

**WILK AUSLANDER LLP
FIRM MEMORANDUM**

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**New Bill Poses Major Expansion of New York
Law on Long-Arm Jurisdiction Over Out-of-State Businesses
Registered to Do Business in New York**

Currently, two “same-as” bills in the New York State Assembly (New York Assembly Bill A7351) and the New York State Senate (New York Senate Bill S7476) are progressing through New York’s legislative process. The proposed legislation provides that whenever an out-of-state business entity (*i.e.*, a business entity that is not incorporated, formed or headquartered in New York) registers for authorization to do business in New York, it automatically consents to the jurisdiction of New York’s courts, regardless of whether the entity has any other ties, connections or business in New York state. Conversely, the proposed law provides that an out-of-state business automatically revokes such consent once it “surrenders” its authorization to conduct business in New York.

Should it become law, the proposed legislation would mark the broadest expansion of New York courts’ personal jurisdiction over out-of-state businesses in modern times. As of now, bedrock New York law requires a plaintiff who sues an out-of-state business in New York to establish that “long arm” jurisdiction over the out-of-state business is satisfied. New York’s “long-arm” statute is codified in New York Civil Practice Law and Rules (“CPLR”) 302, and in essence, confers New York courts with jurisdiction over out-of-state businesses that (1) regularly conduct business in New York, (2) commit a tortious act in New York, (3) regularly solicit business in New York, (4) own, use, or possess real property in New York or (5) derive substantial revenue from goods used or consumed or services rendered, in New York. Should the proposed legislation pass, in the place of satisfying any of the foregoing standards, a plaintiff who sues an out-of-state business in New York will be able to satisfy long-arm jurisdiction merely by showing that the out-of-state business was registered to do business in New York as of when the plaintiff’s lawsuit was filed. This showing can be made in a matter of seconds simply by checking the out-of-state business’s registration status on the New York Department of State, Division of Corporations website.

OUR TAKEAWAYS

Should the proposed legislation become law (which we anticipate will happen in the near future), all out-of-state businesses registered to do business in New York will be deemed to have consented to the jurisdiction of New York’s courts, regardless of whether or not they have any ties to New York (apart from registering to do business in the state). Consequently, should the proposed legislation be signed into law, it is virtually certain that it will lead to a massive increase in lawsuits filed against out-of-state businesses in New York. We therefore advise that

out-of-state business registered to do business in New York take measures towards updating their litigation insurance policies to ensure that they are covered for claims in New York. We further recommend that out-of-state businesses registered to do business in New York consult New York counsel to determine whether they should undertake corporate restructuring measures (e.g., forming new New York-only business entities to operate separately from the rest of the out-of-state business enterprise) to potentially alleviate the increased litigation risks that the new legislation presents should it become law.

If you have any questions about the issues addressed in this memorandum, please contact author Scott Watnik, Esq. (swatnik@wilkauslander.com) or at (646) 375-7658. Scott is a litigation partner in Wilk Auslander's New York City office.

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