

tl;dr – Pandemic Risk Insurance

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ICLE tl;dr

Background: Thousands of U.S. businesses have filed insurance claims for business interruption since the start of the COVID-19 pandemic, particularly where civil authorities have ordered businesses to shutter. The overwhelming majority of such claims have been denied, however, as standard commercial property insurance policies typically require an insured to demonstrate evidence of physical damage. Most policies also explicitly exclude losses related to viral contagion. Many of these claims disputes have ended up in the courts.

But... Lawmakers at the state and federal level have responded to these claims denials with several ill-considered legislative proposals. Bills that would vitiate contract language and require coverage retroactively for COVID-19 business interruption claims were introduced in more than 10 states in 2020, though none were passed into law. In May 2020, U.S. Rep. Carolyn B. Maloney introduced the Pandemic Risk Insurance Act of 2020 (PRIA), establishing a \$750 billion reinsurance program that would have the federal government pay 95 percent of business interruption claims arising from a future viral contagion.

However... Both the magnitude and the extreme correlation of business interruption losses arising from a pandemic make them nearly impossible to insure. Rewriting contract language to require payment of claims that are explicitly excluded would jeopardize both the rule of law and the solvency of the global insurance industry. Disallowing virus exclusions in future policies could threaten the availability of coverage for business interruption altogether. While it is possible to structure a government backstop that could draw interest from private insurers, the details of any such proposal need to be closely scrutinized. Ultimately, the question should be raised whether insurance is actually the tool best suited to the problem

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