

## State Legislatures Considering Bills to Extend Business Interruption Coverage for Coronavirus Losses

Hinckley Allen Construction & Public Contracts

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*Update: April 10, 2020:*

**Four More States Introduce Bills to Extend Coverage Under Business Interruption Insurance Policies, Bringing the Total Number of States Considering Such Action to at Least Eight** Legislators in New York, Pennsylvania, Louisiana and South Carolina have now introduced bills which would require Business Interruption insurance carriers to honor claims arising out of Covid-19 and to bar denials of claims based upon a lack of damage to property. Like the proposed statutes in Massachusetts, Rhode Island, Ohio and New Jersey, this proposed legislation (except the Louisiana bill) includes provisions requiring the reimbursement of carriers by state administered funds. The New York bill limits relief to policyholders with less than 250 employees, Pennsylvania limits relief to businesses with less than 100 employees and the South Carolina and Louisiana bills do not contain limitations on relief due to numbers of employees. Pennsylvania is also considering a fund which would directly compensate Business Interruption policy holders should their claims be denied by their carrier. Whether other states or follow suit or Federal action is taken remains to be seen.

**See the original post below for information on how you should prepare and file a claim.**

*Update: April 6, 2020:*

**Rhode Island Legislators Consider Reformation of Business Interruption Insurance Policies** The Providence Journal has reported that a number of Rhode Island legislators intend to introduce bills when the legislature reconvenes which would require Business Interruption insurance carriers to honor claims arising out of Covid-19 and to bar denials of claims based upon a lack of damage to property. Like the proposed statutes in Massachusetts, Ohio and New Jersey, the proponents of the legislation say that it will include a provision requiring the reimbursement of carriers by a state administered fund. One of the draft bills would limit relief to businesses with less than 100 employees. It is unclear when the General Assembly will be able to reconvene. We will provide further updates as we obtain additional information.

*Originally published on April 1, 2020*

### What Does this Mean for Your Company

The COVID-19 pandemic is having enormous impact on our lives, our companies, our society and our government.

Three state legislatures – New Jersey, Ohio and Massachusetts – have each proposed novel bills that would retroactively require companies that provide business interruption insurance to cover financial losses due to COVID-19.

This proposed legislation will, however, likely face legal challenges. By effectively rewriting business interruption policies to include coronavirus pandemic-related losses as covered losses, the legislation is limiting or overriding an insurer's

contracted-for policy exclusions and imposing liability on carriers. Such an act by the legislature may be found to be an unconstitutional restriction on the parties' freedom to contract, even though each of the proposed bills provide for some reimbursement to affected carriers.

## **What Should Holders of Business Interruption Policies Do in These Circumstances?**

Before the legislatures pass and/or the carriers challenge these bills, insureds need to review their property and business income insurance policies and packages to gain a clear understanding of their coverage, coverage extensions and exclusions, especially exclusions or extensions related to business interruption, ingress/egress, civil authority, communicable diseases, epidemics, pandemics and viruses. The language and available coverages may differ between policies, and the interaction between policy provisions may be complex, so it is advisable to retain experienced coverage counsel to review the various policy terms and circumstances, the insurers' responsibilities and the insureds' rights and remedies.

In light of the unprecedented legislative action in New Jersey, Massachusetts and Ohio (with more states likely to follow), businesses should prepare and submit claims for COVID-19-related losses, even if their policies currently exclude coverage for such losses. This does not necessarily mean that a company's claims will be covered. However, submitting a claim is a necessary first step in obtaining coverage. At this point, businesses experiencing COVID-19 losses should review their data, and gather and maintain records and evidence to prove COVID-19-related costs, delays, and inefficiencies.

Hinckley Allen is tracking the legislative action on COVID-19 issues and is prepared to provide whatever advice or assistance is required. If you have any questions about this, please contact Eric Eisenberg, the Chair of our [Insurance Coverage](#) group at [eeisenberg@hinckleyallen.com](mailto:eeisenberg@hinckleyallen.com) or at 617-733-3608.

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