

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

Contact: Jayne Bigelsen jbigelsen@nycbar.org (212) 382-6655

S. 4564
A.3074

Senator Leibell
M. of A. Bradley

AN ACT to amend the domestic relations law, in relation to the statute of limitations for agreements relating to marriage

THIS BILL IS OPPOSED AS WRITTEN, AMENDMENT RECOMMENDED

The New York City Bar opposes Assembly Bill 3074, which would amend the statute of limitations for agreements relating to marriage, for the following reasons:

The bill as drafted goes too far and does not accomplish the intent of the drafters. As drafted, the bill would provide a three-year statute of limitations for agreements made prior to and/or during a marriage, but would then toll that statute of limitations until such time as an action either supporting or opposing that agreement is commenced. The problem with the bill as drafted is that, if after the action is commenced, it is "dismissed, dropped or otherwise resolved" the statute would again be tolled until another action concerning the agreement is commenced, thereby making all marital agreements, including separation agreements and stipulations of settlement susceptible to being attacked in perpetuity. The City Bar supports the concept that the statute of limitations should be tolled during the period when a marriage is viable and no litigation has been commenced to dissolve that marriage, since it is unlikely that parties to a viable marriage would challenge a pre or post-nuptial agreement and risk upsetting their spouse or otherwise cause marital disharmony or precipitate the failure of the marriage.

The City Bar would support the legislation if it were revised to read essentially as follows:

"The statute of limitations for commencing an action or claiming a defense that arises from an agreement made prior to or during a marriage pursuant to section two hundred thirty-six of this article shall be three years. However the statute of limitations shall be tolled until such time as both parties have made an appearance in an action concerning the validity and enforceability of that agreement. The tolling provisions of

this section shall not apply to a separation agreement or an agreement made during the pendency of a matrimonial action or in settlement thereof."