

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act concerning business interruption insurance.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|--------------------------|--------------------------------|------------------|
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | |
| <i>Nika C. Elugardo</i> | <i>15th Suffolk</i> | <i>3/25/2020</i> |

SENATE No.

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act concerning business interruption insurance.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to require certain insurance companies in the commonwealth to provide business interruption insurance coverage to their insured in connection with the COVID-19 pandemic, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety, health and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. (a) Notwithstanding the provisions of any other law, rule or regulation to
2 the contrary, every policy of insurance insuring against loss or damage to property,
3 notwithstanding the terms of such policy (including any endorsement thereto or exclusions to
4 coverage included therewith) which includes, as of the effective date of this act, the loss of use
5 and occupancy and business interruption in force in the commonwealth, shall be construed to
6 include among the covered perils under such policy coverage for business interruption directly or
7 indirectly resulting from the global pandemic known as COVID-19, including all mutated forms
8 of the COVID-19 virus. Moreover, no insurer in the commonwealth may deny a claim for the
9 loss of use and occupancy and business interruption on account of (i) COVID-19 being a virus

10 (even if the relevant insurance policy excludes losses resulting from viruses); or (ii) there being
11 no physical damage to the property of the insured or to any other relevant property.

12 (b) Subject to (i) any monetary limits of the policy and (ii) any maximum length of time
13 set forth in the policy for such business interruption coverage, the coverage required by this
14 section shall cover the insured for any loss of business or business interruption until such time as
15 the emergency declaration issued by the governor, dated March 10, 2020, and designated as
16 executive order number 591, is rescinded by the governor.

17 (c) This act shall apply only to policies issued to insureds with 150 or fewer full-time-
18 equivalent employees in the commonwealth, and which are in force on the effective date of this
19 act, or that become effective prior to the date on which executive order number 591 is rescinded
20 by the governor.

21 SECTION 2. (a) An insurer that is required to provide coverage to an insured that has
22 filed a claim pursuant to Section 1 of this act may apply to the commissioner of insurance for
23 relief and reimbursement from funds collected and made available for such purpose as provided
24 in Section 3 of this act.

25 (b) The commissioner of insurance shall establish procedures for the submission and
26 qualification of claims by insurers which are eligible for reimbursement pursuant to this section.
27 In addition, the commissioner of insurance shall establish procedures and standards to protect
28 against fraudulent claims for reimbursement by the commonwealth by the insurers, and
29 appropriate safeguards for insurers to employ in the review and payment of such claims by their
30 insureds.

31 SECTION 3. (a) In addition to the assessments made pursuant to Section 8C of Chapter
32 26 of the General Laws, the commissioner of insurance is authorized to make one or more
33 assessments in each fiscal year against licensed insurers in the commonwealth that sell business
34 interruption insurance as may be necessary to recover the amounts paid, or estimated to be paid,
35 to insurers pursuant to Section 2 of this act. Any such assessment shall be made at a rate and
36 shall be determined and certified by the commissioner as sufficient to recover the amounts paid
37 to insurers pursuant to Section 2 of this act. The amount to be so assessed shall be made against
38 all licensed domestic companies and foreign companies in proportion to their net premiums
39 written and annuity considerations in the commonwealth as shown in the annual report of each of
40 said insurers filed with the Division of insurance. Said assessment shall reimburse the
41 commonwealth for funds appropriated for such reimbursement. Assessments under this section
42 shall be charged to the normal operating cost of each company. For the purposes of this section,
43 the term "licensed insurer" shall have the same meaning as defined in Section 8C of Chapter 26
44 of the General Laws.

45 SECTION 4. For the avoidance of doubt, this act is subject to Chapter 176D of the
46 General Laws.