

New York State Authorizes Stand-Alone Business Interruption Insurance Policies

February 6, 2025

On Sept. 27, 2024, Governor Kathy Hochul approved A.B. 10342, which amended New York State insurance law to authorize, for the first time, stand-alone business interruption insurance policies. Notably, these policies would respond to claims for business interruption loss even in the absence of direct physical loss or damage to property.

The authorization of this new insurance product is a direct response to the effects of the COVID-19 pandemic, during which time government orders requiring the shutdown of non-essential businesses forced countless businesses to close their doors.

Many of these businesses sought to recover losses related to the shutdowns under their commercial property insurance policies, only to have their insurance claims denied on the grounds that direct physical loss or damage to insured property is a condition precedent to business interruption coverage under such policies.

The Basics of the Insurance

The new amendments introduce business interruption insurance as a separate form of



Photo: Ryland West/ALM

Midtown Manhattan.

authorized insurance and set forth the scope of coverage. Business interruption insurance is defined as “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.” N.Y. Ins. Law §1113 (Consol. 2025). The amendments also permit excess line brokers to place stand-alone

business interruption insurance policies in New York State.

The Impact of the New Law

The most significant impact of the amendments is that a policyholder that procures stand-alone business interruption insurance would not be prohibited from recovering business losses due to a forced closure during a health crisis even if it had not actually incurred physical damage to its property.

While the losses associated with the COVID-19 pandemic were undoubtedly a significant driver for the amendments, a business interruption insurance product that is not tied to direct physical loss or damage to property may prove useful in a number of situations aside from a pandemic or other health crisis. For example, the legislative sponsor's memorandum in support of the bill noted the practicality of offering business interruption insurance as a component of active shooter insurance policies.

There are other scenarios in which a business may be forced to close and experience losses not tied to physical damage to the business property – such as riots, demonstrations, environmental hazards, or catastrophic storms. In these scenarios, a stand-alone business interruption insurance policy could potentially provide a source for loss recovery.

Limitation to Business Closure

While certainly useful, because the scope of coverage requires closure, the current form of the new product would not protect businesses against losses due to a reduction in revenue while the business remained open. Given

this limitation, it is worth noting that many businesses experienced significant losses during the COVID-19 pandemic not due to a complete cessation of operations, but rather caused by a reduction in customers or sales.

As we discussed in a previous column, New York's highest court recently joined the majority of courts holding that the presence of SARS-CoV-2 (the virus that causes COVID-19) at insured properties and the related cessation and interruption of business activities were not sufficient to state a claim for "direct physical loss or damage" under a commercial property insurance policy. *Consol. Rest. Operations, Inc. v. Westport Ins. Co.*, No. 7, 2024 WL 628047 (N.Y. Feb. 15, 2024).

In that case, Consolidated Restaurant Operations, Inc. (CRO) alleged that it suffered "tens of millions of dollars in revenue loss" due to executive orders that forced the restaurant conglomerate to suspend indoor dining at its restaurants. *Id.* at 18. Like many other restaurants during this time, CRO continued to provide takeout, drive-through and delivery services.

Since its restaurants remained partially open, CRO would likely have been unable to recover its losses under the proposed stand-alone business interruption insurance policy if it had one in place during the COVID-19 pandemic – because the amendments define business interruption insurance as a protection against losses "resulting from a business closure."

Terms and Conditions

It is important for policyholders to review their insurance contracts carefully to understand

the scope of coverage and the relevant terms, conditions and limitations. As with any other form of insurance, exclusions written into a business interruption policy may further limit the scope of coverage.

For example, a policy containing a communicable diseases exclusion would likely limit or bar coverage for losses sustained due to a future pandemic or other health crisis concerning contagious disease. Likewise, a policy containing a pollution exclusion would likely limit or bar recovery for losses related to an environmental disaster.

Further, business interruption insurance may not cover all losses related to an event that seemingly falls into the definition of “business interruption insurance” under New York law. In the event of a catastrophic storm or flood, for example, policyholders would likely need flood or property insurance to cover certain losses.

The Market

The authorizing amendments are still very new and it remains to be seen whether a market will develop for this stand-alone insurance product. Insurers have traditionally included business interruption insurance in property insurance policies, albeit with a direct physical loss or damage requirement.

It is too soon to tell whether underwriters are enthusiastic about this product – and, if so, what exact terms and conditions will be included in the policies.

The amendment’s authorization of excess line brokers to place stand-alone business interruption insurance policies in New York State could help to provide potential insureds with more coverage options, particularly if few state-authorized insurers decide to provide this form of insurance.

Looking Forward

The authorization of stand-alone business interruption insurance that is not contingent on direct physical loss or damage to property is a potentially significant development in New York State insurance law.

While it should not be an insured’s sole protection against potential liabilities, if available, this new form of coverage may be a useful risk mitigation tool for businesses when combined with other insurance. We continue to actively monitor the industry for additional developments with respect to this product and will include any notable updates in a future column.

Theodore A. Keyes is a partner at *Schulte Roth & Zabel*. **Julia R. Cummings**, an associate, also contributed to this column.