S.6813-A (Ramos) / A.7285 (Weinstein)

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BILL

S.6813-A (Ramos) / A.7285 (Weinstein)

SUBJECT

Fair Settlement Private Right of Action

DATE

May 24, 2021

OPPOSE

The Business Council opposes S.6813-A (Ramos) / A.7285 (Weinstein), which would among other things, create a private right of action against an insurer based on claims that the insurer failed to effectuate a prompt and fair settlement – defined broadly under a long list of criteria. In addition to the ability to sue under an overly broad set of actions, a plaintiff could also seek punitive damages, driving the costs of insurance up by billions annually for all New Yorkers, in a state that already leads the nation in cost of insurance.

This bill is duplicative and unnecessary. New York's common law already provides a remedy for the recovery of extra-contractual compensation under the holding in *Bi-Economy Market v. Harleysville*, 10 NY3d 187 (2008). Further, just five years ago, the courts extended these remedies to third party liability cases, see *Mutual Association Administrators v. National Union Fire Insurance Company*, 118 AD3d 856 (Appellate Division, Second Department, 2014). Moreover, The Department of Financial Services (DFS) already possesses the authority to penalize insurers for unfair claims settlement practices. A simple search on DFS's website will yield the fact that the regulator has taken this job both seriously and actively, fining companies millions of dollars over the last several years.

New York would not be a case of first impression as to the impact of an unnecessary private right of action for unfair claim settlements. In the 1990s California's Supreme Court allowed third-party bad faith lawsuits to be pursued. Bodily injury claims immediately began to rise and bodily injury insurance premiums increased by 50% during the decade that such actions were allowed. After learning this expensive lesson, California repealed these private rights of action. Other states, such as Florida and West Virginia have had similar experiences with more than 30% increases in premium, moving West Virginia to repeal such law.

While these other states' experiences may serve as warning, it is worth noting that New York's experience will likely be far more damaging for two reasons. First, New York is already an outlier in insurance costs and second, the standards set forth in this legislation are broader than they were in the states mentioned. The bill lacks exceptions or limitations for cases in which liability is not clear, nor is there any exception or limitation where the insurer suspects fraud, arson or other policyholder wrongdoing. Accordingly, a claim could arise anytime someone alleges that a settlement is not "prompt and fair." The flood of lawsuits that will arise is not an unforeseen consequence, but rather, a further attempt to enrich those who use New York's judicial system as a profit generating industry.

This bill is bad policy at the worst time. Taxing New Yorkers by driving up insurance costs for all New Yorkers to benefit the few when so many businesses and individuals are struggling to recover from the economic crisis caused by the pandemic, is dangerous to recovery and counterproductive.

For these reasons, The Business Council opposes S.6813-A (Ramos) / A.7285 (Weinstein).