



## **MEMORANDUM IN OPPOSITION**

A5646-A (Cook) / S5591-A (Comrie)

AN ACT to amend the insurance law, in relation to the collateral estoppel effect of issues decided by certain arbitrators

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, is strongly **OPPOSED** to the above-captioned bill.

This bill would amend section 5106 of the insurance law, to restructure the current very fragile No-Fault Automobile Insurance Law, so as to eliminate the critically important collateral estoppel principle, currently used in arbitration for No-Fault Cases.

More specifically, this bill would essentially dramatically disrupt New York's No-Fault Law, that has proven of great benefit to consumers since its enactment in the 1970s. This law, intended to remove minor claims and non-serious injuries that often result from motor vehicle accidents, from the civil litigation system, has led to only serious accidents and injuries ending up in litigation, with the faster resolution of claims for victims and the concomitant large scale insurance premium savings for consumers.

To reverse this system, which this bill seeks to do, would result in dramatically expanded civil litigation all across New York, together with skyrocketing insurance premiums for drivers everywhere in our state.

One of the most effective mechanisms used in the No-Fault system is the process of arbitration. In many ways, this alternative to a civil court action, leads to faster, fairer, less expensive decisions, which significantly benefit both accident victims and insurers.

This bill would simply shatter this system, by legally prohibiting the use of collateral estoppel in such No-Fault cases. By so doing, this bill would use this prohibition to drive all the cases determined through the current fair, effective, and efficient arbitration system, back into the court room, which was the very purpose of No-Fault to prevent.

Advocated for by the trial lawyers, this bill benefits neither accident victims, nor premium paying drivers in New York. Indeed, the only persons it does help, are the case churning members of the trial bar, who are seeking to manufacture yet another source for their contingency fees.

By eliminating the use and evidence of duly adjudicated arbitrations, this bill will absolutely blow up New York's already very fragile No-Fault System, and lead us back to the litigation morass that clogged the courts and slowed victim recoveries back in the pre No Fault 1970s. It is an ill-conceived bill that will have devastating effects for insurance rates, and accident victims in New York State.

Although not a perfect system, No Fault has been successful to deliver fast, just results for both accident victims and all insurance purchasing drivers in New York. A lynchpin of this system is the arbitration process, which this bill would effectively end. For as any attorney recognizes, by prohibiting the use of collateral estoppel, the very effectiveness and force of the arbitration is eliminated.

Accordingly, there is absolutely no reason for this bill, which would cause great harm to both victims of automobile accidents, as well as drivers who wish to purchase affordable coverage for their car and personal injury, and as such, for the reasons stated above, **NYIA strongly urges the Legislature to not enact this measure.**