

### **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 will provide daily updates documenting any relevant new bills and the current procedural posture of existing legislation. Today's actions include:

- New York referred its bill which would establish the Coronavirus Business Interruption and Municipal Recovery Program to the Senate Committee on Commerce, Economic Development and Small Business.
- Pennsylvania referred its bill, which would define “property damage” and the presence of a “communicable disease” for business interruption insurance to include specific places in which COVID-19 has been detected, to the Senate Committee on Banking and Insurance.

\* Most states that have introduced legislation on this subject follow this general framework:

- Require business interruption due to the threat posed by COVID-19 to be construed as a “covered peril” under policy;
- Require indemnification of the insured for any loss of business/business interruption during a COVID-19-related state of emergency; and
- Define 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.).

\* 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   |
|-----------------------------|---|---|---|---|---|---|
| <b>District of Columbia</b> | <a href="#">B23-0750</a> / <a href="#">B23-0751</a> | Business Interruption Provisions Removed (May 5, 2020)  | <p>Requires every policy in force on or before March 25, 2020, to insure loss of use and occupancy and business interruption shall provide coverage for business interruption directly or indirectly resulting from the D.C. Public Health Emergency.</p> <p>Requires the Commissioner to establish procedures for the submission and qualification of claims by insurers that are eligible for reimbursement.</p> <p>Establishes a separate account for Business Interruption Insurance Reimbursement.</p> | Provides that the coverage will indemnify the insured for any loss of business or business interruption for the duration of the D.C. Public Health Emergency. | Applies to policies issued to insureds who have less than 50 full-time employees, each of whom work 25 or more hours per week as of March 25, 2020 <i>and</i> less than \$2.5 million in federal gross receipts or sales. | Applies both prospectively and retroactively to March 25, 2020. |
| <b>Louisiana</b>            | <a href="#">SB 477</a>                              | Referred to the Committee on Insurance (May 4, 2020); introduced; placed on the calendar for a second reading | 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   | Provides that the coverage will indemnify the insured for any loss of business or business interruption for the duration of the                               |   | Applies both prospectively and retroactively to March 11, 2020. |

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|               |                         | (Mar. 31, 2020)  | for business interruption due to imminent threat posed by COVID-19.”<br><br>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.                  | Louisiana state of emergency.   |  |   |
|               | <a href="#">HB 858</a>  | Introduced (Mar. 31, 2020); referred to the Committee on Insurance (May 4, 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 | <a href="#">SD 2888</a> | Referred to the Committee on Financial Services (Apr. 21, 2020); House Concurred | Requires every policy of insurance insuring against loss or damage to property (notwithstanding the terms of such policy, including any endorsements or exclusions to coverage), which includes the loss of use, loss of occupancy, and business   | Subject to the policy’s monetary limits and any maximum length of time set forth in the policy for such business interruption coverage, requires  | Applies only to policies issued to insureds with 150 or fewer full-time-equivalent employees and which are in force on the effective date of this act (or that become effective prior to the | Applies only to policies that are in force on the effective date of this act (or that become effective prior to the |

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|          |                         | (Apr. 23, 2020)                                | <p>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"> <li>• COVID-19 being a virus (even if the relevant insurance policy excludes losses resulting from viruses); or</li> <li>• There being no physical damage to the property of the insured or to any other relevant property.</li> </ul> <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> | the coverage to cover the insured for any loss of business interruption until the emergency declaration is rescinded. | rescission of the emergency declaration).  | rescission of the emergency declaration). |
| Michigan | <a href="#">HB 5739</a> | Introduced; referred to Committee on Insurance | Provides that an insurer that delivers, issues for delivery, or renews a business interruption insurance policy  | Requires the coverage to indemnify the insured, subject to  | Applies to policies in force upon the effective date of the legislation and issued to insureds | Applies for the duration of Michigan’s    |

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|                   |                         | (Apr. 24, 2020)  | must include in the policy coverage for business interruption due to COVID-19.   | the limits under the policy, for any loss of business or business interruption.   | that have less than 100 eligible employees in Michigan (i.e., full-time employees who work a normal workweek of 25+ hours).                                       | state of emergency.                     |
| <b>New Jersey</b> | <a href="#">AB 3844</a> | 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 in New Jersey. | 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. |
| <b>New York</b>   | <a href="#">S 8319</a>  | Referred to the Senate Committee on Commerce, Economic Development and Small                                 | Establishes the Coronavirus Business Interruption and Municipal Recovery Program to provide grants to businesses and municipalities which sustain economic losses as a result of the COVID-19 emergency.   |   |   |   |

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|       |                          | Business (May 11, 2020)   | Details the eligibility and operation requirements of the grant program.  |   |  |   |
|       | <a href="#">AB 10327</a> | Introduced; referred to the Committee on Insurance (Apr. 22, 2020)                    | 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.<br><br>Allows insurers to apply to DFS for reimbursement for claims paid and provides guidance to DFS for how to make such reimbursements. | 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. |
|       | <a href="#">SB 8178</a>  | Enacting Clause Stricken (Apr. 17, 2020); amended and recommitted to the Committee on | 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  | 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   | 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. |

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|       |  | Insurance (May 1, 2020)  | <p>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>   | period of a declared state of emergency due to COVID-19.  |   |   |
|       | <a href="#">SB 8211</a>   <a href="#">AB 10226</a> | <p>SB: Referred to the Committee on Insurance (Apr. 17, 2020)</p> <p>AB: Amended and recommitted to the Committee on Insurance (Apr. 29, 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"> <li>• 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.</li> <li>• Whose policy expires during a period of a declared state of emergency due to COVID-19 will be subject to an <u>automatic renewal</u> of the policy at the current rate of charge.</li> <li>• Which allows the insurer to deny coverage</li> </ul> | 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>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 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>   |   |  |   |
| <b>Ohio</b> | <a href="#">HB 589</a> | Referred to the Committee on Insurance (May 5, 2020); 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 Ohio 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</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 Ohio 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. |



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|                     |                         |  | of Insurance for how to make such reimbursements.  |                 |   |  |
| <b>Pennsylvania</b> | <a href="#">SB 1127</a> | Referred to Senate Banking and Insurance (Apr. 30, 2020) | <p>Establishes the following:</p> <ul style="list-style-type: none"> <li>• If a person positively identified as having been infected with COVID-19 has been present in, or if COVID-19 has otherwise been detected in a building, an office, a retail space, a structure, a plant, a facility, a commercial establishment or other area of business activity, this area of business activity shall be deemed to have experienced the actual, and not merely suspected, presence of a “communicable disease.”</li> <li>• If a person positively identified as having been infected with COVID-19 has been present in, or if the presence of COVID-19 has otherwise been detected in a building, an office, a retail space, a structure, a plant, a facility, a commercial establishment or other area of business activity, or a municipality in</li> </ul> |                 | <p>Applies to each and every property, all-risk, business interruption, contingent business interruption, time element and contingent time element insurance claim where the property giving rise to the claimed loss is located within Pennsylvania and the losses claimed to be insured arise out of, or relate to, the COVID-19 pandemic.</p> <p>Applies to insurance companies that provide coverage against property damage, loss of use or occupancy or business interruption, and similar coverages, with respect to property in Pennsylvania.</p> | Applies retroactively to policies in force on or before March 6, 2020. |

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|       |      |                    | <p>which these commercial establishments are located, it shall be deemed to have experienced “property damage.”</p> <p>Provides that in any claim for insurance for losses relating to property damage, business interruption, contingent business interruption, time element, contingent time element or losses of a similar nature arising from the COVID-19 pandemic, the rules of construction in the act shall apply to first-party insurance policy provisions that are the subject of the claims.</p> <p>Provides that the loss of market exclusion, and similar exclusions, in a first-party policy may not be interpreted to apply to preclude coverage for COVID-19-related losses if one of the reasons for reduced customer demand for a policyholder’s goods or services is the same COVID-19 pandemic that gives rise to the policyholder’s losses for which coverage is sought.</p> |                 |                         |                         |

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|       |                         |  | Requires that each provision of this act and every application of the provisions of this act are severable from each other as a matter of State law.   |  |  |   |
|       | <a href="#">HB 2386</a> | Recommitted to the Committee on Finance (Apr. 28, 2020)            | 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.<br><br>Details the eligibility and operation requirements of the grant program.              |  |  |   |
|       | <a href="#">SB 1114</a> | Referred to the Committee on Banking and Insurance (Apr. 15, 2020) | Requires a policy of insurance insuring against a loss related to property damage—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 | Requires the coverage to indemnify the 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 | Applies at 100% coverage levels to “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).<br><br>Provides that insureds not classified as small | Applies to active insurance policies with effective dates prior to March 6, 2020 and to insurance companies providing coverage against loss |

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|       |                         |   | <p>emergency and exigencies caused by COVID-19.</p> <p>Does <b>not</b> 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> | maximum individual policy limits.   | businesses will receive 75% of the policy limit for eligible claims for covered losses.   | or damage to property (including the loss of use, loss of occupancy, and business interruption in the state). |
|       | <a href="#">HB 2372</a> | Referred to Committee on Insurance (Apr. 3, 2020) | 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.  | 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 | 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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|                       |                         |   | 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.  | insurance policy, for any loss of business or business interruption for the duration of the declaration of disaster emergency in Pennsylvania. |  |  |
| <b>South Carolina</b> | <a href="#">SB 1188</a> | 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> | 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 South Carolina state of emergency declaration expires. |

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|       |      |                    | <ul style="list-style-type: none"> <li>• COVID-19 being a virus, even if the relevant insurance policy excludes losses resulting from viruses;</li> <li>• There being no physical damage to the property of the insured or to any other relevant property; or</li> <li>• Orders issued by any civil authority, or acts or decisions of a governmental entity.</li> </ul> <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> |                 |                         |                         |