



Legislative Memorandum in Support **A10226 (Carroll) / S8211 (Gounardes)**

An act in relation to requiring certain perils be covered under business interruption insurance during the COVID-19 pandemic

Nonprofit New York¹, and the undersigned nonprofit organizations, **strongly support A10226/S8211**, which would allow business interruption claims to be filed for losses sustained as a result of COVID-19.

Nonprofit revenue losses due to COVID-19

Nonprofits have experienced significant revenue losses, layoffs, and closures due to COVID-19, particularly nonprofits heavily reliant on revenue-generating events and fundraisers, nonprofits with fee-for-service contracts reimbursed for the number of people or units served, and community development corporations who generate revenue from rent.² Nonprofits in New York are not financially strong³ and these losses could lead to significant closures and adverse consequences to the communities we serve.

Nonprofit insurance

Most nonprofits with general liability or commercial property insurance have very limited business interruption coverage.⁴ Unlike for-profit entities, most nonprofits are not well-versed in insurance coverage negotiations and do not have weighty insurance brokers advocating for their interests.

¹ Nonprofit New York is an association of 1,500 nonprofit organizations in the New York City area.

² According to a pulse poll that was sent out by Nonprofit New York, 85% of respondents canceling programs and/or events, 70% experiencing reduced revenue, and 64% reporting a disruption of services to clients and communities. Dance/NYC reported that its survey respondents had lost at least \$15.2 million in income and that due to mandated social distancing, 69% of dance organizations surveyed are experiencing cash flow issues and/or financial hardship. New Yorkers for Culture & Arts found that surveyed freelance artists were reporting an average of \$7,021.88 worth of canceled work. *Times Union* reported that Planned Parenthood of Greater New York reportedly will be reducing its staff by roughly 28% across all departments. As reported by the *NY Post* and *ABC News*, roughly 40% of food pantries in NYC have shut down.

³ SeaChange Capital Partners. (2016). Risk Management for Nonprofits.

⁴ For those that do purchase the insurance, the coverage often does not extend to contingent business interruption, which is designed to cover business income loss resulting from loss, damage, or destruction of property owned by others, including: direct “suppliers” of goods or services to the insured and/or direct “receivers” of goods or services manufactured or provided by the insured. In addition, even if a claim for business interruption is related to COVID-19, insurers have disputed whether the physical loss requirement has been met and have pointed to pandemic, infectious or contagious disease exclusions in their policies to deny coverage.

Accordingly, **without specific legislative intervention, nonprofits are unlikely to receive coverage under their business interruption coverage for any COVID-19 related losses.**

Constitutionality

While the Commerce Clause of the U.S. Constitution imposes certain limits on the ability of states to retroactively interfere with vested contractual rights, such an interference can be upheld if it is rationally related to a legitimate state interest.⁵ We believe states have the power to retroactively mandate business interruption coverage of COVID-19 losses under existing policies under the current circumstances.

Contact: Chai Jindasurat, Policy Director, Nonprofit New York

Date: April 24, 2020

Signatories

Alice Austen House

Ars Nova

Asian American Federation

Association for Neighborhood & Housing Development

BOMB Magazine

Brooklyn Museum

Building for the Arts NY, Inc.

Callen Lorde Community Health Center

The Center for Fiction

Chinese-American Planning Council

Chocolate Factory Theater

The Climate Museum

City Lyric Opera

Dance/NYC

The Fortune Society

The Field

FPWA

Fraunces Tavern Museum

GMHC

IMPACCT Brooklyn

JACK, Brooklyn

The Joyce Theater Foundation

LEAP

Lincoln Center for the Performing Arts

MCC Theater

The Movement Theatre Company

Museum at Eldridge Street

New Art Publications

New York Botanical Garden

New York City Anti-Violence Project

New York City Ballet

New York Council of Nonprofits

New York Housing Conference

New York Immigration Coalition

New Yorkers for Culture & Arts

Nonprofit Finance Fund

Nonprofit New York

New York City Employment and Training Coalition

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Performance Space New York

The Public Theater

Roundabout Theatre Company

The Tank

Theatre Communications Group

United Way of New York City

⁵ General Motors Corp. v. Romein, 503 U.S. 181, 191 (1992)