



NEW YORK
CITY BAR

**REPORT ON LEGISLATION BY THE
INSURANCE LAW COMMITTEE**

**A.10342
S.9481**

**M. of A. Burgos
Sen. Mayer**

AN ACT to amend the insurance law, in relation to authorizing stand-alone business interruption insurance

THIS BILL IS SUPPORTED IF AMENDED

The Insurance Law Committee of the New York City Bar Association (the “Committee”) welcomes this opportunity to comment on Department Bill #110 of the Department of Financial Services relating to business interruption insurance, which recently passed both houses of the Legislature as Assembly Bill A.10342 (AM Burgos) and Senate Bill S.9481 (Sen. Mayer) (the “Bill”) and is pending Governor Hochul’s action.

The Bill “amend[s] Insurance Law § 1113(a) to add business interruption insurance as an authorized kind of insurance that does not need to be tied to physical damage and would amend Insurance Law § 2105 to permit this insurance to be written in the excess line market if it is unavailable from authorized insurers. As a result, the bill would allow insurers to sell business interruption insurance that is not tied to physical damage, which businesses could purchase in the event of future pandemics or other events where there may not be physical damage to the property, such as an active shooter threat.”¹

The Committee supports adding business interruption insurance as a stand-alone kind of insurance. However, we write to raise a concern with the Bill’s definition of business interruption insurance that appears to be inconsistent with the Memorandum of Support and that could lead to confusion or unintended loss of coverage.

Under the Bill as passed by the Legislature, “Business interruption insurance” is defined as follows (emphasis added):

¹ See New York State Assembly Memorandum in Support for Legislation, https://nyassembly.gov/leg/?bn=A10342&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y&leg_vide=1 (All websites last accessed on July 2, 2024).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

“(34) "Business interruption insurance" means insurance against loss of use and occupancy, rents, and profits **resulting from a business closure** due to: (A) loss of or damage to insured or neighboring property; (B) an act or threatened act of violence while the perpetrator is on the business premises; or (C) a government order.”

However, the Justification paragraph of the Memorandum in Support describes business interruption coverage, correctly we believe, as follows (emphasis added):

“Currently, business interruption insurance typically covers loss of net profits when a covered peril, such as a fire, causes "direct physical loss of or damage to" insured property resulting in a closure **or a reduction** in business.”

There is no statement in the record explaining whether the elimination of “reduction in business” was intentional or not, and if intentional, what the reasoning was for narrowing coverage from the industry norm. The Committee is concerned that requiring closure of a business could result in a significant reduction of coverage for entities that are capable of continuing a business at a reduced capacity even in the event of a major loss. Further, insureds have the obligation to mitigate losses and the Committee is concerned that, absent the reduction of business language, an insured fulfilling its duty to mitigate by opening at reduced capacity could be faced with a total loss of coverage that would only remain available if the insured’s business was “closed.”

The Committee believes that if the elimination of “a reduction” in business was unintentional, then the wording should be amended as soon as practicable, possibly through a chapter amendment. If it was intentional, we believe it would be helpful to the insurance community and its customers to understand the reasoning behind this narrowing of the customary definition of business interruption insurance.

Insurance Law Committee
Peter Bickford, Member

July 2024

Contact

Elizabeth Kocienda, Director of Advocacy | 212.382.4788 | ekocienda@nycbar.org
Mary Margulis-Ohnuma, Policy Counsel | 212.382.6767 | mmargulis-ohnuma@nycbar.org