



111 Washington Avenue,
First Floor
Albany, NY 12207

518-434-1262
NFIB.com

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New York State Joint Legislative Budget Hearing on Transportation

Testimony submitted by Ashley Ranslow, NY State Director for the National Federation of Independent Business (NFIB)

Thank you very much Senator Krueger, Assemblymember Pretlow, Senator Cooney, Assemblymember Magnarelli, members of the Senate and Assembly, and legislative staff, for your consideration of NFIB's testimony.

NFIB is a member-driven organization representing close to 300,000 small businesses across the country and more than 11,000 across New York State.

NFIB members define our neighborhoods and strengthen our communities with character and value: local hardware stores, independent restaurants, florists, barbers, small retailers, dry cleaners, convenience stores, truckers, farmers, roofers, landscapers, mechanics, and fitness and retail boutiques. These are samples of NFIB members.

There are close to 500,000 small businesses with employees in New York. These businesses employ 40 percent of the state's private-sector workforce, over 3 million New Yorkers, and their production accounts for nearly half of the state's GDP. A staggering 98 percent of New York's businesses have fewer than 100 employees. A strong, vibrant small business eco-system supports local tax bases, governments, and schools. Sixty-seven cents of every dollar spent at a local small business is reinvested into the community. Small businesses also enrich their communities through financial support, in-kind contributions, and volunteerism. Ninety percent of small business owners have financially supported community or civic groups, sixty-three percent have provided in-kind contributions, and seventy-six percent of all business owners reported volunteering

their time according to NFIB's 2024 Small Business' Contribution to the Community report.¹

Small businesses are local job creators and the bedrock of the state and regional economies. Neighborhood employers continue to face significant financial challenges, including inflation, escalating utility bills, high taxes, an exodus of workers from the labor force, rising insurance premiums, and the threat of costly lawsuits. In NFIB's semi-annual "State of the States" Small Business Economic Trends (SBET) report, optimism among New York's small business owners is lagging the nation, driven by lower sales expectations, employment plans, and economic expectations. Thirty-five percent of small business owners report job openings that could not be filled, and only five percent plan to increase employment, a nine point drop from national sentiment. The cost of labor is the second highest problem for New York's small business owners, but just fifth in the rest of the country (15% vs 9%). The labor shortage continues to drive wages even higher with small business owners reporting that they raised compensation or plan to raise compensation in the next 3 months, while also increasing selling prices. The cost/availability of insurance has increased significantly, with nine percent of small businesses reporting it as their single most important problem compared to five percent just a year ago. Overall, the top five single most important problems for the Empire State's small businesses are labor quality (18%), cost of labor (15%), taxes (14%), government regulation (10%), and cost/availability of insurance (9%).

In NFIB's 2024 Problems and Priorities report, New York small business owners ranked 75 potential business problems, with the top ten problems relating to taxes, regulations, economic uncertainty, and the cost of insurance and utility bills. New York's small business owners identified state business income taxes as the third most burdensome problem – six spots higher than the national average.² Other critical problems higher than the national average include government regulations (4th), cost of natural gas, propane, gasoline, diesel, and fuel oil (5th), electricity rates (7th), workers' compensation (14th), minimum wage (15th), and credit card payment processing costs (20th). The top 20 problems for New York's Main Street demonstrate small business owners' struggles with the cost and logistics of running a business in New York State.

Unfortunately, post-pandemic financial challenges and New York's difficult business environment have taken a toll on the small business eco-system and New York's economy at large. According to Empire State Development, since 2019, New York State has seen a 2.2 percent growth in small businesses with fewer than 100 employees but a

¹ NFIB Research Center, 2024 Small Businesses' Contribution to the Community, Nov. 2024. [2024 Small Business Contribution to the Community.ai](https://nfib.com/wp-content/uploads/2024/10/2024-Small-Business-Problems-Priorities.pdf)

² NFIB Research Center, 2024 Small Business Problems & Priorities, <https://nfib.com/wp-content/uploads/2024/10/2024-Small-Business-Problems-Priorities.pdf>.

2.4 percent decline in employment in small businesses³. There are nearly 11,000 more small businesses with fewer than 100 employees (due to growth in firms with less than 25 employees) but 75,000 fewer employees working in those businesses, undoubtedly a reflection of business owners trying to contain costs while also facing a severe labor shortage. More troubling, small businesses with more than 24 employees but fewer than 100 employees, have decreased by 4 percent over the last four years, and employment has fallen by 3.8 percent. New York has an opportunity to help small businesses overcome challenges, address the affordability crisis, stem the tide of out migration of New Yorkers, and put the state's economy in a more competitive and better position. One way to change the trajectory of the Empire State's economy and business climate, is to address the unsustainable and crippling cost of auto insurance.

New York's auto insurance premiums continue to rise to unaffordable levels for small businesses and consumers alike. Auto insurance premiums in New York jumped 13.5 percent in 2024 alone and have risen 21 percent since 2022. These rate hikes cost New Yorkers \$1,500 more per year than the national average with their annual bill totaling \$4,000. This problem must be addressed in this year's state budget.

The FY 2027 Executive Budget includes several reasonable and necessary reforms to reduce auto insurance premiums that should be welcomed and enacted. These reforms address key contributors to the Empire State's nation-leading auto insurance premiums including fraud, costly and abusive litigation, greater enforcement, and closing legal loopholes.

Unfortunately, fraud runs rampant throughout the insurance industry, inflating premiums by as much as \$300 per year. In 2023, New York recorded 1,729 staged auto accidents, the second highest in the nation. Insurers are reporting suspected incidents of fraud at record highs to the Department of Financial Services. Fraud unequivocally is a major problem and must be addressed, and requires an organized and robust approach. The Executive budget proposes revamping New York's Motor Vehicle Theft and Insurance Fraud Prevention Board to investigate and prosecute insurance fraud, as well as directly tasking state agencies (DFS, DMV, DCJS, and NYSP) to coordinate enforcement. The agencies will collaborate with prosecutors to ensure that any fraud is prosecuted so that wrongdoers are held accountable. The Executive budget also includes provisions to increase penalties against fraudsters. Any individual responsible for participating in the organization of a staged accident could be charged with a felony and medical providers participating in staged accident schemes could have their licenses suspended or revoked. Insurers will also coordinate and collaborate to ensure fraud does not continue to go undetected or unaddressed. Provisions to increase the time

³ New York State Empire State Development, Annual Report on the State of Small Businesses, 2024. <https://esd.ny.gov/sites/default/files/media/document/2024-ESD-ANNUAL-REPORT-ON-SMALL-BUSINESSES.pdf>

insurers must report fraud and reducing barriers to allege fraud in court will help avoid fraudulent payouts – saving policy holders money. Fraud is a severe problem and must have profound consequences, otherwise it will continue to run rampant. Small businesses and consumers should not have to foot the bill for the illegal actions of others. Fraudsters must be held accountable and be fully prosecuted.

While cracking down on fraud is imperative, it is only part of the problem. Costly and abusive litigation is a growing issue and unfairly penalizes hardworking small business owners and consumers to enrich a few. Under current law, individuals committing crimes, such as driving under the influence of drugs or alcohol, can sue and receive payouts for non-economic damages. This is absurd, and should not be allowed to continue. The Governor's proposal would cap non-economic damages for drivers committing crimes including uninsured drivers, drivers convicted of operating the vehicle under the influence at the time of the incident, and drivers committing a felony (or fleeing one) at the time of the incident. This is a commonsense change to protect law-abiding citizens who, under no circumstances, should be on the hook for higher premiums because wrong doers, and their attorneys, can sue and get rich quickly when the driver is committing a crime.

New York is also an outlier in allowing non-economic damages to drivers "mostly" at fault. The majority of states, including neighboring states like Connecticut, Massachusetts, and New Jersey, only allow damages if the driver is not primarily at fault for the accident. This makes sense; the driver who caused the accident should not be able to cash in. A driver who is "mostly" at fault should be held accountable for their actions and should not be able to secure a hefty payout. This reform is not only important for auto insurance premium reduction but will also create an environment where drivers face accountability and hopefully subsequently operate vehicles more safely and without distractions.

The other major contributor to increased and expensive litigation is the serious injury threshold. The serious injury threshold, while well-intended at the time of enactment, is being exploited. The original intent of this threshold was to prevent minor injuries from personal injury litigation, and reserve lawsuits for those suffering from major injuries. Unfortunately, the state's legal definition of serious injury is inconsistent and vague, allowing for litigation even when an injury may be temporary. The lack of a clear definition of serious injury has led to staggering levels of personal injury litigation, resulting in massive awards. The system is being gamed as demonstrated by a LexisNexis Risk Solutions report stating that 38% of auto insurance claimants reported that their attorney suggested or recommended medical treatment. The current system creates a perverse incentive for attorneys to recommend medical treatment for claimants and allows attorneys to cash in. The Executive budget provision to tighten the serious injury standard is a necessity to stop the exploitative litigation environment here in New York.

While the above-mentioned reform package is essential to help reduce the strain on the auto insurance industry, any savings should be passed onto policyholders through lower insurance premiums. NFIB strongly supports the Governor's initiative to direct the Department of Financial Services to reexamine the Excess Profit Law to ensure that small business owners and consumers see their costs go down because of these substantial reforms.

New York cannot continue to have the highest auto insurance premiums in the nation; it is bad for consumers, small businesses, and the state's economy. There are structural and systemic problems that have for too long been ignored because of powerful entrenched interests. The comprehensive reform package proposed by the Governor will lead to lower insurance costs, and these savings will be passed on to consumers and small business owners; ultimately, taking a step in the right direction to addressing the affordability crisis plaguing New York.

NFIB thanks you for the time and consideration and urges the legislature to support Governor Hochul's entire auto insurance reform package in the final enacted budget.