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Secretary of State
Tre Hargett

STATE OF TENNESSEE

EXECUTIVE ORDER

BY THE GOVERNOR

No. 38

AN ORDER EXPANDING THE NUMBER OF TENNESSEANS WHO MAY RETURN TO WORK SAFELY WHILE URGING CONTINUED ADHERENCE TO HEALTH AND SOCIAL DISTANCING GUIDELINES TO LIMIT THE SPREAD OF COVID-19

WHEREAS, in recent months, local, state, and federal officials have taken numerous actions to limit the spread of Coronavirus Disease 2019 (COVID-19); and

WHEREAS, between March 22, 2020, and April 2, 2020, I issued executive orders directing that Tennesseans stay at home unless engaging in essential activity or essential services, prohibiting large social gatherings, and limiting the operation or visitation of certain businesses and venues, in accordance with guidelines issued by President Trump and the Centers for Disease Control and Prevention (CDC); and

WHEREAS, because of the progress made in flattening the COVID-19 curve in Tennessee, the enormous damage suffered by many businesses and individuals as a result of COVID-19, and the importance of encouraging Tennesseans to return to work to support their families and communities in a safe way, between April 28, 2020, and May 8, 2020, I issued executive orders encouraging many Tennesseans to return to work, and the Governor's Economic Recovery Group issued numerous sets of guidelines for the safe operation of a variety of types of businesses; and

WHEREAS, our progress in reopening Tennessee while limiting the spread of COVID-19 has continued, as many Tennesseans have returned to work, more guidance has been developed regarding how businesses can keep their employees and customers safe, hospitalization rates continue to be stable, our mortality rates remain lower than national averages, and testing capacity continues to increase across the state; and

WHEREAS, as a result of this continued progress in mitigating the spread of COVID-19 in Tennessee, it is appropriate to encourage more Tennesseans to return to work to support their families and communities while trusting and expecting them to continue to limit non-essential activity and follow the practices that have resulted in this progress (the "Health Guidelines"), including:

For individuals:

a. Maintaining at least six (6) feet of distance from other persons;
b. Practicing good personal hygiene and observing other CDC recommendations;
c. Remaining at home if you feel sick;
d. Working from home whenever possible;
e. Avoiding discretionary travel and large gatherings; and
f. Avoiding visitation or close contact with vulnerable persons or those who are sick; and

For employers:

a. Implementing appropriate policies and practices in accordance with state and federal guidance to facilitate social distancing, temperature checks, sanitation, use and disinfection of common areas, and reduced business travel;
b. Monitoring employees for symptoms and prohibiting employees with symptoms from returning to work until cleared by a medical provider; and
c. Cooperate with governmental contact tracing procedures for employees or customers who test positive for COVID-19; and

WHEREAS, the threat from COVID-19 remains very serious, and with this increased ability to return to work comes increased personal responsibility on the part of each Tennessean to protect themselves and others by following the Health Guidelines to slow the spread of this virus, and therefore, all Tennesseans are strongly urged to continue to diligently follow the Health Guidelines at all times; and

WHEREAS, in addition to the other emergency management powers granted by law, Tennessee Code Annotated, Section 58-2-107(e), provides that during a state of emergency, the Governor is authorized to suspend laws and rules regarding the conduct of state business if necessary to cope with the emergency, order evacuations from certain areas, make orders concerning entry and exit and the occupancy of premises within an emergency area, and take measures concerning the conduct of civilians and the calling of public meetings and gatherings, among other things; and

WHEREAS, the temporary suspension of selected state laws and rules and the other measures contained herein are necessary to facilitate the response to the current emergency.

NOW THEREFORE, I, Bill Lee, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and other applicable law, to keep the citizens of the State of Tennessee safe and healthy, do hereby declare a continuing state of emergency to facilitate the response to COVID-19 and order the following statewide:

1. Return to work. Persons, businesses, and organizations are encouraged to return to work consistent with the provisions of this Order and while following to the greatest

extent practicable the Health Guidelines and the operational guidance issued by the Governor's Economic Recovery Group (e.g., Tennessee Pledge).

a. Health Guidelines. All employers and businesses are strongly urged to take all practicable steps to equip, encourage, allow, or require and permit employees to work remotely or via telework from home, and employees and their customers should practice good hygiene and observe the Health Guidelines to reduce the spread of COVID-19 to the greatest extent practicable.

b. ERG Guidelines. All venues, employers, and businesses are expected to operate in accordance with, and to fulfill the spirit of, applicable operational guidance issued by the Governor's Economic Recovery Group (e.g., Tennessee Pledge), which are available at the following web address and may be periodically updated: https://www.tn.gov/governor/covid-19/economic-recovery.html. Generally applicable guidelines and industry-specific guidelines for certain industries have been and will continue to be released by the ERG. If an employer, business, or industry does not operate in a safe manner, or if health outcomes demonstrate that a particular business or industry sector is unable to be operated in a sufficiently safe manner, the Governor and/or other applicable state official(s) may issue additional health and safety orders as may be appropriate under the circumstances.

2. Social distancing remains imperative.

a. CDC guidance states that "COVID-19 is thought to spread mainly through close contact from person-to-person", and therefore every person is strongly urged to maintain at least six (6) feet of separation from persons outside their household to the greatest extent practicable.

b. To ensure appropriate social distancing for the purposes of social or recreational gatherings, including, but not limited to, festivals, fairs, parades, large parties or picnics, sporting events and activities (in accordance with Paragraph 2.c. and 2.d.), summer youth camps, and other types of social or recreational assemblies or gatherings, persons in the State of Tennessee should to the greatest extent practicable maintain at least six (6) feet of separation from persons outside their household, and shall not in any event be in a group of fifty (50) or more persons for the purposes of social or recreational activities or events; provided, that this limitation does not necessarily prohibit fifty (50) or more total persons from gathering in a single place or venue for an activity or event if they are in separate, otherwise permissible smaller groups that substantially maintain six (6) feet or more of separation from other persons or separate groups. For example, under this Paragraph 2, more than fifty (50) persons may sit in a set of bleachers and watch an event provided that persons or multiple smaller

groups of persons are spread out from one another and maintain at least six (6) feet of separation from other groups or persons.

c. Contact sporting events and activities are prohibited under this Order; provided, that collegiate and professional sporting events and activities may be conducted if permitted by, and pursuant to, the rules or guidelines of their respective governing bodies. Noncontact sporting events and activities, and spectating for such events and activities, are permissible subject to applicable social distancing provided for herein.

d. For purposes of this Paragraph 2:

i. "Contact sporting events and activities" are sports for which there is a requirement or substantial likelihood of routine, sustained close proximity or physical contact between participants. For example, some sports, such as wrestling are scored by impacting an opponent, while others, including football or rugby, require tackling of players. Others like basketball, soccer, lacrosse, rugby, ice and field hockey, rowing, mixed martial arts, wrestling, boxing, and other combat sports involve participants being in close, sustained proximity and likelihood of physical contact. "Contact sporting events and activities" does not include training or otherwise engaging in elements or aspects of such sports or activities in a manner that do not involve close contact with other persons; and

ii. "Noncontact sporting events and activities" means sports that can be conducted while substantially maintaining appropriate social distancing, and that involve at most only close contact or proximity between participants that is incidental to the activity. Such sports include, but are not limited to, baseball, softball, volleyball, golf, disc golf, tennis and other racket sports, cycling, swimming, track and field and running events, and equestrian.

e. Further operational guidance from the Governor's Economic Recovery Group (e.g., Tennessee Pledge) regarding youth sporting events and summer youth camps is forthcoming.

3. Places of worship, weddings, and funerals. Worship services, weddings, funerals, and events related thereto are not social or recreational gatherings under Paragraph 2. Nevertheless, places of worship are strongly encouraged to continue to utilize virtual or online services and gatherings and strongly encouraged to follow the Guidance for Gathering Together in Houses of Worship issued by the Governor's Office of Faith-Based and Community Initiatives regarding in-person services that can be conducted safely. Likewise, persons at weddings and funerals are strongly encouraged to follow the Health Guidelines and maintain appropriate social distancing as provided for herein to the greatest extent practicable, although it is

further strongly encouraged that any large public celebration component of weddings and funerals be postponed or attended only by close family members.

4. Staying at home when possible and limiting unnecessary activity still critically important to maintaining a healthy and economically vibrant Tennessee.

   a. Most Tennesseans can return to work under this Order; however, the threat of COVID-19 remains very serious. Because avoiding unnecessary public interactions is critical to protecting the health and safety of Tennesseans by limiting the spread of COVID-19, preserving health care resources, and sustaining the improved conditions that allow vital economic activity to resume in Tennessee, all persons are still strongly encouraged to continue to stay at home and to minimize in-person contact with people not in the same household, except when engaging in critical activities such as employment or occupational activities, activities integral to health and safety, obtaining supplies or services, engaging in permitted outdoor activity, caring for or visiting family or friends, visiting a place of worship, or travel associated with such activity.

   b. All persons are strongly encouraged, among other things, to use thoughtful planning, careful coordination, and consideration of others to minimize the need and frequency for public interactions.

   c. All persons have a civic responsibility to protect themselves and their communities by following the Health Guidelines to the greatest extent practicable when outside their homes.

5. Persons are urged to wear face coverings in public places. In accordance with CDC guidance, persons, including employees or customers of businesses, are strongly urged to wear cloth face coverings or other similar coverings in public settings where being in close proximity to others is anticipated, and particularly where other social distancing measures are difficult to maintain at all times. Such cloth face coverings can be created from household items or made at home from common materials at low cost. Cloth face coverings should not be placed on young children under age 2, anyone who has trouble breathing, or anyone who is incapacitated or otherwise unable to remove the mask without assistance. Surgical masks and N-95 respirators should be reserved for health care workers and first responders.

6. Elderly-citizen and care-related facilities closed to visitors in most cases.

   a. Persons are highly encouraged to use available electronic or virtual communication options to spend time with a family member, friend, fellow resident, loved one, or other person ("Resident") in a nursing home, retirement home, long-term care facility, or assisted-living facility ("Facility" or "Facilities"). Persons shall not visit a Resident in a Facility unless:

i. The Facility determines in its judgment that: (1) the visit involves the provision of critical assistance to a Resident; or (2) the visit is to a Resident receiving end-of-life care; and

ii. The Facility determines in its judgment that the visit may be accomplished without unreasonable risk to other residents or staff.

In making such determinations, the Facility may seek the professional medical opinion of the Resident's treating physician or other healthcare providers involved in the Resident's care, as well as the Facility's medical director, as applicable, on a case-by-case basis. Facilities should also ensure that any Resident with disabilities is afforded visitation, as needed, by ancillary service providers (sign-language interpreters, behavioral health support personnel, etc.), or other visitation essential to care decisions or daily functioning, in order to maintain open lines of communication and continuation of needed services in light of individual Resident needs.

Facilities should continue to screen any permitted visitors to reduce the risk of infection among Residents and Facility personnel.

b. Facilities shall at all times follow the Health Guidelines and any other infection control rules, policies, or guidance set forth by the Department of Health or other applicable state and federal agencies or departments.

c. Facilities shall take reasonable steps to minimize the movement of staff to more than one Facility location whenever possible.

d. Senior centers or equivalent facilities shall continue to be closed to members, customers, or the public.

7. Testing of residents and staff at long-term-care facilities. Administrators of nursing homes, assisted-care living facilities, and residential homes for the aged, as defined in Tennessee Code Annotated, Section 68-11-201, are strongly urged to provide COVID-19 testing for all residents and staff members across the state. Administrators are further urged to complete or take substantial steps toward completing this testing by May 31, 2020. An administrator may request financial and operational support for this testing from the Department of Health and the Tennessee National Guard by contacting the Department of Health. Cases of communicable and reportable diseases must continue to be reported to the Department of Health and county health departments as required by law.

8. Special care should be taken to protect vulnerable populations. Persons and businesses should take particular care to protect the well-being of those populations especially vulnerable to COVID-19, including older adults and persons with compromised immune systems or severe underlying medical conditions, by, among other things, taking care to adhere to all precautions advised by the President and the CDC and refraining to the extent practicable from physical contact and

association. Businesses should further consider implementing measures to protect our most vulnerable populations by, for example, offering delivery service or special opportunities for members of vulnerable populations to shop in retail establishments exclusive of the general population.

9. Persons with COVID-19 or COVID-19 symptoms must stay at home. In accordance with CDC guidance, persons who test positive for COVID-19 or who are suffering from COVID-19 symptoms shall stay at home, except to receive medical care, until satisfying the conditions for discontinuing home isolation, which the CDC has set forth at the following web address: https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html.

10. Employers shall not require or allow employees with COVID-19 to work. An employer, through its supervisors or appropriate management personnel, shall not require or allow an employee who the employer knows has tested positive for COVID-19 to report to work until that employee has satisfied the conditions for discontinuing home isolation under CDC guidelines, which are available at the following web address: https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html.

11. Limited service restaurants. Bars, night clubs, and limited service restaurants, as defined in Tennessee Code Annotated, Section 57-4-102(22), may only serve customers seated at tables and must follow the Economic Recovery Group Guidelines (e.g., Tennessee Pledge) for restaurants in doing so, including appropriately spacing apart tables, which are set forth at the following web address: https://www.tn.gov/governor/covid-19/economic-recovery/restaurant-guidelines.html; and further provided, that such establishments may offer drive-through, pickup, carry-out, or delivery service for food or drink, and persons are highly encouraged to use such drive-through, pickup, carry-out, or delivery options to support such businesses during this emergency.

12. Take-out alcohol sales by restaurants and limited-service restaurants to continue in order to encourage carryout or delivery orders. The provisions of Tennessee Code Annotated, Title 57, and related rules and other state or local laws, orders, rules, or regulations are temporarily suspended to the extent necessary to allow restaurants and limited service restaurants, as defined in Tennessee Code Annotated, Section 57-4-102, and wine-only restaurants, as permitted by Tennessee Code Annotated, Section 57-4-101(c), to sell for take-out or delivery alcoholic beverages or beer, so long as the following conditions are met:

    a. Any sale of an alcoholic beverage or beer is for consumption off of the premises of the restaurant, limited service restaurant, or wine-only restaurant (collectively referred to hereafter as "restaurant") and is accompanied by the sale of food in the same order;

b. An alcoholic beverage or beer sold under this Paragraph 12 must be packaged in a container or bottle with a secure lid or cap and in a manner designed to prevent consumption without removal of the lid or cap, and customers shall not remove such lids or caps while operating a motor vehicle;

c. Single servings of alcoholic beverages or beer and multi-serving bottles or containers of beer or wine normally sold by the restaurant may be sold under this Paragraph 12, but not bottles of spirits or liquor;

d. A restaurant selling alcoholic beverages or beer under this Paragraph 12 shall prominently post a warning in a manner reasonably calculated to provide notice to customers of open container laws, which must include the following language from Tennessee Code Annotated, Section 55-10-416: "No driver shall consume any alcoholic beverage or beer or possess an open container of alcoholic beverage or beer while operating a motor vehicle in this state.";

e. An employee or contractor of a restaurant providing or delivering alcoholic beverages or beer to a customer under this Paragraph 12 shall not provide or deliver such beverages to any person under twenty-one (21) years of age and may not provide or deliver such beverages to a person who is visibly intoxicated. Any such employee providing or delivering alcoholic beverages or beer must visually inspect a valid government-issued document deemed acceptable to the restaurant that includes the photograph and birth date of the adult consumer attempting to make an alcoholic beverage purchase and confirms that the person is at least twenty-one (21) years of age;

f. A person delivering alcoholic beverages or beer under this Paragraph 12 must be at least twenty-one (21) years of age and must have a valid driver license; and

g. An alcoholic beverage or beer sold under this Paragraph 12 must be sold during current operating hours.

13. Local orders.

a. No local orders permitted regarding dental or medical procedures. In order to ensure a comprehensive approach to the measures needed to conserve personal protective equipment, which is an issue that is statewide in scale, no local official or local governmental entity shall issue an order or measure regarding the provision of medical, dental, or oral procedures because of COVID-19 absent authority delegated by the Governor.

b. Local orders in 89 counties without a locally run county health department (all counties except for Davidson, Hamilton, Knox, Madison, Shelby, and Sullivan). The provisions of this Order shall exclusively govern on the subjects they concern in the 89 counties that do not have a locally run county health department, and this Order shall supersede and preempt any emergency order, health order, or other order issued by a local official or local governmental entity that contravenes or would limit the application of the provisions of this Order.

c. Local orders in six counties with a locally run county health department (Davidson, Hamilton, Knox, Madison, Shelby, and Sullivan). The six locally run county health departments in Davidson, Hamilton, Knox, Madison, Shelby, and Sullivan counties shall have authority to issue additional orders or measures related to the containment or management of the spread of COVID-19, which may permit to a greater degree, or restrict to a greater degree, the opening, closure, or operation of businesses, organizations, or venues in those counties or the gathering of persons; provided that no local official or local governmental entity shall issue an order or measure regarding places of worship or an order or measure that contravenes Paragraphs 6, 9, or 10. This Order shall govern on all subjects it concerns, except to the extent that the locally run county health department has issued differing local orders or measures regarding the opening, closure, or operation of businesses, organizations, or venues or the gathering of persons as provided for in this Paragraph 13.

d. Local orders of a proprietary nature. Nothing in this Order shall affect or limit local orders that do not contravene or limit the application of the provisions of this Order, such as orders or measures in which a local governmental entity acts in a proprietary capacity—for example, with respect to the opening or closure of governmental buildings, employee measures, or government operations.

14. Suspension of laws that would limit application of this Order. Any law, order, rule, or regulation that would otherwise limit the enforceability of this Order is hereby suspended, pursuant to Tennessee Code Annotated, Section 58-2-107.

15. Executive Order Nos. 30, 33, and 35. This Order supersedes and repeals the following executive orders: Executive Order No. 30, dated April 28, 2020; Executive Order No. 33, dated May 5, 2020; and Executive Order No. 35, dated May 7, 2020.

16. Severability. If any provision of this Order or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Order which can be given effect without the invalid provision or application, and to that end the provisions of this Order are declared to be severable.

17. Term and effective date. This Order shall be effective and enforceable as of 12:01 a.m., Central Daylight Time, on May 22, 2020, and shall remain in effect until 11:59 p.m., Central Daylight Time, on June 30, 2020.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 22nd day of May, 2020.

GOVERNOR

ATTEST:

SECRETARY OF STATE