

ALERTS

State Legislators Seek to “Rewrite” Insurance Policies, Requiring Coverage of COVID-19 Business Interruption Losses

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The Novel Coronavirus (COVID-19) pandemic has elicited extraordinary suppression and mitigation measures from all levels of government in the U.S. and around the world. It is difficult to fathom the extent to which the economy, global and domestic travel, and life as we knew it have been disrupted in the span of only a few weeks. Lawmakers have been in the difficult position of having to weigh the public health implications of their policy decisions against the economic impact on businesses and individuals. At all levels, our governments have been taking steps to address mitigation of business and individual losses incurred during the pandemic. On March 27, 2020, the federal government passed an unprecedented \$2 trillion stimulus package aimed at stemming some of the damage. State legislators also are taking steps to address mitigation of business losses, including attempts to remove obstacles for businesses to collect under business interruption insurance policy provisions.

In our previous post, we discussed the landscape of event cancellation and business interruption insurance coverage as it pertains to losses sustained due to government-mandated shut downs of large portions of the economy. Several states, including New York, Massachusetts, New Jersey, and Ohio recently have introduced legislation that would require insurance companies to pay out COVID-19 related business losses under business interruption coverage, notwithstanding contractual language that may even explicitly exclude coverage when losses are due to a virus or pandemic. While the introduced bills require insurance companies to pay out under these policies, they also provide that the insurance companies may apply for reimbursement from the state through various mechanisms. In Pennsylvania, a resolution has been introduced that would seek a federal source of reimbursement for insurance companies that pay COVID-19 related business interruption claims.

New York. The New York Bill (A. 10226), introduced March 27, 2020, requires that all policies providing for recovery of business interruption losses be construed to include COVID-19 related business interruption:

Notwithstanding any provisions of law, rule or regulation to the contrary, every policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption, shall be construed to include among the covered perils under that policy, coverage for business interruption during a period of a declared state emergency due to the coronavirus disease 2019 (COVID-19) pandemic.

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The NY Bill was referred to the Committee on Insurance.

Ohio. The Ohio Bill (House Bill 589), introduced March 24, 2020, similarly requires all policies to be interpreted to cover COVID-19 losses, but the Bill’s language is broader than just COVID-19, allowing for coverage in the event of a different pandemic. It states that policies: “shall be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic during the state of emergency.”

Massachusetts. The Massachusetts Bill (SD 2888), also filed on March 24, 2020, requires all business interruption provisions to be construed to cover COVID-19 related losses. The Massachusetts Bill goes further though to explicitly negate any exclusion in a policy for losses resulting from viruses and to explicitly eliminate the requirement that there be physical damage to the property:

Moreover, no insurer in the commonwealth may deny a claim for the loss of use and occupancy and business interruption on account of (i) COVID-19 being a virus (even if the relevant insurance policy excludes losses resulting from viruses); or (ii) there being no physical damage to the property of the insured or to any other relevant property.

New Jersey. In mid-March, a New Jersey Bill (A3844) was introduced requiring that each applicable policy: shall be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic, as provided in the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020 concerning the 17 coronavirus disease 2019 pandemic.

These bills have been or can expect to be met with opposition. Concerns regarding the constitutionality of these bills have been raised and there has been push-back from the insurance industry in some instances. The NJ Bill reportedly has been caught up due to ongoing discussions with insurance industry representatives.

Pennsylvania - Federal Reimbursement. In a slightly different effort to encourage payment of business interruption losses, Pennsylvania Rep. Michael Driscoll introduced a resolution on March 25, 2020 that would urge the U.S. Congress to use stimulus money to reimburse insurance companies that voluntarily pay business interruption claims due to COVID-19.

As the COVID-19 insurance landscape continues to change, we will keep you abreast of developments.