

If Passed, House Bill 589 Requires Insurers Offering Business Interruption Insurance to Cover Losses Due to COVID-19

By Laura (Megan) Faust

Earlier this week, the Ohio legislation introduced H.B. No. 589 to require insurers offering business interruption insurance to cover losses attributable to COVID-19. The bill declares the act to be “an emergency measure necessary for the immediate preservation of the public peace, health, and safety . . . to protect small businesses from catastrophic losses caused by commercial decline necessary to prevent the spread of COVID-19.” If passed, it would go into immediate effect.

The bill defines “state of emergency” as “the state of emergency . . . issued on March 9, 2020, to protect the well-being of Ohio citizens from the dangerous effects of COVID-19.” It provides that “every policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption, in force in this state on the effective date of this section, shall be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic during the state of emergency.” The bill adds that “[t]he coverage required by this section shall indemnify the insured, subject to the limits under the policy, for any loss of business or business interruption for the duration of the state of emergency.”

The bill would apply to business interruption policies issued by March 9, 2020 and held by Ohio-based companies with 100 or fewer employees working at least 25 hours per week.

Under the bill, an insurer that indemnifies an insured for such COVID-19 related losses may apply to the state Superintendent of Insurance for relief and reimbursement from funds collected from an assessment charged to insurers and deposited into a Business Interruption Insurance Fund. The Superintendent of Insurance is tasked with establishing procedures for the submission and qualification of claims and may pay such claims as they are received from such funds as are available to the Superintendent or after the assessment charged to insurers is collected.

The bill’s language closely resembles recently proposed bills in New Jersey and Massachusetts. There is no guarantee that the bill will become law. As has been raised with the New Jersey bill, there is a question whether a law that seeks to compel insurance coverage is constitutional.

The best course of action for businesses is to carefully review your policy terms and consult with those who have specialized knowledge in this area of the law in order to present any claim to your insurer. Any claims should be presented sooner rather than later as some policies have limited time frames within them.

If you have any questions, please feel free to contact any of the listed attorneys.

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