

2021 State Legislative Action on Business Interruption Coverage

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

* This tracker focusses on the 2021 legislative session. You can access the 2020 legislative session tracker [here](#).

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

- The New York Senate introduced a bill, S 4711, that would (1) require every policy of insurance insuring against loss or damage to property and/or insuring against an insured's business income loss resulting from loss, damage, or destruction of property owned by others to be construed to include coverage for business interruption and contingent business interruption during due to COVID-19; (2) require that the above-mentioned policies which expire during a period of a declared state emergency due to COVID-19, be subject to an automatic renewal at the current rate of charge; and (3) nullify every clause or provision of insurance insuring against loss or damage to property which allows the insurer to deny coverage based on a virus, bacterium or other microorganism.

* 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
New York	S. 847 / A. 498	Introduced and referred to the Committee on Insurance in both the Senate and Assembly (Jan. 6, 2021)	Nullifies every clause or provision of insurance insuring against loss or damage to property (including but not limited to, the loss of use and occupancy, business interruption, and contingent business interruption) which allows the insurer to deny coverage based on a virus, bacterium or other microorganism. Allows the remaining clauses and provisions of the contract to remain in effect for the duration of the contract term.	Indemnifies the insured, subject to the limits under the policy, for any loss of business or business interruption and contingent business interruption.	Applies to policies issued to insureds with less than two hundred fifty eligible employees.	Applies prospectively.
	A. 1937 / S 4711	Introduced in the Assembly and referred to the Committee on Insurance (Jan. 13, 2020); introduced in the Senate (Feb. 9, 2021)	<p>Requires every policy of insurance insuring against loss or damage to property and/or insuring against an insured's business income loss resulting from loss, damage, or destruction of property owned by others to be construed to include among the covered perils under that policy, coverage for business interruption and contingent business interruption during a period of declared state of emergency due to COVID-19.</p> <p>Requires that the above-mentioned policies which expire during a period of a declared state emergency due to COVID-19, be subject to an automatic renewal of the policy at the current rate of charge.</p> <p>Nullifies every clause or provision of insurance insuring against loss or damage to property which allows the insurer to deny</p>	Indemnifies the insured, subject to the limits under the policy, for any loss of business or business interruption and contingent business interruption.	Applies to policies issued to insureds with less than two hundred fifty eligible employees.	Applies retroactively to policies in force on or after March 7, 2020.

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			coverage based on a virus, bacterium or other microorganism.			
Pennsylvania	SB 42	Introduced and referred to the Senate Committee on Banking and Insurance (Jan. 20, 2021)	Requires that a policy of insurance insuring against a loss related to property damage, including the loss of use and occupancy and business interruption, must 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 the COVID-19.	Indemnifies 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 maximum individual policy limits.	Small business shall receive 100% of the policy limit for eligible claims for covered losses. Those not classified as a small business shall receive 75% of the policy limit for eligible claims for covered losses.	Applies retroactively to policies in force on or after March 6, 2020.
Rhode Island	HB 5052	Introduced (Jan. 22, 2021)	Requires every policy of insurance insuring against loss or damage to property, regardless of the terms of such policy, to include among the covered perils coverage for business interruption directly or indirectly resulting from COVID-19.	Indemnifies the insured for losses related to COVID-19 subject to any monetary limits of the policy and any maximum length of time set forth in the policy for such business interruption coverage.	Applies only to policies issued to insureds with one hundred fifty or fewer full-time equivalent employees in the state.	Applies to policies in force on the effective date of this act or which become effective prior to the date that the Governor rescinds the March 9, 2020 state of emergency.
Washington	SB 5351	Introduced (Jan. 26, 2021)	Requires that every property insurance policy containing a grant of coverage for direct physical loss of or damage to property be construed to include the			Applies prospectively except in the case of the

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			deprivation of such property and the loss of the ability to use such property.			Governor's state of emergency as a result of COVID-19 where it applies retroactively to February 29, 2020.