



# Lawsuit Reform Alliance of New York

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## OPPOSE

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<b>BILL:</b>	<b>S.2407 (Comrie)/A.679 (Niou)</b>
<b>SUBJECT:</b>	<b>Expansion of the General Business Law</b>
<b>DATE:</b>	<b>February 4, 2019</b>
<b>CONTACT:</b>	<b>Adam Morey</b>

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### Summary:

This legislation broadly expands the standards for lawsuits under the General Business Law (GBL) to include “unfair, unlawful, deceptive or abusive” acts or practices; increases minimum statutory damages by 2000%, from \$50 to \$2000; bars federal regulatory compliance as a defense in actions arising from interstate commerce; repeals the law's treble damages provision to allow judicial discretion in final damage awards; allows third-party organizations to sue without any connection to the alleged harm; allows actions regardless of whether the alleged violation is consumer oriented or has any discernible public impact.

### Why we strongly oppose this legislation:

#### ***Radical Expansion of the Law Opens the Flood Gates for Litigation***

- Under current law, GBL 349 is violated when an act is found to be "deceptive." The proposal at hand expands violations to cover "unfair, unlawful, deceptive, or abusive acts or practices" in ways that expose businesses to liability without the establishment of causation or proof of an actual injury. The term "unlawful" is especially troubling as this provision creates a private cause of action that effectively allows private attorneys, with no accountability to the public, to file lawsuits for alleged infractions that are more appropriately evaluated and enforced by the Office of the Attorney General or a government agency of proper jurisdiction. The bill also raises constitution concerns as it strips defendants of important due process rights by creating unpredictable penalties by giving open-ended discretion judges to increase damage awards. Another concerning provision extends the ability to sue under the statute to organizations that have no connection to the harm alleged.

#### ***Detrimental Impact on Economic Activity, Employment, and State Revenues***

- The explosion of litigation caused by this legislation will have a significant impact on New York's business climate and economic well-being. New York's tort system is already ranked as the most costly in the nation, with a \$6,600 per household annual price-tag.<sup>1</sup> Due to the state's already permissive laws, 22% of all food-marketing lawsuits nationwide are hosted in New York's federal courts.<sup>2</sup> Four of 10 of the Institute for Legal Reform's annual list of "most ridiculous lawsuits of 2018 were filed in New York courts."<sup>3</sup> Independent of the direct costs this legislation would place on businesses, the enactment of such a proposal would send a hostile message to job creators looking to invest, locate, or even remain in New York.

#### ***Disproportionate and Astronomical Liability in Class Actions***

- Current law allows for consumers to sue for actual damages or \$50, whichever is greater. That \$50 minimum is intended to provide a sufficient monetary incentive for individual consumers to seek recovery stemming from small purchases. This legislation proposes to increase that figure to \$2000, which means, when class actions are filed in New York federal courts each class member will be entitled to a whopping \$2000 each, even if the alleged injury is derived from a purchase of less than one dollar.

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<sup>1</sup> Hinton, P., McKnight, D., Powell, L. (2018) [Costs and Compensation of the US Tort System](#). Institute for Legal Reform.

<sup>2</sup> Silverman, C. & Muehlberger, J. (2017) [The Food Court: Trends in Food and Beverage Class Action Litigation](#). Institute for Legal Reform.

<sup>3</sup> Marsh, J. (2018, Dec. 20) [Nearly half of the world's 'most ridiculous' lawsuits were filed in NY](#). New York Post.

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The Lawsuit Reform Alliance of New York is a not-for-profit association of businesses, healthcare providers, membership organizations, and concerned citizens dedicated to reform of the legal system in order to foster a better business climate and address the growing cost of lawsuit abuse.