Testimony

Submitted on behalf of the
Pennsylvania Chamber of Business and Industry

Public Hearing on Title 35 Emergency Declaration Powers

Before the:
House Veterans Affairs and Emergency Preparedness Committee

Presented by:
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Harrisburg, PA
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Chairman Barrar, Chairman Sainato, and members of the House Veterans Affairs and Emergency Preparedness Committee,

On behalf of the Pennsylvania Chamber of Business and Industry, the largest, broad-based business advocacy organization in the Commonwealth, thank you for the opportunity to present the perspective of our membership on the impact of the state’s emergency response measures. Our membership, which is nearly 10,000 strong, consists of sole proprietors to Fortune 500 companies and represents all industry sectors in every region of the state. Successful recovery from this pandemic will require a collaborative and thoughtful approach between the business community, the administration and the General Assembly.

As we work together toward this goal, there needs to be a focus on enacting policies that prioritize re-opening safely, and encourage business investment and reinvestment. As the ‘Statewide Voice of Business™,’ the PA Chamber has taken the lead in driving Pennsylvania’s economic resurgence through our ‘Bringing PA Back’ Initiative. This initiative is arming employers with the information they need to re-open their facilities for employees and customers; along with promoting public policies that will help employers overcome hurdles to operating that they face in this new pandemic era. We have hosted numerous calls with our local chamber partners and statewide associations to identify employers’ major concerns and needs and to communicate those needs with both the legislature and the Wolf administration. We strive to be a trusted, fact-based resource in the ever-changing COVID-19 landscape for both businesses and for elected officials who are weighing the public policies that will best move Pennsylvania’s economy forward.

Specifically with regard to emergency response measures, which encompasses subjects broader than just the pandemic, I would like to briefly describe to this committee the challenges our members have faced with respect to the emergency declaration process, including vehicle restrictions and road closures during forecasted inclement weather; the impact of the state’s price gouging law on businesses; and the on-going confusion over enforcement of requiring mask wearing in places of business. Legislative remedies have been proposed to address some of these challenges, which I will also lay before this committee for its consideration.

The State’s Decision-Making Framework for Restricting Travel and Closing Roads Led to Significant Disruption in Logistics and Freight During 2018; Recent Proposed Revisions are Promising but Have Not Been Road-Tested

On several occasions during the winter of 2018, the administration, through the Department of Transportation working with the State Police, issued total travel restrictions on several major interstate highways. Even tractor trailers, driven by well-trained drivers manning vehicles with chains or other traction control devices, were pulled off the road. Yet it often either never snowed, or accumulated to levels at which drivers likely would have still been able to navigate the conditions. As supply chains have shifted toward “just in time” deliveries to reduce costs for businesses and families, Pennsylvania has seen a tremendous amount of economic development surrounding logistics and warehousing. Some industries, such as the pharmaceutical, milk or fresh produce delivery service industries, rely on regular, daily deliveries. The weather-induced interruptions impacted supply on the grocery store and pharmacy shelves and the producers. There was also a lack of clarity regarding whether utility response trucks, such as those sent by companies to manage downed power lines, were allowed on the roads.

In response to the concerns of the business community, in the fall of 2019 the Wolf administration issued a revised framework, “Inclement Winter Weather Travel Restriction and Ban Framework,” that provides for a tiered road-closure response with, in part, a stated goal of being “responsive to commercial vehicle operators’ needs” on better communication and minimized economic impact. Our members believe this tiered-approach, which allows more commercial vehicles on the road in more circumstances, will better serve the
public and the economy in a safe and effective manner. We encourage this committee, as well as your partners on the Transportation committee, to continue having an open dialogue with the business community, PennDOT, the State Police and PEMA in preparation for this winter and the inclement weather that may accompany it.

The Current Emergency Declaration Process Leaves Businesses at Compliance and Reputational Risk for Excessive Periods of Time

While much attention, rightly so, has been given to this pandemic and the responses by the administration, the General Assembly, the business community and the public, it is important to recognize that the state has been operating under a state of emergency since January 2018, when the governor signed an emergency declaration regarding the number of opioid-related overdoses and deaths in the Commonwealth — a declaration that has since been renewed 11 times. We are also under an emergency declaration due to the pandemic, renewed earlier this month by the Governor.

This is relevant because of the challenges the state’s 2006 Price Gouging Act imposes on the business community during the 90 days a declaration is in effect and 30 days thereafter. During such times, employers are exposed to a “guilty until proven innocent” standard for any price increase of “consumer goods or services” (undefined by the statute) of 20 percent or more, with limited exceptions. This places businesses at significant compliance and reputational risks. No business wants to be in the headlines for price gouging, yet the act makes it possible for such a charge to be levied by the Attorney General’s Office for changes in price that may very well have taken place due to, for example, contractual obligations on the part of the distributor or retailer. The Act currently authorizes penalties of up to $10,000 per violation, based on unclear and arbitrary standards.

Further, the general approach of the state’s price gouging law assumes a view that consumers are better protected when the dynamics of supply and demand are not allowed to operate — which is, at best, a debatable proposition. For many categories of goods and services for which there are an abundant number of choices and alternatives, restricting prices distorts markets and does not allow consumers to signal to producers which products are in greater demand.

This General Assembly, unanimously, passed revisions to the state’s Price Gouging Law last session. Unfortunately, Gov. Wolf vetoed the legislation despite the bipartisan vote. We urge this committee and the legislature to continue working to address this issue in a manner that protects consumers and provides clarity to the business community. Senate Bill 139 does this by bringing the price increase threshold down to 10 percent, while also giving more assurance to businesses that the price gouging must have been willful in order for prosecution under the act to occur.

The Lack of Enforcement of the Governor’s Mask Mandate Has Put Businesses in a Precarious Position with Customers and Clients

Further, the governor has issued a requirement that all customers in stores wear masks but has left enforcement of this order to businesses, with the potential threat of revoked insurance or licensing authorizations. There remains a lack of clarity to this mandate, including whether businesses may require a patron who claims a medical issue that precludes mask-wearing to utilize and alternative, such as curbside service or delivery, or if they must be allowed into a facility without a mask. As a result of this confusion, several businesses have already been targeted by lawsuits. Further, retail employees are not law enforcement. Our members have reported customers threatening store employees or even acting out with physical violence over requests to wear a mask. We have requested that the Governor engage law enforcement on the mask mandate so that the public takes this matter seriously and also address the widespread misconception that
employers have discretion to decide if masks are required in public places. We have also supported, through a #WhyIWearIt social media campaign, the wearing of masks so that the spread of this disease is curtailed and the economic and public health impact is minimized.

**Liability Reform Remains Paramount to the Successful Recovery of the State and its Economy**

Finally, no discussion surrounding response measures to the pandemic would be complete without a discussion regarding liability. Last week, the PA Chamber, along with dozens of organizations, including associations representing child care, hospitals, doctors, education, non-profits and local governments, sent a letter to the General Assembly urging support for temporary safe harbor from unwarranted lawsuits, while not precluding appropriate action against bad actors or those acting irresponsibly. The diverse coalition of employers, non-profits, and government institutions who signed on to this letter have taken significant and unprecedented strides to contribute to the health, safety and economic vitality of the public during this time. This letter was followed up with a similar letter from 81 chambers of commerce from across the state making the same request. All of these businesses share the prospect of an uncertain future and likely significant additional compliance costs to protect the health and safety of their employees, customers and the public. All also face the threat of unfair, opportunistic pandemic-related litigation and some Pennsylvania employers have already been targeted with unwarranted lawsuits.

For the foreseeable future, employers will be subject to strict workplace health and safety requirements and those who adopt these precautions should proceed with confidence knowing they will not be targeted with frivolous, and potentially devastating, litigation. On the other hand, those who act with gross negligence or disregard safety precautions should not be protected and we support robust enforcement against bad actors or irresponsible employers.

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In the months ahead, the PA Chamber looks forward to continuing to work with lawmakers and the administration on policies that will move our state toward an economic recovery. There have been many sacrifices made during this time and the business community has made many of them, along with the brave medical professionals and first responders who are fighting this virus head-on. Pennsylvania is fortunate to have a strong foundation in our healthcare, medicine, energy, manufacturing, telecommunications and education sectors and we know that by working together, we can come out of this difficult time stronger than ever. Our members are up for the challenge of leading our state forward, safely and responsibly, and we welcome collaboration from the General Assembly and the Wolf administration to do it.