



New York Joins New Jersey, Massachusetts and Ohio in Discussing Legislation That Would Require Property Insurers To Pay COVID-19 Business Interruption Claims

By Richard W. Brown and Andres Avila

If approved, New York Draft Assembly Bill A10226 (the "Bill") would require property insurers to cover business interruption losses resulting from the COVID-19 pandemic. The Bill would have immediate retroactive effect applying to property policies containing business interruption and loss of use and occupancy coverage, and in force on March 7, 2020, the date Governor Cuomo declared a State of Emergency. The draft Bill would apply to policyholders under such policies with less than 100 full-time employees who work a normal week of 25 hours or more in the State of New York. New York joins New Jersey, Ohio and Massachusetts, all of which are considering similar proposed legislation.

The proposed Bill, which was introduced for debate on March 27, 2020, would effectively avoid disputes as to whether the presence of COVID-19 on property triggers the direct physical loss of or damage to property condition requirement contained in most business interruption coverages. Though not explicitly addressed, the Bill would also effectively result in any "virus" exclusions contained in such policies being unenforceable.

Specifically, the draft Bill mandates an interpretation of every such policy insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption, to include coverage for business interruption during the current declared State of Emergency due to the COVID-19 pandemic. The indemnification would be subject to the limits under the policy, for any loss of business or business interruption for the duration of a period of a declared State of Emergency.

The draft Bill, which can be found [here](#), is in the early stages of the legislative process. SDV will continue to monitor its status along with other legislative efforts nationwide and keep policyholders informed on all insurance-related issues concerning the COVID-19 pandemic.

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