

HOUSE No. 1079

The Commonwealth of Massachusetts

PRESENTED BY:

Dylan A. Fernandes

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act concerning business interruption insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>2/15/2021</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>3/2/2021</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>	<i>3/2/2021</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>3/4/2021</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>3/9/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>3/29/2021</i>
<i>Steven G. Xiarhos</i>	<i>5th Barnstable</i>	<i>3/30/2021</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>4/8/2021</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>7/23/2021</i>

HOUSE No. 1079

By Mr. Fernandes of Falmouth, a petition (accompanied by bill, House, No. 1079) of Dylan A. Fernandes and others relative to business interruption insurance. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act concerning business interruption insurance.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. Business interruption insurance

2 (a) (1) Every policy of insurance in force, and insuring risks, in the Commonwealth of
3 Massachusetts that provides insurance coverage against Business Income, Contingent Business
4 Income and/or Extra Expense arising out of the loss of or damage to Covered Property, as
5 defined in any such policy of insurance, shall be reasonably construed with respect to losses
6 arising from or in connection with business interruption directly or indirectly resulting from any
7 public health emergency declared pursuant to Chapter 639 of the Acts of 1950 and Section 2A of
8 Chapter 17 of the General Laws, where the purpose of which declaration is to combat the spread
9 of 2019 Novel Coronavirus (“COVID-19”) (“Public Health Emergency”), in accordance with
10 this Act.

11 (2) It shall be an Unfair Claims Settlement Practice under Section 3 of Chapter 176D of
12 the General Laws for any person to fail to pay claims under such policies of insurance
13 inconsistent with this Act.

14 (3) Massachusetts law concerning such policies of insurance in connection with a Public
15 Health Emergency is declared as follows:

16 (A) A rebuttable presumption applies that COVID-19 was present on the insured's
17 Covered Property and caused (i) physical loss of or (ii) physical damage to that Property
18 resulting in business interruption losses;

19 (B). A rebuttable presumption applies that a Public Health Emergency means there is (i)
20 physical loss of or (ii) damage to Covered Property and/or property adjacent to the insured or
21 within one mile of the insured's covered premises which present sufficiently dangerous physical
22 conditions to warrant such declaration preventing access to such adjacent property as well as the
23 Covered Property;

24 (C) A rebuttal presumption applies, that COVID-19 was present on property other than
25 property at the described premises, thus prohibiting access, including ingress and/or egress, to
26 the described premises resulting in loss of Business Income.

27 (D) A rebuttal presumption applies that, with respect to business interruption due to an
28 order of civil authority, that COVID-19 caused direct physical loss of or property damage to
29 Covered Property or property located within the geographical location required by the insurance
30 policy, and an action of civil authority was taken in response to dangerous physical conditions
31 resulting from the damage or continuation of the direct physical loss of or damage to Covered
32 Property.

33 (E) A rebuttable presumption applies that, direct physical loss of or damage to Covered
34 Property shall include but not be limited to a restriction on operations, partially or in full,
35 including limiting customer density and permitting only distant customer interaction, when such
36 restrictions are necessary to comply with existing Public Health Emergency;

37 (F) An insured's partial operation following a Public Health Emergency and in
38 compliance with any restrictions mandated under the Public Health Emergency, including
39 limiting customer density and permitting only distant customer interaction, shall be deemed to be
40 mitigation of loss and does not evidence that the insured's operations have resumed;

41 (G) No exclusion for pollution shall be construed to include viruses, bacteria or
42 microorganisms; no exclusion for mold shall be construed to include viruses, bacteria or other
43 microorganisms; no exclusion for viruses shall be construed to include mold, bacteria or other
44 microorganism, and shall be construed to have an exception for COVID-19; no exclusion for
45 animal infestations shall be deemed to include any virus, mold, microorganism, or bacterium;
46 notwithstanding this subsection, a policy that otherwise indemnifies debris removal or pollutant
47 clean up shall be construed to include removal or clean up expenses incurred by the insured
48 arising from the Public Health Emergency;

49 (H) Premises unoccupied, or not fully occupied, consistent with a Public Health
50 Emergency shall not be deemed to be "vacant" or "abandoned" by the insured;

51 (I) Partial reopenings and closures during the same policy period that arise from one or
52 more related orders or instructions from related Public Health Emergencies shall be deemed to be
53 continuous and uninterrupted (and may be cumulated) by the insured in its claim;

54 (J) Deadlines or compliance periods under such insurance policies shall be construed
55 without including partial or entire periods of suspension of operations following Public Health
56 Emergency;

57 (K) No insurer may deny coverage based on the insured's non-compliance with a notice
58 or reporting provision, including a contractually limited time period to file suit, unless the insurer
59 proves it was prejudiced directly from the insured's non-compliance;

60 (L) The actions of persons other than the insured complying with a Public Health
61 Emergency shall not be deemed to be the proximate cause of loss, and instead the damage
62 identified in the Public Health Emergency is deemed to be the cause of the insured's direct loss
63 of business income; and

64 (M) Every policy of insurance or endorsement insuring against loss or damage to
65 property which includes, but is not limited to, the use of occupancy and business interruption,
66 which policy expires during the period of a declared state of emergency due to COVID-19, shall
67 be subject to an automatic renewal of the policy at the current or reduced rate of charge;

68 (N) The provisions of this Act are severable. If any part of this Act is declared invalid or
69 unconstitutional, that declaration shall not affect the part that remains.

70 (b) The Executive Office of Housing and Economic Development shall promulgate
71 reasonable rules, regulations, and orders as are necessary or appropriate to carry out and
72 effectuate the provision of Section 2 of this Act.

73 (c) This act shall apply only to policies issued to insureds with 50 or fewer full-time-
74 equivalent employees in the commonwealth.