

LAWSUIT REFORM ALLIANCE OF NEW YORK

OPPOSE

BILL NUMBER: S.298 (THOMAS) / A.2265 (Niou)
SUBJECT: Cause of Action for Medical Monitoring
DATE: March 8, 2021
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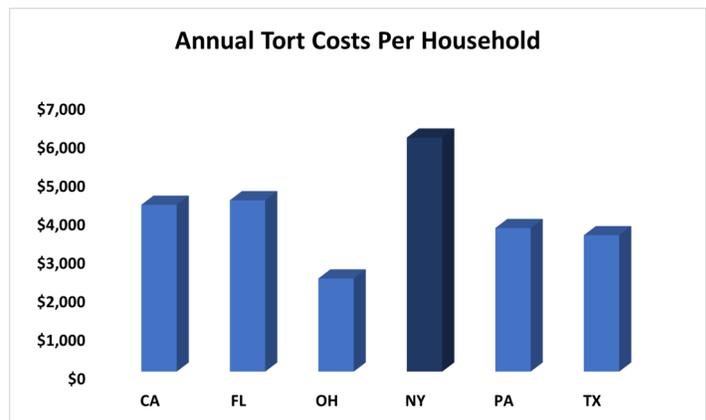
Summary:

This legislation would establish a cause of action for medical monitoring even if the plaintiff exhibits no injury or disease. The bill would also change the statute of limitations for such actions.

Why we strongly oppose this legislation:

Expansion of the Law Would Increase Costs to Taxpayers and Consumers

- Expanding existing law for no-injury claims would lead to a deluge of speculative lawsuits. As we have seen with claims under the Americans with Disabilities Act, many of these claims would be driven by attorneys, not consumers. New York leads the nation in those claims and already leads the nation in annual “tort costs” a figure that includes legal costs, settlements, insurance costs, and litigation against public entities.^{1,2} This legislation would undoubtedly increase those costs, putting further burden on New York households for the benefit of enterprising attorneys.



Source: Institute for Legal Reform

Only Speculative Lawsuits Would Be Brought Under this Statute

- This bill expressly permits lawsuits where there is no perceivable injury. Such lawsuits set a dangerous precedent for our court system. With no evidence of injury required, juries may approve medical monitoring verdicts simply because the standard of evidence under this statute is so low. Indeed, it is lack of evidence that is driving this legislation in the first place.

Monitoring Should Be the Purview of State Agencies

- The Department of Environmental Conservation, the Department of Health, and other state agencies should be the entities responsible for monitoring, not profit-seeking attorneys. If injuries are discovered by these entities, then actions can and should commence.

¹ Vu, Minh, “2019 Was Another Record-Breaking Year for Title III ADA Lawsuits,” Sayfarth Shaw, February 2020

² “Cost and Compensation of the U.S. Tort System,” Institute for Legal Reform, U.S. Chamber of Commerce, October 2018