New York Insurance Association

MEMORANDUM IN OPPOSITION

A7351 (Weinstein) / S7476 (Hoylman-Sigal)

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.

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 further provide that a surrender of such application to do business in New York shall constitute a withdrawal of consent to jurisdiction.

This bill presents several practical and constitutional issues for little dubious benefit, and questionable reasons.

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.

Civil litigation on the other hand, 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, placing a serious and unnecessary cloud upon 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 present a serious legal and jurisdictional impediment to the New York State business operation of such out of state insurers. Such promises to assure fewer insurance products and opportunities are offered to New York customers. For 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. Aggrieved parties may still always recover without its enactment, and mandating that all out of state businesses must automatically chose New York State as their jurisdiction of choice, despite the potential contractual agreement of all parties concerned, is both practically and constitutionally circumspect. This bill has not been thoroughly considered as to its many possible negative impacts, and its unnecessary, costly, and overhanded mandates, that can well prove far more harm than good.

As a result, for all the foregoing reasons stated above, NYIA strongly urges the Governor to veto this bill.

130 Washington Avenue • Albany, New York 12210
518.432.4227 • info@nyia.org • www.nyia.org