

Pennsylvania Senate Issues Bill That, If Passed, Will Require Insurers to Provide Broad Coverage for COVID-19-related Business Interruption Claims

Insurance Recovery, Litigation & Counseling Alert

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The Pennsylvania Senate has joined the ranks of other states' lawmakers, as well as Pennsylvania's House of Representatives, in proposing broad legislation that would assist policyholders that are suffering from the major economic upset stemming from COVID-19.

In what is by far the broadest bill to date, the General Assembly of Pennsylvania issued Senate Bill 1114, dated April 15, 2020, which shall be known as the "COVID-19 Insurance Relief Act." The bill sets forth several legislative findings concerning the initial discovery of the coronavirus; the Pennsylvania Governor's Emergency Disaster Declaration of March 6; the exponential spread of the virus; and the governmental orders closing schools, nonessential businesses, and nonlife-sustaining businesses, as well as the "social distancing" guidance and stay-at-home order for the entire state.

The Pennsylvania Senate explained the legislature's authority to pass such a bill: "Inherent in the police powers of the legislature is the ability to enact laws that are necessary for the good of the public. Those laws may result in an impairment of contract rights when the legislature has a significant and legitimate public purpose, such as remedying a social or economic problem." The bill further explained that "COVID-19 and the mandated closures resulted in major economic upset throughout this Commonwealth." Although businesses may have insurance for business interruption or civil authority, a "virus exclusion" in policies may prohibit recovery. The legislature further noted that the Insurance Services Office developed a rider to provide policyholders the option of purchasing business interruption coverage due to viruses, but that form has not been approved to date. Therefore, according to the Pennsylvania Senate, "[p]ermitting coverage for business losses during the COVID-19 disease pandemic and Statewide outbreak is necessary to prevent further economic disruption and allow businesses to remain functioning in the face of continued and uncertain closures."

The proposed legislation provides the following broad relief: "Notwithstanding any other law, rule or regulation, a policy of

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insurance insuring against a loss related to property damage, including the loss of use and occupancy and business interruption, shall 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 disease pandemic.” As a result, insurers issuing policies to Pennsylvania businesses providing coverage for loss or damage to property (including loss of use and occupancy) and business interruption are required to indemnify policyholders for these losses. The bill provides a sweeping definition of property damage that rejects the insurance industry’s argument that COVID-19-related losses are not covered because there has been no “direct physical loss, damage or destruction of property.” In fact, the bill defines “property damage” as follows:

In a building, office, retail space, structure, plant, facility, commercial establishment or other area of business activity, the direct physical loss, damage or injury to tangible property, as a result of a covered peril, including, but not limited to:

- a. *The presence of a person positively identified as having been infected with COVID-19.*
- b. *The presence of at least one person positively identified as having been infected with COVID-19 in the same municipality of this Commonwealth where the property is located.*
- c. *The presence of COVID-19 having **otherwise been detected in this Commonwealth.***

The proposed law applies to all insurance policies issued prior to March 6, 2020. An insured who qualifies as a “small business” pursuant to SBA criteria may recover 100% of the policy’s limit, while an insured that is not a “small business” may recover 75% of a policy’s limit. The Insurance Commissioner is instructed to promulgate rules and regulations necessary to effectuate the law, and the Pennsylvania Supreme Court is vested with exclusive jurisdiction to hear any challenges concerning the act.

This bill goes farther than the General Assembly’s House Bill No. 2372, introduced on April 3, 2020, which would aid only insureds with fewer than 100 eligible employees. However, unlike the Senate Bill, the House Bill would allow insurers to apply to the Insurance Commissioner for relief and reimbursement, which may be paid through “special purpose apportionments” or funds the Commissioner collects from property and casualty insurers. On April 13, 2020, the General Assembly also introduced House Resolution No. 842, which urged “the Congress of the United States to facilitate payment to insurance companies through Federal stimulus funds for the reimbursement of costs associated with the payment of claims made on business interruption insurance policies during the COVID-19 pandemic.”