



Lawsuit Reform Alliance of New York

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OPPOSE

BILL: S.6216 (Bailey) / A.5623A (Weinstein)
SUBJECT: Private lawsuits for insurance "bad faith"
DATE: June 14, 2019
CONTACT: Adam Morey

Summary:

This legislation would create a private right of action for policyholders to directly sue insurers for alleged unfair claim settlement practices.

Why we oppose this legislation:

Incentivizes meritless litigation

- This legislation is problematic because it fails to provide any safeguards against meritless litigation. Worse, by providing for treble damages and attorneys fees, the proposed legislation would increase incentives to file speculative or weak lawsuits and reduce the likelihood that insurers will aggressively investigate potentially fraudulent claims.

Increases costs to New York policyholders

- A rise in questionable litigation and insurance fraud will drive up premiums. California courts briefly recognized a private cause of action for insurance bad faith (1979-1988)¹, which was ultimately reversed, citing "undesirable social and economic effects."² Studies estimate that the impact of authorizing private actions was a 11-19% in total insurance premiums for California consumers.³ This legislation would have a similar effect in New York, where insurance rates are already among the highest in the nation.

Reduces accountability to the public

- Enforcement and punishment of unfair claims settlement practices is currently the purview of the Superintendent of the Department of Financial Services—an accountable public servant. Enforcement actions are transparent, and the Superintendent has a sworn duty to act in the public interest. This legislation would grant enforcement powers to private attorneys, who act in the interest of creating profit, not the interest of public good. Moreover, private litigation lacks transparency—private settlements are not often publicly disclosed, and there is little way to determine if the litigation is serving the public's best interests.

Provides little additional benefit to consumers

- In addition to enforcement actions by the DFS Commissioner, policyholders in New York already have a private cause of action for insurance bad faith under contract law. The proposed legislation creates serious unintended consequences, but fails to provide additional protections for consumers.

¹ *Royal Globe Insurance Company v. Superior Court*, 952 P.2d 329 (Cal. 1979).

² *Moradi-Shalal v. Fireman's Fund Ins. Co.*, 758 P.2d 58 (Cal. 1988).

³ Hawken, Carrol, and Abrahamse. *The Effects of Third Party, Bad Faith Doctrine on Automobile Insurance Costs and Compensation*. RAND Institute for Civil Justice, 2001.

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.