

FDCC Insurance Industry Institute - 2022  
New York Property & Casualty Legislative & Regulatory Update  
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**Pending/Recently Enacted Bills:**

[S4254](#)(Gianaris)/[A4075](#)(Glick): Prohibits insurers from refusing to issue or renew, cancel, or charge or impose an increased premium for homeowners' insurance policies based on the breed of a dog owned. L.2021; c.545.

[S5760A](#)(Breslin)/[A3222](#)(Hunter): Authorizes catastrophic business interruption insurance as a non-basic type of insurance. L.2021;c.359.

[S4483](#)(Breslin)/[A4672](#)(Cahill): Allows banks and credit card companies to offer insurance for wireless communications equipment. L.2021; c.307.

[S7052](#)(Gounardes)/[A8041](#)(Lunsford): Would require mandatory disclosure of insurance policies under which any person or entity may be liable to satisfy part or all of a judgment within 60 days of serving an answer; would include the application for insurance as part of the policy or policies to be disclosed; would require disclosure to plaintiff's attorney of contact information of the adjuster or third party administrator; would also require the defendant to certify as to policy erosion impacting disclosed policies.

[S4326](#)(Breslin)/[A5379](#)(Hunter): Would allow consumers to obtain policies with terms of less than one year where the insured requests such a policy from an insurer offering such a policy.

[S653A](#)(Sanders)/[A651A](#)(Rosenthal, D): Would permit insurance notices and documents to be delivered to the policyholder via electronic means, including posting to the internet, and with clear and conspicuous notice on the subject line, with policyholder consent.

[S6715](#)(Breslin)/[A2349A](#)(Rodríguez): Would enact the peer-to-peer car sharing program act, including additional insurance minimums of \$1.25MM for death, bodily injury, or property damage, as well as for SU/SUM occurring during the car sharing period.

[S473](#)(Hoylman)/[A2199](#)(Cruz): Would establish pre-judgment interest from the date of entry of the denial of a motion for summary judgment where the plaintiff prevails on appeal of such denial for summary judgment.

[S5724A](#)(Thomas)/[A6474A](#)(Weinstein): Would establish two-percent as the statutory rate of judgment interest on money judgments involving consumer debt against a natural person.

[S7093](#)(Hoylman)/[A8040](#)(Dinowitz): Would expand the hearsay rules to allow the admission of an opposing party's statement into evidence if the statement was made by an agent or

employee within the scope of that relationship and during the existence of that relationship. NB: Program Bill, Office of Court Administration

## INTRODUCED

### **COVID-19**

[A41](#)(Cahill): Would direct the department of financial services (DFS) to study and report upon the adequacy and affordability of business interruption insurance coverage for pandemics, viruses and other public health emergencies.

[S847](#)(Gounardes)/[A498](#)(Carroll): Would require (including retroactively) business interruption insurance to cover disease outbreaks such as COVID-19 for employers including non-profits with 250 or less employees, and establish that denying such coverage based on a disease outbreak is against public policy.

[A871](#)(Carroll): Would authorize and direct the department of financial services to require insurers to make insurance premium refunds and other adjustments for all policyholders adversely impacted by COVID-19, i.e. auto, workers' comp, etc.

[S4711](#)(Gounardes)/[A1937](#)(Carroll): Would retroactively include coverage for business losses due to COVID-19 to any employer with 250 employees or less, which had business interruption coverage when the state of emergency was declared in New York on March 7, 2020.

[S1741](#)(Skoufis)/[A1595](#)(Gottfried): Would allow individuals and businesses that have experienced financial hardship due to COVID-19 to defer premium payments until the end of the COVID-19 period. NB: New York COVID-19 state-of-emergency declared on March 7, 2020 and not renewed as of June 24, 2021.

[S1241](#)(Ramos)/[A6117](#)(Simon): Would include exposure to COVID-19, as an occupational disease for which compensation shall be payable for disabilities sustained or death incurred by an employee.

[S2560](#)(Jordan)/[A4102](#)(DiPietro): Would limit civil liability of employers and employees for the spread or possible transmission of COVID-19 caused by an act or omission while acting in good faith.

### **Auto:**

[A101](#)(Cahill): Would repeal no-fault auto insurance five years after the effective date of the bill, i.e. would establish a five year period to develop a system to replace no-fault before repeal takes effect.

[S3553](#)(Breslin): Would provide for comprehensive no-fault reform including limitations on the assignment of benefits, lifting preclusion, shifting the burden of proof, mandatory arbitration, provider decertification, and medical treatment guidelines.

[S4714](#)(Breslin): Would also provide for comprehensive no-fault reform, primarily by lifting claim preclusion and provider sanctions for three years if after notice and an opportunity to be heard, the provider is found to have engaged in illicit conduct.

[S4047](#)(Breslin): Would adopt the workers' compensation medical treatment guidelines (MTGs) to no-fault auto.

[S3552](#)(Breslin): Would place burden of proof for medical necessity under no-fault upon the claimant.

[A5699](#)(Joyner): Would prohibit limitation of no fault benefits for a missed independent medical examination (IME) or examination under oath (EUO) provided the claimant has a reasonable justification or a willingness to reschedule the IME/EUO within 30 days.

[S5532](#)(Comrie)/[A3375](#)(Cook): Would provide that no-fault arbitration awards or decisions would not constitute a collateral estoppel of the issues arbitrated.

[S3570](#)(Breslin): Would reform the definition of serious injury under no-fault.

[S3581](#)(Breslin): Would provide for mandatory arbitration of no-fault disputes.

[S4042](#)(Breslin): Would eliminate the assignment of benefits (AOB) under no-fault for durable medical equipment (DME).

[S4046](#)(Breslin): Would lift claim preclusion, and provide that interest and attorneys fees are the exclusive remedy if a carrier has failed to make a timely no-fault payment.

[S499](#)(Breslin)/[A2618](#)(Hyndman): Would require DFS to conduct a study of the minimum coverage amounts for non-commercial auto insurance.

[S1943](#)(Akshar)/[A2501](#)(Hyndman): Would increase the minimum insurance coverage requirements for motor vehicles rented or leased in the state to \$1MM BI/\$25,000 for physical damage.

[S1941](#)(Akshar)/[A2624](#)(Hyndman): Would Increase the minimum insurance coverage requirements for automobiles registered and/or operated within the state of New York to \$250,000 BI/\$500,000 physical damage

[A3076](#)(Pretlow): Would make supplemental underinsured motorist insurance (SUM) equal to the liability limits.

[S5904](#)(Parker)/[A3082](#)(Peoples-Stokes): Would prohibit auto insurers from using socioeconomic factors in determining algorithms used to construct actuarial tables, coverage terms, premiums and/or rates.

S6456(May)/A7371(Hunter): Would prohibit carrier from refusing to issue or renew an auto policy based on the credit history of the insured.

S4656(Parker)/A7218(Pretlow): Would require DFS to promulgate regulation prohibiting the use of credit scores in the determination of auto insurance rates.

A8126(Niou): Would require DFS to promulgate regulation prohibiting the use of credit scores in determining premium rates for insurance policies that consumers are required to purchase by law.

[A2532](#)(Cymbrowitz): Would sunset the current flex rating system for auto insurance after June 30, 2024 and revert back to prior approval for auto insurance rates.

[S502](#)(Breslin)/[A8158](#)(Pretlow): Would allow carriers to retroactively cancel an auto policy due to fraudulent payment of premium.

[S6028](#)(Breslin)/[A6877](#)(Zebrowski): Would allow carriers to waive the photo inspection requirement for physical damage coverage.

[A1029](#)(Cahill): Would require motor vehicle liability insurance policies to include supplemental spousal liability coverage equal to bodily injury unless the insured declines such coverage in writing.

[S4871](#)(Breslin)/[A6335](#)(Gunther): Would replace the current automobile liability insurance reporting system in New York with an online verification system.

[A4803](#)(Manktelow): Would prohibit uninsured or underinsured motorists from recovering damages for non-economic harm arising out of a motor vehicle accident.

### **Property:**

[S3079](#)(Ryan)/[A7488](#)(Rivera, JD): Would prohibit the exclusion of coverage for losses or damages caused by exposure to lead-based paint; would provide that no insurer licensed or permitted by the superintendent to provide liability coverage to rental property owners shall exclude coverage for losses or damages caused by exposure to lead-based paint.

[S5637](#)(Parker): Would enact the childhood lead poisoning prevention and safe housing act to make enforcement of lead hazard control standards in the state of New York more certain and more effective; creates a loan fund to assist owners in complying with lead-safe requirements; provides for inspections and certification of inspectors and remediators; requires registration of affected properties; provides tax credits for remediation; provides for appointment of deputy commissioner of housing and community renewal to oversee provisions; provides for educational programs relating to lead poisoning and abatement.

[S503](#)(Breslin)/[A599](#)(Cahill): Would require that an insurer or producer shall, prior to the time a policy of personal lines insurance is sold or purchased, provide the potential insured with a copy of the policy and allow the potential insured sufficient time to review such policy; further provides that an insurer or producer shall, prior to the time a policy of commercial lines insurance that provides coverage for loss or damage to real property, personal property, or other liabilities for loss or damage to property is sold or purchased, provide the potential insured with a copy of the policy and allow the potential insured sufficient time to review such policy.

[A5154](#)(Montesano): Would require insurers to display certain underwriting information, such as whether credit score was used, on the declarations page to their homeowners and dwelling fire personal lines policies.

[S6407A](#)(Sanders)/[A950B](#)(Pheffer Amato): Would require DFS to establish standards for hurricane windstorm deductibles, creating uniformity in the operation of such deductibles with respect to the triggering event.

[A3249](#)(Pretlow): Would require insurers insuring property in floodplains to include damages done by wave action or windblown waves, and make available to all insureds who reside in single family homes in a floodplain homeowners insurance covering such damage.

[A3543](#)(Rodriguez): Would restrict the use of anti-concurrent causation clauses in policies.

[A927](#)(Pheffer Amato): Would create the New York flood insurance association as the insurer of last resort for flood insurance.

[S6595](#)(Skoufis)/[A2236](#)(Stern): Would establish standards for the prompt investigation and settlement of claims arising out of states of emergency and disasters.

[S4057](#)(Breslin): Would mandate that DFS create report cards for insurers following a disaster emergency.

[S1291](#)(Brooks): Would, among other things, apply anti-steering standards to all property claims.

[S354](#)(Hoylman)/[A172](#)(Paulin): Would impose liability on landlords for non-economic harm suffered by a tenant if the landlord failed to provide reasonable security for the tenant.

[S1678](#)(Skoufis)/[A7051](#)(Rosenthal, L): Would prohibit animal insurance policies from limiting or excluding pre-existing conditions.

[A2254](#)(Dinowitz): Would prohibit insurers from demanding intrusive personal, financial and tax information from insureds as a standard practice in processing ordinary theft claims where no special circumstances warranting a demand for such information exists.

[S678](#)(Harckham)/[A2016](#)(Barrett): Would remove liability for the death of a person caused by any act of persons permitted to use certain premises and removes liability from the owner, lessee or occupant of premises adjacent to such premises.

[S1932](#)(Ritchie)/[A201](#)(Gunther): Would limit the liability of landowners who permit recreational uses of their land; establishes landowners owe no duty to keep premises safe for entry, passage over premises or other recreational uses or to give warning of any hazardous condition or use of or structure or activity on such premises to persons entering for such purposes.

[A5072](#)(Montesano): Would subject dwelling protection coverage homeowners' insurance rates to DFS prior approval.

### **Commercial**

[S3560](#)(Breslin): Would add more business insurance lines to the Free Trade Zone.

[S3563](#)(Breslin): Would allow out of state businesses to also use Free Trade Zone; removes brick and mortar requirement.

[S498](#)(Breslin)/[A5241A](#)(Hunter): Would exempts commercial lines policies placed by wholesale brokers from the excess line diligent effort requirement.

### **Bad Faith, Wrongful Death, Unfair, Discriminatory, or Deceptive Practices**

[S6813](#)(Ramos)/[A7285](#)(Weinstein): Would grant a first and third party private right of action against liability insurers for bad faith settlement practices; allow for recovery beyond policy limits, including punitive damages and pre-judgment interest.

[S3551](#)(Breslin)/[A2540](#)(Weinstein): Would allow for a private right of action against insurers where the insurer failed to effectuate prompt and fair settlement of the claim and considered its interests to the detriment of the insured so as to cause the rendering of a judgment in excess of the policy limits.

[S5585](#)(Comrie)/[A6811](#)(Bichotte Hermelyn): Would create a private right of action against an insurer for such insurer's refusal to pay or unreasonable delay of payment to the policy holder if such refusal or delay was not substantially justified; enumerates instances whereby an insurer's refusal or delay of payment is not substantially justified including intentional negligence, failure to act in good faith, failure to provide written denial of claim, failure to make final determination of claim within six months, and failure to promptly proceed with the appraisal process; includes attorneys' fees and punitive damages.

[S4044](#)(Breslin): Would establish price optimization as an unfair and discriminatory practice under NYIL Article 23.

[S74A](#)(Hoylman)/[A6770](#)(Weinstein): Would expand damages under wrongful death cases to allow for non-economic damages and expand the class of plaintiffs who can bring such a case.

[S965](#)(Gaughran)/[A4140](#)(Lavine): Would allow plaintiffs to recover non-economic damages for wrongful death cases involving the intentional or premeditated acts of violence with a deadly weapon.

[S6414](#)(Comrie)/[A2495A](#)(Niou): Would expand standing for consumers to sue for unfair or deceptive trade practices, establishes a subjective standard of unfair or deceptive, increases statutory damages, grants mandatory attorney's fees.

### **Scaffold Law**

[S1582](#)(Sanders)/[A1247](#)(Cahill): Would establish the small contractors relief act; authorizes the State Insurance Fund to write general and excess liability insurance coverage to small (less than \$1MM gross revenue) and MWBE contractors (Cahill Scaffold Law reform bill)

[S1899](#)(Akshar): Would impose comparative negligence or assumption of risk in scaffold law cases.

### **Liability:**

[S1498](#)(Breslin)/[A5768](#)(Cusick): Would invalidate any provision in a construction contract that requires the purchase of additional insured coverage in violation of General Obligations Law §5-322.1.

[S3577](#)(Breslin)/[A7786](#)(Cahill): Would require the DFS, in consultation with the department of taxation and finance, to conduct a study regarding insurance or other risk mitigation tools and third-party payroll service providers; provides that the superintendent of financial services shall submit a report to the governor, the temporary president of the senate and the speaker of the assembly of the department's findings, conclusions, and recommendations.

[A581](#)(Perry): Would require the submission of proof of personal liability insurance prior to the issuance or renewal of a license to carry a firearm.

[S4946](#)(Parker): Would require owners of firearms to obtain liability insurance in an amount not less than one million dollars.

[S3347](#)(Bailey): Would impose negligent entrustment liability to firearms manufacturers and sellers.

[A4029](#)(Colton): Would impose liability for the manufacture, sale, leasing or other disposition of ammunition feeding devices and compensation for damages.

[S667](#)(Sanders)/[A5031](#)(Ramos): Would extend the tolling period and statute of limitations in toxic tort cases where the specific toxic etiological cause of injury is not known for up to ten years (instead of five years) after the injury itself is discovered; a plaintiff shall have three years to file a claim from the time such specific cause is discovered.

### **Professional Liability:**

[S714](#)(Breslin)/[A996](#)(Cahill): Would repeal the declination requirement for medical malpractice before brokers can place primary medical malpractice insurance in the excess line market.

[A1489](#)(Magnarelli): Would provide that in medical malpractice actions where the plaintiff is not the patient of the defendant and the alleged malpractice is the result of the defendant's treatment or care of a third party, the defendant may make a motion to the court to compel the non-party patient to waive the privilege; the court shall grant a waiver of the privilege in certain instances.

[S4848](#)(Reichlin-Melnick)/[A5599](#)(Galef): Would exclude a statement of apology or regret, made by a health care provider, as an admission of liability in a medical, dental or podiatric malpractice lawsuit.

[S5038](#)(Parker): Would extend the time to commence certain medical malpractice actions; provides that actions related to acts or omissions of hospitals where an incident report is required to be filed may be filed within one year of the required filing.

[A5725](#)(Hawley): Would require a certificate of merit in actions for damages, contribution or indemnity arising out of alleged negligence of a professional licensed pursuant to the education law; establishes a party in an action for medical, dental or podiatric malpractice may not omit the name of certain experts in responding to a request; limits judgments for past and future damages in an action to recover damages for dental, medical or podiatric malpractice; limits compensation for noneconomic damages suffered by an injured plaintiff in any personal injury action to \$250,000.

[S4761](#)(May): Would require securities dealers and brokers to have a professional liability insurance policy of at least one million dollars; requires proof of such insurance policy to be submitted to the department of law; requires notice of such insurance policy to be provided to clients.

[S4127](#)(Griffo)/[A1706](#)(Pretlow): Would repeal and reenact the statute of limitation provisions on wrongful death, personal injury and property damage actions against professional engineers, architects, landscape architects, land surveyors and construction contractors to provide for a limitations period of ten years after completion of improvement to real property; "completion", which constitutes the accrual date for the limitations period, is defined; provides for a one year extension for injuries to person or property or wrongful death which occur during the tenth year after completion.

### **Workers' Compensation**

[S4695](#)(Breslin): Would direct the state insurance fund (SIF) to compensate insurance brokers for services provided to clients who obtain coverage through the fund; establishes within the existing rate structure a factor to compensate licensed insurance producers for services provided to clients who obtain coverage through the fund.

[S3948](#)(Kennedy)/[A1409](#)(Reyes): Would restrict time insurers can make payment without penalty from 25 to 14 days.



[S1396](#)(Brooks)/[A1130](#)(Zebrowski): Would require a workplace safety and loss prevention program for employers with a payroll above \$1.25 million or whose safety rating exceeds 1.2

[S4694](#)(Breslin)/[A1295](#)(Zebrowski): Would removes the requirement that policyholders insured by SIF provide 30 days notice when withdrawing from SIF

[A1307](#)(Magnarelli): Would direct the chair of the workers' compensation board to biennially prepare and establish a schedule of fees.

[A320](#)(Cahill): Would require annual workers' comp audits for construction employers and biennial audits for all other employers

### **Litigation Bills**

[S705](#)(Kaplan)/[A1270](#)(Magnarelli): Would enact the consumer litigation funding act to promote consumer protections related to consumer litigation funding transactions; provides for contract requirements, including that the contract contain a no penalty provision for the pre-payment of the funded amount prior to the settlement of his or her case; makes related provisions; sets maximum interest rate at 36%.

[S5735](#)(Comrie)/[A3315](#)(Dilán): Would establish that consumer litigation funding transactions should be subject to state regulation and sets forth requirements regarding disclosure, licensing, funding company and attorney responsibilities and limitations, violations and other provisions.

[S6527](#)(Gaughran)/[A3208](#)(McDonald): Would reform the judgment rate of interest against municipalities from 9% to the market rate.

[S3250](#)(Sanders)/[A5016](#)(McDonald): Would relate to the rate of interest to be paid on judgments and accrued claims; ties the rate of interest to the maturity treasury yield as published by the federal reserve.

[A1950](#)(Cruz): Would allow pre-judgment interest in personal injury cases to accrue on the day the cause of action came into existence.

[S469](#)(Hoylman)/[A2547](#)(Weinstein): Would provide that for settlements that require a court order, the order, or the judgment in a special proceeding, shall provide for the payment of pre-judgment interest on the settlement amount at the statutory interest rate on judgments until the settlement is approved by the court.

[A3024](#)(Dinowitz): Would provide that in tort cases where one defendant has settled, that remaining defendants must elect, prior to trial, whether to reduce liability by the amount of the settlement or by the amount of the equitable share of damages delegated to the settler in the verdict.

[A3486](#)(Dinowitz): Would allow plaintiff, as judgment creditor against the defendant, to collect directly against a third-party defendant found liable for contribution or indemnification.

[S472](#)(Hoylman): Would enact the "sunshine in litigation act" which would limit the secrecy of litigation settlements.

### **Miscellaneous Bills**

[S3767](#)(Breslin): Would require the superintendent to promulgate regulations which provide standardized definitions for commonly used terms and phrases in certain insurance policies.

[A112](#)(Quart): Would allow policies to be posted on the internet.

[S3773](#)(Breslin): Would fully adopt the NAIC redomestication model law, which allows for domestic insurers to more efficiently consolidate affiliations across states.