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RECENT NEW YORK CASES
EXCERPTED FOR LEGISLATIVE INTENT AND HISTORY

The following cases relating to New York law are not exhaustive on the issue of legislative intent and history. These are a few examples of recent court decisions excerpted for this topic in the state. ***You must review the entire court opinion to determine its applicability to your case.***

REDDINGTON V. STATEN ISLAND UNIVERSITY HOSP.
11 N.Y.3D 80, 893 N.E.2D 120
N.Y.,2008. JULY 01, 2008

The plain text of this provision indicates that "institut[ing]" an action-without anything more-triggers waiver. And in New York, an action is instituted with the filing of a complaint and service upon opposing parties. Moreover, documents in the Bill Jacket repeatedly refer to section 740(7) as an election-of-remedies provision, thus contemplating that a plaintiff will *choose* whether to file a section 740 whistleblower claim or some other claim (*see e.g.* Mem. of Pub. Empl. Relations Bd., Bill Jacket, L. 1984, ch. 660, at 16).

[1] Although Reddington argues that either filing a time-barred section 740 claim (as she did), or amending a complaint to omit a section 740 claim (as she also did), precludes waiver, ***88** section 740(7)'s language and **legislative history** do not support her position. A "cause of action will be deemed the same if the amended and original complaints both seek to enforce the same obligation or liability" (*Abrams v. Maryland Cas. Co.,* 300 N.Y. 80, 86, 89 N.E.2d 235 [1949] [citations omitted]). In short, Reddington clearly "institut[ed] ... an action in accordance with [section 740]." We conclude, however, that Reddington nonetheless did not waive the right to pursue her section 741 claim. This conclusion flows from the uniquely interconnected elements of sections 740 and 741; specifically, every section 741 claim expressly relies on and incorporates section 740 for purposes of enforcement.

...

Because some limiting principle is mandated by section 741, the question becomes the meaning of the phrase "performs health care services." Webster's Collegiate Dictionary defines "perform" as "carry out; do" or "to do in a formal manner or according to prescribed ritual" (Merriam-Webster's Collegiate Dictionary 863 [10th ed. 1998]), while the Oxford English Dictionary defines perform as "to carry through to completion; to complete, finish, perfect (an action process, work, etc.)" (10 Oxford English Dictionary 543 [2d ed. 1989]). Similarly, Roget's Thesaurus defines "perform" as "[t]o begin and carry through to completion" and supplies the synonyms "do," "execute," and "prosecute" (Roget's II: The New Thesaurus 721 [3d ed. 1995]). Nowhere is the term "perform" defined to mean "coordinate," "communicate," or "develop."

[2] We have observed that "[i]n construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning" (*Majewski v. Broadalbin-Perth Cent. School Dist.,* 91 N.Y.2d 577, 583, 673 N.Y.S.2d 966, 696 N.E.2d 978 [1998], quoting *Tompkins v. Hunter,* 149 N.Y. 117, 122-123, 43 N.E. 532 [1896] [additional citation omitted]). Here, the "natural signification" of section 741(1)(a) is quite definite: to be subject to the special protections of section 741, an employee of a health care provider must "perform[ ] health care services," which means to actually***850** supply health care services, not merely to coordinate with those who do.

A review of the rest of Labor Law § 741, as well as the statute's **legislative history**, further bolsters the plain-text interpretation of section 741(1)(a). The Assembly memorandum in ***92** support of Laws of 2002 (ch. 24)-which enacted Labor Law § 741 as well as Labor Law § 740(4)(d)-states, under the subtitle "JUSTIFICATION":

PEOPLE V. FINLEY
10 N.Y.3D 647, 891 N.E.2D 1165
N.Y.,2008. JUNE 10, 2008

***5** Our task, therefore, is to determine whether the imposition of felony consequences, based upon possession of small amounts of marihuana, which would constitute a violation outside of prison (*see* Penal Law §§ 221.05, 221.10 [2] [absent aggravating circumstances, not present here, possession of 25 grams or less of marihuana is a noncriminal violation]), comports with the Legislature's intent as codified in Penal Law § 205.00(4) and § 205.25(2). Based on the statutory text and **legislative history**, we conclude that it does not.

We begin, as we must, with the plain meaning of the statute, presuming that lawmakers "have used words as they are commonly or ordinarily employed, unless there is something in the context or purpose of the act which shows a contrary intention" (McKinney's Cons. Laws of N.Y., Book 1, Statutes § 232, Comment.; *see also* Penal Law § 5.00 [Penal Law provisions "must be construed according to the fair import of their terms to promote justice and effect the objects of the law"]).

Here, the operative statutory language is: "capable of such use as may endanger the safety or security of a detention facility or any person therein" (*see* Penal Law § 205.00[4]). The word "use" refers to the "application or employment" of a particular item of contraband (*see* Black's Law Dictionary 1577 [8th ed. 2004]). Small amounts of marihuana-such as those at issue here-may be used in many ways. These amounts can be, for example, burned, smoked or otherwise ingested. Or, as Bezio and Fonda testified, they can be used as a means of barter and extortion.

...

We will not presume that the Legislature intended such a result when it expressly mandated harsher consequences for the possession of dangerous contraband (*see People v. Giordano,* 87 N.Y.2d 441, 448, 640 N.Y.S.2d 432, 663 N.E.2d 588 [1995], quoting *Sanders v. Winship,* 57 N.Y.2d 391, 396, 456 N.Y.S.2d 720, 442 N.E.2d 1231 [1982] ["Under well-established principles of interpretation, effect and meaning should be given to the entire ***6** statute and every part and word thereof" (internal quotation marks omitted)]; *accord Friedman v. Connecticut Gen. Life Ins. Co.,* 9 N.Y.3d 105, 115, 846 N.Y.S.2d 64, 877 N.E.2d

281 [2007]). And, based on the prison contraband provisions' **legislative history**, we need not do so here (*see People v. Santi,* 3 N.Y.3d 234, 243, 785 N.Y.S.2d 405, 818 N.E.2d 1146 [2004] ["Legislative intent drives judicial interpretations in matters of statutory construction"]).

The prison contraband provisions, Penal Law §§ 205.00, 205.20 and 205.25, were codified in 1965 as part of a major revision to the Penal Law and became effective in 1967. Although the Staff Notes indicate that the definitions of contraband and dangerous contraband codified in Penal Law § 205.00 were new, they also indicate that the felony/misdemeanor distinction set forth in Penal Law §§ 205.25 and 205.20 "substantially restates" that same distinction as established in former Penal Law § 1691(3) and (2) (*see* Staff Notes of Temp. St. Commn. on Rev. of Penal Law and Crim. Code, 1964 Proposed N.Y. Penal Law [Study Bill, 1964 Senate Intro. 3918, Assembly Intro. 5376], at 373 [describing Penal Law §§ 210.00 (definitions of "contraband" and "dangerous contraband"), 210.30 (misdemeanor offense) and 210.35 (felony offense), later renumbered as sections 205.00, 205.20 and 205.25, respectively], reprinted in N.Y. CLS, Book 23B, Penal Law art. 205, at 495-496; *see also* Denzer and ***656** McQuillan, Practice Commentary, McKinney's Cons. Laws of N.Y., Book 39, Penal Law § 205.20, at 674 [1967 ed.] [current sections 205.20 and 205.25 "continue" the "(g)rading of ... offenses" found in former section 1691]). Subdivision (2) made it a misdemeanor for persons not confined in a prison to convey "any drug, liquor or any article prohibited by law [or prison rules]" into a prison (*see* former Penal Law § 1691[2]). In contrast, under subdivision (3), it was a felony for non-inmates to convey into a prison: "any article or thing ... which ... may be used in such manner as to endanger the safety or security of the institution, or as to endanger the life or limb of any prisoner, guard, attendant, inmate, patient or other [prison] employee" (former Penal Law § 1691[3]).

JONES V. BILL
10 N.Y.3D 550, 890 N.E.2D 884
N.Y.,2008. JUNE 05, 2008

The Graves Amendment provides that it "shall apply with respect to any action commenced on or after the date of enactment***554** of this section without regard to whether the harm that is the subject of the action, or the conduct that caused the harm, occurred before such date of enactment" (49 USC § 30106[c]). Defendants urge that we read "commenced"-with regard to a party later joined-to refer to the date the claim is "interposed" against such party. Under New York law, however, an action is "commenced" "by filing a summons and complaint or summons with notice" (CPLR 304[a]). As a general proposition, we need not look further than the unambiguous language of the statute to discern its meaning (*see Riley v. County of Broome,* 95 N.Y.2d 455, 463, 719 N.Y.S.2d 623, 742 N.E.2d 98 [2000]), and in this particular case we find no reason to do so. Thus, under the statute's plain language, any action filed prior to August 10, 2005 has been "commenced" and therefore removed from the federal statute's preemptive reach. Here, plaintiff "commenced" his action as of August 8, 2005, when he filed his summons and complaint.

...

Although defendants urge us to glean congressional intent from the floor minutes surrounding the enactment of this contentious legislation (*see* 151 Cong. Rec. H1034-01), where the language of a statute is clear there is little room to "add to or take away from that meaning" (*see Tompkins v. Hunter,* 149 N.Y. 117, 123, 43 N.E. 532 [1896]). Moreover, if we were to find the word "commenced" somehow ambiguous, which we do not, the debates fail to shed any light whatsoever on Congress's intent with regard to vehicle lessors later joined by

amendment, and we have found no other **legislative history** relevant to this specific point.

JERICHO WATER DIST. v. ONE CALL USERS COUNCIL, INC.
10 N.Y.3D 385, 887 N.E.2D 1142
N.Y.,2008. MAY 01, 2008

"Municipality" is an ambiguous word. It denotes a unit of local government, but it may be used relatively narrowly, to include only entities exercising general governmental functions-i.e., counties, cities, towns and villages-or more broadly, to include also specialized governmental units like plaintiff. In several New York statutes, "municipality" is a defined term, and both the narrower definition (ECL 15-0107[3]; Executive Law § 155-a [3], [4]; General Business Law § 780[4]; General City Law § 20-g [3] [a]; General Municipal Law § 239-h [2]; Town Law § 284[3][a]) and the broader one (General Municipal Law § 77-b [1][a]; Public Authorities Law § 1115-a [13]) are used. But there is no statutory definition of the word as used in General Business Law § 761(3), and the **legislative history** of that statute gives no clue to which definition the Legislature had in mind.

The narrower definition of "municipality" better corresponds to common usage. In ordinary English, a water district is not a municipality. We recognized this in ***391** *Kenwell v. Lee,* 261 N.Y. 113, 116, 184 N.E. 692 (1933), where we held that a town water supply district "is not a municipality within the meaning of article VII, section 7, of the Constitution." We added that "[w]hile a water district, for the special objects of certain statutes, has been included as a matter of convenient reference within the terms 'municipal corporation,' or 'municipality,' it is essentially and only 'a special administrative area' " (*id.* at 117, 184 N.E. 692 [citations omitted]).

PEOPLE v. CABRERA
10 N.Y.3D 370, 887 N.E.2D 1132
N.Y.,2008. MAY 01, 2008

FN4. The dissent's characterization of the graduated licensing law's **legislative history** is at best incomplete. For example, while the Senate memorandum in support does at one point refer to "limiting [teenagers'] exposure to hazardous driving situations," this is hardly an accurate characterization of the legislation's primary purpose (Mem. in Support, 2002 McKinney's Session Laws of N.Y., at 2114). Indeed, the very same memorandum contains an explicit section titled "PURPOSE" located just below the bill number and the title of the bill; this "PURPOSE" section reads, in its entirety: "PURPOSE: To require young novice drivers to complete a series of experience and education requirements before they obtain full driving privileges" (*id.* at 2111).Similarly, the letter from the Department of Transportation in the Bill Jacket-the only other piece of **legislative history** cited by the dissent (*see* dissenting op. at 383-384, 858 N.Y.S.2d at 83, 887 N.E.2d at 1141)-fails to buttress the dissent's argument. In this letter, the Department described the legislation as "a graduated driver's license program where young drivers must demonstrate an ability to competently operate a vehicle before being relieved from certain motor vehicle operating restrictions" (Bill Jacket, L. 2002, ch. 644, at 14).

Read as a whole, the **legislative history** indicates that graduated licensing was intended as a carrot to foster safe driving habits-not as a stick to create strict liability in homicide prosecutions.

STEEL LOS III/GOYA FOODS, INC. V. BOARD OF ASSESSORS OF COUNTY OF NASSAU
10 N.Y.3D 445, 889 N.E.2D 453
N.Y.,2008. APRIL 24, 2008

A deeper inquiry into the "no charge-back" provision amply supports this conclusion. The NCAC was amended in 1948 to align the consequences of assessment errors or illegality with a shift in the responsibility for rendering such assessments. Prior to 1938, town boards of assessors were responsible for preparing the assessment rolls for taxation purposes within their respective towns for all school, fire and other districts (*see* Assembly *****457 ***580*** Mem. in Support, Bill Jacket, L. 1948, ch. 851, at 7). Under this arrangement, each town or city was charged with deficits to any such districts resulting from illegal or erroneous assessments on the ground that such deficits "could be attributed to [their respective] assessors as shown in the certificates of error issued by them" (*id.* at 8). There was "no provision as to the manner in which the excesses or deficiencies ... [were] handled. By custom, however, [they were] placed in [a so-called] 'towns and cities' account and placed to the credit or debit of the respective towns and districts" (N.Y. Dept. of Audit and Control Letter in Support, Bill Jacket, L. 1948, ch. 98, at 6 [amending L. 1936, ch. 879, § 607]).

By 1938, however, the offices of town and city assessors were abolished and their powers transferred to the County Board of ****454*** Assessors. The sensible view-"in the best interests of the County" and the affected taxing jurisdictions-that any surplus or deficiencies arising from county assessments shall be credited or charged to it accompanied this shift in responsibility (*see* Nassau County Attorney Letter in Support, *id.* at 9). Thus, local districts were to be held harmless from the County's own assessment mistakes, and a concomitant amendment to section 6-17.3 of the NCAC eliminated the need for districts to be notified of proceedings challenging assessments-precisely because they would not be made to suffer the loss of their expectancy interests by surrendering tax revenue in the form of refunds to properties they had no role in assessing (*see* Assembly Mem. in Support, Bill Jacket, L. 1948, ch. 851, at 9-10).

APPLETON ACQUISITION, LLC V. NATIONAL HOUSING PARTNERSHIP
10 N.Y.3D 250, 886 N.E.2D 144
N.Y.,2008., MARCH 18, 2008

In our view, a comparison of the text of Business Corporation Law § 623(k) and Partnership Law § 121-1102(d) is fatal to plaintiffs' argument. Both statutes share a common feature: the availability of an appraisal proceeding to determine the value of the interest held by a dissenting shareholder or limited partner. Yet the critical distinction is that section 623(k) explicitly incorporates a common-law fraud or illegality exception to the exclusivity of the appraisal remedy, whereas Partnership Law § 121-1102(d) does not. The Assembly sponsor explained that the Partnership Law was amended to promote the twin objectives of granting limited partners "appraisal rights similar to those shareholders [are given] under the Business Corporation Law" while also giving "greater assurance to the general partners as to the validity" and, thus, finality of a merger or consolidation (July 17, 1990 Letter from Assembly Sponsor, Bill Jacket, L. 1990, ch. 950, at 8). In light of the fact that section 623(k) of the Business Corporation Law had been enacted many years earlier, the absence of the fraud or illegality exception in section 121-1102(d) can be viewed only as an intentional legislative omission. Consequently, in the absence of a violation of the partnership agreement or inadequate notice of the proposed merger (*see* Partnership Law § 121-1102[d]), the statute prohibits limited partners from relying on any form of relief other than a judicial appraisal-an approach that furthers the Legislature's interest in finality of mergers.[FN5] We

therefore *257 conclude that the first three causes of action were properly dismissed.

SAMIENTO V. WORLD YACHT INC.
10 N.Y.3D 70, 883 N.E.2D 990
N.Y.,2008. FEBRUARY 14, 2008

The language of the statute states that it is a violation of Labor Law § 196-d to "retain any part of a gratuity or ... any charge purported to be a gratuity for an employee." We have repeatedly stated that "where the language of a statute is clear and unambiguous, courts must give effect to its plain meaning" (*Matter of Charter Dev. Co., L.L.C. v. City of Buffalo,* 6 N.Y.3d 578, 581, 815 N.Y.S.2d 13, 848 N.E.2d 460 [2006] [brackets omitted], quoting *Matter of Tall Trees Constr. Corp. v. Zoning Bd. of Appeals of Town of Huntington,* 97 N.Y.2d 86, 91, 735 N.Y.S.2d 873, 761 N.E.2d 565 [2001]). Given the language, "any charge [[FN2] purported [FN3] to be a gratuity" and the remedial nature of Labor Law § 196-d, such language should be liberally construed in favor of the employees. Both the plain meaning of Labor Law § 196-d and its **legislative history** establish that the service charges at issue in this *79 appeal are contemplated within Labor Law § 196-d.[FN4]

...

FN2. Black's Law Dictionary 248 (8th ed. 2004) (hereinafter Black's) defines "charge," in pertinent part, as "[t]o demand a fee [or] to bill." Merriam Webster's Collegiate Dictionary 192 (10th ed. 1993) (hereinafter Webster's) defines "charge," in pertinent part, as "expense [or] cost [and] the price demanded for something."

FN3. "Purport" or "purported" have been variously defined as: "[r]eputed [or] rumored"; "[t]he idea or meaning that is conveyed or expressed"; and "[t]o profess or claim, esp. falsely; to seem to be" (*see* Black's at 1271; *see also* Webster's at 949 [defining "purported" as: "reputed (or) alleged" and "purport" as: "meaning conveyed, professed, or implied" and "to have the often specious appearance of being, intending, or claiming (something implied or inferred)"]).

FN4. The drafters of Labor Law § 196-d sought to end the "unfair and deceptive practice" of an employer retaining money paid by a patron "under the impression that he is giving it to the employee, not to the employer" (*see* Mem. of Indus. Commr., June 6, 1968, Bill Jacket, L. 1968, ch. 1007, at 4).

...

*80 waiters, busboys and 'similar employees' who work at that function, even if the contract makes no reference to such a gratuity."

World Yacht asserts that the last sentence of Labor Law § 196-d exempts the banquet industry from the proscription of Labor Law § 196-d and allows an employer to retain service charges. We disagree. The **legislative history** of the last sentence makes what has been referred to as the banquet exception quite clear. The New York State Hotel & Motel Association, Inc. requested the inclusion of this language upon the drafting of Labor Law § 196-d in order to ensure the industry could continue its common practice of applying a fixed percentage, or lump sum payment, to a banquet patron's bill as a gratuity which then was distributed to all personnel engaged in the function, waitstaff, bartenders, busboys

and all other similar employees. It was feared that without this language the practice of pooling for later distribution of tips to all involved employees would be prohibited because upon receiving payment, a person could believe they were entitled to retain the entire amount and not share with the rest of the personnel who worked the banquet (*see* Letter from N.Y. State Hotel & Motel Assn., May 21, 1968, Bill Jacket, L. 1968, ch. 1007, at 12). Therefore World Yacht's contention that banquet service charges are not contemplated within "any charge purported to be a gratuity" is incorrect.

AMOROSI V. SOUTH COLONIE INDEPENDENT CENT. SCHOOL DIST.
9 N.Y.3D 367, 880 N.E.2D 6
N.Y.,2007.
DECEMBER 18, 2007

"[I]t is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature, but we have correspondingly and consistently emphasized that where the statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used....

"We have provided further clear teaching and guidance that absent ambiguity the courts may not resort to rules of construction to broaden the scope and application of a statute, because no rule of construction gives the court discretion to declare the intent of the law when the words are unequivocal. Lastly, the courts are not free to legislate and if any unsought consequences result, the Legislature is best suited to evaluate and resolve them" (***373** *Matter of Raritan Dev. Corp. v. Silva,* 91 N.Y.2d 98, 106-107, 667 N.Y.S.2d 327, 689 N.E.2d 1373 [1997] [internal quotation marks, citations, emphasis and brackets omitted]).

ROSARIO V. DIAGONAL REALTY, LLC
8 N.Y.3D 755, 872 N.E.2D 860
N.Y.,2007. JULY 02, 2007

Diagonal's preemption theory is belied by the **legislative history**, which shows that no preemption was intended. Indeed, the Senate Committee on Banking, Housing, and Urban Affairs could not have made the point more clearly when it reported that it did "not anticipate that the repeal of [the 'endless lease' rule] will adversely affect assisted households because *protections will be continued under State, tribal, and local tenant laws* as well as Federal protections under the Fair Housing Act and the Americans with Disabilities Act" (S. Rep. 195, 104th Cong., 1st Sess., at 32; S. Rep. 21, 105th Cong., 1st Sess., at 36 [identical language in both Senate Reports] [emphasis added]). The intent of Congress was to "streamline and simplify the [Section 8] program by reducing the involvement of the Federal government" and housing agencies (S. Rep. 195 at 31-32; S. Rep. 21 at 36.). In other words, the legislative intent was to remove *federal* obstacles to landlords' participation in the Section 8 program.

NORTH V. BOARD OF EXAMINERS OF SEX OFFENDERS OF STATE OF NEW YORK
8 N.Y.3D 745, 871 N.E.2D 1133
N.Y.,2007. JULY 02, 2007

This result is consistent with statements in the **legislative history** of the 2002 SORA amendments relating to the inclusion of the specified federal offenses. The Governor's Program Bill Memorandum and the Senate and Assembly sponsors' memoranda***754** indicate that the intent in listing the federal child pornography offense was to "clarify" that the offense was subject to registration, which was

necessary because some federal offenders had contested the equivalency of the federal and New York offenses (*see* Governor's Program Bill Mem. # 102, 2002 N.Y. Legis. Ann., at 6, 8; Senate Mem. in Support, 2002 McKinney's Session Laws of N.Y., at 1646; Aubry Mem. in Support of 2002 N.Y. Assembly Bill A10367).[FN3] By characterizing the new ***1140 ***314 legislation as a "clarification," rather than as a change in the law, the Legislature and the Governor indicated that the child pornography offense was already subject to registration under the existing "essential elements" provision. Hence, in their view, the victim age distinctions between the federal and state offenses did not preclude registration under that standard.

BENESOWITZ V. METROPOLITAN LIFE INS. CO.
8 N.Y.3D 661, 870 N.E.2D 1136
N.Y.,2007. JUNE 27, 2007

In matters of statutory interpretation, "our primary consideration is to ascertain and give effect to the intention of the Legislature" (*Matter of DaimlerChrysler Corp. v. Spitzer,* 7 N.Y.3d 653, 660, 827 N.Y.S.2d 88, 860 N.E.2d 705 [2006] [internal quotation marks and citation omitted]). In discerning the legislative intent underlying section 3234(a)(2), it is instructive to examine Insurance Law § 3232, a health insurance statute. Indeed, section 3234 tracks the language of section 3232, which was added a year earlier and places similar limitations on preexisting condition provisions in health insurance policies. Both statutes contain a portability provision requiring insurers to credit the time a person previously was covered under a comparable plan for purposes of determining the applicability of a preexisting condition provision (*see* Insurance Law § 3232 [a]; § 3234[a][1]). This portability feature was designed to enable individuals to change jobs or insurance plans without fear of having to wait for coverage to take effect. Most relevant to the issue here, both statutes also prescribe a 12-month maximum time frame for preexisting *668 condition provisions (*see* Insurance Law § 3232[b]; § 3234[a][2]).

...

In choosing to use the same "for a period in excess of twelve months" language in section 3234(a)(2) to define the time frame, the Legislature sought to create a similar tolling provision for preexisting conditions in group disability policies. We have observed in this regard that "whenever a word is used in a statute in one sense and with one meaning, and subsequently the same word is used in a statute on the same subject matter, it is understood as having been used in the same sense" (*Riley v. County of Broome,* 95 N.Y.2d 455, 466, 719 N.Y.S.2d 623, 742 N.E.2d 98 [2000] [internal quotation marks and citation omitted]). If insurers may exclude health coverage for up to 12 months under section 3232 but must pay benefits for medical claims related to preexisting conditions after that time period, the statute should operate the same way for group disability plans under section 3234(a)(2).

The **legislative history** buttresses our conclusion that section 3234 should be interpreted in a manner consistent with section 3232 (*see id.* at 463, 719 N.Y.S.2d 623, 742 N.E.2d 98 [noting that "the **legislative history** of an enactment may also be relevant and is not to be ignored, even if words be clear" (internal quotation marks and citation omitted)]). The Senate memorandum in support of the bill explains that it "adds a new section 3234 to the Insurance Law to establish similar standards for pre-existing conditions for disability insurance policies" (Senate Introducer Mem. in Support, Bill Jacket, L. 1993, ch. 650). Similarly, the Assembly sponsor described the bill as extending the standards applicable to preexisting conditions in health insurance policies to group disability *669 insurance policies (*see* Assembly Mem. in Support, Bill Jacket, L. 1993, ch. 650).

PEOPLE v. LITTO

8 N.Y.3D 692, 872 N.E.2D 848N.

The question posed in this case is whether a driver can be prosecuted under Vehicle and Traffic Law § 1192(3) for "driving while intoxicated" while under the influence of a drug or other unlisted substance. The People argue that subdivision 3 includes the voluntary use of any substance or agent that can render a person "intoxicated." Defendant asserts that "intoxication" under this statute applies only to alcohol. The **legislative history** of the statute and its scheme reveal that the Legislature's intent has been to treat a driver's use of alcohol differently from a driver's use of drugs, and that the prohibition of ****696*** driving while intoxicated under subdivision 3 of section 1192 is part of the strategy to prevent the "drinking driver" from using the roadways.

...

The Court's primary goal is to interpret a statute by determining, and implementing, the Legislature's intent. Analysis begins with the language of the statute itself. Next, in construing a statute, the courts frequently "follow the course of legislation on the subject, the lineage of the act being thought to illuminate the intent of the legislature" (McKinney's Cons. Laws of N.Y., Book 1, Statutes § 124, at 255; *see Matter of Tompkins County Support Collection Unit v. Chamberlin,* 99 N.Y.2d 328, 335, 756 N.Y.S.2d 115, 786 N.E.2d 14 [2003]; *Riley v. County of Broome,* 95 N.Y.2d 455, 463, 719 N.Y.S.2d 623, 742 N.E.2d 98 [2000]). The Court additionally looks to the purposes underlying the legislative scheme (*see Sheehy v. Big Flats Community Day,* 73 N.Y.2d 629, 634, 543 N.Y.S.2d 18, 541 N.E.2d 18 [1989]). That method is particularly apt in this case in which the Legislature itself, over the course of the century, has repeatedly refined the statute as society has evolved, science has progressed and new problems have emerged.

The plain meaning of the language of a statute must be interpreted "in the light of conditions existing at the time of its passage and construed as the courts would have construed it soon after its passage" (*People v. Koch,* 250 App.Div. 623, 624, 294 N.Y.S. 987 [2d Dept.1937]; *see People v. Broadway R.R. Co. of Brooklyn,* 126 N.Y. 29, 37, 26 N.E. 961 [1891]).

When enacted in 1910, section 290(3) of the Highway Law (precursor to section 1192) stated: "Whoever operates a motor ****698*** vehicle while in an intoxicated condition shall be guilty of a misdemeanor" (L. 1910, ch. 374, § 1, at 684, amending Highway Law of 1909 tit. 11 [L. 1909, ch. 30, 3 Birdseye, Cumming and Gilbert's Cons. Laws of N.Y., at 3622 (2d ed.)]). The law did not-as it does not today-define "intoxication." In *People v. Weaver,* 188 App.Div. 395, 399, 177 N.Y.S. 71 (3d Dept.1919), the court interpreted this statute by using "the ordinary speech of people." After citing to various dictionary definitions, the court adopted a rule that under Highway Law § 290(3), one is "intoxicated when he has imbibed enough liquor to render him incapable of giving that attention and care to the operation of his automobile that a man of prudence and reasonable intelligence would give" (*id.* at 400, 177 N.Y.S. 71). Black's Law Dictionary in 1910 defined "intoxication" as:

The **legislative history** of the 1941 amendment supports that interpretation. Dutton S. Peterson, the sponsor, wrote to the Governor:

"Since this bill has been approved by the highest medical authority, The American Medical Association, bar associations, police organizations, civic organizations, and

automobile clubs, and because of the need for a further curb on the drinking driver, I urge that you sign this bill.

***741 **853 "I have made an extensive study of this matter." (Letter from Assembly Sponsor, Apr. 19, 1941, Bill Jacket, L. 1941, ch. 726, at 39.)

*700 A "summary of evidence" is enclosed with that letter. Peterson notes that "different drinkers are differently affected by the same amount of alcoholic beverages," and, thus, "the only fair test of intoxication is to determine the degree of alochol [*sic*] concentration in the blood by scientific tests" (*id.* at 41). The percentages were arrived at through "careful study" and "thousands of medical tests" which were "not disputed by any reputable medical authority" (*id.* at 40, 41). Exhaustive studies were made by the National Safety Council (*id.* at 42). The American Medical Association noted the disability by prescribed drugs but used the term "intoxication" for the amount of alcohol in the blood (AMA, Report of the Committee to Study Problems of Motor Vehicle Accidents, May 1939, Bill Jacket, L. 1941, ch. 726, at 47-49). The Senate sponsor also sought the admission of scientific tests to prove intoxication to "cut[ ] down the number of injuries and deaths caused by the drunken drivers" (Letter from Senate Sponsor, Apr. 24, 1941, Bill Jacket, L. 1941, ch. 726, at 69).

Some voiced concern over the medical reliability of the tests and of the amounts of alcohol that would show intoxication. For example, one group noted that it had disapproved a previous 1938 bill because the medical profession was not "unanimous in its opinion as to the results obtainable from urine and blood tests," which, "according to some, are not determinative on the question of whether or not any *particular* person is intoxicated" (Mem. of Comm. on Crim. Cts. Law and Pro. of Assn. of Bar of City of N.Y., Bill Jacket, L. 1941, ch. 726, at 4-5; *see* Rep. of N.Y. County Lawyers' Assn., Comm. on State Legislation, Bill Jacket, at 7; Letter from Commr. of Taxation and Fin., Bill Jacket, at 25 ["while tests of the amount of alcohol in the blood may furnish valuable evidence as to intoxication, there ought to be supporting evidence to warrant a conviction"]).

This extensive documentation demonstrates that the legislative goal of strengthening the ability to prosecute for driving in an intoxicated condition was to address the drinking driver, not the driver who uses drugs. Only after studying exhaustive scientific and statistical tests confirming the validity of the percentages for blood alcohol content did the Legislature pass a law that would find intoxicated drivers liable for criminal penalties.

***742 **854 Opposed to the amendment, the New York State Automobile Association found fault with the difficulty of enforcement for such low amounts of alcohol in the blood and wondered why "little mention is made of the impairment produced by fatigue, tension, the taking of medicines or even indisposition caused by indigestion" (Letter from N.Y. State Auto Assn., Bill Jacket, at 12). The Governor's memorandum, however, indicated that the amendment

"provides a realistic approach towards reducing the tragic toll of death and injury caused by the drinking driver.

"Existing law has proved inadequate in this regard in that it is directed towards only the most serious offender, the driver with a blood-alcohol level of at least 0.15%. In requiring that the drinking driver be classified as a criminal, present law has not proved adequate to remove the drinking driver from our highways" (Governor's Mem. approving L. 1960, ch. 184, 1960 McKinney's Session Laws of N.Y., at 2002).

Two other groups also voiced concern in holding a person criminally liable for taking a drug when the driver had no intent to become impaired (Letter from State Adm'r of Jud. Conf., Apr. 12, 1966, Bill Jacket, at 21-22; Mem. of Supt. of N.Y. State Police, Mar. 31, 1966, Bill Jacket, at 30). Nothing in this Bill Jacket suggests that the provision on "intoxication" included a violation for use of drugs while driving. The **legislative history** is conclusive that the Legislature in 1966, like previous Legislatures, intended that "intoxication" refer to inebriation by alcohol. It appears that the Legislature did not want to penalize a driver who inadvertently took prescription drugs without knowing their side effects. In addition, the Legislature sought to limit criminalization by defining the drugs prohibited.

PEOPLE V. CHIDDICK
8 N.Y.3D 445, 866 N.E.2D 1039
N.Y.,2007. MAY 01, 2007

finally, the **legislative history** of the Penal Law ***448** shows that the motive of the offender may be relevant: the revisors' notes to the sections defining assault say that "petty slaps, shoves, kicks and the like delivered out of hostility, meanness and similar motives" constitute only harassment and not assault, because they do not inflict physical injury (*see* Staff Notes of Temp. St. Commn. on Rev. of Penal Law and Crim. Code, 1964 Proposed N.Y. Penal Law art. 125, at 330, quoted in *Matter of Philip A.,* 49 N.Y.2d at 200, 424 N.Y.S.2d 418, 400 N.E.2d 358). Motive is relevant because an offender more interested in displaying hostility than in inflicting pain will often not inflict much of it. Here, defendant's motive was to make Gentles let go of him: the whole point of the bite was to inflict as much pain as he could. Indeed, it seems unlikely that anything less than substantial pain would have caused Gentles, evidently a tenacious man, to release his hold.

PEOPLE V. KOZLOW
8 N.Y.3D 554, 870 N.E.2D 118
N.Y.,2007. APRIL 26, 2007

We begin with a brief observation about the ordinary meaning of the word "depict." While one meaning of "depict" is *represent in a picture,* and the etymology of the word lies in the Latin "pingere" ("to paint"), the word "depict" also has a standard sense of *represent or portray in words* and it has been used in that manner since the colonial era (*see* 4 Oxford English Dictionary 477 [2d ed. 1989]).

Turning to legislative intent, the purpose of the New York State Legislature in enacting Penal Law § 235.22 in 1996 (*see* L. 1996, ch. 600, § 6) may be discerned from the range of concerns expressed by its proponents and sponsors.

SPERRY V. CROMPTON CORP.
8 N.Y.3D 204, 863 N.E.2D 1012
N.Y.,2007.FEBRUARY 22, 2007

The Legislature enacted CPLR article 9 (§§ 901-909) in 1975 to replace CPLR 1005, the former class action statute. The prior class action provision, which remained largely unchanged through its various incarnations dating back to the Field Code of Procedure (*see* L. 1849, ch. 438, § 119), had been judicially restricted over the years and was subject to inconsistent results (*see generally Moore v. Metropolitan Life Ins. Co.,* 33 N.Y.2d 304, 313, 352 N.Y.S.2d 433, 307 N.E.2d 554 [1973] [noting***1015 ***763** "the general and judicial dissatisfaction with the existing restrictions on class action"]). Consequently, in 1975, the

Judicial Conference proposed a new class action statute that was designed "to set up a flexible, functional scheme whereby class actions could qualify without the present undesirable and socially detrimental restrictions" (13th Ann. Report of Jud. Conf. on CPLR, reprinted in 1975 McKinney's Session Laws of N.Y., at 1493). To that end, the Judicial Conference recommended*211 the enactment of CPLR 901(a), which specified the five prerequisites of numerosity, predominance, typicality, adequacy of representation and superiority.

While the Legislature considered the Judicial Conference report, various groups advocated for the addition of a provision that would prohibit class action plaintiffs from being awarded a statutorily-created penalty or minimum measure of recovery, except when expressly authorized in the pertinent statute (*see* Legislation Report No. 15 of Banking Law Comm., Business Law Comm. and Comm. on CPLR of N.Y. St. Bar Assn., Bill Jacket, L. 1975, ch. 207; Legislation Report No. 1 of Banking Law Comm. of N.Y. St. Bar Assn., Bill Jacket, L. 1975, ch. 207; Mem. in Opposition of Empire St. Chamber of Commerce, Feb. 14, 1975, Bill Jacket, L 1975, ch. 207). These groups feared that recoveries beyond actual damages could lead to excessively harsh results, particularly where large numbers of plaintiffs were involved. They also argued that there was no need to permit class actions in order to encourage litigation by aggregating damages when statutory penalties and minimum measures of recovery provided an aggrieved party with a sufficient economic incentive to pursue a claim. Responding to these concerns, the Legislature amended the legislation to include a new subdivision-CPLR 901(b), which reads: "Unless a statute creating or imposing a penalty, or a minimum measure of recovery specifically authorizes the recovery thereof in a class action, an action to recover a penalty, or minimum measure of recovery created or imposed by statute may not be maintained as a class action."

Assemblyman Stanley Fink, the bill's sponsor, explained the purpose of section 901(b):

"The bill, however, precludes a class action based on a statute creating or imposing a penalty or minimum measure of recovery unless the specific statute allows for a class action. These penalties or 'minimum damages' are provided as a means of encouraging suits where the amounts involved might otherwise be too small. Where a class action is brought, this additional encouragement is not necessary. A statutory class action for actual damages would still be permissible" (Sponsor's Mem., Bill Jacket, L. 1975, ch. 207).

Hence, the final bill, which was passed by the Legislature and approved by the Governor on June 17, 1975, was the result of a compromise among competing interests.

...

*214 The antitrust treble damages statute also does not state that such damages are compensatory (*compare Bogartz,* 293 N.Y. at 565, 59 N.E.2d 246). Nor does its **legislative history** clearly indicate a compensatory purpose. Read together, we conclude that Donnelly Act threefold damages should be regarded as a penalty insofar as class actions are concerned. Although one third of the award unquestionably compensates a plaintiff for actual damages, the remainder necessarily punishes antitrust violations, deters such behavior (the traditional purposes of penalties) or encourages plaintiffs to commence litigation-or some combination of the three. But we need not break down the remaining damages into specific categories for purposes of determining whether it is a penalty under CPLR 901(b). Where a statute is already designed to foster litigation through an

enhanced award, CPLR 901(b) acts to restrict recoveries in class actions absent statutory authorization

It is notable that the Legislature added the treble damages provision to the Donnelly Act shortly after having adopted CPLR 901(b). Clearly, the Legislature was aware of the requirement of making express provision for a class action when drafting penalty statutes, and could have included such authorization in General Business Law § 340.[FN7] In sum, it lies with the Legislature to decide whether class action suits are an appropriate vehicle for the award of antitrust treble damages. Indeed, the Legislature has contemplated adding such authorization on a number of occasions.[FN8]

...

FN8. In 1973 and 1974, bills died in committee that would have permitted class actions for the recovery of treble damages (*see* 1973 N.Y. Senate-Assembly Bill S 3544, A 4832; 1974 N.Y. Senate-Assembly S 3544, A 4832). Similarly, in 1975, while the Legislature was considering the treble damages bill that was eventually enacted, a separate proposal (1975 N.Y. Assembly Bill A 1215) would have expressly permitted class actions. More recently, bills to amend the Donnelly Act to create a class action provision in General Business Law § 340(7) have been considered a number of times (*see* 2002 N.Y. Assembly Bill A 11124; 2003 N.Y. Assembly Bill A 5158; 2005 N.Y. Assembly Bill A 663). The same proposal is currently pending (*see* 2007 N.Y. Assembly Bill A 396). Under the proposed amendment, General Business Law § 340(7) would provide: "Any damages recoverable pursuant to this section may be recovered in any action which a court may authorize to be brought as a class action pursuant to article nine of the civil practice law and rules."

NEW YORK CITY TRANSIT AUTHORITY v.
NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BD.
8 N.Y.3D 226, 864 N.E.2D 56 N.Y.,2007.

The text and **legislative history** of a later-enacted statute strongly support our conclusion that the Taylor Law does not confer a *Weingarten* right. In 1993, 26 years after the Taylor Law's enactment, and 18 years after *Weingarten,* the Legislature amended Civil Service Law § 75(2)-which applies to many, though not all, of the public employees protected by the Taylor Law-to add the following language:

...

The history of the 1993 legislation shows clearly that its supporters did not believe that any *Weingarten* right existed in New York law before 1993. The supporting memorandum of the Senate sponsor of the 1993 legislation says: "New York State public employees do not have the same protection enjoyed by private sector employees during interviews and discussions by their employers," and goes on to defend the idea of creating such a right with language taken from the Supreme Court's *Weingarten* decision (Senate Introducer Mem. in Support, Bill Jacket, L. 1993, ch. 279, at 22). A letter from a supporter of the legislation, the president of a civil service union, similarly notes that, under existing law, New York public employees lack the protections enjoyed by private sector employees, and adds: "This protection has been affirmed by the United States Supreme Court in *NLRB v. Weingarten* ...." (Letter from Joseph E. McDermott, President of Civ. Serv. Empls. Assn., Mar. 29, 1993, Bill Jacket, L. 1993, ch. 279, at 49; *see also* Letter from Stanley Hill, Exec. Director, Am. Fedn. of St, County & Mun. Empls., AFL-CIO, Dist. Council 37, July 13, 1993, Bill Jacket, L. 1993, ch. 279, at 59). We see no

basis for concluding that the supporters of the 1993 legislation misunderstood the existing law, and were wasting their time in changing it.

MERSCORP, INC. V. ROMAINE
8 N.Y.3D 90, 861 N.E.2D 81
N.Y.,2006. DECEMBER 19, 2006

The **legislative history** of the statute supports this interpretation. In 1951, Real Property Law § 321(3) was amended to, among other things, insert the term "of record" (L. 1951, ch. 159, § 1). The relevant memoranda submitted to the Legislature in connection with the amendment indicate that the term was inserted to "correct a difficulty" in complying with the statute (*see e.g.* Mem. in Support of Exec Secretary and Director of Research of Law Rev. Commn., Bill Jacket, L. 1951, ch. 159). Prior to the amendment, the statute required that a discharge certificate presented to the County Clerk either list all of the assignments in the chain of title or state that the mortgage was unassigned. [FN5] However, problems developed when an assignment, known to the person executing the discharge, was not in the chain of title. In those situations, the person executing the discharge would make the untrue statement that the mortgage was unassigned. Thus, the Legislature amended the statute allowing the discharge certificate to either list the assignments in the chain of title or to state that the assignment has not been made "of record." The MERS discharge complies with the statute by stating that the "mortgage has not been further assigned *of record* " (emphasis added) and, therefore, the County Clerk is required to accept the MERS assignments and discharges of mortgage for recording.

FN5. The purpose of such requirement was to facilitate the work of the recording officer in marking the record of the mortgage.

DAIMLERCHRYSLER CORP. V. SPITZER
7 N.Y.3D 653, 860 N.E.2D 705
N.Y.,2006. DECEMBER 14, 2006

When presented with a question of statutory interpretation, our primary consideration "is to ascertain and give effect to the intention of the Legislature" (*Riley v. County of Broome,* 95 N.Y.2d 455, 463, 719 N.Y.S.2d 623, 742 N.E.2d 98 [2000] [internal quotation marks and citation omitted]). The statutory text is the clearest indicator of legislative intent and courts should construe unambiguous language to give effect to its plain meaning (*see Majewski v. Broadalbin-Perth Cent. School Dist.,* 91 N.Y.2d 577, 583, 673 N.Y.S.2d 966, 696 N.E.2d 978 [1998]; *Matter of State of New York v. Ford Motor Co.,* 74 N.Y.2d 495, 500, 549 N.Y.S.2d 368, 548 N.E.2d 906 [1989]). At the same time, because the New Car Lemon Law is remedial in nature, it should be liberally construed in favor of consumers (*see Matter of White v. County of Cortland,* 97 N.Y.2d 336, 339, 740 N.Y.S.2d 288, 766 N.E.2d 950 [2002]). And where, as here, "the question is one of pure statutory reading and analysis, dependent only on accurate apprehension of legislative intent, there is little basis to rely on any special competence or expertise of the administrative agency"-in this case, the Attorney General's office (*Matter of Gruber [New York City Dept. of Personnel-Sweeney],* 89 N.Y.2d 225, 231, 652 N.Y.S.2d 589, 674 N.E.2d 1354 [1996] [internal quotation marks and citation omitted]).

...

Finally, the result we reach today is buttressed by the **legislative history** of the New Car Lemon Law, which indicates that a consumer's eligibility for relief under the statute arises upon a fourth unsuccessful repair attempt. The sponsors' memorandum in support of the legislation states:

"Presently, the Magnuson-Moss Act has a so-called 'lemon provision' which entitles the consumers to repair [or] replacement of a defective product. Unfortunately, the Magnuson-Moss Act fails to define a reasonable number of attempts to remedy defects. This bill contains clearly expressed guidelines in determining when a 'reasonable number' of repair attempts has been surpassed" (Sponsors' Mem., Bill Jacket, L. 1983, ch. 444).

It further explains that the New Car Lemon Law would require "the manufacturer to replace the automobile or refund to the consumer the full purchase [price] after four attempts have been made to repair the car or after the car has been out of service for a total of 30 or more days" (*id.*). In contrast, nothing in the **legislative history** indicates an intention to require consumers to leave their vehicles in disrepair pending arbitration or trial.

PEOPLE V. CAGLE
7 N.Y.3D 647, 860 N.E.2D 51
N.Y.,2006. NOVEMBER 20, 2006

Focus on the plain purpose of Penal Law § 70.06 also leads us to reject defendant's argument. The statute is intended "to deter recidivism by enhancing the punishments of those who, having been convicted of felonies, violate the norms of civil society and commit felonies again" (*People v. Walker,* 81 N.Y.2d 661, 665, 603 N.Y.S.2d 280, 623 N.E.2d 1 [1993]). To avoid enhanced punishment, prior felons must demonstrate their ability to live within the norms of civil society for 10 years. Plainly, time spent serving a sentence of imprisonment does not satisfy this requirement. That the Legislature has spoken in terms of time "incarcerated" does not compel us to limit the term to "behind bars" (*cf. People v. Love,* 71 N.Y.2d 711, 530 N.Y.S.2d 55, 525 N.E.2d 701 [1988] [periods***54 ***592 of wrongful incarceration are not included in the statutory toll]). Rather, we conclude that defendant should be considered incarcerated until he completed his sentence of imprisonment for the prior crime and was released into parole. Indeed, the sparse **legislative history** supports this sensible construction: " The alleged second felony offense must occur within 10 years after the defendant was released from a prison term on the first felony" (Governor's Mem. approving L. 1973, ch. 277, 1973 N.Y. Legis. Ann., at 4).