

William Parra
(646) 232-3683
wparra@gvlaw.com

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Via E-Mail: Legislative.Secretary@exec.ny.gov

Governor of New York State
NYS Capitol Building
Albany, N.Y. 12224
Attn.: The Honorable Kathy Hochul

Re: Bill No. S7052/A8041- Comprehensive Insurance Disclosure Act

Dear Governor Hochul:

We represent several national and regional insurance carriers that issue policies and otherwise do business in the State of New York, and their insured business owners, corporations, residential and commercial real estate owners, contractors of every specialty and individuals of every profession, socio-economic level and background.

We are in receipt of Dan D. Kohane's December 27, 2021 correspondence to you, and join in his and others' petition that you veto S7052/A8041, the Comprehensive Insurance Disclosure Act (the "bill"), which was recently presented to you for review. As members of the New York State Bar that specialize in insurance defense and insurance coverage matters, we can attest to the fact that Mr. Kohane's petition raises several material, unduly burdensome and potentially unmanageable burdens that this bill will impose, not only on insurers but on insurance coverage and civil suit defendants of all types, businesses and individuals big and small, of means and without.

We respectfully submit that however well-intentioned the bill may be, any objective review of the litany of new insurance disclosure requirements it imposes will find them either unreasonably burdensome, unnecessary and/or possibly unattainable. They will impact a broad range of court litigants, the potential number and scope of which cannot be understated. Public hearings and debate on the impact of such far-reaching legislation is imperative to identify and hopefully find a balanced, equitable approach to addressing and enforcing the insurance disclosure requirements the bill contemplates.

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It is a particularly inopportune time for legislation such as this which, rather than decreasing unnecessary litigation over the range of many insurance-related matters, will only create issues and add, significantly and unnecessarily, to the State Courts' dockets, already overburdened by the impact of pandemic-related restrictions. It would stand in direct contrast to the trend, forced by the pandemic but so needed and overdue, of streamlining the Courts' litigation process by incorporating the use of virtual appearances and stipulated discovery orders, in lieu of time-consuming court conference appearances.

The impact of the bill in its present form will be to place unreasonable obligations on insurers and civil defendants of all manners that, when not met, will provide claimants an easier road to recovery via a foreseeable increase in non-compliance sanctions. Our State follows a public policy rationale that favors the determination of litigation on the merits, rather than as a result of strict discovery and other default-related sanctions. However, if the point of the bill is that compliance with these additional disclosure requirements will generally foster the pursuit of justice in our Courts, then the equitable way forward is to provide such disclosure requirements and sanctions that equally impact all litigants, not just defendants.

Moreover, the increased cost of compliance on litigants and the litigation process cannot be understated. Against our own interest, we note that the biggest benefactors of the bill in its present form are not the claimants whose attorneys for some reason do not find the present insurance-related discovery provisions and decisional case law adequate to obtain the information required by the bill, without adding 30 and 60 day on-going obligations on defendants to certify that the specified disclosure is and remains "accurate and complete."

The "winners" of this bill, if passed in its current form, will ultimately be the insurance coverage attorney practice, whose workload will significantly increase as a result of the excessive, on-going analysis, monitoring and compliance burdens it imposes. Insurers can afford the cost of this additional work but will pass it along to their insureds as a cost of business, resulting in increased insurance procurement costs. Many individual litigants do not have the ability to pass on these added costs, requiring them to absorb them and creating a disincentive for some to seek consideration, resolution and relief from our State's Court system.

Some would also refer to this bill and its effect as a "recessive tax," disproportionately impacting the lower income litigant. The reality is that as insurance coverage attorneys, when we step back from considering the range of issues raised and burdens imposed by this bill, our next thought is to try to quantify how much this bill may increase the demand for insurance coverage work. I know that insurance coverage attorneys' personal interest was the last thing the drafters and proponents

of this bill had in mind when they drafted and proposed it. But that is the very point. The lack of deliberation and debate over this bill, public or otherwise, has resulted in a bill whose impact has not been fully thought out or considered.

There is no disputing that the will of the People should rightfully be expressed and carried out via our democratically-elected legislators' proposal of bills and the results of their votes on same. As citizens of this great Country and State, we are blessed by the legacy of a genius form of government that our forefathers gobbled together, on which our State's form of government is modeled. And in our form of government, the executive is empowered with a check on the legislature's authority and power for a reason. We respectfully submit that a delay to reconsider the impact, burdens and costs imposed by this comprehensive, far-reaching bill is the very reason the State's executive branch is empowered with veto power.

We therefore join with the NY Insurance Association, American Property and Casualty Insurance Association and National Association of Mutual Insurance Companies in respectfully requesting that Your Honor refrain from signing this bill into law, to allow for more thorough and careful consideration and debate as to what reforms are justified and would best benefit the litigation process in this area, in the best interests of the Citizens of our great State. That should and must be the bar for any such modification to existing law in this important and impactful area of law.

Thank you for your consideration.

Very truly yours,

GALLO VITUCCI KLAR LLP



William Parra

cc: Paul W. Ryan, Esq.
Assistant Counsel to the Governor, Financial Services
Via E-Mail: Paul.Ryan@exec.ny.gov