

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 Illinois House introduced two bills:
 - o HB 3166, which would require 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 resulting from a public health emergency or disaster regardless of whether the public health emergency or disaster results in physical damages to business property; and
 - o HB 3148, which would require 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.

- The Massachusetts House and Senate introduced companion bills, HD 3170 and SD 1845, which would require every policy of insurance in force 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 business interruption - to be a direct or indirect result of any public health emergency declared to combat the spread of COVID-19. The bills would also create 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.

- Rhode Island introduced a bill, HB 5912, which would require 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, 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).

* 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.
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,			Applies prospectively.

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			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.			
Massachusetts	SD 1845 / HD 3170	Introduced (Feb. 18, 2021)	<p>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 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>		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 to combat the spread of COVID-19.
New York	S. 847 / A. 498	Introduced and referred to the Committee on Insurance in	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	Indemnifies the insured, subject to the limits under the policy, for any loss	Applies to policies issued to insureds with less than two hundred	Applies prospectively.

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		both the Senate and Assembly (Jan. 6, 2021)	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.	of business or business interruption and contingent business interruption.	fifty eligible employees.	
	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 coverage based on a virus, bacterium or other microorganism.</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.
Pennsylvania	SB 42	Introduced and referred to the Senate Committee on	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	Indemnifies the insured for losses related to the declared disaster	Small business shall receive 100% of the policy limit for	Applies retroactively to policies in force on or

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		Banking and Insurance (Jan. 20, 2021)	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.	emergency subject to the policy limits for loss of business or business interruption and subject to the maximum individual policy limits.	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.	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.
	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 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).	Indemnify the insured for losses incurred during the state of emergency.	Apply to all businesses covered by a business interruption insurance policy with less than one hundred full-time employees in Rhode Island.	Applies retroactively to policies in force on March 9, 2020 and prospectively while the Rhode Island Governor's 20-2 executive

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						order is in effect.
Washington	<u>SB 5351</u>	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 February 29, 2020.