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NYBFAA Memo in Opposition Exculpatory Clause - March 21, 2011

The NYBFAA represents the interests of the New York Electronic Life & Security Industry and is the trade association for the New York Alarm Industry with hundreds of member companies across New York State. The NYBFAA represents Security Alarm Companies, Manufacturers, and Distributors that do business in the State of New York.

The NYBFAA, on behalf of its members opposes the enactment of bill A.1805, which provides that any contract provisions exempting or limiting any party from liability from negligence are void and unenforceable.

As the sponsor notes, New York case law has held that absent a statute or public policy to the contrary, a contractual provision limiting a party from its own negligence will generally be enforced. The courts have specifically upheld contractual language in alarm contracts, for example, limiting a customer’s damages to a contractually agreed amount. In fact, the state’s highest court has suggested that such limitations on liability have kept alarm services affordable (Eaves Brooks Costume Co. v Y.B.H. Realty Corp., 76 NY2d at 227, supra).
In Eaves Brooks the court stated that without such limitations on liability alarm companies “would be forced to insure against a risk the amount of which they many not know and cannot control." The Court suggested further that the result of failing to enforce such contractual limitations “would be higher insurance premiums passed along through higher rates to all those who require sprinkler system and alarm services.”

Voiding such contractual protections, in essence, seeks to make insurers out of alarm companies and passage of this legislation threatens to make alarm services unaffordable to the public.

The unintended results of this legislation would be that the Security/Fire Alarm industry would not be able to get general liability insurance or, if it is available at all, the premiums are expected to increase exponentially. Not only would this cause Security/Fire companies to increase the fees for services to New York residents, but they may have less choice in choosing a provider, as it is less likely that companies may stay in New York doing business.

It must be noted any existing contractual limitations on liability are only enforceable against claims of ordinary negligence and these clauses CANNOT protect a defendant from liability for gross negligence or for conduct evincing a reckless disregard for its customer’s rights.