STATE OF NEW YORK

1937

2021-2022 Regular Sessions

IN ASSEMBLY

January 13, 2021

Introduced by M. of A. CARROLL, FAHY, GRIFFIN, EPSTEIN, PHEFFER AMATO, DINOWITZ, CUSICK, BARRETT, COLTON, THIELE, FALL, FRONTUS, GLICK, ROZIC, JONES, JACOBSON, NIOU, SIMON, OTIS, WOERNER, SEAWRIGHT, LUPARDO, L. ROSENTHAL, ANDERSON, EICHENSTEIN, BRONSON, STECK, GALEF, REYES, J. RIVERA, TAYLOR, DAVILA -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, LAVINE, McDONOUGH -- read once and referred to the Committee on Insurance

AN ACT in relation to requiring certain perils be covered under business interruption insurance during the coronavirus disease 2019 (COVID-19) pandemic

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. For the purposes of this act:

(a) "business" shall mean a business registered with the department of tax and finance or not-for-profit corporation registered with the Attorney General's charities bureau.

(b) "income" shall mean traditional business income as well as not-for-profit revenue from donations, sponsorships, and grants.

(c) "net written premiums received" shall mean gross direct premiums written, less return premiums thereon and dividends credited or paid to policyholders, as reported on the company's annual financial statement.

(d) "premium taxes" shall mean payments required under subsection (d) of section 2118 of the insurance law.

§ 2. (a) Notwithstanding any provisions of law, rule or regulation to the contrary, every policy of insurance insuring against loss or damage to property, which includes, but is not limited to, the loss of use and occupancy and business interruption, shall be construed to include among the covered perils under that policy, coverage for business interruption during a period of a declared state emergency due to the coronavirus disease 2019 (COVID-19) pandemic.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(b) Every policy of insurance insuring against loss or damage to property, which includes, but is not limited to, the loss of use and occupancy and business interruption, whose policy expires during a period of a declared state emergency due to the coronavirus disease 2019 (COVID-19) pandemic, shall be subject to an automatic renewal of the policy at the current rate of charge.

(c) Every policy of insurance or endorsement thereto insuring against an insured's business income loss resulting from loss, damage, or destruction of property owned by others, including direct suppliers of goods or services to the insured and/or direct receivers of goods or services manufactured or provided by the insured, shall be construed to include among the covered perils under that policy, coverage for contingent business interruption during a period of a declared state emergency due the coronavirus disease 2019 (COVID-19) pandemic.

(d) Every policy of insurance or endorsement thereto insuring against an insured's business income loss resulting from loss, damage, or destruction of property owned by others, including direct suppliers of goods or services to the insured and/or direct receivers of goods or services manufactured or provided by the insured, whose policy expires during a period of a declared state emergency due to the coronavirus disease 2019 (COVID-19) pandemic, shall be subject to an automatic renewal of the policy at the current rate of charge.

(e) Any clause or provision of a policy of insurance insuring against loss or damage to property, which includes, but is not limited to, the loss of use and occupancy and business interruption and contingent business interruption, which allows the insurer to deny coverage based on a virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress shall be null and void; provided, however, the remaining clauses and provisions of the contract shall remain in effect for the duration of the contract term.

(f) The coverage required by this section shall indemnify the insured, subject to the limits under the policy, for any loss of business or business interruption and contingent business interruption for the duration of a period of a declared state emergency due to the coronavirus disease 2019 (COVID-19) pandemic.

(g) This section shall apply to policies issued to insureds with less than 250 eligible employees in force on the effective date of this act. "Eligible employee" means a full-time employee who works a normal work week of 25 or more hours.

§ 3. (a) An insurer, including excess lines insurers, which indemnifies an insured who has filed a claim pursuant to section two of this act may apply to the superintendent of financial services for relief and reimbursement by the department from funds collected and made available for this purpose as provided in section four of this act.

(b) The superintendent of financial services shall establish procedures for the submission and qualification of claims by insurers which are eligible for reimbursement pursuant to this act. The superintendent of financial services shall incorporate in these procedures such standards as are necessary to protect against the submission of fraudulent claims by insureds, and appropriate safeguards for insurers to employ in the review and payment of such claims.

§ 4. (a) The superintendent of financial services is authorized to impose upon, distribute among, and collect from the companies, including excess lines insurers, engaged in business pursuant to the insurance

law, such additional amounts as may be necessary to recover the amounts paid to insurers pursuant to section three of this act.

(b) The additional special purpose apportionment authorized pursuant to subdivision (a) of this section shall be distributed in the proportion that the net written premiums, or premium taxes in the case of excess lines insurers, received by each company subject to the apportionment authorized by this section for insurance written or renewed on risks in this state during the calendar year immediately preceding, bears to the sum total of all such net written premiums, or premium taxes in the case of excess lines insurers, received by all companies writing that insurance or coverage within the state during that calendar year, as reported.

§ 5. This act shall take effect immediately, and shall be deemed to have been in full force and effect on and after March 7, 2020 and shall apply to insurance policies in force on that date.