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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 42 Session of  
2021

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INTRODUCED BY HUGHES, MUTH, KEARNEY, FONTANA, SANTARSIERO,  
TARTAGLIONE, BLAKE, COLLETT, SCHWANK, BREWSTER, CAPPELLETTI  
AND COSTA, JANUARY 20, 2021

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REFERRED TO BANKING AND INSURANCE, JANUARY 20, 2021

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AN ACT

1 Providing for coverage under business interruption insurance  
2 during the COVID-19 disaster emergency.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the COVID-19  
7 Insurance Relief Act.

8 Section 2. Legislative findings.

9 The General Assembly finds the following:

10 (1) A novel coronavirus, referred to as COVID-19,  
11 emerged in Wuhan, China, and began infecting humans in  
12 December 2019 and on March 11, 2020, the World Health  
13 Organization declared COVID-19 as a pandemic. Since then,  
14 COVID-19 has spread to 220 countries, including the United  
15 States, and has caused 66,422,058 confirmed cases and  
16 1,532,418 deaths worldwide, with numbers increasing daily.

17 (2) On March 6, 2020, Governor Tom Wolf signed an

1 emergency disaster declaration in response to the increased  
2 risk of the virus. The emergency declaration has been  
3 extended as the virus continues to ravage this Commonwealth.

4 (3) Although the Governor and the Secretary of Health  
5 have attempted numerous mitigation efforts during the course  
6 of the pandemic, community spread of COVID-19 continues to  
7 frustrate these efforts and daily cases are increasing. As of  
8 December 7, 2020, 394,455 Pennsylvanians have contracted the  
9 virus while 11,373 Pennsylvanians have lost their lives to  
10 the virus. These numbers are likely to increase.

11 (4) COVID-19 constitutes a grave threat to the health,  
12 safety and well-being of the residents of this Commonwealth  
13 and an emergency, which has caused significant adverse  
14 impacts upon the entire Commonwealth population.

15 (5) As COVID-19 continues to spread, many businesses  
16 have closed permanently and those that have been able to  
17 remain open have drastically reduced their workforce, which  
18 continues to cause significant adverse impacts to both  
19 businesses and individuals.

20 (6) Inherent in the police powers of the legislature is  
21 the ability to enact laws that are necessary for the good of  
22 the public. Those laws may result in an impairment of  
23 contract rights when the legislature has a significant and  
24 legitimate public purpose, such as remedying a social or  
25 economic problem.

26 (7) COVID-19 has resulted in major economic upset  
27 throughout this Commonwealth and businesses are in dire  
28 straits. Although businesses may have insurance to account  
29 for losses related to business interruptions, they are  
30 prohibited from making such claims because of a "virus

1 exclusion" to covered perils related to global virus  
2 transmission and pandemic.

3 (8) Because of the "virus exclusion," businesses will be  
4 prohibited from making claims under business interruption or  
5 civil authority provisions, which may be their only lifeline  
6 during these uncertain times.

7 (9) Permitting coverage for business losses during the  
8 COVID-19 disease pandemic and Statewide outbreak is necessary  
9 to prevent further economic disruption and allow businesses  
10 to remain functioning in the face of continued and uncertain  
11 closures.

12 (10) COVID-19 is unlike anything we have experienced,  
13 and the social and economic effects must be mitigated to  
14 ensure the stability and well-being of the residents of this  
15 Commonwealth and the businesses that employ them.

16 Section 3. Definitions.

17 The following words and phrases when used in this act shall  
18 have the meanings given to them in this section unless the  
19 context clearly indicates otherwise:

20 "Civil authority order." The order of the Governor, issued  
21 March 19, 2020, prohibiting or restricting the access to non-  
22 life-sustaining business locations in this Commonwealth as a  
23 direct result of property damage at or in the immediate vicinity  
24 of those locations.

25 "COVID-19." The disease that is causing the 2019 novel  
26 coronavirus outbreak and global pandemic. The term includes the  
27 novel coronavirus, coronavirus disease 2019 or 2019-nCoV.

28 "Declared disaster emergency." The proclamation of disaster  
29 emergency issued by the Governor on March 6, 2020, published at  
30 50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of

1 disaster emergency.

2 "Insurance company." An insurance company, association,  
3 exchange or any other entity subject to the jurisdiction of the  
4 Insurance Department, excluding any government-owned or  
5 government-controlled insurance company, that insures property  
6 under the act of May 17, 1921 (P.L.682, No.284), known as The  
7 Insurance Company Law of 1921.

8 "Perils." A risk or cause of loss or damage.

9 "Policy of insurance." An enforceable contract between an  
10 insurance company and an individual or business, including any  
11 endorsement, rider, written or oral binder, cover note,  
12 certificate or other instrument of insurance attached or  
13 relating to the enforceable contract, without regard to the form  
14 of insurance, which provides any of the coverages enumerated in  
15 section 202 of the Insurance Company Law of 1921, except:

16 (1) Life, annuity, health or disability insurance.

17 (2) Mortgage guaranty, financial guaranty or other forms  
18 of insurance offering protection against investment risks.

19 (3) Fidelity or surety bonds or any other bonding  
20 obligations.

21 (4) Credit insurance, vendors' single interest insurance  
22 or collateral protection insurance or any similar insurance  
23 protecting the interests of a creditor arising out of a  
24 creditor-debtor transaction.

25 (5) Insurance of warranties or service contracts.

26 (6) Title insurance.

27 (7) Ocean marine insurance.

28 (8) Transaction or combination of transactions between a  
29 person, including affiliates of the person, and an insurer,  
30 including affiliates of the insurer, which involves the

1 transfer of investment or credit risk unaccompanied by  
2 transfer of insurance risk.

3 (9) Insurance provided by or guaranteed by a  
4 governmental entity.

5 (10) Workmen's compensation and employer's liability  
6 insurance.

7 "Property damage." In a building, office, retail space,  
8 structure, plant, facility, commercial establishment or other  
9 area of business activity, the direct physical loss, damage or  
10 injury to tangible property, as a result of a covered peril,  
11 including, but not limited to:

12 (1) The presence of a person positively identified as  
13 having been infected with COVID-19.

14 (2) The presence of at least one person positively  
15 identified as having been infected with COVID-19 in the same  
16 municipality of this Commonwealth where the property is  
17 located.

18 (3) The presence of COVID-19 having otherwise been  
19 detected in this Commonwealth.

20 "Small business." A business that, on the effective date of  
21 this section:

22 (1) satisfies the United States Small Business  
23 Administration's criteria to qualify as a small business  
24 under 13 CFR Pt. 121 (relating to small business size  
25 regulations); or

26 (2) has received or will receive funding through a  
27 program administered by the United States Small Business  
28 Administration.

29 Section 4. Relief.

30 (a) Covered perils.--Notwithstanding any other law, rule or

1 regulation, a policy of insurance insuring against a loss  
2 related to property damage, including the loss of use and  
3 occupancy and business interruption, shall be construed to  
4 include among the covered perils coverage for loss or property  
5 damage due to COVID-19 and coverage for loss due to a civil  
6 authority order related to the declared disaster emergency and  
7 exigencies caused by the COVID-19 disease pandemic.

8 (b) Coverage limits.--The coverage required under subsection  
9 (a) must indemnify the insured for losses related to the  
10 declared disaster emergency subject to the policy limits for  
11 loss of business or business interruption and subject to the  
12 maximum individual policy limits. The following shall apply:

13 (1) Insureds classified as a small business shall  
14 receive 100% of the policy limit for eligible claims for  
15 covered losses.

16 (2) Insureds not classified as a small business shall  
17 receive 75% of the policy limit for eligible claims for  
18 covered losses.

19 Section 5. Rulemaking authority.

20 The Insurance Commissioner shall promulgate rules and  
21 regulations necessary to effectuate the administrative  
22 provisions of this act.

23 Section 6. Applicability.

24 This act shall apply:

25 (1) To active insurance policies with effective dates  
26 prior to March 6, 2020.

27 (2) To insurance companies providing coverage against  
28 loss or damage to property, which includes the loss of use  
29 and occupancy, and business interruption in this  
30 Commonwealth.

1 Section 7. Exclusive jurisdiction of Supreme Court.

2 The Pennsylvania Supreme Court shall have exclusive  
3 jurisdiction to hear any challenge to or to render a declaratory  
4 judgment concerning the constitutionality of this act. The  
5 Supreme Court is authorized to take such action as it deems  
6 appropriate, consistent with the Supreme Court retaining  
7 jurisdiction, to find facts or to expedite a final judgment in  
8 connection with such a challenge or request for declaratory  
9 relief.

10 Section 8. Effective date.

11 This act shall take effect immediately.