

California Lawmakers Introduce Bill Aimed At Supporting Claims For Business Interruption Losses

Neil Merkl

July 27, 2020

Introduced earlier this month, California Amended Bill 1552 (“AB 1552”) is one of several attempts by state legislatures nationwide to bolster the insurance claims of businesses forced to close, or limit operations, under the COVID-19 pandemic. The bill is currently pending before the California Senate Insurance Committee.

If passed, AB 1552 would apply a set of rebuttable presumptions to business interruption claims under commercial policies that were in full effect on or after March 4, 2021. The business interruption losses must be due to the COVID-19 pandemic and must have occurred during the California Governor’s declared State of Emergency.

AB 1552’s presumptions adjust the evidentiary threshold required to establish a claim, putting the burden on insurers to prove why they need not offer coverage in any one case. The Bill also simplifies some of the thornier issues associated with claims under COVID-19, such as the need for a claimant to satisfy the physical damage to personal property requirement written into the text of standard business interruption policies.

Under the text of AB 1552 the following presumptions apply:

First, with respect to general business interruption losses, “a rebuttable presumption applies that COVID-19 was present on the insured’s property and caused physical damage to that property which was the direct cause of the business interruption.”

Second, with respect to losses attributable to government regulation “a rebuttable presumption applies that COVID-19 was present on property located within the geographical location covered by the order of civil authority and caused physical damage to that property which was the direct cause of the insured’s business interruption.”

Thirdly, with respect to coverage for losses due to impairment of ingress or egress, “a rebuttable presumption applies that COVID-19 was present on the property of a third party and caused physical damage to that property which was the direct cause that prevented the ingress and egress to the insured’s property and resulted in the insured’s business interruption.”

To successfully contest a claim subject to AB 1552’s presumptions, an insurer would need to produce rebuttal evidence showing why the presumptions do not apply in their particular case. As such, the passage of AB 1552 could represent a real boost to California claimants currently facing a denial of coverage from their insurance companies.

Kelley Drye & Warren LLP will keep monitoring this, and other legislative efforts, as they mature. Please [click here](#) if you would like to be kept abreast of current developments.