

State Legislative Action on Business Interruption Coverage

* In recent weeks, state legislatures have introduced bills seeking to expand coverage under business interruption policies in response to the novel coronavirus (COVID-19) outbreak.

* We are planning on providing daily updates documenting any relevant new bills that are introduced and the current procedural posture of the existing legislation. Today, the recent updates are denoted below, including:

- The Michigan House introduced business interruption legislation and referred it to the legislature’s Committee on Insurance.

* In general, most states that have introduced legislation expanding coverage under business interruption policies follow a specific framework:

- Requires coverage for business interruption due to the threat posed by COVID-19 to be construed as a “covered peril” under the business interruption policy;
- Requires the coverage to indemnify the insured for any loss of business/business interruption during a COVID-19-related state of emergency; and
- Dictates the policies to which the expansion applies (e.g., policies covering insureds who have less than 100 employees, policies in place during a certain time period, etc.).

Not every state has followed this model and some states deviate in important respects (e.g., application to all insureds, etc.). The below survey details the existing legislation, the current state of play, and a brief overview of the general provisions.

* We envision this as an evergreen document that we will aim to update daily. If you operate in a state and notice that we have not included the most up-to-date legislative developments, please let us know.

Business Interruption Legislation

State	Bill	Procedural Posture	General Overview	Indemnification	Application to Insureds	Duration of Application
Louisiana	SB 477	Introduced; placed on the calendar for a second reading (Mar. 31, 2020)	<p>Requires every policy of insurance in force on March 11, 2020 and thereafter insuring against loss/damage to property that includes loss of use, loss of occupancy, or business interruption to be construed to include among the covered perils, “coverage for business interruption due to imminent threat posed by COVID-19.”</p> <p>Requires every policy of insurance covering business interruption delivered/issued for delivery on or after August 1, 2020 to include a notice of all exclusions that is signed by the insured.</p>	Provides that the coverage will indemnify the insured for any loss of business or business interruption for the duration of the declared state of emergency.		Applies retroactively to March 11, 2020.
	HB 858	Introduced; lies over under the rules (Mar. 31, 2020)	Requires insurers that write policies which insure against loss/damage to property that also provide for coverage of loss of use, loss of occupancy, and business interruption to be construed to include “coverage of business interruptions due to the coronavirus disease 2019 pandemic.”	Requires insurers to indemnify policyholders who have policies that provide such coverage, subject to the extent of the policyholder’s policy, for any loss of business or business interruption incurred during the public health emergency.	Applies to policies issued to insureds who have less than 100 full-time employees.	Applies both prospectively and retroactively to March 11, 2020.
Massachusetts	SD 2888	Referred to the Committee on Financial	Requires every policy of insurance insuring against loss or damage to property (notwithstanding the terms of such policy, including any endorsements or exclusions to	Subject to the policy’s monetary limits and any maximum length of time set forth in the	Applies only to policies issued to insureds with 150 or fewer full-time-	Applies only to policies that are in force on the effective

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		Services (Apr. 21, 2020); House Concurred (Apr. 23, 2020)	<p>coverage), which includes the loss of use, loss of occupancy, and business interruption to be construed to include among the covered perils coverage for business interruption “directly or indirectly resulting from the global pandemic known as COVID-19.”</p> <p>Prohibits an insurer from denying a claim for the loss of use, loss of occupancy, and business interruption on account of:</p> <ul style="list-style-type: none"> • COVID-19 being a virus (even if the relevant insurance policy excludes losses resulting from viruses); or • There being no physical damage to the property of the insured or to any other relevant property. <p>Allows insurers to apply to the Division of Insurance for reimbursement for claims paid and provides guidance to the Division of Insurance for how to make such reimbursements.</p>	policy for such business interruption coverage, requires the coverage to cover the insured for any loss of business interruption until the emergency declaration is rescinded.	equivalent employees and which are in force on the effective date of this act (or that become effective prior to the rescission of the emergency declaration).	date of this act (or that become effective prior to the rescission of the emergency declaration).
Michigan	HB 5739	Introduced; referred to Committee on Insurance (Apr. 24, 2020)	Provides that an insurer that delivers, issues for delivery, or renews a business interruption insurance policy must include in the policy coverage for business interruption due to COVID-19.	Requires the coverage to indemnify the insured, subject to the limits under the policy, for any loss of business or business interruption.	Applies to policies in force upon the effective date of the legislation and issued to insureds that have less than 100 eligible employees in Michigan (i.e., full-time employees who work a normal	Applies for the duration of the declaration of state of emergency.

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					workweek of 25+ hours).	
New Jersey	AB 3844	Reported out of the Assembly Committee on Homeland Security and State Preparedness by 63-0-0 (Mar. 16, 2020)	<p>Requires every policy of insurance insuring against loss or damage to property, which includes the loss of use, loss of occupancy, and business interruption to be construed to include among the covered perils coverage for business interruption due to COVID-19.</p> <p>Allows insurers to apply to the Department of Banking and Insurance for reimbursement for claims paid and provides guidance to the Department of Banking and Insurance for how to make such reimbursements.</p>	Requires coverage to indemnify the insured, subject to the limits under the policy, for any loss of business or business interruption for the duration of that declared state of emergency.	Applies to policies issued to insureds with less than 100 eligible employees (i.e., a full-time employee who works a normal work-week of 25+ hours) in the state.	Applies retroactively to March 9, 2020.
New York	AB 10327	Introduced; referred to the Committee on Insurance (Apr. 22, 2020)	<p>Requires every policy of insurance insuring against loss or damage to property, which includes the loss of use, loss of occupancy, and business interruption to be construed to include among the covered perils under that policy, coverage for business interruption during a period of declared state of emergency due to COVID-19.</p> <p>Allows insurers to apply to DFS for reimbursement for claims paid and provides guidance to DFS for how to make such reimbursements.</p>	Provides that coverage will indemnify the insured, subject to the limits under the policy, for any loss of business or business interruption for the duration of a period of a declared state of emergency due to COVID-19.	Applies to insureds with such coverage who operate certain programs and services (e.g., mental health outpatient providers, substance use disorder treatment providers, diagnostic and treatment centers, mental hygiene clinics, primary care physicians or other providers, etc.).	Applies retroactively to policies in force on or after March 7, 2020.

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	SB 8178	Recommitted to the Committee on Insurance; Enacting Clause Stricken (Apr. 17, 2020)	<p>Requires every policy of insurance insuring against loss or damage to property, which includes the loss of use, loss of occupancy, and business interruption to be construed to include among the covered perils under that policy, coverage for business interruption during a period of a declared state of emergency due to COVID-19.</p> <p>Allows insurers to apply to DFS for reimbursement for claims paid and provides guidance to DFS for how to make such reimbursements.</p>	Requires the coverage to indemnify the insured, subject to the limits under the policy, for any loss of business or business interruption for the duration of a period of a declared state of emergency due to COVID-19.	Applies to policies issued to insureds with less than 100 eligible employees (i.e., full-time employees who work a normal work-week of 25+ hours) in force on the date the legislation takes effect.	Applies retroactively to policies in force on or after March 7, 2020.
	SB 8211 AB 10226	<p>SB: Referred to the Committee on Insurance (Apr. 17, 2020)</p> <p>AB: Amended and recommitted to the Committee on Insurance (Apr. 8, 2020)</p>	<p>Provides that every policy of insurance insuring against loss or damage to property, which includes—but is not limited to—the loss of use, loss of occupancy, and business interruption:</p> <ul style="list-style-type: none"> • Will be construed to include among the covered perils under that policy, coverage for business interruption during a period of a declared state of emergency due to COVID-19. • Whose policy expires during a period of a declared state of emergency due to COVID-19 will be subject to an automatic renewal of the policy at the current rate of charge. • Which allows the insurer to deny coverage based on a virus, bacterium, or other microorganism that causes disease, illness, or physical distress, will be null and void (provided that the other clauses and provisions will 	Provides that coverage will indemnify the insured, subject to the limits under the policy, for any loss of business or business interruption for the duration of a period of a declared state of emergency due to COVID-19.	Policies issued to insureds with less than 250 eligible employees (i.e., full-time employees who work a normal work-week of 25+ hours) in force on the date the legislation takes effect.	Applies retroactively to policies in force on or after March 7, 2020.

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			<p>remain in effect for the duration of the contract term).</p> <p>Allows insurers to apply to DFS for reimbursement for claims paid and provides guidance to DFS for how to make such reimbursements.</p>			
Ohio	HB 589	Introduced (Mar. 24, 2020)	<p>Requires every policy of insurance insuring against loss or damage to property, which includes the loss of use, loss of occupancy, and business interruption to 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.</p> <p>Allows insurers to apply to the Department of Insurance for reimbursement for claims paid and provides guidance to the Department of Insurance for how to make such reimbursements.</p>	Provides that the coverage will indemnify the insured, subject to the limits under the policy, for any loss of business or business interruption for the duration of the state of emergency.	Applies only to businesses that employ 100 or fewer eligible employees (i.e., full-time employees who work a normal work-week of 25+ hours).	Applies only to businesses that were covered by a policy of insurance that was in force on the effective date of the legislation.
Pennsylvania	HB 2386	Reported out of the Committee on Commerce; laid on the table (Apr. 21, 2020)	<p>Establishes the COVID-19 Disaster Emergency Business Interruption Grant Program within the Department of Community and Economic Development to provide funding for the continuing operation of businesses during and after the COVID-19 disaster emergency.</p> <p>Details the eligibility and operation requirements of the grant program.</p>			
	SB 1114	Referred to the	Requires a policy of insurance insuring against a loss related to property damage—	Requires the coverage to indemnify the	Applies at 100% coverage levels to	Applies to active

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		Committee on Banking and Insurance (Apr. 15, 2020)	<p>including the loss of use, loss of occupancy, and business interruption—to be construed to include among the covered perils coverage for loss or property damage due to COVID-19 and coverage for loss due to a civil authority order related to the declared disaster emergency and exigencies caused by COVID-19.</p> <p>Does not apply to certain lines of insurance (e.g., life, annuity, health, or disability insurance; mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks; fidelity or surety bonds; credit insurance, vendors’ single interest insurance or collateral protection insurance; title insurance; ocean marine insurance; insurance provided or guaranteed by a governmental entity; workers’ compensation and employer’s liability insurance; etc.).</p>	insured for losses related to the declared disaster emergency subject to the policy limits for loss of business or business interruption and subject to the maximum individual policy limits.	<p>“small businesses” (i.e., qualifies as a small business under SBA regulations or has received or will receive funding through a program administered by the SBA).</p> <p>Provides that insureds not classified as small businesses will receive 75% of the policy limit for eligible claims for covered losses.</p>	insurance policies with effective dates prior to March 6, 2020 and to insurance companies providing coverage against loss or damage to property (including the loss of use, loss of occupancy, and business interruption in the state).
	HB 2372	Referred to Committee on Insurance (Apr. 3, 2020)	<p>Requires an insurance policy that insures against loss or damage to property, which includes the loss of use, loss of occupancy, and business interruption, in force on March 6, 2020 to be construed to include among the covered perils under the insurance policy coverage for business interruption due to global virus transmission or pandemic.</p> <p>Allows insurers to apply to the Department of Insurance for reimbursement for claims paid and provides guidance to the Department for how to make such reimbursements.</p>	Requires the coverage to indemnify the insured of an insurance policy, subject to the broadest or greatest limit and lowest deductible afforded to business interruption coverage under the insurance policy, for any loss of business or business interruption for the duration of the	Applies to an insurance policy that is issued to an insured of an insurance policy if the insured has fewer than 100 eligible employees (i.e., a full-time employee who works a normal work week of 25+ hours).	Applies to insurance policies that were active on March 6, 2020.

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				declaration of disaster emergency.		
South Carolina	SB 1188	Introduced; referred to the Committee on Banking and Insurance (Apr. 8, 2020)	<p>Requires every policy of insurance in force insuring against loss or damage to property, notwithstanding its terms, that includes a loss of use, loss of occupancy, or business interruption to be construed to include, among the covered perils under the policy, coverage for loss of use, loss of occupancy, or business interruption, directly or indirectly resulting from COVID-19, including all mutated forms of the COVID-19 virus.</p> <p>Provides that no insurer may deny a claim for a loss of use, loss of occupancy, or business interruption, with respect to COVID-19, including, but not limited to, attempted insurer denials on account of:</p> <ul style="list-style-type: none"> • COVID-19 being a virus, even if the relevant insurance policy excludes losses resulting from viruses; • There being no physical damage to the property of the insured or to any other relevant property; or • Orders issued by any civil authority, or acts or decisions of a governmental entity. <p>Allows insurers to apply to the Department of Insurance for reimbursement for claims paid and provides guidance to the Department for how to make such reimbursements.</p>	Provides that the coverage required is subject to any monetary limits of the policy and any maximum length of time set forth in the policy.	Applies only to policies issued to insureds with 150 or fewer full-time equivalent employees in the state.	Applies to policies that are in force on the effective date of the legislation or become effective prior to the date on which the governor's state of emergency declaration expires.