

**NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES  
11 NYCRR 76  
(INSURANCE REGULATION 209)**

**COMMERICAL CRIME COVERAGE EXCLUSIONS**

I, Maria T. Vullo, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301 and 2307 and Articles 23, 24 and 34 of the Insurance Law, do hereby promulgate Part 76 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 209), to take effect on July 1, 2017, with respect to all policies issued, renewed or delivered in this State on or after that date, to read as follows:

**(ALL MATERIAL IS NEW)**

**Section 76.0 Preamble and purpose.**

(a) Correction Law section 753 states that the public policy of New York, as expressed in Correction Law Article 23-A, is to encourage the licensure and employment of persons previously convicted of one or more criminal offenses. Correction Law section 752 forbids discrimination based upon a conviction for a previous criminal offense unless there is a direct relationship between one or more of the previous offenses and the specific employment sought or held by the individual; or the granting or continuation of employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. Correction Law section 753 specifies eight factors, including the public policy of the state, to be considered in making a determination pursuant to section 752.

(b) However, commercial crime insurance policies often have provisions that will exclude coverage for loss or damage caused by an employee who has been convicted of a criminal offense, where the employer knew about the conviction prior to the loss or damage. This puts employers in the untenable position of either not being able to obtain insurance or violating the Correction Law by not hiring the individual, even though a review of the Correction Law factors would weigh in favor of employment. Given the strong public policy of the State, the Superintendent has determined that it would be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this state for an insurer that writes commercial crime insurance policies in this state to exclude coverage where the employer has weighed the factors set out in Correction Law Article 23-A and made a determination favorable to the employee.

**Section 76.1 Definitions.**

For purposes of this Part:

(a) *Commercial crime coverage* means coverage under a policy of commercial risk insurance that provides burglary and theft insurance or fidelity insurance; and

(b) *Commercial risk insurance* has the meaning ascribed by Insurance Law section 107(a)(47).

**Section 76.2 Prior convictions.**

No policy issued, renewed or delivered in this state that provides commercial crime coverage may exclude or limit coverage for loss or damage caused by an employee on the basis that the employee was convicted of one or more criminal offenses in this state or any other jurisdiction prior to being employed by the employer, if, after learning about an employee's past criminal conviction or convictions, the employer made a determination to hire or retain the employee utilizing the factors set out in Correction Law Article 23-A.

**Section 76.3 Determined violation.**

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this state, and shall be deemed to be a trade practice constituting a determined violation, as defined in section 2402(c) of the Insurance Law, in violation of section 2403 of such law.



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

I, Maria T. Vullo, Superintendent of Financial Services, do hereby certify that the foregoing is the new Part 76 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 209), entitled "Commercial Crime Coverage Exclusions", promulgated by me on December 6, 2016, pursuant to the authority granted by Financial Services Law Sections 202 and 302 and Insurance Law Sections 301 and 2307 and Articles 23, 24 and 34, to take effect on July 1, 2017, with respect to all policies issued, renewed or delivered in this State on or after that date.

Pursuant to the provisions in the State Administrative Procedure Act, prior notice of the proposed regulation was published in the State Register on October 12, 2016. No other publication or prior notice is required by statute.

A handwritten signature in blue ink, reading "Maria T. Vullo".

Maria T. Vullo  
Superintendent of Financial Services

Date: December 6, 2016