



Choose Lives Not Money:

On a Proposed Amendment A04895 to SB 327, PN 1436

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Introduction

Governor Wolf has ordered all Pennsylvanians to stay at home except when necessary to engage in “tasks essential to maintain...the health and safety of their family and household members;” to get “necessary services or supplies for themselves or their family or household members....or to those in need;” to engage in “outdoor activities” or to “perform work providing essential products and services at life-sustaining businesses....”¹

This order has required the closure of most businesses in the Commonwealth. And that has placed a great burden on the owners of businesses large and small as well as on the employees of those businesses. The Pennsylvania Budget and Policy Center has [recommended](#), along with many others, that the Commonwealth and the federal government take many steps to help sustain businesses and their employees during this time. Both the federal and state governments have taken such steps. We will be making other such recommendations and expect additional efforts to sustain businesses that have been forced to close and the employees who have temporarily or permanently lost their jobs, as well as others who are suffering economically from the crisis.

An amendment to SB327 (printer’s number 1436) expected to be offered by Republican legislators next week is a well-meaning but misguided effort to limit the governor’s authority under the emergency law by requiring him to develop a “plan to mitigate the spread of COVID-19 for businesses in the Commonwealth” and then allow businesses that comply with the requirements of the mitigation plan to operate in the Commonwealth.

While this proposal seeks to address the serious concerns everyone has for the businesses that have been forced to close and the employees who have lost their jobs, it is based on a number of fantasies: 1) There is a safe way for most such businesses to operate in the Commonwealth; 2) employers will place the health and safety of their employees above their own profits; and 3) the actions of individual businesses and their employees will not have broader consequences for the community as a whole. If we were to base public policy on these fantasies, we would risk the health and safety of not only business owners and their employees but everyone who lives in Pennsylvania.

The proposal

We know that the coronavirus that gives rise to COVID-19 is transmitted both through the air and through contact with materials on which the virus lives for some time. Most estimates of the virus’s transmittal rate put it substantially above the flu, especially in the current circumstance in which most people have no acquired immunity to it.

The language of the amendment implies that there are ways to operate businesses that would adequately “mitigate” the risks of transmitting it from one person to another in such businesses. It says that the state plan should be developed using the “recommended guidance for mitigating exposure to COVID-19 from

¹ Commonwealth of Pennsylvania, [Responding to COVID-19 in Pennsylvania](#), update April 4, 2020, 4 p.m.

the Centers for Disease Control (CDC) and shall conform to the [March 29, 2020 Advisory Memorandum on Identification of Critical Infrastructure Workers During COVID-19 response](#) as published by the United States Cybersecurity and Infrastructure Security Agency (CISA).

The fantasy that most business can be conducted safely

The CDC's "[Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission](#)" makes recommendations for workplaces when a substantial degree of community transmission is taking place—the circumstance we now face. The CDC recommends that businesses should implement “telework arrangements (when feasible).” Clearly, this recommendation cannot be met by most businesses. Moreover, work that can be conducted through telework isn't currently restricted by the governor's stay at home order.

Even the recommendations for circumstances when community transmission is “minimal to moderate,” such as “implementing social distance measures” by “increasing the physical space between workers at the worksite” or “staggering work schedules,” would, if taken seriously, make most of the work done at the offices, retail stores, manufacturing sites, construction sites and farms in the Commonwealth impossible.

Anyone who has worked in such sites understands that even if work spaces are separated, people interact with one another and, more importantly, pass materials—products, component parts, construction materials, paper, food, and feed—to one another all the time. Where they provide services in, say, health or food service establishments they touch other people or the physical objects they come in contact with.

The reason that some work cannot be carried out via telecommuting and the internet is precisely that such work requires physical interaction between people and the physical objects and materials with which they work. And that is precisely the interaction that is now dangerous.

Work that cannot be done remotely is work that cannot be done safely as long as COVID-19 is spreading quickly through the community and we cannot identify those who have it, trace their contacts, or isolate the people who might develop it.

This is why the CISA document referenced in the amendment, [March 29, 2020 Advisory Memorandum on Identification of Critical Infrastructure Workers During COVID-19 response](#), contains *no* additional recommendations for mitigating the spread of the virus. The purpose of this document is *not* to tell businesses how to mitigate risk but to identify the government work, businesses, and other activities so essential that they should be allowed to operate *despite* the acknowledged risks of their operation.

So the amendment is based, first, on a fantasy that federal agencies have identified rules for safely carrying out work that cannot be done by telecommuting or over the internet. No agency has done that. And no agency could identify such rules when community transmission of the virus is occurring so rapidly that we call it *exponential growth*.

The fantasy that unregulated businesses can and will respect the health and safety of their employees

What will be the consequences of enacting this amendment? It will require the governor to provide broad guidelines that are either meaningless in that they set little or no limit on what businesses do or are so onerous that no business can meet them. But even if the rules are onerous and restrictive, businesses and business owners so desperate to reopen that they are willing to risk their own health and lives, as well as those of their employees, will certify that they are following these rules. And there will be no oversight to ensure that they are doing so.

Businesses may take some steps to distance their employees or provide sanitizer that can be used every time some physical object changes hands. And perhaps some businesses will, through intentional, careful, and thoughtful steps, reduce the risk of transmission of the COVID-19 virus from one employee to another and from employees to customers.

But there will be no state regulation of those business operations to ensure that, even in the relatively few cases where such steps can be taken, they *are* taken or that where they cannot be taken the business does not reopen. And there will be no recourse for employees who object to going to work under unsafe conditions. The amendment offers no mechanism by which employees can protest unsafe working conditions and petition for them to be changed or the business closed. And if employees refuse to work under conditions they deem unsafe, the amendment offers no protection for their jobs and no guarantee that they can receive unemployment insurance if they quit. News reports about “essential workers” at food processing and Amazon plants facing risks of coronavirus and, in some cases, protesting their conditions without effect do not provide reassurance that the plan envisions by this amendment can work.² Neither does the fact that in 1918, Pittsburgh and Philadelphia, then the center of the steel industry and the workshop of the world respectively, had the highest and second-highest incidence of the Spanish flu.³ So the second fantasy on which this amendment is based is that employers can be trusted to only open their businesses when the health and safety of their employees can be guaranteed.

The fantasy that what businesses do has no impact on the health and safety of the entire community

The third fantasy on which this amendment rests is the notion that what each of us does—and the risks we are willing to take—has no impact on the lives and health of others. Of course, it will not just be the employees and customers of these businesses whose health and lives will be put at risk by this amendment. Everyone who comes into contact with them will be put at risk as well. This is simply the situation we are in as we fight an invisible virus that is often carried by people who do not know they are infected, that can infect any of us at any time, and that is spreading so rapidly that it threatens to overwhelm our health care system, leading to even more unnecessary deaths. Allowing a business to open when it is likely to become a vector by which the virus is transmitted could have a devastating impact on the health and lives of tens of thousands of people in the Commonwealth.

Conclusion

We say again that this amendment is well-intentioned. But it is based on fundamental misunderstanding about the danger of transmission of the virus in most workplaces in which workers and the materials with which they work are physically present, about the relationship between employers and employees, and about the communal consequence of individual action.

² Michael Grabell, “What Happens If Workers Cutting Up the Nation’s Meat Get Sick?” *ProPublica*, March 28, 2010; <https://www.propublica.org/article/what-happens-if-workers-cutting-up-the-nations-meat-get-sick>. Dana Mattioli and Sebastian Herrera, “Amazon Struggles to Find Its Coronavirus Footing. ‘It’s a Time of Great Stress.’” *Wall Street Journal*, March 31, 2020; <https://www.wsj.com/articles/amazon-struggles-to-find-its-coronavirus-footing-its-a-time-of-great-stress-11585664987>. Jaewon Kang and Sebastian Herrera, “Some Instacart and Amazon Workers Stay Home, Calling for More Pay in Coronavirus Pandemic,” *Wall Street Journal*, updated March 30, 2020; <https://www.wsj.com/articles/some-instacart-and-amazon-workers-stay-home-calling-for-more-pay-in-coronavirus-pandemic-11585603516>.

³ Dan Barry and Caitlin Dickinson, “The Killer Flu of 1918: A Philadelphia Story,” *The New York Times*, April 4, 2020; <https://nyti.ms/2xJYf4C>.

To protect the lives and health of Pennsylvanians, it must be rejected. And the threats that the amendment seeks to address—to the livelihoods of workers and to businesses—must continue to be addressed in other ways, including through additional federal and state actions.