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If you reopen for business early and somebody dies, don't expect your insurance company to bail you out

When towns and businesses refuse to enforce Gov. J.B. Pritzker's stay-at-home order, trial lawyers might step in and insurance companies might take a walk.

By [Rich Miller](#) May 8, 2020, 4:51pm CDT

Gov. J.B. Pritzker has repeatedly said he's delegating enforcement of his stay-at-home order to local governments.

That stance has frustrated some folks who want him to get tougher with violators (although he'd undoubtedly risk making martyrs out of them if he did crack down hard). And the governor's position seems to have emboldened some local officials to defy the governor's executive order and open up their economies on their own.

But when local governments refuse to enforce the governor's order, it appears that trial lawyers might 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 state's attorney. Johnson County's sheriff is one of several who've said he also wouldn't arrest anyone for violating the order.

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 governor's executive order, including hair salons, spas, gyms and indoor recreational facilities. On May 15, bars and restaurants will be allowed to reopen at 50 percent capacity, and churches and theaters also will be allowed to reopen on that date.

But the Illinois Trial Lawyers Association has a message for those renegade municipalities and businesses preparing 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 in a written statement. "The prudent course would be to stay closed for another 25 days and limit any further potential spread which could lead to litigation."

I asked Pritzker at a recent press conference what he thought of the warning from trial lawyers.

"Well, I was a businessman before I became governor," Pritzker replied, "and I have to tell you that I would not want to defy the executive order because I believe that I would be taking on liability if I did that."

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 that insurance policies are "not going to cover intentional acts." In other words, if a business intentionally reopens in violation of the executive order and somebody injures himself at the establishment or contracts the virus, insurance coverage won't be a given. The same may go for municipalities that openly violate the executive order.

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."

I asked Pritzker at that same press about insurance issues.

"It would not surprise me if insurance companies are found to not be required to cover you when you are defying essentially state law or a state executive order," he replied.

The Illinois Retail Merchants Association has taken the position from the beginning that the executive order 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 of both the liability, insurance and other legal issues that may arise from not following the state’s guidance.”

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

The governor has pointed out several times that many of the businesses that are defiantly reopening have state licenses. Your local barber or salon owner needs a state license to open and operate. Cosmetologists, electrologists, massage therapists and nail technicians are just some of the others who must have state licenses. Restaurants and taverns are under state oversight and can be closed down by local public health departments in situations just like this.

The bottom line is, if you don’t fear the virus, then you might want to start to fear being wiped out by lawsuits not covered by insurance or losing your license.

Rich Miller also publishes Capitol Fax, a daily political newsletter, and CapitolFax.com.

Send letters to letters@suntimes.com.