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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# SENATE BILL

No. 1114 Session of  
2020

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INTRODUCED BY HUGHES, KEARNEY, FONTANA, SANTARSIERO,  
TARTAGLIONE, BREWSTER, SCHWANK, ARGALL, DINNIMAN, BOSCOLA,  
LEACH, IOVINO, FARNESE, MASTRIANO, COLLETT, COSTA, MUTH AND  
BLAKE, APRIL 15, 2020

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REFERRED TO BANKING AND INSURANCE, APRIL 15, 2020

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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, since that time, has spread to more than  
13 169 countries, including the United States, and killed over  
14 22,000 people worldwide.

15 (2) On March 6, 2020, following the announcement of the  
16 first two presumptive positive cases of COVID-19 in  
17 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) COVID-19 constitutes a serious threat to the health  
5 of the residents of this Commonwealth and an emergency, which  
6 has the potential to cause significant adverse impacts upon  
7 the entire Commonwealth population.

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

12 (6) On March 16, 2020, the number of confirmed cases  
13 more than doubled to 76 as Governor Wolf ordered the  
14 Statewide shutdown of nonessential businesses, including  
15 community centers, gyms, entertainment centers and  
16 nonessential retail. The Governor's order closed dine-in  
17 facilities in restaurants and bars and permitted only takeout  
18 and delivery services to continue.

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

24 (8) On March 19, 2020, due to the continued community  
25 spread of COVID-19, the Governor ordered all non-life-  
26 sustaining businesses to close physical locations until  
27 further notice.

28 (9) Since then, the Governor has issued a stay-at-home  
29 order for the entire Commonwealth.

30 (10) As of April 7, 2020, there were 14,559 positive

1 cases and 249 deaths in this Commonwealth as a result of  
2 COVID-19. Unfortunately, the number of positive cases and  
3 deaths is expected to increase.

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

9 (12) Inherent in the police powers of the legislature is  
10 the ability to enact laws that are necessary for the good of  
11 the public. Those laws may result in an impairment of  
12 contract rights when the legislature has a significant and  
13 legitimate public purpose, such as remedying a social or  
14 economic problem.

15 (13) COVID-19 and the mandated closures have resulted in  
16 major economic upset throughout this Commonwealth, and  
17 businesses are in dire straits. Although businesses may have  
18 insurance to account for losses related to business  
19 interruptions, they are prohibited from making such claims  
20 because of a "virus exclusion" to covered perils related to  
21 global virus transmission and pandemic.

22 (14) Because of the "virus exclusion," businesses will  
23 be prohibited from making claims under business interruption  
24 or civil authority provisions, which may be their only  
25 lifeline during these uncertain times.

26 (15) The Insurance Services Office has developed a rider  
27 to provide an insured with the option of purchasing coverage  
28 for business interruptions related to loss or damage caused  
29 by viruses, but to date the form has not been approved.

30 (16) Permitting coverage for business losses during the

1       COVID-19 disease pandemic and Statewide outbreak is necessary  
2       to prevent further economic disruption and allow businesses  
3       to remain functioning in the face of continued and uncertain  
4       closures.

5                 (17) COVID-19 is unlike anything we have experienced,  
6       and the social and economic effects must be mitigated to  
7       ensure the stability and well-being of the residents of this  
8       Commonwealth and the businesses that employ them.

9       Section 3. Definitions.

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

13         "Civil authority order." The order of the Governor, issued  
14     March 19, 2020, prohibiting or restricting the access to non-  
15     life-sustaining business locations in this Commonwealth as a  
16     direct result of property damage at or in the immediate vicinity  
17     of those locations.

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

21         "Declared disaster emergency." The proclamation of disaster  
22     emergency issued by the Governor on March 6, 2020, published at  
23     50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of  
24     disaster emergency.

25         "Insurance company." An insurance company, association,  
26     exchange or any other entity subject to the jurisdiction of the  
27     Insurance Department, excluding any government-owned or  
28     government-controlled insurance company, that insures property  
29     under the act of May 17, 1921 (P.L.682, No.284), known as The  
30     Insurance Company Law of 1921.

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

2       "Policy of insurance." An enforceable contract between an  
3 insurance company and an individual or business, including any  
4 endorsement, rider, written or oral binder, cover note,  
5 certificate or other instrument of insurance attached or  
6 relating to the enforceable contract, without regard to the form  
7 of insurance, which provides any of the coverages enumerated in  
8 section 202 of the Insurance Company Law of 1921, except:

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

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

12             (3) Fidelity or surety bonds or any other bonding  
13 obligations.

14             (4) Credit insurance, vendors' single interest insurance  
15 or collateral protection insurance or any similar insurance  
16 protecting the interests of a creditor arising out of a  
17 creditor-debtor transaction.

18             (5) Insurance of warranties or service contracts.

19             (6) Title insurance.

20             (7) Ocean marine insurance.

21             (8) Transaction or combination of transactions between a  
22 person, including affiliates of the person, and an insurer,  
23 including affiliates of the insurer, which involves the  
24 transfer of investment or credit risk unaccompanied by  
25 transfer of insurance risk.

26             (9) Insurance provided by or guaranteed by a  
27 governmental entity.

28             (10) Workmen's compensation and employer's liability  
29 insurance.

30        "Property damage." In a building, office, retail space,

1 structure, plant, facility, commercial establishment or other  
2 area of business activity, the direct physical loss, damage or  
3 injury to tangible property, as a result of a covered peril,  
4 including, but not limited to:

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

7                 (2) The presence of at least one person positively  
8 identified as having been infected with COVID-19 in the same  
9 municipality of this Commonwealth where the property is  
10 located.

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

13 "Small business." A business that, on the effective date of  
14 this section:

15                 (1) satisfies the United States Small Business  
16 Administration's criteria to qualify as a small business  
17 under 13 CFR Pt. 121 (relating to small business size  
18 regulations); or

19                 (2) has received or will receive funding through a  
20 program administered by the United States Small Business  
21 Administration.

22 Section 4. Relief.

23 (a) Covered perils.--Notwithstanding any other law, rule or  
24 regulation, a policy of insurance insuring against a loss  
25 related to property damage, including the loss of use and  
26 occupancy and business interruption, shall be construed to  
27 include among the covered perils coverage for loss or property  
28 damage due to COVID-19 and coverage for loss due to a civil  
29 authority order related to the declared disaster emergency and  
30 exigencies caused by the COVID-19 disease pandemic.

1       (b) Coverage limits.--The coverage required under subsection  
2       (a) must indemnify the insured for losses related to the  
3       declared disaster emergency subject to the policy limits for  
4       loss of business or business interruption and subject to the  
5       maximum individual policy limits. The following shall apply:

6              (1) Insureds classified as a small business shall  
7       receive 100% of the policy limit for eligible claims for  
8       covered losses.

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

12 Section 5. Rulemaking authority.

13       The Insurance Commissioner shall promulgate rules and  
14      regulations necessary to effectuate the administrative  
15      provisions of this act.

16 Section 6. Applicability.

17       This act shall apply:

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

20              (2) To insurance companies providing coverage against  
21       loss or damage to property, which includes the loss of use  
22       and occupancy, and business interruption in this  
23       Commonwealth.

24 Section 7. Exclusive jurisdiction of Supreme Court.

25       The Pennsylvania Supreme Court shall have exclusive  
26      jurisdiction to hear any challenge to or to render a declaratory  
27      judgment concerning the constitutionality of this act. The  
28      Supreme Court is authorized to take such action as it deems  
29      appropriate, consistent with the Supreme Court retaining  
30      jurisdiction, to find facts or to expedite a final judgment in

1 connection with such a challenge or request for declaratory  
2 relief.

3 Section 8. Effective date.

4 This act shall take effect immediately.