

California Business Interruption COVID-19 Coverage Bill: A New Twist to Proposed State Legislation

By: Edward M. Koch and Felix S. Yelin
Insurance Coverage and Bad Faith Alert
7.8.20

On July 2, 2020, an amended California Assembly Bill 1552 (Bill 1522 or the bill), which relates to commercial business interruption coverage of insured businesses during the ongoing COVID-19 pandemic, was referred to the California Senate Insurance Committee. Unlike other bills that various state legislatures are considering, this bill would create certain **rebuttable presumptions** that affect the burden of proof in a first-party coverage case where the insured alleges that business interruption was due to the COVID-19 pandemic and occurred during the California Governor's state of emergency issued as a result of this pandemic. Section 2 of Bill 1522 states that it is an "urgency statute necessary for the immediate preservation of the public peace, health, or safety . . . and shall go into immediate effect." The necessity for it to go into immediate effect purportedly is in "order to protect the solvency of businesses that were forced to close their doors or limit business" due to the pandemic (although the bill does not explain why insurance is the only, or the proper, vehicle for addressing these solvency issues). The bill's provisions would be retroactively applied to all commercial insurance policies providing coverage for business interruption that were in full force and effect on and after March 4, 2020, the date of the declared state of emergency.

There are three (3) "rebuttable presumptions" introduced within Section 1 of Bill 1522. First, with respect to general business interruption and extra expenses coverage, "a rebuttable presumption applies that COVID-19 was present on the insured's property and caused physical damage to that property which was the direct cause of the business interruption." Second, with respect to civil authority-related business interruption coverage, "a rebuttable presumption applies that COVID-19 was present on property located within the geographical location covered by the order of civil authority and caused physical damage to that property which was the direct cause of the insured's business interruption." Finally, with respect to coverage for business interruption due to impairment of ingress or egress, "a rebuttable presumption applies that COVID-19 was present on the property of a third party and caused physical damage to that property which was the direct cause that prevented the ingress and egress to the insured's property and resulted in the insured's business interruption."

While Section 1's benefits do not affect the applicability of any policy provision, the bill states that COVID-19 shall not be construed as a pollutant or contaminant for purposes of any exclusion within a commercial insurance policy. The only exception is if a commercial policy provision contains a virus exclusion. A virus exclusion, such as ISO form CP 01 40 07 06, titled "Exclusion for Losses Due To Virus or Bacteria," may still bar coverage for such a claim despite the language of this bill.

Multiple state jurisdictions have introduced – but not passed – COVID-19 business interruption coverage bills. New Jersey was the first state to introduce such a bill back in March 2020. Other state jurisdictions, such as Louisiana, Ohio, Pennsylvania, South Carolina and New York, have also introduced similar bills to New Jersey. The bills introduced in New Jersey and other jurisdictions all mandated coverage and faced potential constitutional challenges due to the bills' potential to impair contracts. However, the California bill is the first to introduce rebuttable presumptions for key coverage elements of business interruption claims arising out of the COVID-19 pandemic. Legal challenges would still be likely if Bill 1552 is passed, although it could involve novel issues involving whether statutory-mandated rebuttable presumptions for key coverage determination elements are still unconstitutional impairment of contracts.

125th
ANNIVERSARY



White and
Williams LLP

If you have any questions or need more information, contact Edward M. Koch (koche@whiteandwilliams.com; 215.864.6319) or Felix S. Yelin (yelinf@whiteandwilliams.com; 215.864.6317).

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.

