AN ACT

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

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 Property and Business Interruption Insurance Act.

Section 2. Legislative findings.

The General Assembly finds and declares as follows:

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

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.


(5) On March 16, 2020, as the pandemic continued to spread throughout this Commonwealth, with the number of confirmed cases more than doubled to 76, Governor Wolf ordered the Statewide shutdown of certain non-essential 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.

(6) 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.

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

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

(9) As of April 20, 2020, there were 32,284 positive cases, including 1,112 deaths in this Commonwealth as a result of COVID-19. Unfortunately, the number of positive cases and deaths is expected to increase.
The COVID-19 coronavirus is prevalent throughout this Commonwealth and constitutes a serious threat to the health and welfare of our residents.

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

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

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

Supervising the conduct of insurance companies, and defining the duties and responsibilities of insurers, is within the inherent regulatory and police powers of the State to advance the public good. Furthermore, requiring insurers doing business in this Commonwealth to promptly honor their insurance policy obligations as to claims arising from the COVID-19 pandemic is necessary to prevent further economic disruption and allow businesses to remain functioning in the face of continued and uncertain closures.
Section 3. Scope of the act.

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

Section 4. Limitation of act.

This act does not apply to life, health or disability insurance, fidelity or surety bonds, credit or mortgage insurance, title insurance, workers compensation, general liability or employer's liability insurance, representations and warranties insurance or to ocean marine, hull and cargo insurance. Furthermore, this act does not apply to 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.

Section 5. Choice of law.

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

Section 6. 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:

"Communicable disease." As defined and insured in a first-
party property policy, including an all-risk policy.

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

Section 7. Property damage.

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

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

Section 8. Communicable disease.

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

(b) Presence of COVID-19.--In addition, buildings, offices,
retail spaces, structures, plants, facilities, commercial
establishments and other areas of business activity located in a
municipality of this Commonwealth in which at least one person
in that municipality has been positively identified as having
been infected with COVID-19, or in which the presence of the
COVID-19 coronavirus has otherwise been detected, are deemed to
have experienced the actual, and not merely suspected, presence
of a communicable disease.

Section 9. Order of civil authority.
The Order of the Pennsylvania Governor, dated March 19, 2020,
Regarding the Closure of All Businesses That Are Not Life
Sustaining, constitutes an order of civil authority under a
first-party insurance policy limiting, prohibiting or
restricting access to non-life-sustaining business locations in
this Commonwealth as a direct result of physical damage at or in
the immediate vicinity of those locations.

Section 10. Order regarding ingress and egress.
The Order of the Pennsylvania Governor, dated March 19, 2020,
Regarding the Closure of All Businesses That Are Not Life
Sustaining, constitutes, under a first-party insurance policy,
an order prohibiting ingress to and egress from all non-life-
sustaining business locations in this Commonwealth as a direct
result of physical damage at or in the immediate vicinity of
those locations namely, the presence of the COVID-19
coronavirus.

Section 11. Loss of market.
The loss of market exclusion, and similar exclusions, in a
first-party policy may not be interpreted to apply to preclude
coverage for COVID-19-related losses if one of the reasons for
reduced customer demand for a policyholder's goods or services
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is the same COVID-19 pandemic that gives rise to the
policyholder's losses for which coverage is sought.

Section 12. Applicability.

The following shall apply to this act:

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

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

Section 13. Exclusive jurisdiction of the Pennsylvania Supreme
Court.

The Pennsylvania Supreme Court shall have exclusive
jurisdiction to hear any challenge to, or render a declaratory
judgment concerning the validity or 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 14. Severability.

Each provision of this act and every application of the
provisions of this act are severable from each other as a matter
of State law. If any application of any provision in this act to
any person or group of persons or circumstances is found by a
court to be invalid, the remainder of this act and the
application of the act's provisions to all other persons and
circumstances shall not be affected. All constitutionally valid
applications of this act shall be severed from any applications
that a court finds to be invalid or unconstitutional, leaving
the valid and constitutional applications to be permitted to 
stand alone and in continued effect.

Section 15. Savings clause.

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

Section 16. Effective date.

This act shall take effect immediately.