
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1127 Session of
2020

INTRODUCED BY IOVINO, FARNESE, TARTAGLIONE, MUTH, ARGALL,
STREET, COSTA AND SCHWANK, APRIL 30, 2020

REFERRED TO BANKING AND INSURANCE, APRIL 30, 2020

AN ACT

1 Relating to property and business interruption insurance
2 coverage for COVID-19 Pandemic-related Losses.

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 Property and Business Interruption Insurance Act.

8 Section 2. Legislative findings.

9 The General Assembly finds and declares as follows:

10 (1) A novel coronavirus, referred to as COVID-19,
11 emerged in China, and began infecting humans beginning at
12 least in December 2019 and, since that time, has spread to
13 more than 185 countries, including the United States and
14 killed over 168,000 people worldwide and more than 42,000
15 persons in the United States.

16 (2) On March 6, 2020, following the announcement of the
17 first two presumptive positive cases of COVID-19 in
18 Pennsylvania, Governor Tom Wolf signed an emergency disaster

1 declaration in response to the increased risk of the virus.

2 (3) On March 11, 2020, the World Health Organization
3 declared COVID-19 a pandemic.

4 (4) On March 13, 2020, Pennsylvania had 33 confirmed
5 cases of COVID-19. In an effort to mitigate the spread of
6 COVID-19, Governor Wolf ordered the Statewide closure of
7 schools, grades kindergarten through 12.

8 (5) On March 16, 2020, as the pandemic continued to
9 spread throughout this Commonwealth, with the number of
10 confirmed cases more than doubled to 76, Governor Wolf
11 ordered the Statewide shutdown of certain non-essential
12 businesses, including community centers, gyms, entertainment
13 centers and nonessential retail. The Governor's order closed
14 dine-in facilities in restaurants and bars and permitted only
15 takeout and delivery services to continue.

16 (6) In conjunction with the ordered closures, the
17 Governor and the Secretary of Health urged the residents of
18 this Commonwealth to adhere to the practice of "social
19 distancing" and to self-quarantine if feeling ill or
20 exhibiting symptoms of COVID-19.

21 (7) On March 19, 2020, due to the continued community
22 spread of COVID-19 throughout this Commonwealth, the Governor
23 ordered all non-life-sustaining businesses to close physical
24 locations until further notice.

25 (8) Since then, the Governor has issued a stay-at-home
26 order for the entire Commonwealth.

27 (9) As of April 20, 2020, there were 32,284 positive
28 cases, including 1,112 deaths in this Commonwealth as a
29 result of COVID-19. Unfortunately, the number of positive
30 cases and deaths is expected to increase.

1 (10) The COVID-19 coronavirus is prevalent throughout
2 this Commonwealth and constitutes a serious threat to the
3 health and welfare of our residents.

4 (11) As a result of the continued spread of COVID-19 and
5 the pervasive presence of the COVID-19 coronavirus throughout
6 this Commonwealth, Pennsylvania businesses have been forced
7 to close their physical locations, and those that can remain
8 open have drastically reduced their workforce, which has led
9 to significant adverse impacts to both businesses and
10 individuals.

11 (12) The mandated business closures resulting from the
12 COVID-19 pandemic have resulted in major economic upset
13 throughout this Commonwealth and businesses are in dire
14 straits. Prior to this pandemic, many businesses purchased
15 insurance to account for losses related to business
16 interruptions.

17 (13) The insurance industry has responded to claims for
18 business interruption coverage by Pennsylvania policyholders
19 with swift and categorical denials of coverage, contending
20 that such coverage cannot apply to COVID-19 pandemic related
21 losses.

22 (14) Supervising the conduct of insurance companies, and
23 defining the duties and responsibilities of insurers, is
24 within the inherent regulatory and police powers of the State
25 to advance the public good. Furthermore, requiring insurers
26 doing business in this Commonwealth to promptly honor their
27 insurance policy obligations as to claims arising from the
28 COVID-19 pandemic is necessary to prevent further economic
29 disruption and allow businesses to remain functioning in the
30 face of continued and uncertain closures.

1 Section 3. Scope of the act.

2 Except as provided in section 14, in any claim for insurance
3 for losses relating to property damage, business interruption,
4 contingent business interruption, time element, contingent time
5 element or losses of a similar nature arising from the COVID-19
6 pandemic, the rules of construction in this act shall apply to
7 first-party insurance policy provisions that are the subject of
8 the claims.

9 Section 4. Limitation of act.

10 This act does not apply to life, health or disability
11 insurance, fidelity or surety bonds, credit or mortgage
12 insurance, title insurance, workers compensation, general
13 liability or employer's liability insurance, representations and
14 warranties insurance or to ocean marine, hull and cargo
15 insurance. Furthermore, this act does not apply to any
16 government-owned or government-controlled insurance company that
17 insures property under the act of May 17, 1921 (P.L.682,
18 No.284), known as The Insurance Company Law of 1921.

19 Section 5. Choice of law.

20 Pennsylvania law shall apply to each and every property, all-
21 risk, business interruption, contingent business interruption,
22 time element and contingent time element insurance claim where
23 the property giving rise to the claimed loss is located within
24 this Commonwealth and the losses claimed to be insured arise out
25 of, or relate to, the COVID-19 pandemic.

26 Section 6. Definitions.

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

30 "Communicable disease." As defined and insured in a first-

1 party property policy, including an all-risk policy.

2 "Property damage." Direct physical loss, damage or injury to
3 tangible property or as defined in a first-party property
4 policy, including in an all-risk policy.

5 Section 7. Property damage.

6 (a) Within structure.--If a person positively identified as
7 having been infected with COVID-19 has been present in, or if
8 the presence of the COVID-19 coronavirus has otherwise been
9 detected in, a building, an office, a retail space, a structure,
10 a plant, a facility, a commercial establishment or other area of
11 business activity, that area of business activity shall be
12 deemed to have experienced property damage.

13 (b) Within municipality.--Buildings, offices, retail spaces,
14 structures, plants, facilities, commercial establishments and
15 other areas of business activity located in a municipality of
16 this Commonwealth in which at least one person present in that
17 municipality has been positively identified as having been
18 infected with COVID-19, or in which the presence of the COVID-19
19 coronavirus has otherwise been detected, are deemed to have
20 experienced property damage.

21 Section 8. Communicable disease.

22 (a) Positive test.--If a person positively identified as
23 having been infected with COVID-19 has been present in, or if
24 the COVID-19 coronavirus has otherwise been detected in, a
25 building, an office, a retail space, a structure, a plant, a
26 facility, a commercial establishment or other area of business
27 activity, this area of business activity shall be deemed to have
28 experienced the actual, and not merely suspected, presence of a
29 communicable disease.

30 (b) Presence of COVID-19.--In addition, buildings, offices,

1 retail spaces, structures, plants, facilities, commercial
2 establishments and other areas of business activity located in a
3 municipality of this Commonwealth in which at least one person
4 in that municipality has been positively identified as having
5 been infected with COVID-19, or in which the presence of the
6 COVID-19 coronavirus has otherwise been detected, are deemed to
7 have experienced the actual, and not merely suspected, presence
8 of a communicable disease.

9 Section 9. Order of civil authority.

10 The Order of the Pennsylvania Governor, dated March 19, 2020,
11 Regarding the Closure of All Businesses That Are Not Life
12 Sustaining, constitutes an order of civil authority under a
13 first-party insurance policy limiting, prohibiting or
14 restricting access to non-life-sustaining business locations in
15 this Commonwealth as a direct result of physical damage at or in
16 the immediate vicinity of those locations.

17 Section 10. Order regarding ingress and egress.

18 The Order of the Pennsylvania Governor, dated March 19, 2020,
19 Regarding the Closure of All Businesses That Are Not Life
20 Sustaining, constitutes, under a first-party insurance policy,
21 an order prohibiting ingress to and egress from all non-life-
22 sustaining business locations in this Commonwealth as a direct
23 result of physical damage at or in the immediate vicinity of
24 those locations namely, the presence of the COVID-19
25 coronavirus.

26 Section 11. Loss of market.

27 The loss of market exclusion, and similar exclusions, in a
28 first-party policy may not be interpreted to apply to preclude
29 coverage for COVID-19-related losses if one of the reasons for
30 reduced customer demand for a policyholder's goods or services

1 is the same COVID-19 pandemic that gives rise to the
2 policyholder's losses for which coverage is sought.

3 Section 12. Applicability.

4 The following shall apply to this act:

5 (1) This act shall apply to active insurance policies,
6 with effective dates on or before March 6, 2020.

7 (2) This act applies to insurance companies that provide
8 coverage against property damage, loss of use or occupancy or
9 business interruption, and similar coverages, with respect to
10 property in this Commonwealth.

11 Section 13. Exclusive jurisdiction of the Pennsylvania Supreme
12 Court.

13 The Pennsylvania Supreme Court shall have exclusive
14 jurisdiction to hear any challenge to, or render a declaratory
15 judgment concerning the validity or constitutionality of, this
16 act. The Supreme Court is authorized to take such action as it
17 deems appropriate, consistent with the Supreme Court retaining
18 jurisdiction, to find facts or to expedite a final judgment in
19 connection with such a challenge or request for declaratory
20 relief.

21 Section 14. Severability.

22 Each provision of this act and every application of the
23 provisions of this act are severable from each other as a matter
24 of State law. If any application of any provision in this act to
25 any person or group of persons or circumstances is found by a
26 court to be invalid, the remainder of this act and the
27 application of the act's provisions to all other persons and
28 circumstances shall not be affected. All constitutionally valid
29 applications of this act shall be severed from any applications
30 that a court finds to be invalid or unconstitutional, leaving

1 the valid and constitutional applications to be permitted to
2 stand alone and in continued effect.

3 Section 15. Savings clause.

4 The rules of construction of insurance policy language set
5 forth in this act do not apply if the application of a rule
6 results in an interpretation that is contrary to the mutual
7 intent of the parties, both policyholder and insurer, as clearly
8 and expressly communicated to each other during the period of
9 negotiating for, and agreeing to, the terms of the insurance
10 policy that is the subject of the policyholder's claim for
11 coverage for COVID-19-related losses.

12 Section 16. Effective date.

13 This act shall take effect immediately.