

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)

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District 6 (Burlington and Camden)

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District 33 (Hudson)

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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.

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

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

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

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

Emergency.

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

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

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

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

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

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

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

STATEMENT

This bill provides a mechanism by which certain businesses that suffer losses due to interruption as a result of the coronavirus disease 2019 pandemic may recover those losses from their insurer if they had a policy of business interruption insurance in force on March 9, 2020, the date on which the Governor declared a Public Health Emergency and State of Emergency in Executive Order 103. The bill would apply

to businesses covered by such a policy with less than 100 eligible employees in the State of New Jersey. "Eligible employee" is defined as a full-time employee who works a normal work week of 25 or more hours

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

The bill then provides that an insurer which indemnifies an insured who has filed a claim pursuant to its provisions may apply to the Commissioner of Banking and Insurance for relief and reimbursement from funds collected and made available for this purpose as provided in the bill, pursuant to an additional special purpose assessment under the general scheme already established by law to recover the general expenses of the Department of Banking and Insurance as the regulator of the insurance industry in this State. The commissioner shall establish procedures for the submission and qualification of claims by insurers which are eligible for reimbursement, incorporating such standards as are necessary to protect against the submission of fraudulent claims by insureds, and appropriate safeguards for insurers to employ in the review and payment of such claims.

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

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