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LAWSUITS AND INSURANCE ISSUES LOOM FOR DEFIANT TOWNS, BUSINESSES

Gov. JB Pritzker has repeatedly said he’s leaving enforcement of his stay at home order up to local governments. But when local governments refuse to enforce his executive order, it appears that trial lawyers may step in and insurance companies might take a walk.

A growing number of Downstate sheriffs, state’s attorneys and other officials have declared they won’t be enforcing the governor’s stay at home order. The Woodford County state’s attorney has said he won’t prosecute violators, as has the White County SA. Johnson County’s sheriff is one of several who’ve said he also wouldn’t arrest anyone for violating the orders.

East Peoria’s mayor has gone beyond even that, officially allowing the “opening” of several businesses in his city on May 1 that were ordered closed by the EO, including hair salons, spas, gyms and indoor recreational facilities. On May 15, bars and restaurants are allowed to open at 50 percent capacity, churches and theaters are also allowed to reopen on that date.

But the Illinois Trial Lawyers Association has a message for the renegade municipalities and the businesses that decide to throw open their doors: Watch out for lawsuits.

“The risk of opening early outweighs the benefit of limiting liability not only for the municipality but also for any employer who follows the guidelines of the municipality,” said ITLA President Antonio Romanucci via a written statement over the weekend. “The prudent course would be...
to stay closed for another 25 days and limit any further potential spread which could lead to litigation.”

And those towns and businesses could find themselves without insurance coverage should something go wrong.

Kevin Martin, Executive Director of the Illinois Insurance Association, told me over the weekend that insurance policies are “not going to cover intentional acts.” In other words, if a business intentionally reopens in violation of the EO and somebody injures themselves at the establishment or contracts the virus, insurance coverage isn’t a given. The same may go for municipalities which openly violate the EO.

The Illinois Department of Insurance also chimed in, saying via press release “if businesses reopen contrary to public health guidelines and the State’s executive orders, there is risk that an insurer could find reason within the policy language to deny Covid-19 related claims.”

The Illinois Retail Merchants Association has taken the position from the beginning that the EO is “the best course of action for both consumers and employees,” the group’s president Rob Karr said via written statement. “We have also advised retailers both the liability, insurance and other legal issues that may arise from not following the state’s guidance,” Karr continued.

The Illinois Restaurant Association also released a statement over the weekend saying the group has encouraged its members to follow the EO. The Illinois Licensed Beverage Association (which represents tavern owners) said it “does not advise” its members to violate the executive order.

The bottom line is, if you don’t fear the virus, then you might wanna start to fear being wiped out by lawsuits that aren’t covered by insurance.

Some local governments appeared emboldened by state Rep. Darren Bailey’s Clay County judicial win against the executive order last week. But the Xenia Republican asked the appellate court to vacate his TRO late Thursday night, and his lawyer claimed he would be filing a new lawsuit at the county level. It seemed fairly clear to some that the local judge had overstepped his bounds by issuing a restraining order that didn’t fit the guidelines for what a TRO is supposed to do.

The amended filing seems likely to focus on whether the Illinois Department of Public Health and local public health departments should be handling the closure of businesses instead of the governor.

Public health departments do have the authority to order quarantines, and people and businesses hit with the orders have the right to a hearing within 48 hours. But those powers are very specific and narrow. The governor is using a different law governing the Illinois Emergency Management Agency to back up his far more expansive executive orders. We’ll see if this works, but that Clay County judge has proved to be quite amenable to whatever Bailey wants.

And then the Thomas More Society lost its federal case over the weekend when a judge ruled that the governor’s
executive order did not violate a northwest Illinois church’s constitutional rights. Pritzker altered his order at the last moment to allow for church services of no more than 10 people and to allow and even encourage drive-in services. The federal judge mentioned those changes in his ruling.


And Friday’s protests against the stay at home order turned out to be underwhelming, with smallish crowds of 500 people at both the Statehouse and the Thompson center. The crowds were also populated with extremists and cranks and one Chicago protester drew a sharp rebuke from the Auschwitz Museum and Memorial in Poland for her “Arbeit Macht Frei” sign.

**Despite favorable polling, the threat of civil action** against those who defy the orders, the recent court wins and the protests’ flops, the governor’s job isn’t going to get any easier in the coming weeks.

The Chicago media has extensively covered the city’s attempts to stop large parties and gatherings. A large party in Rockford ended in a shooting on Sunday and the same thing happened earlier in Peoria. People understandably want to blow off some steam after weeks of being cooped up.

Let’s hope that doesn’t escalate further, but you don’t need a PhD in sociology, economics or history to know that the global economic carnage caused by this pandemic is bound to unleash some dangerous and dystopian forces.

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State Press Releases
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