

STATE OF NEW YORK

4711

2021-2022 Regular Sessions

IN SENATE

February 9, 2021

Introduced by Sens. GOUNARDES, ADDABBO, BIAGGI, GAUGHRAN, GIANARIS, HARCKHAM, HOYLMAN, JACKSON, KAPLAN, KENNEDY, MAY, MAYER, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SEPULVEDA, SKOUFIS, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed 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:

- 1 Section 1. For the purposes of this act:
2 (a) "business" shall mean a business registered with the department of
3 tax and finance or not-for-profit corporation registered with the Attor-
4 ney General's charities bureau.
5 (b) "income" shall mean traditional business income as well as not-
6 for-profit revenue from donations, sponsorships, and grants.
7 (c) "net written premiums received" shall mean gross direct premiums
8 written, less return premiums thereon and dividends credited or paid to
9 policyholders, as reported on the company's annual financial statement.
10 (d) "premium taxes" shall mean payments required under subsection (d)
11 of section 2118 of the insurance law.
12 § 2. (a) Notwithstanding any provisions of law, rule or regulation to
13 the contrary, every policy of insurance insuring against loss or damage
14 to property, which includes, but is not limited to, the loss of use and
15 occupancy and business interruption, shall be construed to include among
16 the covered perils under that policy, coverage for business interruption
17 during a period of a declared state emergency due to the coronavirus
18 disease 2019 (COVID-19) pandemic.
19 (b) Every policy of insurance insuring against loss or damage to prop-
20 erty, which includes, but is not limited to, the loss of use and occu-
21 pancy and business interruption, whose policy expires during a period of

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

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1 a declared state emergency due to the coronavirus disease 2019 (COVID-
2 19) pandemic, shall be subject to an automatic renewal of the policy at
3 the current rate of charge.

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

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

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

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

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

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

43 (b) The superintendent of financial services shall establish proce-
44 dures for the submission and qualification of claims by insurers which
45 are eligible for reimbursement pursuant to this act. The superintendent
46 of financial services shall incorporate in these procedures such stand-
47 ards as are necessary to protect against the submission of fraudulent
48 claims by insureds, and appropriate safeguards for insurers to employ in
49 the review and payment of such claims.

50 § 4. (a) The superintendent of financial services is authorized to
51 impose upon, distribute among, and collect from the companies, including
52 excess lines insurers, engaged in business pursuant to the insurance
53 law, such additional amounts as may be necessary to recover the amounts
54 paid to insurers pursuant to section three of this act.

55 (b) The additional special purpose apportionment authorized pursuant
56 to subdivision (a) of this section shall be distributed in the propor-

1 tion that the net written premiums, or premium taxes in the case of
2 excess lines insurers, received by each company subject to the appor-
3 tionment authorized by this section for insurance written or renewed on
4 risks in this state during the calendar year immediately preceding,
5 bears to the sum total of all such net written premiums, or premium
6 taxes in the case of excess lines insurers, received by all companies
7 writing that insurance or coverage within the state during that calendar
8 year, as reported.

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