



Massachusetts and Ohio Join the Effort to Insure COVID-19 Business Interruption Losses

By Bethany L. Barrese

On March 24, 2020, the Massachusetts and Ohio legislatures proposed bills that would provide insurance coverage to small businesses for business interruption losses sustained during the COVID-19 pandemic. These new developments come less than two weeks after New Jersey became the first state in the nation to introduce legislation on this issue.

The Ohio bill, HB 589, is similar to the bill presently pending in New Jersey. It states that all existing insurance policies that provide coverage for loss of use and occupancy and business interruption shall be construed to include coverage for business interruption due to global virus transmission or pandemic during Ohio's state of emergency, which was declared on March 9, 2020. If passed, the bill would apply to businesses located in Ohio that employ 100 or fewer full-time employees.

The Massachusetts bill, SD.2888, has an even broader reach, applying to Massachusetts companies that employ 150 or fewer full-time employees. Moreover, while the New Jersey and Ohio bills do not expressly address the treatment of virus exclusions or the requirement that there be "direct physical loss or damage" to covered property, the Massachusetts bill is crystal clear: "no insurer in the commonwealth may deny a claim for the loss of use and occupancy and business interruption on account of (i) COVID-19 being a virus (even if the relevant insurance policy excludes losses resulting from viruses); or (ii) there being no physical damage to the property of the insured or to any other relevant property."

The Massachusetts bill also ends on a unique note: it states that "[f]or the avoidance of doubt, this act is subject to Chapter 176D of the General Laws." Chapter 176D concerns Unfair Methods of Competition and Unfair and Deceptive Acts and Practices in the Business of Insurance. By including this statement, the legislature is sending a message to insurers that the bill, if enacted into law, must be complied with fairly and in good faith.

Each of the proposed bills state that the coverage it provides is subject to the policy limits. With respect to business interruption, most policies contain two types of limits: a dollar limit and a limit on the duration of the business interruption. While the New Jersey and Ohio bills simply state that the coverage shall be “subject to the limits under the policy,” the Massachusetts bill specifies that both the monetary limit and the time duration limit will apply.

As discussed in [SDV's review of the New Jersey legislation](#), it is likely that these two new bills will face criticism from insurers based on concerns over the impact on premiums and governmental interference in private contracts. The New Jersey bill was set for a vote on March 16th, but pushback from the insurance industry caused the bill to be put on hold. The sponsors of the bill are purportedly working with insurance industry representatives to address these concerns, with the hope of reintroducing an amended bill in the near future.

With three such bills passed in the span of two weeks, state legislatures are trying to alleviate the overwhelming negative effect the COVID-19 pandemic has had on small businesses.

SDV is continuing to track this legislation and remains ready to serve policyholders facing coronavirus-related coverage issues nationwide.

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