



October 17, 2023

via email: [legislative.secretary@exec.ny.gov](mailto:legislative.secretary@exec.ny.gov)

Hon. Elizabeth Fine  
Counsel to the Governor  
NYS Capitol - Executive Chamber  
Albany, New York 12224

Dear Ms. Fine:

**RE: S7476 (Senator Hoylman-Sigal) / A7351 (Member of Assembly Weinstein)  
The Foreign Corporation Jurisdiction Act**

*AN ACT to amend the civil practice law and rules, the business corporation law, the general associations law, the limited liability company law, the not-for-profit corporation law and the partnership law, in relation to consent to jurisdiction by foreign business organizations authorized to do business in New York.*

Thank you for providing us with the opportunity to offer comments on this extremely important but very harmful bill.

The New York Insurance Association (NYIA), the state trade association that has represented the property and casualty insurance industry in New York for more than 140 years, **strongly OPPOSES** the above-captioned bill to amend several sections of state law, to mandate consent to jurisdiction by foreign business organizations authorized to do business in New York.

More specifically, this bill would amend section 301-a of the civil practice law and rules, section 1301 of the business corporation law, section 18 of the general associations law, section 802 of the limited liability company law, section 1301 of the not for profit corporation law, section 121-902 and 121-1502 of the partnership law, to mandate that a business organization, not chartered or established in New York, but which maintains authority to do business in this state, shall be deemed by means of its application to do business in New York, to have consented to the jurisdiction of the courts of this state for all actions against such business organization.

This bill would provide that a surrender of such application to do business in New York, shall constitute a withdrawal of consent to jurisdiction.

This legislation, though well intentioned, presents several practical and constitutional issues, for little actual benefit, and for questionable rationale.

First, by its very terms, this bill would only apply to jurisdiction in civil matters, as jurisdiction by state prosecuting entities in claims involving criminal allegations against such foreign business organizations, has already been clearly demonstrated, and is not the subject of this proposed legislation.

Accordingly, this bill would only apply to civil litigation. But civil litigation, is primarily an issue of commercial concern, and does not hold the same level of state interest, or constitutionality.

Indeed, in the sponsors' own memo, they freely admit, that the Supreme Court of the United States, and well as several New York State Courts, have already recognized the right of foreign business entities, as well as New York business organizations, to contractually agree to have their operations, contracts and businesses, subject to the laws and civil jurisdictions of other states and nations.

There are many reasons for the long standing principle of allowing private business entities to locate and select the law that will apply to their transactions and operations, including, but not limited to the fact, that litigants who might have a dispute with such business organizations can always choose to bring a cause of action against such organization in either federal court (under diversity principles) or in the courts under which such out of state organization is located.

Accordingly, despite the claims of the sponsors, such claimants are never without remedy. Enacting this bill would make New York State a sad outlier in the world of business, eroding our already challenging business climate. By its terms, it would force out of state, and multinational businesses, to face serious additional challenges, when deciding whether or not to do business in New York, and offer their products and services to our citizens.

At a time when the out migration of people and businesses from New York is occurring at an alarming rate, it is far from prudent public policy, to chase even more business opportunities and jobs away from our state.

With respect to insurance, a well recognized state regulated business, under the McCarran Ferguson Act, this bill could not have more of a serious impact. By its terms, it will not help in the regulation of out of state insurers, which is already assured under current law, but rather, will simply present yet another serious legal and jurisdictional impediment to the New York State business operation of out of state insurers.

The result of this bill will be to create a climate that assures fewer insurance products and opportunities are offered to New York customers. And if this bill causes fewer insurers to operate in New York, it will limit the types of insurance products, decrease availability and affordability of insurance products, decrease competition, and increase the overall cost of insurance.

None of these possible impacts are good for New York insurance consumers. Accordingly, this bill bears no measure of sensible responsibility, and all for an undefined, dubious benefit. Even without this bill, under current law, aggrieved parties may still pursue a civil recovery.

But what this bill will do, is to limit the commercial and legal choices of out of state businesses, who might otherwise wish to do business in, and employ, in New York State. By its terms, this legislation would mandate that all out of state businesses must automatically choose New York State as their jurisdiction, despite the potential, beneficial contractual agreement of all parties concerned. Such a

policy is both practically unwise for the recruitment and retention of business, as well as being constitutionally circumspect.

As a result, this bill has not been thoroughly considered as to its many possible negative impacts, and its unnecessary, costly, and overhanded mandates, that could well prove far more harm than good.

**Accordingly, for all the foregoing reasons stated above, NYIA respectfully requests, the Governor not to sign, and to issue a veto on, this bill.**

Sincerely,

A handwritten signature in black ink that reads "Ellen Melchionni". The signature is written in a cursive, flowing style.

Ellen Melchionni  
President

cc: Bella Satra, Esq., Assistant Counsel to the Governor