



# Lawsuit Reform Alliance of New York

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# OPPOSE

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**BILL:** S.3551 (BRESLIN) / A.2540 (Weinstein)  
**SUBJECT:** Private right of action for insurance “bad faith”  
**DATE:** February 11, 2021  
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## **Summary:**

This legislation would authorize a private right of action to allow policy holders to sue insurers for alleged unfair claim settlement practices and the insurer failed to offer favorable accommodations to the policy holder over its own interests. The plaintiff would be able to recover damages in excess of the insurance policy limits.

## **Why we strongly oppose this legislation:**

### ***Incentivizes Meritless Litigation***

- This legislation is problematic because it fails to provide any safeguards against meritless litigation. Simply inserting a clause expressly permitting private actions into the Insurance Law would have serious unintended consequences. The definition of what constitutes an “unfair claim settlement practice” is subjective and lacks specificity. It is virtually certain that this vague definition would spur opportunistic litigation. The proposed legislation would increase incentives to pursue weak claims, increase incentives to commit insurance fraud, and reduce the likelihood that insurers will aggressively investigate potentially fraudulent claims.

### ***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. 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 not publicly disclosed, and there is little way to determine if the litigation is serving the public’s best interests.

### ***Increases Costs to New York Policyholders***

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

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

<sup>2</sup> *Moradi-Shalal v. Fireman’s Fund Ins. Co.*, 758 P.2d 58 (Cal. 1988).

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

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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.