavine.

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<sup>1</sup> All references to chapters, except where otherwise noted, are to chapters of the laws of 2014.

**6. Enabling greater involvement of relatives in cases involving child abuse or neglect – A.7623 [Weinstein]/S.5203A [Felder].**

This measure would enable greater notice to and participation by non-respondent parents and relatives in child protective proceedings, while simultaneously streamlining custody procedures.

**7. Interpreting orders of protection – A.1084A [Weinstein].**

This measure sets forth the requirements for interpreting orders of protection into the appropriate language to help parties that are hearing impaired or have limited English proficiency to better understand the essential terms of an order of protection as outlined by the court.

**The following bills were reported by the Assembly Judiciary Committee and were pending at the conclusion of session.**

**8. Protecting due process rights of parents in custody cases - A.8342A [Weinstein].**

This measure addresses longstanding due process concerns relating to limited access to information that has significant bearing on parental rights to their children. To that end, it provides for uniform access to court ordered forensic mental health evaluation reports and underlying data by litigants, their counsels and the attorney for the child in child custody and visitation cases.

**9. Reforming New York State’s Spousal Maintenance Laws - A.9606-A – [Weinstein].**

To facilitate predictability and fair outcomes in awarding critical remedies for many divorcing spouses, this measure builds on the interim maintenance reform law of 2010, and introduces numeric guidelines to determine the amount and duration for post-divorce maintenance.

**B. CIVIL PRACTICE<sup>2</sup>**

**1. Streamlining the filing of motion papers – Chapter 109 - A.8972 [Hennessey]/S.7075 [Bonacic].**

By removing the requirement to re-file motion papers in cases that are electronically litigated, this law will avoid redundancy and extra costs to litigants.

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<sup>2</sup> In addition to the Assembly Judiciary Committee, Civil Practice related bills are also reported from the Assembly Codes Committee.

**2. Clarifies the law on dismissals for want of prosecution – Chapter 371 – A.9075 [Steck]/S.5073 [Bonacic].**

This law clarifies the required pleadings and time periods concerning when a civil case may be dismissed for failure to prosecute.

**3. Clarifies when an attorney can make objections at a deposition – Chapter 379 – A.9077 [Weinstein]/S.5077 [Bonacic].**

This law permits attorneys for non-party deponents to make objections at an examination before trial of a non-party witness, just as can be made at an examination of a party witness.

**4. Certification of business records – Chapter 314 – A.9314 [Weinstein]/S.7143 [Bonacic].**

This law allows the introduction of business records that are produced without a subpoena into evidence at trial when the records are voluntarily submitted by third parties.

**5. Clarify referee fees – Chapter 356 – A.1582A [Lento]/S.3479A [Golden].**

This law will ensure that referees who conduct foreclosure sales for the courts are not liable for real estate transfer taxes.

**6. Clarifies where abandoned property fund actions must be commenced – Chapter 453 – A.9577 [Farrell]/S.7332 [Defrancisco].**

This law clarifies that court withdrawal actions which seek monies from the abandoned property fund must be commenced in the court which had original jurisdiction. It also increases the threshold amount of a claim for abandoned property fund actions that must include the comptroller as a party from \$5,000 to \$10,000.

**The following bills passed the Assembly only.**

**7. Consent to general jurisdiction by foreign business – A.9576 [Weinstein]/S.7078 [Bonacic].**

This legislation reinforces consent as a basis for general (all-purpose) personal jurisdiction over foreign corporations authorized to do business in New York.

**8. Strategic Lawsuits Against Public Participation – A.856 [Weinstein]/S.7280 [Espailat].**

This legislation expands current protections for persons faced with abusive litigation filed by parties who object to a citizen's participation in matters of public concern.



**9. Notice of claim affirmative defense – A.6550 [Weprin]/S.5072 [Bonacic].**

This legislation amends the Civil Practice Law and Rules to ensure that claims against governmental entities are determined on the merits, and that any governmental defenses are timely asserted.

**C. COURT OPERATIONS AND ADMINISTRATION OF JUSTICE**

**1. Increases the number of Family Court Judges – Chapter 44 – A.10139 [Weinstein]/S.7883 [Bonacic].**

This law added 25 additional family court judgeships across the state.

**2. Ratifying employment terms for non-judicial officers – Chapter 400 – A.10098 [Weinstein]/S.7845 [Bonacic].**

This law ratified an agreement between the Unified Court System and its' non-judicial employees, which was the subject of many years of complex negotiation.

**3. Authorization of night courts – Chapter 452 – A.9375A [Steck]/S.7378-A [Farley].**

This law permits localities that host a City Court to keep their facilities open in the evening where court administrators determine this is warranted.

**4. Provide for elected City Court Judges in some cities – Chapter 455 – A.10022 [Cahill]/S7820 [Ritchie].**

This law changes the City Court judgeships in Watertown and Kingston from appointment by the Mayor to election by the voters of the locality.

**D. PROTECTING CONSUMERS/TENANTS/HOMEOWNERS**

**1. Extending the mandatory foreclosure settlement conferences – Chapter 29 – A.9354 [Weinstein]/S.7119 [Klein].**

This law extends the mandatory foreclosure settlement conferences overseen by the Judiciary for another five years. This in turn will help prevent properties from being foreclosed without proper judicial oversight.

**2. Sprinkler system notice to renters – Chapter 202 – A.7641A [DenDekker]/S.5212A [Flanagan].**

This law requires a notice on real property leases concerning the presence of a sprinkler system in the leased premises.

**The following bills were passed by the Assembly only:**

**3. Consumer Credit Fairness Act - A.9053 [Weinstein]/S.7349 [Savino].**

This legislation reforms debt collection litigation by requiring creditors to submit proof of their claims prior to being able to obtain a default judgment. It also curtails the right to collect consumer debts upon expiration of the statute of limitations, which is reduced from six to three years in this legislation.

**4. Increased protections in improper debt collection cases – A.6654 [Simotas]/S.570 [Gianaris].**

While the Attorney General and District Attorneys can sue debt collectors for violating state law during collection efforts, ordinary citizens who face this behavior cannot. This legislation expands the right to sue to individuals.

**5. Plain language in consumer contracts – A.7777 [Dinowitz]/S.5206 [Zeldin].**

This legislation requires plain language to be used in certain consumer contracts involving transactions valued at \$250,000 or less.

**The following bill was reported by the Assembly Judiciary Committee and was pending at the conclusion of session.**

**6. Combatting abandoned Properties - A.9341A [Weinstein]/S.7350A [Klein].**

To help protect our cities and neighborhoods from the blight and attendant safety risks of vacant and abandoned properties, the Assembly Judiciary Committee reported legislation proposed by the New York State Attorney General that requires lenders to maintain, before and during the foreclosure process, residential properties that are vacant and abandoned. In addition, this legislation creates a state registry of such properties to help with their early identification and maintenance.

## **E. TRUSTS AND ESTATES AND GUARDIANSHIPS**

### **1. Clarifying the Surrogate's Court jurisdiction over the Uniform Transfer to Minor's Act – Chapter 112 – A.9055 [Buchwald]/S.7137 [Bonacic].**

This law will reduce confusion in proceedings regarding assets belonging to minors in New York State by removing an erroneous reference to a section of law that has been superseded.

### **2. Streamlining the law on interest payable on a delayed legacy - Chapter 404 – A.1185 [Weinstein]/S.4952 [Bonacic].**

This law introduces uniformity to the determination of interest on a delayed legacy and eliminates the need for unnecessary judicial proceedings by mandating the payment of interest on a delayed monetary legacy. In addition it ties the statutory rate of interest to be paid on legacies to the Federal Funds Rate so that the beneficiary is compensated according to the time value of money for the delay in payment of their legacy.

### **3. Establishing and clarifying rights of posthumous children (children conceived after the death of their genetic parent) – Chapter 439 – A7461 [Cook]/S.4779B [Bonacic].**

This law creates a roadmap for rights of posthumous children by permitting them to inherit from their genetic parents under certain circumstances.

### **4. Renunciation of property interests – Chapter 315 – A.9355-A [Santabarbara]/S. 7144 [Bonacic].**

This legislation authorizes the personal representative of a decedent to renounce property to which the decedent became entitled but did not receive before death, so long as the personal representative is authorized to do so by the court having jurisdiction of the decedent's estate.

### **5. Power of Attorney related to decedents' estates – Chapter 391 – A.9759 [Weinstein]/S.7077-A [Bonacic].**

This law ensures that abandoned property location services agreements are not accepted by the Office of Unclaimed Funds until a fiduciary has been appointed or an action is pending before the court unless, the agreement is executed by the spouse or children of a decedent or the amount at issue is less than \$1,000. In addition, all claimants other than the decedent's spouse or children are required to obtain letters pursuant to Article 13 of the Surrogate's Court Procedure Act for claims in excess of \$1,000.

The following bills passed the Assembly only.

**6. Clarifying requirements for a fiduciary to recant a decanting – A.9761 [Braunstein].**

The Assembly passed legislation to create a roadmap for a trustee to follow, in the event that it is necessary to recant a decanting during the thirty day period before the decanting takes effect.

**7. Correction of notice of petition for appointment of guardian – A.9054 [Ryan]**

This legislation amends Mental Hygiene Law section 81.21(c), to reduce the possibility for confusion among practitioners and litigants seeking to satisfy Mental Hygiene Law section 81.21(c)'s notice requirements.

**F. CONSTITUTIONAL AMENDMENTS REPORTED BY THE COMMITTEE**

**1. Independent redistricting commission – Second Passage<sup>3</sup> – A.2086 [Silver]/S.2107 [Skelos].**

This Constitutional amendment establishes an independent redistricting commission. This amendment was passed by the voters in the general election in November of 2014.

**2. Electronic Bills in Legislature – Second Passage – A.7868 [Galef]/S.4417A [Marcellino].**

This Constitutional Amendment permits the legislature to vote on bills which are presented in electronic form. This amendment was passed by voters in the general election in November of 2014.

**G. COMMERCIAL PRACTICE**

**1. Modernizing the Uniform Commercial Code (UCC) – Passed both Houses and awaiting the Governor's signature – A.9933 [Weinstein]/S.7816 [Farley].**

The Uniform Commercial Code is an important series of laws governing business transactions in New York State, and throughout the country. If signed by the Governor, this legislation will repeal and rewrite Article 1 of the Code which contains general

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<sup>3</sup> Amendments to the Constitution must be passed by the Legislature in two consecutive sessions before being presented to the voters for approval.

provisions which are applicable to the other articles of the Code. It will also repeal and rewrite Article 7 of the Code which currently concerns Warehouse Receipts, Bills of Lading and Documents of Title - updating it to reflect modern practice. Additionally, the measure will amend Article 9 of the Code concerning secured transactions. Together these changes will modernize certain articles of the UCC, and will bring New York into accord with other states that have adopted these changes.

## **H. OTHER LEGISLATION OF INTEREST**

### **1. Duty on social hosts – Passed both Houses and awaiting the Governor’s signature – A.3303B [Abbate]/S.1178B [Martins].**

If signed by the Governor, this legislation will impose a duty on a host to summon assistance when a guest suffers a medical emergency.

### **2. Makes clear what compensation can be provided to real estate brokers – Passed both Houses – A.7979B [Lavine]/S.5693B [Zeldin].**

If signed by the Governor, this legislation will clarify that a real estate broker can reduce his or her commission to achieve a sale.

### **III. PUBLIC HEARING**

The Committees on Judiciary and Codes conducted a Public Hearing on December 9, 2014, to examine the current methods of civil forfeiture and the use of deferred prosecution agreements (DPAs) in New York, and how forfeited monies and property are distributed. The Committees also heard testimony concerning current accounting practices, and whether appropriate information about these seizures and monetary payments is made available to putative owners, third-party lienholders and the public-at-large.

### **IV. NEW YORK STATE'S JUDICIARY FUNDING**

The 2014-2015 State budget adopted without change the Judiciary's budget request for appropriations in the amount of \$2.72 billion. The court's budget absorbs the final phase of judicial salary increases, statutorily-mandated salary increments for represented non-judicial employees, statutorily-mandated increases for indigent legal defense, supplemental funds for IOLA, and a much needed increase in funding for civil legal services to address the crisis in legal services funding. The Judiciary budget includes an additional \$5 million in appropriations for twenty-five new family court judgeships to help address the crushing case loads.

# 2014 SUMMARY SHEET

## SUMMARY OF ACTION ON ALL BILLS REFERRED TO THE COMMITTEE ON

judiciary

<u>FINAL ACTION</u>	<u>ASSEMBLY BILLS</u>	<u>SENATE BILLS</u>	<u>TOTAL BILLS</u>
<b>BILLS REPORTED WITH OR WITHOUT AMENDMENT</b>			
TO FLOOR; NOT RETURNING TO COMMITTEE	29	0	29
TO FLOOR; RECOMMITTED AND DIED	0	0	0
TO WAYS AND MEANS	7	0	7
TO CODES	26	0	26
TO RULES	7	0	7
TO JUDICIARY	0	0	0
TOTAL	69	0	69
<b>BILLS HAVING COMMITTEE REFERENCE CHANGED</b>			
TO <u>Local Governments</u> COMMITTEE	2	0	2
TO _____ COMMITTEE	0	0	0
TO _____ COMMITTEE	0	0	0
TO _____ COMMITTEE	0	0	0
TOTAL	2	0	2
<b>SENATE BILLS SUBSTITUTED OR RECALLED</b>			
SUBSTITUTED		7	7
RECALLED		0	0
TOTAL		7	7
<b>BILLS DEFEATED IN COMMITTEE</b>	0	0	0
<b>BILLS NEVER REPORTED, HELD IN COMMITTEE</b>	53	0	53
<b>BILLS NEVER REPORTED, DIED IN COMMITTEE</b>	252	24	276
<b>BILLS HAVING ENACTING CLAUSES STRICKEN</b>	16	0	16
<b>MOTIONS TO DISCHARGE LOST</b>	0	0	0
<b>TOTAL BILLS IN COMMITTEE</b>	392	31	423
<b>TOTAL NUMBER OF COMMITTEE MEETINGS HELD</b>	8		

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