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Business Interruption Insurance Coverage for COVID-19 Losses-Recent Developments

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As the economic impact of COVID-19 becomes more apparent, states and policyholders are seeking insurance coverage for COVID-19 losses or claims. As discussed in our March 19, 2020 [alert](#), insurance coverages that may be triggered by COVID-19 losses or claims include:

- Business Interruption Coverage
- General Liability Coverage
- Workers Compensation Coverage
- Directors and Officers Coverage

An increasing number of states are actively looking for ways to support businesses facing considerable losses due to COVID-19 closures. We previously reported that [New Jersey, Massachusetts, Ohio, and New York](#) are considering legislation that would clarify and expand the scope of business interruption insurance coverage found in commercial property policies to ensure coverage for losses from COVID-19 closures. Since then, New York has amended its bill to provide broader coverage, and three more states—Louisiana, Pennsylvania, and South Carolina—have introduced similar bills. For a detailed comparison of the seven bills to date, see the end of this alert.

On April 8, 2020, the **New York** State Assembly [amended](#) its original bill, and referred it to the Committee on Insurance. The new, expanded legislation now applies to businesses with less than 250 employees, in contrast to the initial bill which was limited to businesses with less than 100 employees. Significantly, the amended New York bill nullifies and voids policy provisions that would allow a carrier to deny coverage based on a virus, bacterium, or other microorganism that causes or is able to cause disease, illness, or physical distress.

On March 31, 2020, **Louisiana's** [Senate](#) and [House](#) each introduced a bill that would mandate coverage for COVID-19-related business losses for property policyholders with business interruption coverage. The House version would apply to Louisiana businesses with less than 100 full-time employees, while the Senate version does not specify the number of employees a business must have to benefit from the bill.

The **Pennsylvania** House of Representatives [introduced](#) a bill that was referred to the Committee on Insurance on April 3, 2020. The bill reflects the terms of the New Jersey and Ohio bills and would apply to businesses with less than 100 employees.

The **South Carolina** Senate [introduced a bill](#) that was referred to the Committee on Banking and Insurance on April 8, 2020. If enacted, the bill would mandate coverage for business interruption losses caused directly or indirectly by COVID-19, including all mutated forms of the virus as a covered peril under existing policies that insure against loss or damage to property, including loss of use and occupancy or business interruption. The bill would apply to South Carolina businesses with 150 or fewer full-time equivalent employees. The bill also prohibits insurers from denying a claim for a loss of use and occupancy or business interruption with respect to COVID-19 on the basis of: (1) COVID-19 being a virus, even if the relevant insurance policy excludes losses resulting from viruses; (2) absence of physical damage to the property of the insured or to any other relevant property; or (3) orders issued by any civil authority, or acts or decisions of a governmental entity. The bill's proposed prohibition on claim denials is some of the strongest language proposed in any state thus far to protect struggling businesses.

While states have taken the lead on introducing such legislation, the issue of business interruption coverage for COVID-19 losses has reached the national stage. On March 18, 2020, 18 bipartisan members of Congress wrote a [letter](#) to heads of insurance companies urging them to cover COVID-19 business interruption losses. As covered in our earlier [alert](#), on March 25, 2020, the National Association of Insurance Commissioners (NAIC) [issued a statement](#) cautioning against Congressional action that

would require insurers to pay COVID-19 business interruption claims that the policies do not cover nor contemplate. In the statement, NAIC wrote that these policies were not designed or priced to provide for coverage against communicable diseases, and often exclude coverage for such risks. On March 31, 2020, the Council of Insurance Agents & Brokers (CIAB) joined other insurance trade groups [to urge Congress](#) to create a Business and Employee Continuity and Recovery Fund as part of the COVID-19 federal relief package to support businesses suffering from COVID-19 losses. Seven GOP Senators have sided with the insurance industry, [writing](#) to President Trump on April 10, 2020 cautioning against the legislative proposals under consideration by the states that would mandate carriers to cover losses related to the pandemic.

Recently, some members of Congress took steps to enact a law that ensure business interruption coverage for Covid-19 losses. On April 11, 2020, Representative Mike Thompson (D-CA-05) introduced a bipartisan bill entitled "[Business Interruption Insurance Coverage Act of 2020](#)." This bill would require carriers of property or casualty policies with business interruption coverage to cover business interruption losses resulting from (1) any viral pandemic, (2) any business closure or mandatory evacuation forced by federal, state, or local government or agency, and (3) any power shut-off conducted for public safety purposes. The bill would also nullify exclusions for business losses resulting from any viral pandemic, forced business closures or mandatory evacuations, and power shut-offs, and would preempt any state approval of such exclusions. The debate as to whether state or federal governments should intervene to mandate COVID-19 business interruption insurance coverage is and will continue to be contentious.

An increasing number of policyholders have taken matters into their own hands by filing lawsuits in state and federal courts across the country arguing that their policies do, in fact, cover COVID-19 business interruption claims. Policyholders should keep in mind that each situation is unique, based on their policy language, factual circumstances and applicable state law. As a starting point, policyholders should examine their policy language carefully to determine whether coverage may exist for COVID-19 related losses or claims.

[Click here for a chart comparing State COVID-19 Business Insurance Bills](#)

FOR MORE INFORMATION

For questions regarding your insurance policy and COVID-19 coverage, please contact [Michael Goodstein](#) (202-298-1923) or [Anne Lynch](#) (202-298-1926) in our Washington, D.C. office, and [Brian Zagon](#) (925-282-8015) or [Allison McAdam](#) (925-282-8011) in our California Bay Area office.

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