

LITIGATION INFORMATION MEMO

AUGUST 22, 2023

Proposed Legislation Would Automatically Confer General Jurisdiction on all Foreign Corporations Registered to do Business in New York State

New York, like many other states, requires foreign (non-New York) corporations and other entities to register to do business in the state.

[Senate Bill S7476 \(2023\)](#) proposes to amend certain provisions of New York law (including the Civil Practice Laws and Rules (CPLR) and the Business Corporation Law) to provide that the act of a foreign corporation (and foreign not-for-profits, LLCs and partnerships) registering to do business in New York automatically confers general jurisdiction on that entity, regardless of the circumstances underlying a lawsuit or whether the claims have anything to do with conduct that occurred in New York. The bill has passed both the New York State Senate and the Assembly and will now go to the Governor to sign.

The long-standing law in New York, most recently articulated by the Court of Appeals in *Aybar v. Aybar*, 37 N.Y.3d 274 (2021), provides that the act of a foreign corporation's registration to do business in New York State and the requisite nomination of an agent to receive service of process does *not* (on its own) confer general jurisdiction on that corporation. Courts have historically engaged in the constitutional due process analysis set forth by the U.S. Supreme Court in a series of cases that looks at what kind of "contacts" (i.e., the level of that corporation's involvement with New York residents) the business has in the state and whether they are sufficient to confer personal jurisdiction.

If S7464 is enacted by Gov. Hochul, New York will join Pennsylvania as a state with a sweeping "long-arm personal jurisdiction" statute. The constitutionality of Pennsylvania's similar legislation was recently challenged, making its way up to the highest court in Pennsylvania, which ultimately struck down the legislation as unconstitutional under the U.S. Supreme Court's due process analysis. However, in June, the U.S. Supreme Court issued a decision (in *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028 (2023)) that reversed the Supreme Court of Pennsylvania and upheld the statute as constitutional.

This paves the way for New York, through S7464, to enact similar legislation and defeat constitutional challenges—although Justice Alito concurred (in part) in the *Mallory* case suggesting such statutes are subject to constitutional scrutiny under the Commerce Clause (observing: "At this point in the development of our constitutional case law, the most appropriate home for these principles is the so-called dormant Commerce Clause. Norfolk Southern appears to have asserted a Commerce Clause claim below, but the Pennsylvania Supreme Court did not address it."). *Mallory*, 143 S. Ct. at 2047 (Alito, J., concurring).

Not surprisingly, passage of this bill carries all sorts of concerns, including overburdening an already-overburdened state court system and discouraging companies from doing business in New York State because of the risk of increased liability. The bill's sponsors address these concerns, arguing:

“Enactment of the proposed addition to BCL sec. 1304 will not burden the New York courts with cases which ought not to be litigated here when corporate defendants are registered in New York, courts retain discretionary power to decline the exercise of jurisdiction over them in the interests of justice and convenience pursuant to the doctrine of forum non conveniens.”¹

Whether the Governor will sign the bill and whether the concerns over its implications will ring true remain to be determined. But, for now, foreign entities registered to do business in New York (or considering the same) should be aware of this potential change in New York law, as it may subject them to litigation in a state where they may not anticipate they could be constitutionally sued.

For more information about this proposed legislation or its effects on your business, contact [Katie McGraw](#), any attorney in Bond’s [litigation practice](#) or the attorney at the firm with whom you are regularly in contact.

¹ See <https://shorturl.at/gxzGM>

