

Update: Louisiana Joins States Proposing Legislation to Require Insurers to Cover COVID-19

Article By:

Paul S. White

Siobhán A. Breen

Louisiana recently joined [New Jersey](#), [Ohio](#), [Massachusetts](#) and [New York](#) in proposing legislation regarding coverage for COVID-19 business interruption claims. On or about March 31, 2020, Louisiana State Senator Rick Ward introduced Senate Bill 477 and Representative Royce Duplessis introduced House Bill 858, both of which call for insurers doing business in the state to retroactively cover business interruption claims due to the pandemic. Louisiana State Senator Troy Carter also introduced Senate Bill 495, which proposes a business compensation fund that would provide insurers bad faith immunity for participation in the fund.

S.B. 477: Mandatory Coverage for COVID-19 Business Losses and Notice of Exclusions

Similar to other states' proposed bills, [Louisiana S.B. 477](#) requires property insurance policies that include coverage for loss of use, loss of occupancy or business interruption coverage "to include among the perils covered under the policy, coverage for business interruption" due to the coronavirus, up to the limits of the policy. The coverage would apply retroactively to March 11, 2020, the date of Louisiana's state of emergency.

S.B. 477 specifically states: "...notwithstanding any other provision of law to the contrary, every policy of insurance in force in this state on March 11, 2020, and thereafter insuring against loss or damage to property that includes the loss of use, loss of occupancy, or business interruption shall be construed to include among the perils covered under that policy, coverage for business interruption due to imminent threat posed by COVID-19." The coverage proposed by S.B. 477 will indemnify the insured, subject to the limits of the policy, for any loss of business or business interruption for the duration of the declared state of emergency.

Importantly, S.B. 477 does not limit the required coverage to policies issued to businesses having over a certain number of employees, unlike the other bills introduced in various states. This nuance would broaden the range of policies and insurers that would be impacted by the legislation.

Notably, S.B. 477 also would require all insurance policies covering business interruption issued on and after August 1, 2020, to include a notice of all policy exclusions, with the notice to be signed by the insured. The notice would be assumed to be part of the policy when issued and delivered,

regardless of whether it is actually attached to the delivered policy. Importantly, a properly completed notice would create a rebuttable presumption that the insured knowingly contracted for coverage with the stated exclusions.

H.B. 858: Mandatory Coverage for COVID-19 Business Losses

Similar to S.B. 477, [Louisiana H.B. 858](#) would apply to policies insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption, and will be construed to include among the covered perils coverage for business interruption due to global virus transmission or pandemic. H.B. 858 would apply to policies issued to insureds with fewer than 100 full-time employees. H.B. 858 provides that insurers shall indemnify insured policyholders who have policies that provide coverage “for any loss of business or business interruption for the duration of the declared public health emergency.” The proposed bill would apply retroactively to insurance policies dated March 11, 2020.

S.B. 495: Enactment of Business Compensation Fund and Bad-Faith Immunity for Insurers Who Contribute

Louisiana also proposed [S.B. 495](#), which enacts a business compensation fund created to structure certain property insurance claims, dispute resolution and coverage for coronavirus-related losses. S.B. 495 would afford any insurer writing insurance in Louisiana the option to participate in a business compensation fund by depositing the greater of \$50 million or 80 percent of the aggregate policy limits for “all commercial insurance policies” that the insurer has in force in Louisiana on March 11, 2020, or anytime thereafter during the state of emergency. In exchange for participation in the fund, insurers would be immune from claims of bad faith by claimants seeking compensation for losses associated with the COVID-19 pandemic. The bill endeavors to allow a claimant to seek compensation from the fund if they meet certain criteria, including if the insured has a policy for commercial loss, if the insured sustained loss of commercial income or revenue due to COVID-19, if the insured agrees to accept 80 percent of actual losses up to the policy limits, and if the application for a claim is received by the commissioner of insurance no more than 90 days after the expiration of the emergency declaration. Additionally, it allows insurers to challenge fraudulent claims or challenge the amount claimed by an insured.

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