

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 Jersey legislature enacted a bill, A 4805, that requires insurers that issue policies of business interruption in New Jersey to: (1) disclose to any potential purchaser or policyholder seeking renewal whether the policy provides coverage for global virus transmission or pandemic coverage and (2) to notify the policyholder, within 30 days of the date of enactment of the bill, of whether the policy provides coverage for global virus transmission or pandemic coverage.
- The DC Council passed and transmitted to the Mayor for approval, B24-0217, which would require, on an emergency basis, for the length of the public health emergency and for 90 days thereafter, the tolling of all time periods for holders of a commercial policy of insurance to exercise their rights under the policy or District law for losses covered under the existing policy.
- The DC Council introduced a bill, B24-0218, which would require, on a temporary basis, for the length of the public health emergency and for 90 days thereafter, the tolling of all time periods for holders of a commercial policy of insurance to exercise their rights under the policy or District law for losses covered under the existing policy. This bill, unlike B24-0217, would remain in effect for 225 days after having taken effect as opposed to B24-0217 which would only remain in effect for 90 days because it was passed through the emergency procedure as opposed to the standard procedure which includes a 30-day Congressional review period.

* 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
California	AB 743	Introduced (Feb. 17, 2021)	<p>Creates a rebuttable presumption with respect to coverage for business interruption – due to general business interruption and extra expenses or due to an order of civil authority or due to impairment of ingress and egress (coming and going) – that COVID-19 was present on property located within the geographical location covered by the order of civil authority and caused physical loss or damage to that property which was the direct cause of the insured’s business interruption.</p> <p>Prohibits COVID-19 from being construed as a pollutant or contaminant for purposes of any exclusion within an insurance policy unless viruses are expressly included in that exclusion policy language.</p>			Applies retroactively to all insurance policies that provide coverage for business interruption in full force and effect on and after March 4, 2020 and prospectively.
District of Columbia	B 24-0217	Introduced (May 3, 2021); passed and transmitted to Mayor, Response Due on May 25, 2021 (May 11, 2021)	Require, on an emergency basis, for the length of the public health emergency and for 90 days thereafter, the tolling of all time periods for holders of a commercial policy of insurance to exercise their rights under the policy or District law for losses covered under the existing policy.			Shall remain in effect for no longer than 90 days following the approval of the Mayor.
	B 24-0218	Introduced (May 3, 2021)	Requires, on a temporary basis, for the length of the public health emergency and for 90 days thereafter, the tolling of all time periods for holders of a commercial policy			Expires 225 days after

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			of insurance to exercise their rights under the policy or District law for losses covered under the existing policy.			having taken effect.
Illinois	HB 3166	Introduced (Feb. 19, 2021)	Requires that any insurance in Illinois that offers business interruption insurance must be construed to include, among the covered perils of that policy, coverage for loss of use and occupancy of a business and business interruption resulting from a public health emergency or disaster regardless of whether the public health emergency or disaster results in physical damages to business property.			Applies prospectively.
	HB 3148	Introduced (Feb. 19, 2021)	Requires that any insurance policy in Illinois that offers business interruption insurance must be construed to include, among the covered perils of that policy, coverage for loss of use and occupancy of a business and business interruption, including lost income, resulting from a forced closure of businesses during a period of a declared emergency by law or order of a federal or State government or governmental officer or agency.			Applies prospectively.
Massachusetts	SD 1845 / HD 3170 / H 1079	Introduced (Feb. 18, 2021)	Requires every policy of insurance in force, and insuring risks, in Massachusetts that provides insurance coverage against Business Income, Contingent Business Income and/or Extra Expense arising out of the loss of or damage to Covered Property must be reasonably construed - with respect to losses arising from or in connection with		Applies only to policies issued to insureds with 50 or fewer full-time equivalent employees in Massachusetts.	Applies prospectively to any time in which a public health emergency is in force in Massachusetts

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			<p>business interruption - to be a direct or indirect result of any public health emergency declared to combat the spread of COVID-19.</p> <p>Creates a variety of rebuttable presumptions and declarations to reinforce the above requirement including requiring that every policy of insurance or endorsement insuring against loss or damage to property which expires during a declared state of emergency due to COVID-19 be subject to an automatic renewal of the policy at the current or reduced rate of charge.</p>			to combat the spread of COVID-19.
Maine	HP 506	Introduced (Mar. 4, 2021)	Prohibits insurers that provide a policy insuring against loss or damage to property from (1) excluding coverage for any loss of occupancy or business interruption directly or indirectly resulting from the COVID-19 pandemic and (2) including a provision in a policy excluding coverage for any loss of occupancy or business interruption directly or indirectly resulting from a pandemic declared by the World Health Organization or the United States Government.			Applies retroactively to March 15, 2020.
New Jersey	A 4805	ENACTED (May 12, 2021)	Requires insurers that issue policies of business interruption in New Jersey to disclose to any potential purchaser or policyholder seeking renewal whether the policy provides coverage for global virus transmission or pandemic coverage. The disclosure to potential purchasers of business interruption insurance shall be in a			Applies prospectively.

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			<p>form and manner prescribed by the Commissioner of Banking and Insurance.</p> <p>Also requires insurers issuing business interruption insurance in New Jersey to notify the policyholder, within 30 days of the date of enactment of the bill, of whether the policy provides coverage for global virus transmission or pandemic coverage. The notification of policyholders of business interruption insurance is to be in a written statement delivered by mail or electronic means.</p>			
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)	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	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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			<p>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 coverage based on a virus, bacterium or other microorganism.</p>			
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.	<p>Small business shall receive 100% of the policy limit for eligible claims for covered losses.</p> <p>Those not classified as a small business shall receive 75% of the policy limit for eligible claims for covered losses.</p>	Applies retroactively to policies in force on or after March 6, 2020.
	HB 1223	Introduced (Apr. 20, 2021)	Requires that an insurance policy that insures against loss or damage to property, which includes the loss of use and occupancy and business interruption, in force on March 6, 2020, be construed to include among the covered perils under the insurance policy coverage for business	Indemnifies the insured of an insurance policy, subject to the broadest or greatest limit and lowest deductible afforded	Applies to insurance policies that are (1) issued to insureds with fewer than 100 eligible employees in the Commonwealth, and	Applies retroactively to policies in force on or after March 6, 2020.

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			interruption due to global virus transmission or pandemic.	to business interruption coverage under the insurance policy, for any loss of business or business interruption for the duration of the declaration of Commonwealth's March 6, 2020 Proclamation of Disaster Emergency concerning the coronavirus pandemic.	(2) in force on 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.
	HB 5912	Introduced (Feb. 24, 2021)	Requires that every policy of insurance for loss or damage to property, which includes the loss of use and occupancy and business	Indemnify the insured for losses	Apply to all businesses covered by a business interruption insurance	Applies retroactively to policies in

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			interruption, in force on March 9, 2020, must include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic, as provided in the Rhode Island Governor’s March 9, 2020 executive order (20-2).	incurred during the state of emergency.	policy with less than 100 full-time employees in Rhode Island.	force on March 9, 2020 and prospectively while the Rhode Island Governor’s 20-2 executive order is in effect.
	SB 347	Introduced (Feb. 25, 2021)	Requires that every policy of insurance for loss or damage to property, which includes the loss of use and occupancy and business interruption, in force on March 9, 2020, be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic, as provided in the Rhode Island Governor’s executive order 20-2.		Apply to all businesses covered by a business interruption insurance policy with less than 100 full-time employees in the state of Rhode Island.	Applies prospectively.
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 deprivation of such property and the loss of the ability to use such property.			Applies prospectively except in the case of the Governor’s state of emergency as a result of COVID-19 where it applies retroactively to

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						February 29, 2020.