

ASSEMBLY, No. 3844

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Assemblywoman ANNETTE CHAPARRO

District 33 (Hudson)

Co-Sponsored by:

**Assemblywomen Reynolds-Jackson, McKnight, Lopez, Assemblymen
Wimberly, Mazzeo, Chiaravalloti, Assemblywoman Jasey, Assemblyman
Mejia, Assemblywomen Jimenez, Swain and Assemblyman Zwicker**

SYNOPSIS

Concerns business interruption insurance during coronavirus disease 2019 state of emergency.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain covered perils under business
2 interruption insurance and supplementing Title 17 of the Revised
3 Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. a. Notwithstanding the provisions of any other law, rule or
9 regulation to the contrary, every policy of insurance insuring
10 against loss or damage to property, which includes the loss of use
11 and occupancy and business interruption in force in this State on the
12 effective date of this act, shall be construed to include among the
13 covered perils under that policy, coverage for business interruption
14 due to global virus transmission or pandemic, as provided in the
15 Public Health Emergency and State of Emergency declared by the
16 Governor in Executive Order 103 of 2020 concerning the
17 coronavirus disease 2019 pandemic.

18 b. The coverage required by this section shall indemnify the
19 insured, subject to the limits under the policy, for any loss of
20 business or business interruption for the duration of that declared
21 State of Emergency.

22 c. This section shall apply to policies issued to insureds with
23 less than 100 eligible employees, in the State of New Jersey, and in
24 force on the effective date of this act. "Eligible employee" means a
25 full-time employee who works a normal work week of 25 or more
26 hours.

27
28 2. a. An insurer which indemnifies an insured who has filed a
29 claim pursuant to section 1 of this act may apply to the
30 Commissioner of Banking and Insurance for relief and
31 reimbursement by the commissioner from funds collected and made
32 available for this purpose as provided in section 3 of this act.

33 b. The commissioner shall establish procedures for the
34 submission and qualification of claims by insurers which are
35 eligible for reimbursement pursuant to this section. The
36 commissioner shall incorporate in these procedures such standards
37 as are necessary to protect against the submission of fraudulent
38 claims by insureds, and appropriate safeguards for insurers to
39 employ in the review and payment of such claims.

40
41 3. a. In addition to the special purpose apportionment made
42 pursuant to section 2 of P.L. 1995, c.156 (C.17:1C-20), the
43 Commissioner of Banking and Insurance is authorized to impose
44 upon, distribute among, and collect from the companies engaged in
45 business pursuant to subtitle 3 of Title 17 of the Revised Statutes,
46 such additional amounts as may be necessary to recover the
47 amounts paid to insurers pursuant to section 2 of this act.

1 b. The additional special purpose apportionment authorized
2 pursuant to subsection a. of this section shall be distributed in the
3 proportion that the net written premiums received by each company
4 subject to the apportionment authorized by this section for
5 insurance written or renewed on risks in this State during the
6 calendar year immediately preceding, bears to the sum total of all
7 such net written premiums received by all companies writing that
8 insurance or coverage within the State during that calendar year, as
9 reported. The commissioner shall adopt the same procedures and
10 calculations as are provided in section 2 of P.L.1995, c.156
11 (C.17:1C-20) as appropriate to calculate the additional special
12 purpose apportionment authorized by this section.

13 c. For the purposes of this section, "net written premiums
14 received" means gross direct premiums written, less return
15 premiums thereon and dividends credited or paid to policyholders,
16 as reported on the company's annual financial statement.
17

18 4. This act shall take effect immediately, shall be retroactive to
19 March 9, 2020 and shall apply to insurance policies described in
20 section 1 of this act and in force on that date.
21

22

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STATEMENT

24

25 This bill provides a mechanism by which certain businesses that
26 suffer losses due to interruption as a result of the coronavirus
27 disease 2019 pandemic may recover those losses from their insurer
28 if they had a policy of business interruption insurance in force on
29 March 9, 2020, the date on which the Governor declared a Public
30 Health Emergency and State of Emergency in Executive Order 103.
31 The bill would apply to businesses covered by such a policy with
32 less than 100 eligible employees in the State of New Jersey.
33 "Eligible employee" is defined as a full-time employee who works a
34 normal work week of 25 or more hours

35 The bill provides that every policy of insurance insuring against
36 loss or damage to property, which includes the loss of use and
37 occupancy and business interruption, in force on the date of the
38 Executive Order, shall be construed to include among the covered
39 perils under that policy coverage for business interruption due to
40 global virus transmission or pandemic, as provided in the
41 Governor's Executive Order. The coverage provided would be
42 subject to the limits under the policy and would indemnify the
43 insured for losses incurred during the State of Emergency.

44 The bill then provides that an insurer which indemnifies an
45 insured who has filed a claim pursuant to its provisions may apply
46 to the Commissioner of Banking and Insurance for relief and
47 reimbursement from funds collected and made available for this
48 purpose as provided in the bill, pursuant to an additional special

1 purpose assessment under the general scheme already established
2 by law to recover the general expenses of the Department of
3 Banking and Insurance as the regulator of the insurance industry in
4 this State. The commissioner shall establish procedures for the
5 submission and qualification of claims by insurers which are
6 eligible for reimbursement, incorporating such standards as are
7 necessary to protect against the submission of fraudulent claims by
8 insureds, and appropriate safeguards for insurers to employ in the
9 review and payment of such claims.

10 Finally, the bill authorizes the commissioner to impose upon,
11 distribute among, and collect from insurance companies, other than
12 life and health insurance companies, the additional amounts as may
13 be necessary to recover the amounts paid pursuant to the bill. The
14 additional special purpose apportionment authorized by the bill
15 shall be distributed according to essentially the same procedures
16 and calculations as are provided currently for the existing special
17 purpose apportionment.

18 Industry sources have indicated that global virus transmission
19 and pandemic are generally excluded from the list of covered perils
20 under the existing standard business interruption insurance policy.
21 The Insurance Services Office, ISO, has developed a rider to
22 provide an insured with the option of purchasing such coverage, but
23 to date, no states have yet approved the form. This bill, then, is
24 intended to hold harmless a certain portion of the business sector,
25 which had the foresight to purchase business interruption insurance,
26 for losses sustained as a result of the current health emergency, but
27 for which no such coverage is currently offered.