



## Will Legislation Require Coverage For COVID-19 Business Interruption Losses?

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Over the past several weeks as the COVID-19 pandemic has caused unprecedented economic disruption nationwide, insurance companies and many others in the insurance industry have repeated a steady refrain that commercial insurance will not cover the resulting business interruption losses. These statements may cause many policyholders to dismiss out of hand the possibility of making a claim. That would be a mistake for two reasons. First, it is impossible to determine what coverage actually may be available without carefully examining the specific policy language and facts at issue. Second, there are increasing legislative efforts seeking to compel insurance carriers to cover COVID-19 losses. Because insurance carriers often refuse to pay claims when notice was late, failing to notify insurance carriers of losses now could jeopardize a company's ability to obtain insurance coverage that may become available as a result of such legislation.

There are several examples of such ongoing legislative efforts:

- In Massachusetts, proposed Bill SD 2888 would prohibit insurers from denying a claim for business interruption on the ground that COVID-19 is a virus, even if the relevant insurance policy excludes losses resulting from viruses. Under the proposed bill, insurers also would not be able to deny COVID-19 related business interruption claims on the ground that there is a lack of physical damage to the insured's property or to any other relevant property. If passed, this legislation

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would apply to policies issued to insureds with 150 or fewer full-time-equivalent employees in Massachusetts, and would be retroactive to March 10, 2020.

- In New Jersey, proposed Bill A-3844 would compel insurance companies to cover claims by New Jersey small businesses (100 or fewer full-time employees) for damages resulting from interruption of their operations due to COVID-19. This bill was voted out of the New Jersey Assembly Homeland Security and State Preparedness Committee on March 16, 2020. No further action has been taken on the bill yet.
- In Ohio, House Bill 589 would require insurers that provide business interruption insurance to cover losses that arise from global virus transmission or pandemic during the state of emergency for coronavirus, regardless of whether their policies contain exclusions for such risks. The bill would apply to businesses located in Ohio with 100 or fewer eligible employees.
- In New York, Draft Assembly Bill A10226 would require coverage for business interruption losses resulting from the COVID-19 pandemic. It would retroactively require coverage for COVID-19 business interruption losses under property policies providing business interruption coverage that were in force on March 7, 2020. If passed, the law would apply to policyholders with fewer than 100 full-time employees in New York.

Given the historic economic disruption caused by COVID-19, it is entirely possible that other states or even the federal government also could consider legislation that impacts the availability of insurance coverage for business interruption losses or other damages.

A best practice for policyholders is to evaluate insurance coverage and consider whether to notify carriers now. Insurers usually can be counted on to use a delay in providing notice as a basis for disputing coverage, so prompt notice can be crucial to preserve coverage. Businesses should consider giving notice, or reporting circumstances that may give rise to a loss, even if there are doubts about whether losses will be covered. Doing so could help preserve the opportunity to pursue coverage if legislation ultimately requires insurers to cover COVID-19 losses.