



# Lawsuit Reform Alliance of New York

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# OPPOSE

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**BILL:** S. 5642 (Thomas) / A. 8526 (Rosenthal)  
**SUBJECT:** Enacts NY privacy act  
**DATE:** November 22, 2019  
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## Summary:

This legislation would authorize a private right of action which would allow private plaintiffs to sue for data privacy violations, a responsibility that appropriately resides with the Attorney General and government regulators.

## Why We Strongly Oppose this Legislation:

### **Private Attorneys are Not Accountable 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. Current 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 profit, not the public good. Moreover, private litigation lacks transparency—private settlements are not often not publicly disclosed, and there is little way to determine if the litigation is serving the public’s best interests.

### **Private Rights of Actions Do Not Enhance Consumer Privacy**

- The Institute for Legal Reform has examined the effect of private rights of action on privacy protections under four different statutes, and the findings are clear: “statutory private rights of action are inefficient and ineffective for addressing privacy concerns.”<sup>1</sup> The federal Telephone Consumer Protection Act, or TCPA, is an example of breaches of privacy as a result of a private right of action. The Second Circuit recently held in *Melito v. Experian Mktg. Solutions, Inc.*, that TCPA plaintiffs who receive an unsolicited text messages meet the Article III injury-in-fact requirement, even without alleging any other harm, because such texts are a “nuisance and privacy invasion.”<sup>2</sup>

### **Private Rights of Action Undermine Appropriate Agency Enforcement**

- Private Rights of actions allow plaintiffs’ lawyers to set policy nationwide rather than allowing expert regulators to shape policy and protections. By contrast, statutes enforced exclusively by agencies are appropriately guided by experts in the field who can be expected to understand the complexities of encouraging compliance and innovation while preventing and remediating harms.<sup>3</sup>

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<sup>1</sup> US Chamber Institute for Legal Reform. “Ill-Suited Private Rights of Action and Privacy Claims,” July 2019. [https://www.instituteforlegalreform.com/uploads/sites/1/Private\\_Rights\\_of\\_Action\\_-\\_Ill\\_Suited\\_Paper.pdf](https://www.instituteforlegalreform.com/uploads/sites/1/Private_Rights_of_Action_-_Ill_Suited_Paper.pdf).

<sup>2</sup> *Melito v. Experian Mktg. Solutions, Inc.*, No. 17-3277-cv(L), 2019 WL 1906087, at \*5 (2d Cir. Apr. 30, 2019).

<sup>3</sup> See, e.g., International Collaboration To Protect Children’s Privacy, fed. trade Comm’n (May 11, 2015) (“The Federal Trade Commission [which enforces COPPA] and 27 members of the Global Privacy Enforcement Network (GPEN), a group of privacy enforcement agencies around the world, are marshaling resources to protect the privacy of children online ... In this latest initiative, privacy experts

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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, promote job growth and address the growing cost of lawsuit abuse.