

MEMORANDUM IN OPPOSITION

Date:	5/25/2019
Bill Number:	S.2407-B/A.679-B
Sponsor:	COMRIE/NIOU
Subject:	<i>AN ACT to amend the general business law, in relation to standing for persons affected by prohibited or unlawful business practices</i>
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Summary:

This legislation would effectuate 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.

Why We Oppose this Legislation:

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 “unfair,” “deceptive,” or “abusive” 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.

A significant proportion of New York’s independent insurance agencies are small businesses, many of which are multi-generational family enterprises. Independent agents help their customers navigate the complex universe of risk and coverage options to best meet their needs, routinely educating their customers about the elements of various policies, including deductibles, exclusions, coverage limits, etc. As such, producers (agents and brokers) are held to high standards of conduct, and may be sued for errors and omissions (E&O) that harm the customer. This legislation would

dramatically increase independent producers' legal exposure, resulting both from stand-alone lawsuits alleging violations based on the broad and subjective definition of "unfair, deceptive, or abusive" conduct, and/or in addition to an E&O claim. Consequently, the cost of professional liability insurance is likely to increase dramatically, to levels that may be unaffordable for many independent agencies.

Furthermore, the legislation will increase the cost of virtually all types of insurance, and may lead some carriers to stop writing certain types of insurance – or abandon the New York marketplace entirely. The insurance-buying public, individuals and businesses alike, will face higher premiums and reduced choice.

We do not believe this legislation will meaningfully improve consumer protection. There are already robust accountability mechanisms in place to ensure that agents and brokers act fairly and honestly, including enforcement actions by the Attorney General, disciplinary actions including fines and license suspension by the Superintendent of the Department of Financial Services, and private E&O lawsuits. This legislation will cause substantial harm in exchange for minimal, if any, benefit.

For these reasons, Big I NY strongly opposes this legislation.

Big I NY is New York's leading association representing independent insurance agents and brokers, representing over 1,800 agencies and their 13,000 employees. We believe independent insurance agents serve customers best with trusted advice and the right coverage options to protect what matters most.