

# LEGISLATIVE POSITION PAPER

— 2021 SESSION —



Founded in 1882, Big I  
New York is the oldest  
and largest producer  
association in  
New York State.

We represent  
approximately

**3,400**  
independent business  
owners and principals of

**1,750**  
independent insurance  
agency locations in the State  
of New York,  
comprising more than

**13,000**  
individuals who sell and  
service the personal and  
business insurance needs of  
consumers

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The insurance industry has been an important component of the New York economy for decades with its economic significance growing steadily each year. It is imperative that New York maintain a stable and healthy insurance market.

Over the 5-year period 2016 - 2020, New York's property & casualty industry generated an estimated **\$202.9 billion** in economic impacts and supported more than **152,000 jobs** annually across the state. New York's property & casualty industry produced an estimated **\$5.4 billion** in state and local collections. (Ernest Goss, Ph.D., 2017)

Our members are uniquely positioned as an integral part of their communities to assist on a broad range of economic development, tax, insurance, and other business issues that impact the consumers in New York. At every step in the insurance journey, independent agents and brokers are advocates for their customers.

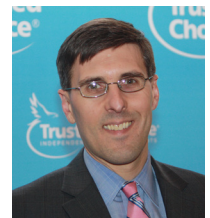
## meet THE TEAM



**SCOTT HOBSON, MPA**  
AVP of  
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**LISA K. LOUNSBURY,**  
CAE, AAI, AIS  
President & CEO



**DAVID MACLACHLAN**  
Chair of the Board

# GRASSROOTS & MEMBER *Engagement*

Big I NY members are passionate and powerful advocates for their businesses and customers. In 2020, member agents played a crucial role in advancing beneficial legislation and were decisive in blocking harmful proposals. Members met with lawmakers at Independent Agents Advocacy Day in Albany and represented the industry with pride in meetings with the state's Members of Congress. As the world shifted to virtual, Big I NY capitalized on the opportunity to amplify our members' voices, hosting virtual legislative forums, political fundraisers, virtual constituent meetings, and phone-in campaigns to state and federal representatives.

In 2020, we grew the ranks of the "Group of 100" (G100). This select group of member agents is composed of our most engaged volunteers, charged with advancing our legislative goals by building strong relationships with local lawmakers, engaging in legislative and political advocacy, and raising funds for our political action committees.

To submit an application to join the G100, visit [www.biginy.org/G100](http://www.biginy.org/G100) or email Scott Hobson at [SHobson@BigINNY.org](mailto:SHobson@BigINNY.org).

Our members  
are champions  
for independent  
agencies and  
their customers  
across the state.  
Big I NY agents  
are crucial to  
our legislative  
success.



**G100**  
GROUP OF ONE HUNDRED



[www.BigINNY.org](http://www.BigINNY.org)

# LEGISLATIVE *Accomplishments*

Thanks to the tireless work of our legislative team, ongoing support from our member agents, and cooperative effort from the Legislature, Big I New York has been successful in achieving a number of critical changes needed in our industry in recent years.

**2020 was a tumultuous year, and the IA community and our customers faced many challenges. In a time of crisis, our advocacy efforts on behalf of our members were crucial.**

## **Blocked Higher Insurance Law Fines and Expansion of DFS Authority:**

In January 2020, the Governor announced an executive budget which would expand the NYS Department of Financial Services' (DFS) authority to levy fines and penalties against insurance agents and brokers, as well as substantially increases in possible fines. Big I NY met with key legislators in the Senate and Assembly, and deployed a grassroots lobbying campaign culminating in our Independent Agents Advocacy Day in March. Ultimately, we were successful in blocking all harmful proposals from the final budget.

## **Stood up for Independent Agents and Policyholders throughout NY's COVID Response:**

- Big I NY called on the DFS to adopt several measures to protect independent agents' ability to assist their customers throughout the pandemic, including suspending the auto photo inspection requirement (Regulation 79), and creating a grace period for continuing education (CE) and license renewal. Ultimately the DFS concurred, allowing agents to renew their license without CE in place, and waiving in-person monitoring requirements for CE classes and licensing exams. The elimination of the in-person monitoring requirement was subsequently made permanent.
- When the Governor first announced business restrictions, Big I NY successfully called for insurance agencies to be deemed essential.
- Following Executive Order 202.16, the DFS issued an emergency regulation imposing a moratorium on cancellations and non-renewals for non-payment, as well as imposing a grace period for premium repayment. Initially, the regulation contained an extremely burdensome requirement that producers notify all of their customers of the new changes. Big I NY successfully urged the department to change course, and allow these notices to be provided electronically and without prior consent. We also called for the policyholder protections to be extended to all excess lines policies.
- Beginning in March, Big I NY launched a grassroots advocacy campaign which successfully opposed devastating state and federal retroactive business interruption coverage mandates. This campaign involved dozens of virtual meetings between member agents and state and congressional representatives, as well as meetings with legislative leadership and chairs of the Senate and Assembly insurance committees.



## **Protect The Solvency of New York's Insurance Market by Opposing Retroactive Coverage Mandates**

Recent legislation seeks to retroactively change existing insurance contracts to require certain perils be covered under business interruption insurance during the COVID-19 pandemic.

Notwithstanding constitutionality concerns, a retroactive coverage mandate is unworkable on the numbers. Nationally, requiring insurers to compensate businesses with fewer than 100 employees for these excluded losses would cost the industry \$255 billion to \$431 billion per month. That amount rises to \$900 billion per month if the threshold is raised to 500 employees. In contrast, the Property and Casualty industry's total surplus – which exists to pay covered automobile, home, and business losses – is only \$812.2 billion and would be wiped out quickly if such mandates ever took effect. According to the National Association of Insurance Commissioners, requiring the payment of claims that were not covered "would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing."

We are in the midst of an unprecedented crisis, and the federal government is the only entity able to provide the type and magnitude of financial assistance required. The insurance industry is urging Congress to pass the Business Continuity Protection Program (BCPP), which would allow businesses to purchase revenue replacement coverage for up to 80 percent of payroll and other expenses. Businesses would purchase the federal revenue replacement assistance through state-regulated insurance entities that participate with BCPP on a voluntary basis, but the aid would come from the Federal Emergency Management Agency (FEMA), which would run the program.

### **Action Needed:**

**Big I NY opposes S.4711 (Gounardes)/A.1937 (Carroll). Big I NY supports efforts to protect small businesses through a federal pandemic revenue replacement program (BCPP).**



# **BUSINESS INTERRUPTION COVERAGE**



[www.BigINNY.org](http://www.BigINNY.org)





# WORKERS COMPENSATION

## Reduce Burdens on Small Businesses by Indexing the Payroll Threshold for the Workplace Safety and Loss Prevention Program

The Workplace Safety and Loss Prevention Program was created in 1997 by statute to reduce workplace injuries and lower Workers' Compensation costs for larger employers.

The program is required for all employers whose most recent annual payroll is in excess of \$800,000 and whose most recent experience rating exceeds the level of 1.2. Employers who meet these criteria are notified by the New York Compensation Insurance Rating Board of the need to undergo a Workplace Safety and Loss Prevention Consultation and evaluation. Notifications are sent out by the Rating Board several times a year as determined by the Board. Employers must pay a fee for the consultation, which if conducted by the Department of Labor is \$350 a day. Any remedial action recommended by the consultant must be implemented by the employer within six months.

Over the last 20 years, payrolls have increased substantially. The law, which was originally intended to apply to larger employers, is now capturing smaller ones because the payroll threshold has not been adjusted. While Big I New York supports compulsory safety and loss prevention programs, it believes that the \$800,000 payroll threshold needs to be adjusted to reflect today's payroll costs. Based upon the Employment Cost Index published by the U.S. Bureau of Labor Statistics, a payroll threshold of \$800,000 in 1997 would equate today to approximately \$1.2 million.

Big I New York developed legislation to reflect this updated payroll threshold. The legislation also would allow for annual adjustments to the threshold based on the Employment Cost Index.

### Action Needed:

Big I New York supports A.1130 (Zebrowski) and S.1396 (Brooks).

## Make it Easier for Businesses to Obtain the Best Coverage by Eliminating the 30-Day Notice of Withdrawal Requirement

The New York State Insurance Fund (NYSIF) is the state's largest writer of Workers Compensation policies. Currently, policyholders must provide the NYSIF with 30 days of advance written notice before canceling a policy. This requirement makes it difficult for small businesses to obtain more competitive coverage, and should be repealed to level the playing field in the Workers Compensation market.

### Action Needed:

Big I NY supports S.4694 (Breslin) and A.1295 (Zebrowski).





# TORT LIABILITY

## Protect Businesses from Lawsuit Abuse Resulting from Lawsuits for “Unfair, Deceptive, and Abusive” Business Practices

Pending legislation proposes an unprecedented and sweeping expansion of the General Business Law to: prohibit broadly and subjectively defined “unfair,” “deceptive,” or “abusive” acts; expand the private right of action to include an organization, business, or any other group of individuals otherwise organized; provide attorneys’ fees and statutory damages of \$2,000 per offense in addition to actual damages; authorize private class action lawsuits for violations of the statute; and permit lawsuits even where there is no underlying consumer-oriented or public impact.

This legislation would cause serious harm to independent insurance agencies, brokerages, producers, and the customers they serve. The expansive and subjective nature of what constitutes prohibited acts, coupled with guaranteed minimum damages of \$2,000 per offense (per class member in a class action), tips the playing field perilously and creates powerful incentives for insurers and businesses to settle lawsuits, even if the underlying claims are dubious. This would harm businesses directly through higher litigation risk and compliance costs, as well as driving up the cost of commercial coverage.

### Action Needed:

Big I New York opposes S.6414 (Comrie) and A.2495 (Niou).





# AUTO INSURANCE ISSUES

## Simplify the Coverage Process by Making the Auto Photo Inspection Requirement Voluntary

Section 3411 of the Insurance Law requires that all motor vehicles must be inspected before comprehensive or collision coverage can be provided. While this provision was effective when it was first implemented over a quarter century ago, new fraud fighting tools have rendered this requirement virtually useless. In fact, John Reiersen, the former Chief Examiner of the Property and Casualty Insurance Bureau and “Father” of the photo inspection law, has opined that the law is no longer effective and should be made optional.

Insurance companies no longer rely on these inspections and the reports are rarely, if ever used. The reports require a photo inspection that is conducted by either the agent or broker or a third party vendor. The photo requirement is inconvenient for policyholders who must bring their vehicle to a location for the photos. It is also an additional burden and business expense on the agent or broker who must take the photo. If a third party is used, there is an additional cost to the insurer associated with the report. The cost of these mandatory inspection reports is passed on to drivers in the form of higher premiums. Not only do drivers have to pay higher premiums but a driver can inadvertently lose physical damage coverage if the inspection is not completed within a time period specified in the law. The photo inspection law should be made voluntary at the discretion of insurance carriers.

### Action Needed:

Action Needed: Big I New York supports S.6028 (Breslin) and A.6877 (Zebrowski).

## Protect Consumers from Misleading Pricing Practices

Currently, certain insurance carriers will bind auto coverage based on an initial quote and questionnaire. The insurer later runs the insured’s motor vehicle record (MVR), typically resulting in a higher premium. This practice is misleading to consumers.

### Action Needed:

Big I New York supports legislation, S.3578 (Breslin) which would require insurers to verify a customer’s MVR before binding coverage.







## Protect Consumer Choice in Health Insurance

New York lawmakers are currently considering legislation to enact a single payer health system. We believe a government-run single payer system would be prohibitively expensive, would reduce consumer choice, and would disrupt other insurance coverage, including existing Medicare coverage for seniors and existing employer-sponsored health insurance coverage. We will continue to work cooperatively with the industry and policymakers to build upon the current strengths in the system and maintain a competitive and vibrant marketplace that will provide quality coverage at an affordable price. We are also supportive measures that will bring down the high costs of health care.

### Action Needed:

Big I New York opposes legislation that would create a single payer health system in New York.

# HEALTH INSURANCE



[www.BigI NY.org](http://www.BigI NY.org)



# PROPERTY INSURANCE ISSUES

## **Streamline the Commercial Property Insurance Process by Eliminating the Anti-Arson Application**

Section 3403 of the Insurance Law requires the completion of “anti-arson application” for people seeking property insurance for fire or explosion to complete. If a policyholder fails to complete this application, which is required upon initial application for insurance and on each subsequent renewal of the policy, the insurer must cancel the policy.

Since technology has advanced the application has outlived its usefulness. Insurance companies today are required by law to have fraud prevention plans, which are filed with the State, on how they detect, investigate, and prevent fraudulent activities. These fraud prevention plans are far more effective than the anti-arson application form which simply asks a series of questions. The law is just a paperwork burden for policyholders who risk losing coverage if the paperwork is not completed. Recent legislation scaled back the current law to remove cities with a population of less than 1 million. The application requirement should be repealed statewide.

### **Action Needed:**

We support A.603 (D. Rosenthal) and S.2627 (Sanders).

## **Ensure the Continued Availability of Affordable Rental Property Coverage by Preserving Lead Paint Exposure Exclusions**

Recently proposed legislation would prohibit admitted insurers from excluding coverage for losses due to lead paint exposure from rental property liability coverage.

While well intentioned, this proposal would have serious unintended consequences that would harm the very people whom it aims to help. Lead paint exposure injuries may involve lifelong harm and ongoing care needs, which are often difficult to prove where exposure occurred. If insurers are required to cover such claims, they will likely raise premiums and/or exit the admitted market. The corresponding increase in cost and loss of availability of residential property coverage will be passed along to renters – those who are often least able to afford increases in the cost of living.

### **Action Needed:**

We oppose legislation to prohibit the use of lead paint coverage exclusions. S.3079 (Ryan) and A.7488 (Rivera).





# EXCESS LINES REFORM

## Make it Easier to Obtain the Most Appropriate Coverage by Reforming the “Diligent Effort” Requirement and Affidavit

New York’s excess line market is critical to providing insurance for risks that are not underwritten by admitted carriers – such as those which are unique, volatile, or lack loss history. Current law requires brokers to obtain three declinations from admitted carriers before an excess line policy can be obtained, and a detailed affidavit must be filed for each declination. New York is one of only ten states that require the filing of declination information.

The current system is burdensome and time consuming, and can lead to delays which are detrimental to prospective policyholders. We support legislation which would simplify and streamline the affidavit process, and exempt commercial lines insurance transactions placed by wholesale insurance brokers from the requirement to obtain three separate declinations.

### Action Needed:

Big I NY supports S.498 (Breslin)/A.5241 (Hunter).



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# DATA PRIVACY

## Protect Small Businesses from Onerous and Unrealistic Data Security Mandates

Legislation currently under consideration would implement major changes to the laws governing data privacy which would be enormously burdensome and difficult for independent agencies and our small business customers to comply with.

The legislation would require companies to act as “information fiduciaries” and hold them liable for a wide range of possible harms that may occur from the misuse or transfer of that data, including indirect financial loss, psychological harm, anxiety, embarrassment, fear, or significant inconvenience or expenditure of time, to name a few.

The legislation also creates a private right of action and allows for attorney’s fees for prevailing plaintiffs. This would expose businesses to enormous liability risk and associated cost increases for insurance coverage and compliance.

The proposed legislation is unnecessary, as all businesses are already subject to the reasonable data security protection requirement under the NYS SHIELD Act, and all DFS-regulated entities and individuals are further subject the 23 NYCRR 500, the most stringent cybersecurity regulation in the country. The NYS Privacy Act will create massive compliance challenges for small agencies, and raise the cost of doing business in the state.

### Action Needed:

Big I New York opposes S.6701 (Thomas) and A.680 (L. Rosenthal).

