
SENATE BILL 5351

State of Washington

67th Legislature

2021 Regular Session

By Senators Frockt and Nobles

1 AN ACT Relating to business interruption insurance claims;
2 amending RCW 48.18.200 and 48.18.520; creating new sections; and
3 declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the novel
6 coronavirus disease COVID-19 has had a devastating impact on small
7 businesses in the state of Washington, particularly those ordered to
8 close their doors and cease or limit operations under the state of
9 emergency that the governor declared on February 29, 2020. Many of
10 those small businesses hold insurance policies that include coverage
11 to replace income lost due to loss of or damage to the business
12 premises or other business property. However, insurers are broadly
13 denying claims under those policies, arguing that "loss" and "damage"
14 are synonymous and that no claims are merited absent a showing of
15 actual physical damages to the premises.

16 The legislature notes that Washington state and federal courts
17 that recently examined this issue have ruled clearly and
18 unambiguously that the words "loss" and "damage" hold distinct
19 meanings under Washington law in the context of business interruption
20 insurance policies and should not be interpreted to render one word

1 or the other superfluous. The legislature intends to codify this
2 interpretation to provide greater clarity.

3 The legislature also finds that a significant amount of
4 inaccurate information continues to circulate regarding claims for
5 business interruption insurance coverage, which, coupled with the
6 ongoing effects of the pandemic, may cause some policyholders to fail
7 to timely pursue valid claims. For this reason, the legislature
8 intends to give policyholders additional time to challenge the denial
9 of business interruption insurance claims.

10 **Sec. 2.** RCW 48.18.200 and 2019 c 427 s 29 are each amended to
11 read as follows:

12 (1) Except as provided by subsection (3) of this section, no
13 insurance contract delivered or issued for delivery in this state and
14 covering subjects located, resident, or to be performed in this
15 state, shall contain any condition, stipulation, or agreement

16 (a) requiring it to be construed according to the laws of any
17 other state or country except as necessary to meet the requirements
18 of the motor vehicle financial responsibility laws of such other
19 state or country; or

20 (b) depriving the courts of this state of the jurisdiction of
21 action against the insurer; or

22 (c) limiting right of action against the insurer to a period of
23 less than (~~one year~~) two years from the time when the cause of
24 action accrues in connection with all insurances other than property
25 and marine and transportation insurances. In contracts of property
26 insurance, or of marine and transportation insurance, such limitation
27 shall not be to a period of less than (~~one year~~) two years from the
28 date of the loss.

29 (2) Any such condition, stipulation, or agreement in violation of
30 this section shall be void, but such voiding shall not affect the
31 validity of the other provisions of the contract.

32 (3) For purposes of out-of-network payment disputes between a
33 health carrier and health care provider covered under the provisions
34 of chapter 48.49 RCW, the arbitration provisions of chapter 48.49 RCW
35 apply.

36 **Sec. 3.** RCW 48.18.520 and 1947 c 79 s .18.52 are each amended to
37 read as follows:

1 (1) Every insurance contract shall be construed according to the
2 entirety of its terms and conditions as set forth in the policy, and
3 as amplified, extended, or modified by any rider, endorsement, or
4 application attached to and made a part of the policy.

5 (2) Every property insurance policy containing a grant of
6 coverage for direct physical loss of or damage to property shall be
7 construed to include the deprivation of such property and the loss of
8 the ability to use such property.

9 NEW SECTION. Sec. 4. This act applies to all causes of action
10 commenced on or after the effective date of this section, regardless
11 of when the cause of action arose. To this extent, this act applies
12 retroactively to February 29, 2020, when Governor Jay Inslee issued
13 Proclamation 20-05, proclaiming a state of emergency for all counties
14 throughout the state of Washington as a result of the COVID-19
15 outbreak in the United States. In all other respects this act applies
16 prospectively.

17 NEW SECTION. Sec. 5. This act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of
19 the state government and its existing public institutions, and takes
20 effect immediately.

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