



New Jersey Discussing Legislation That Would Require Property Insurers To Pay Coronavirus Business Interruption Claims

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New Jersey is discussing draft legislation that would require certain property insurers to provide coverage for business interruption losses resulting from the Coronavirus pandemic. If approved, N.J. Draft Bill A-3844 (the "Bill") would have immediate effect and apply retroactively to insurance policies in force on March 9, 2020 that insure against loss or damage to property and include loss of use and occupancy and business interruption coverage. The proposed Bill would effectively eliminate the impact of any "virus" exclusions in such policies.

Specifically, the draft Bill would require insurers to indemnify their insureds for any loss of business or business interruption sustained during the State of Emergency that was first declared in New Jersey on March 9, 2020, despite any "virus" exclusions in the policy. The Bill would, however, only apply to policies issued to policyholders with less than 100 full-time employees, defined as those who work a normal week of 25 or more hours, in the State of New Jersey. The Bill would further allow insurers to apply to the Commissioner of Banking and Insurance for relief and reimbursement for indemnity paid to policyholders under the Bill. Such relief would be funded by a special purpose apportionment on insurers, other than life and health carriers, doing business in New Jersey.

The text of the proposed Bill, however, does not expressly address whether it intends to eliminate the precondition contained in most Business Interruption policy forms that there be "direct physical loss or damage" to covered property, for coverage to attach. It remains to be seen whether the proposed Bill, as currently written, is intended to and/or will be interpreted to allow business interruption coverage even in the absence of direct physical loss of damage to covered property in the context of the Coronavirus outbreak.

This legislative development is crucial, particularly now that the Governors of New York, New Jersey and Connecticut agreed to reduce mobilization throughout the Tri-State area by ordering the prohibition of crowds of 50 or more, including private parties, effective Monday, March 16, 2020 at 8 p.m. Eastern Time and "until further notice." The Tri-State area's efforts to contain the Coronavirus outbreak also include orders to close restaurants and bars (except for takeout or delivery orders), along with gyms, movie theaters and nontribal casinos. These governmental measures will have a significant impact on business income for policyholders, who are encouraged to review whether their property insurance policies would respond to loss of income claims as a result of exposure to the Coronavirus.

On March 16, 2020, SDV remotely attended the Committee Action hearing at the New Jersey Legislature. The New Jersey Business & Industry Association ("NJBIA"), the Insurance Council of New Jersey ("ICNJ") and the National Association of Mutual Insurance Companies opposed the Bill with no testimony. The NJBIA also proposed amendments to the draft Bill and submitted a written statement in opposition, as did the ICNJ and the American Property Casualty Insurance Association. After deliberation, and despite concerns over the effect on possible increases in insurance premiums if the Bill becomes law, the draft Bill was released for Second Reading in a 4-1 vote, including one abstention.

The draft Bill may be subject to amendments in the Second Reading and then will be subject to a vote under a Third Reading. For the draft Bill to become law, each House must approve it by a majority of the authorized members, and it must pass both Houses in identical terms. If this is achieved, the Bill would be sent to the Governor to sign, return with changes, or veto. The draft Bill would become law upon the Governor's signature or after 45 days if no action is taken. The Bill may, however, be subject to judicial constitutional scrutiny after its enactment.

The draft Bill is still in the early stages of the legislative process but is predicted to proceed rapidly. It is also likely that other states may follow New Jersey's lead.

SDV is monitoring developments nationwide and will keep policyholders advised in all things insurance concerning the Coronavirus outbreak.

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