SENATE DOCKET, NO. 1845 FILED ON: 2/18/2021

SENATE . . . . . No. 660

The Commonwealth of Massachusetts

PRESENTED BY:

Diana DiZoglio

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 relative to business interruption insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Diana DiZoglio	*First Essex*	
Kathleen R. LaNatra	*12th Plymouth*	*2/25/2021*
Christopher Hendricks	*11th Bristol*	*3/19/2021*
Adam J. Scanlon	*14th Bristol*	*5/17/2021*

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SENATE . . . . . No. 660

By Ms. DiZoglio, a petition (accompanied by bill, Senate, No. 660) of Diana DiZoglio, Kathleen R. LaNatra and Christopher Hendricks for legislation relative to business interruption insurance. Financial Services.

The Commonwealth of Massachusetts

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

An Act relative to 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:

Section 1. Business interruption insurance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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