

Business Closure Order Enforcement Guidance

As you are aware, on March 19, 2020, Governor Tom Wolf, along with Dr. Rachel Levine, Secretary of the Department of Health, ordered all non-life-sustaining businesses in Pennsylvania to close their physical locations as of 8 p.m., March 19, to slow the spread of COVID-19 (hereinafter referred to as “the Orders”). See list of life-sustaining businesses, attached. Enforcement actions against businesses that do not close physical locations will begin at 08:00 a.m. Monday, March 23. The Orders are attached hereto.

The closure of non-life sustaining businesses is a measure that has been taken to control the spread of a communicable disease, COVID-19, and has been ordered by the Governor and the Secretary of Health. The closures are enforceable through criminal penalties, under the Disease Control and Prevention Law of 1955 and the Administrative Code of 1929.

While other criminal penalties in those laws may apply, the following are the most directly applicable provision for enforcement of the Orders.

First, the Administrative Code of 1929, 71 P. S. § 1409, states that:

Every person who violates any order or regulation of the Department of Health, or who resists or interferes with any officer or agent thereof in the performance of his duties in accordance with the regulations and orders of the Department of Health, shall, upon conviction thereof in a summary proceeding before a justice of the peace, alderman, or magistrate of the county wherein such violation or offense is committed, be sentenced to pay a fine of not less than ten (\$10.00) dollars and costs nor more than fifty (\$50.00) dollars and costs, such fine to be paid to the county in which the violation or offense is committed. In default of payment of such fine and costs the offender shall be sentenced to be confined in the proper county jail for a period of thirty days.

Thus, pursuant to 71 P.S. § 1409, any person that fails to abide by the Orders, or any other order of the Department of Health or who resists or interferes with any officer or agent thereof in the performance of his or her duties, is in violation of 71 P.S. § 1409, and subject to the criminal penalties stated therein.

Furthermore, under the Disease Prevention and Control Law of 1955, 35 P.S. § 521.1 et seq., the Secretary of Health has the authority to issue orders for isolation, quarantine and other control measures, such as the Orders. See 35 P.S. § 521.5. Under that act, Section 521.20 provides that any person violating a provision of the Disease Prevention and Control Law (such as control measures under section 521.5 and the Department’s regulations at 28 Pa. Code Ch. 27, Subch. C) is guilty of a summary offense and shall be fined \$25 - \$300. According to subsection(b) of section

521.20, "Prosecutions may be instituted by the department, by a local board or department of health or by any person having knowledge of a violation of any provisions of this act or any regulation." This section provides authority for local law enforcement agencies to issue citations for violation of the Orders issued by the Secretary of Health and the Governor.

Thus, citations for businesses in violation of the Orders would reference 71 P.S. § 1409 and/or 35 P.S. § 521.20(a).

Finally, for more serious violators, there are also provisions under the Crimes Code for obstructing the administration of law or government function, including 18 Pa. C.S. § 5101, that may be applicable if someone refuses to abide by the restrictions ordered by the Governor or Department of Health.

I, of course, defer to you as law enforcement executives and District Attorneys to determine appropriate charges for suspected violations. However, given the unique nature of this event, and how quickly it is evolving, the Commonwealth is sharing its current understanding with regard to enforcement of the issued Orders. We strive to ensure enforcement of the orders will be consistent throughout the Commonwealth. We also expect that any discipline for violation of the orders will be progressive such that enforcement will begin with a warning to any suspected violator. Furthermore, enforcement should be prioritized to focus on businesses where people congregate.

Below is a quick digest of other criminal penalties the Commonwealth has identified that may be applicable to enforce the control measures ordered by the Governor and the Department of Health to stop the spread of COVID -19.

A. The Pennsylvania Disease Prevention and Control Law of 1955

35 P.S. § 521.20(a):

Any person who violates any of the provisions of this act or any regulation shall, for each offense, upon conviction thereof in a summary proceeding before any magistrate, alderman or justice of the peace in the county wherein the offense was committed, be sentenced to pay a fine of not less than twenty-five dollars (\$25) and not more than three hundred dollars (\$300), together with costs, and in default of payment of the fine and costs, to be imprisoned in the county jail for a period not to exceed thirty (30) days.

27 Pa. Code § 27.8(a):

A person who violates any provision of the [Disease Prevention and Control Act of 1955] shall, for each offense, upon conviction thereof in a summary proceeding before a district justice in the county wherein the offense was committed, be sentenced to pay a fine of not less than \$25 and not more than \$300, together with costs, and in default of payment of the fine and costs, shall be imprisoned in the county jail for a period not to exceed 30 days.

B. The Administrative Code

71 P. S. § 1409:

Every person who violates any order or regulation of the Department of Health, or who resists or interferes with any officer or agent thereof in the performance of his duties in accordance with the regulations and orders of the Department of Health, shall, upon conviction thereof in a summary proceeding before a justice of the peace, alderman, or magistrate of the county wherein such violation or offense is committed, be sentenced to pay a fine of not less than ten (\$10.00) dollars and costs nor more than fifty (\$50.00) dollars and costs, such fine to be paid to the county in which the violation or offense is committed. In default of payment of such fine and costs the offender shall be sentenced to be confined in the proper county jail for a period of thirty days.

C. The Liquor Code

47 P.S. § 4-462:

The [B]oard may, with the approval of the Governor,

(a) temporarily close all licensed places within any municipality during any period of emergency proclaimed to be such by the Governor.

(b) advance by one hour the hours prescribed in this act as the hours during which liquor and malt or brewed beverages may be sold in any municipality during such part of the year when daylight saving time may be observed generally in such municipality.

47 P.S. § 4-471:

(a) Upon learning of any violation of this act or any laws of this Commonwealth relating to liquor, alcohol or malt or brewed beverages, or of any regulations of the board adopted pursuant to such laws, or any violation of any laws of this Commonwealth or of the Federal Government relating to the payment of taxes on liquor, alcohol or malt or brewed beverages by any licensee within the scope of this article, his officers, servants, agents or employes, or upon any other sufficient cause shown, the enforcement bureau may, within one year from the date of such violation or cause appearing, cite such licensee to appear before an administrative law judge, not less than ten nor more than sixty days from the date of sending such licensee, by registered mail, a notice addressed to him at his licensed premises, to show cause why such license should not be suspended or revoked or a fine imposed, or both. The bureau shall also send a copy of the hearing notice to the municipality in which the premises is located.

47 P.S. § 4-494:

(a) Any person who shall violate any of the provisions of this article, except as otherwise specifically provided, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), and on failure to pay such fine, to imprisonment for not less than one month, nor more than three months, and for any subsequent offense, shall be sentenced to pay a fine not less than three hundred dollars (\$300), nor more than five hundred dollars (\$500), and to undergo imprisonment for a period not less than three months, nor more than one year, or both. If the person, at or relating to the

licensed premises, violates section 493(1), (10), (14), (16) or (21),¹ or if the owner or operator of the licensed premises or any authorized agent of the owner or operator violates the act of April 14, 1972 (P.L. 233, No. 64),² known as "The Controlled Substance, Drug, Device and Cosmetic Act," or 18 Pa. C.S. § 5902 (relating to prostitution and related offenses) or 18 Pa. C.S. § 6301 (relating to corruption of minors), he shall be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to undergo imprisonment for a period not less than three months, nor more than one year, or both.

(b) The right to suspend and revoke licenses granted under this article shall be in addition to the penalty set forth in this section.

D. The Crimes Code

18 Pa. C.S. § 5101:

Obstructing administration of law or other governmental function (M2) - a person commits a misdemeanor of the second degree if he intentionally obstructs, impairs or prevents the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental function