



# Business Interruption Insurance and COVID-19: State Legislative Initiatives

May 11, 2020

One of the most significant challenges currently facing businesses is the loss of revenue as a result of the coronavirus (COVID-19) pandemic and subsequent stay-at-home orders. Businesses across all sectors are incurring losses, and those with [business interruption insurance](#) (BI) are submitting claims to their insurers. However, both individual insurance carriers and the industry as a whole have asserted that BI claims related to COVID-19 are not covered, either because there has been no physical damage to the property or because the policy expressly excludes coverage for viruses, or both. More detail on BI insurance can be found in CRS Insight IN11295, *Business Interruption Insurance and COVID-19*. Insurance companies are [regulated by states](#); the role of the federal government in regulating private insurance (other than health insurance) is more limited. Federal initiatives related to BI coverage are discussed in CRS Insight IN11383, *Business Interruption Insurance and COVID-19: Federal Legislative Initiatives*.

Given the likelihood that many COVID-19 losses will not be covered by BI insurance, many small businesses have requested that their elected representatives intervene through legislation to require their claims to be paid, and a number of state lawmakers have drafted legislation to compel coverage. Legislators in at least eight states have introduced bills, with [others considering legislation](#), to require insurers to provide retroactive BI coverage for coronavirus-related losses even if coverage under the policies otherwise would not be triggered.

The state BI bills have certain features in common, requiring insurers with in-force BI policies or property insurance policies to cover BI losses during a defined period of a declared emergency due to COVID-19, retroactive to the date when the state of emergency was declared. The claims payment would initially come from insurers, but the proposals vary in the extent to which insurance companies or the government would ultimately fund those payments. Most of these bills would apply only to small businesses.

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IN11382

## Insurers Reimbursed for Paying BI Claims for Policies with Virus Exclusions

[New Jersey A-3844](#), [New York A.10226-B](#), [New York S.8178](#), [New York S.8211](#), [Ohio H.B. 589](#), and [Pennsylvania H.B.2372](#) would require insurers to pay BI claims even if the policy expressly excludes losses due to viruses. Insurers would pay the claims and apply to the state insurance regulator for reimbursement, who would impose a special purpose assessment on all insurers to recover costs of reimbursement. Reimbursement would be distributed to companies which paid BI claims according to the proportion of net premiums written by the company. [New York A.10226](#) and [New York S.8211](#) would nullify any exclusion clauses in an insurance policy, including but not limited to loss of use and occupancy and business interruption, which allows the insurer to deny coverage for a virus, bacterium, or other microorganism. [Ohio H.B.589](#) would create a Business Interruption Insurance Fund, and any amount remaining in the Fund after claims are reimbursed would be returned to insurers.

## Insurers Reimbursed for Paying BI Claims for Policies with Virus Exclusions or Requirement for Evidence of Physical Damage

[Massachusetts S.D.2888](#), [South Carolina S.1188](#), and [Washington, DC, B23-750](#) would require insurers to pay BI claims for losses caused directly or indirectly by COVID-19, including all mutated forms of the virus, even if the policy expressly excludes losses due to viruses and/or requires evidence of physical damage. The South Carolina and Washington, DC bills would apply to orders issued by any civil authority. The Washington, DC bill would only apply to businesses with fewer than 50 employees and less than \$2.5 million in federal gross receipts or sales. All three bills would require insurers to pay the claims and apply for reimbursement from the state regulator. The state regulator would be authorized to make one or more special assessments in each fiscal year on all insurers to recover the amounts paid to insurers, who would be reimbursed according to the proportion of net premiums written by the company. In Massachusetts, noncompliant insurers could be subject to penalties under state law regulating unfair practices in the insurance industry.

## Insurers Not Reimbursed for Paying BI Claims

[Louisiana H.B.858](#) and [Louisiana S.B.477](#) would require insurers to pay BI losses to businesses with BI policies in force, even if the policy expressly excludes losses due to viruses. [Louisiana S.B.477](#) does not specify a business size. [Michigan H.B.5739](#) would require insurers to pay all BI claims due to the coronavirus. None of these bills contain any provision for reimbursing insurers.

[Pennsylvania S.1114](#) would require insurers to pay BI losses to businesses with BI policies in force, even if the policy expressly excludes losses due to viruses or due to civil authority orders and/or requires evidence of physical damage. Policyholders classified as small businesses according to the [criteria of the Small Business Administration](#) would receive 100% of the policy limit for eligible claims for covered losses, while policyholders not classified as a small business would receive 75% of the policy limit. The bill would apply to insurance companies providing coverage against business interruption or loss or damage to property, including the loss of use and occupancy. The bill defines property damage as damage including, but not limited to the presence of a person positively identified as having been infected with COVID-19: (1) in the property; (2) in the municipality in which the property is located; or (3) in the Commonwealth of Pennsylvania. The bill does not contain any provision for reimbursing insurers.

## Business Interruption Claims Paid by the State

[Pennsylvania H.B. 2386](#) would establish a COVID-19 Business Interruption Grant Program to provide grants to businesses that have been impacted by COVID-19 and whose BI claim has been denied. Funding for the grant would be appropriated by the state from the general fund. If a business receives a grant, it would be required to remain open and not lay off any employees for the duration of the COVID-19 disaster emergency. Any business which receives a grant and does not comply with these requirements would be required to repay the amount of the grant plus an additional 10%.

### Author Information

Diane P. Horn	Baird Webel
Analyst in Flood Insurance and Emergency Management	Acting Section Research Manager

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