

Proposed Bills Requiring Business Interruption Insurance Coverage for COVID-19 Losses

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Issue

Have any states proposed requiring business interruption insurance to cover COVID-19 losses?

Summary

Legislators in at least three states—Massachusetts, New Jersey, and Ohio—have proposed bills requiring business interruption insurance coverage for losses incurred due to the COVID-19 pandemic. These bills would generally (1) apply to business interruption policies held by small businesses and (2) require insurers to cover losses caused by the COVID-19 outbreak despite any policy term to the contrary. None have become law to date.

Business interruption insurance, also known as business income insurance, typically covers a business' loss of income following a covered peril that causes physical loss or damage, making the business premises temporarily unusable. Covered perils include such things as theft, fire, wind, falling objects, or lightning. The insurance may also cover operating expenses, like electricity, that continue even though business activities have temporarily ceased. However, a standard business interruption policy excludes coverage for losses caused by a virus or global pandemic.

Opponents of the proposed bills argue that their retroactive effect is unconstitutional as an impairment of private contracts (e.g., see this Insurance Journal [article](#)).

Business Interruption Insurance Bills

Bills proposed in Massachusetts ([SD 2888](#)), New Jersey ([A 3844](#)), and Ohio ([HB 589](#)) would expand business interruption policies to cover business losses attributable to the COVID-19 pandemic, regardless of any policy exclusions to the contrary.

Each bill also provides that insurers paying out claims as a result of the expanded coverage would potentially be eligible for reimbursement from the state's insurance commissioner under standards the commissioner adopts. Reimbursements would be paid from a special assessment on insurers that sell business interruption coverage.

Massachusetts

SD 2888 would specifically prohibit insurers from denying business interruption claims based on (1) COVID-19 being a virus, even if the relevant insurance policy excludes losses resulting from viruses, or (2) there being no physical damage to the insured's business property.

It would apply to policies (1) issued to businesses that have 150 or fewer full-time-equivalent employees and (2) in force on the bill's effective date or that become effective after March 10, 2020, when the governor issued an emergency declaration, but before the declaration is rescinded. Coverage, which is subject to policy terms and limits, ends when the governor rescinds the declaration.

New Jersey

A 3844 would apply to policies issued to businesses with less than 100 eligible employees and in force as of the bill's effective date and be retroactive to March 9, 2020, when the governor declared a state of emergency. "Eligible employee" means a full-time employee who works a normal work week of at least 25 hours. Under the bill, coverage would last for the duration of the declared emergency.

Ohio

HB 589 would apply to policies issued to businesses with 100 or fewer eligible employees and in force as of the bill's effective date and cover losses incurred beginning March 9, 2020, when the governor declared a state of emergency. "Eligible employee" means a full-time employee who works a normal work week of at least 25 hours. Coverage would last for the duration of the declared emergency.

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