

**LEGISLATIVE EFFORTS TO ESTABLISH BUSINESS INTERRUPTION
INSURANCE COVERAGE OF LOSSES RELATED TO COVID-19**

In a recent article [*Hope on the Horizon For COVID-19 Related Business Interruption Coverage*](#), we reported on legislative efforts in New York and New Jersey to retroactively require insurance carriers to cover business interruption losses caused by the COVID-19 pandemic. Since then, there has been little legislative progress on those bills. According to the office of Andrew Gournardes, the Senate sponsor of the New York legislation, the bill is still in the Senate and Assembly insurance committees, which have not been meeting. According to office of Assemblyman Roy Freiman, the New Jersey legislation is still being held after it was successfully voted out of the Assembly Homeland Security and State Preparedness Committee.

With more and more legislation being introduced throughout the nation, we thought it would be helpful to provide an update on those legislative efforts. The chart below lists the legislation that has been proposed, together with some of the key features and limitations contained in each bill.

State Legislation

State	Bill	Features	Limitations
Louisiana	SB 477	Provides that every insurance policy in force on March 11, 2020 and thereafter that insures against business interruption, loss of use, or loss of occupancy shall cover business interruptions due to COVID-19.	Applies to all Louisiana businesses, regardless of size. Applies retroactively to March 11, 2020.
	SB 495	Creates the Business Compensation fund in order to expedite certain property insurance claims, resolve disputes, and provide coverage for losses due to COVID-19.	In order to participate, insurers must contribute to the fund the greater of \$50 million or 80% of the aggregate policy limits for all the commercial insurance policies the insurer has in place on March 11, 2020 or anytime thereafter. An insured may apply for payment so long as: (i) a policy for commercial loss was in force in Louisiana during the pandemic; (ii) the insured sustained commercial income or revenue loss due to COVID-19; (iii) the insured agrees to accept 80% of

			actual losses up to the policy limits; (iv) the Commissioner receives the application within 90 days of the expiration of the emergency declaration.
	HB 858	Provides that insurance policies that insure against business interruption and loss of use and occupancy shall cover business interruptions due to COVID-19.	Applies to insureds with less than 100 full time employees. Applies retroactively to March 11, 2020.
Massachusetts	S.2655	Provides that insurance policies that insure against business interruption and loss of use and occupancy shall cover business interruptions which were the direct or indirect result of COVID-19.	Applies to insureds with 150 or fewer full time employees.
Michigan	HB 5739	Provides that business interruption insurance policies shall cover business interruptions due to COVID-19 during the declared state of emergency.	Applies to insureds with less than 100 eligible employees.
New Jersey	AB 3844	Provides that insurance policies that insure against business interruption and loss of use and occupancy shall cover business interruptions that are due to COVID-19 during the declared state of emergency.	Applies to policies issued to insured with less than 100 eligible employees. Applies retroactively to March 9, 2020.
New York	A10226 S08211	Provides that insurance policies that insure against business interruption and loss of use and occupancy shall cover business interruptions that are due to COVID-19 during the declared state of emergency. Cover any loss of business or business interruptions and contingent business interruptions.	Applies to insureds with less than 250 eligible employees. Applies retroactively and will be deemed to have been in full force on March 7, 2020.

	A10327	Provides that insurance policies that insure against business interruption and loss of use and occupancy shall cover business interruptions that are due to COVID-19 during the declared state of emergency.	Applies to insurance policies for certain human service and community based health providers. Applies retroactively and will be deemed to have been in full force on March 7, 2020.
Ohio	HB 589	Provides that insurance policies that insure against business interruption and loss of use and occupancy shall cover business interruptions due to COVID-19 during the declared state of emergency.	Applies to insureds with 100 or fewer eligible employees.
Pennsylvania	HR 842	Urges the United States Congress to reimburse insurance companies, through the Federal stimulus fund, for payments made on business interruption insurance policies.	
	SB 1114	Provides that insurance policies that insure against business interruption and loss of use and occupancy shall cover loss or property damage due to COVID-19 and cover loss due to a civil authority order related to COVID-19.	Insureds that are classified as a small business will recover 100% of the policy limit. Insureds that are not classified as a small business will recover 75% of the policy limit. Applies to insurance policies effective prior to March 6, 2020.
	SB 1127	Provides that insurance policies that insure against property damage, business interruption, or loss of use and occupancy shall cover losses arising from COVID-19.	SB 1127 will be applied to insurance policies effective on or before March 6, 2020.
Pennsylvania	HB 2372	Provides that insurance policies that insure against business interruption and loss of use and occupancy shall cover business	Applies to insureds with less than 100 full time employees (at least 25 hours per week) as of March 6, 2020. Applies to insurance policies in force as of March 6, 2020.

		interruptions due to COVID-19 during the declared state of emergency.	
	HB 2386	Establishes the COVID-19 Disaster Emergency Business Interruption Grant Program in order to provide funding for businesses to continue operations during and after the COVID-19 pandemic.	Applies to businesses that are based in Pennsylvania and that employ no more than 200 people. If a business receives a grant, the business must remain open during the COVID-19 disaster emergency. Moreover, the business cannot layoff any employees during this time period as well. The business must repay the amount of the grant plus 10% if the business does not comply with this condition.
South Carolina	SB 1188	Provides that insurance policies that insure against business interruption or loss of use and occupancy shall cover business interruptions or loss of use and occupancy which were the direct or indirect result of COVID-19.	Applies to insureds with 150 or less full time employees Applies to policies in place on the date SB 1188 becomes effective or policies that become effective prior to the expiration of the Governor’s state of emergency declaration.

Federal Legislation and Industry Response

There has also been an effort in the U.S. House of Representatives to address the issue of business interruption losses resulting from the COVID-19 pandemic. In a [March 18 letter](#) sent to four key insurance industry organizations, a bipartisan group of 18 House members urged insurers to construe commercial business interruption coverage to retroactively cover business losses related to COVID-19. In a [joint response](#), the National Association of Mutual Insurance Companies, Independent Insurance Agents & Brokers of America, the Council of Insurance Agents and Brokers, and the American Property Casualty Insurance Association rejected that request, repeating the standard industry position that “Standard commercial insurance policies offer coverage and protection against a wide range of risks and threats and are vetted and approved by state regulators. Business interruption policies do not, and were not designed to, provide coverage against communicable diseases such as COVID-19.”

In addition to the bi-partisan effort discussed above, two bills have been introduced in the House. Some of their key features and limitations are described below.

H.R.6494	<p>Insurers that protect against business interruptions shall make available coverage for losses resulting from:</p> <ul style="list-style-type: none"> • A viral pandemic; • The forced closure or mandatory evacuation of the business by law or order; or • Any public safety power shut-off <p>Insurers that insure against business interruptions shall also make business interruption insurance coverage available for losses arising from events other than those described in the preceding paragraph.</p>	<p>An insurer may reinstate a provision in the insurance policy which excludes coverage for certain losses covered under H.R.6494 if:</p> <ul style="list-style-type: none"> • The insured has provided the insurer with a written statement that affirmatively authorizes this reinstatement; or • The insured fails to pay any increased premium to the insurer for such coverage and, at least 30 days prior to the reinstatement, the insurer provides notice of the increased premium for business interruption coverage and provides notice of the insured’s rights in regards to this coverage.
H.R.6497	<p>Insurers that protect against business interruptions shall make available optional additional coverage for losses that:</p> <ul style="list-style-type: none"> • Are the result of business interruptions due to any Federal, State, or local order which requires the business to close during a national emergency and; • Occur in any area impacted by the national emergency and for the duration of the national emergency. <p>Upon the declaration of a national emergency, H.R.6497 will cover losses for a continuous period beginning upon such declaration and is no shorter than 30 days.</p>	<p>During the period of the national emergency, H.R.6497 will not cover losses of an insured business if the business involuntarily terminated an employee’s employment or, if applicable, terminated an employee’s healthcare insurance.</p> <p>In the event of a national emergency, business interruption coverage may exclude coverage for business interruptions if:</p> <ul style="list-style-type: none"> • The insured has provided the insurer with a written statement that affirmatively authorizes this exclusion; or • The insured fails to pay any premium to the insurer for such coverage.

For additional information on these bills, or on issues related to business interruption insurance coverage for losses associated with COVID-19, please contact Robert Lillienstein at (212)554-7807 or at rlillienstein@mosessinger.com.