INTRODUCED BY HUGHES, KEARNEY, FONTANA, SANTARSIERO, TARTAGLIONE, BREWSTER, SCHWANK, ARGALL, DINNER, BOSCOLA, LEACH, IOVINO, FARNSE, MASTRIONO, COLLETT, COSTA, MUTH AND BLAKE, APRIL 15, 2020

REFERRED TO BANKING AND INSURANCE, APRIL 15, 2020

AN ACT

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

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

Section 1. Short title.

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

Section 2. Legislative findings.

The General Assembly finds the following:

(1) A novel coronavirus, referred to as COVID-19, emerged in Wuhan, China, and began infecting humans in December 2019 and, since that time, has spread to more than 169 countries, including the United States, and killed over 22,000 people worldwide.

(2) On March 6, 2020, following the announcement of the first two presumptive positive cases of COVID-19 in Pennsylvania, Governor Tom Wolf signed an emergency disaster
declaration in response to the increased risk of the virus.

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

(4) COVID-19 constitutes a serious threat to the health of the residents of this Commonwealth and an emergency, which has the potential to cause significant adverse impacts upon the entire Commonwealth population.


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

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

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

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

(10) As of April 7, 2020, there were 14,559 positive cases of COVID-19.
cases and 249 deaths in this Commonwealth as a result of COVID-19. Unfortunately, the number of positive cases and deaths is expected to increase.

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

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

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

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

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

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

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

Section 3. Definitions.

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

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

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

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

"Insurance company." An insurance company, association,
exchange or any other entity subject to the jurisdiction of the
Insurance Department, excluding any government-owned or
government-controlled insurance company, that insures property
under the act of May 17, 1921 (P.L.682, No.284), known as The
Insurance Company Law of 1921.
"Perils." A risk or cause of loss or damage.

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

1. Life, annuity, health or disability insurance.
2. Mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks.
3. Fidelity or surety bonds or any other bonding obligations.
4. Credit insurance, vendors' single interest insurance or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction.
5. Insurance of warranties or service contracts.
6. Title insurance.
7. Ocean marine insurance.
8. Transaction or combination of transactions between a person, including affiliates of the person, and an insurer, including affiliates of the insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk.
9. Insurance provided by or guaranteed by a governmental entity.
10. Workmen's compensation and employer's liability insurance.

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

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

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

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

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

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

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

Section 4. Relief.

(a) Covered perils.--Notwithstanding any other law, rule or regulation, a policy of insurance insuring against a loss related to property damage, including the loss of use and occupancy and business interruption, shall be construed to include among the covered perils coverage for loss or property damage due to COVID-19 and coverage for loss due to a civil authority order related to the declared disaster emergency and exigencies caused by the COVID-19 disease pandemic.
(b) Coverage limits.--The coverage required under subsection (a) must indemnify the insured for losses related to the declared disaster emergency subject to the policy limits for loss of business or business interruption and subject to the maximum individual policy limits. The following shall apply:

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

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

Section 5. Rulemaking authority.

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

Section 6. Applicability.

This act shall apply:

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

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

Section 7. Exclusive jurisdiction of Supreme Court.

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

Section 8. Effective date.

This act shall take effect immediately.