STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

SECRETARY OF SENATE
2020 JUN 1 AM9:35

EXECUTIVE ORDER

No. 2020-109

Temporary safety measures for food-selling establishments and pharmacies and temporary relief from requirements applicable to the renewal of licenses for the food-service industry

Rescission of Executive Order 2020-71

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended (EMA), MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended (EPGA), MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I issued Executive Order 2020-67 to continue the emergency declaration under the Emergency Powers of the Governor Act, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the Emergency Management Act.

Those executive orders have been challenged in *Michigan House of Representatives and Michigan Senate v Whitmer*. On May 21, 2020, the Court of Claims ruled that Executive

Order 2020-67 is a valid exercise of authority under the Emergency Powers of the Governor Act but that Executive Order 2020-68 is not a valid exercise of authority under the Emergency Management Act. Both of those rulings are likely to be appealed.

On May 22, 2020, I issued Executive Order 2020-99, again finding that the COVID-19 pandemic constitutes a disaster and emergency throughout the State of Michigan. That order constituted a state of emergency declaration under the Emergency Powers of the Governor Act of 1945. And, to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has declined to grant an extension request, that order also constituted a state of emergency and state of disaster declaration under that act.

The Emergency Powers of the Governor Act provides a sufficient legal basis for issuing this executive order. In relevant part, it provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

Nevertheless, subject to the ongoing litigation and the possibility that current rulings may be overturned or otherwise altered on appeal, I also invoke Emergency Management Act as a basis for executive action to combat the spread of COVID-19 and mitigate the effects of this emergency on the people of Michigan, with the intent to preserve the rights and protections provided by the EMA. The EMA vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)–(2). This executive order falls within the scope of those powers and duties, and to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has not granted an extension request, they too provide a sufficient legal basis for this order.

The COVID-19 pandemic has created the risk of COVID-19 exposure in food-selling establishments and pharmacies. Given the need to protect employees and the public from exposure to COVID-19, it is necessary and reasonable to impose standards for food-selling establishments and pharmacies to reduce the risk of COVID-19 exposure and disease transmission. In addition, the COVID-19 pandemic has placed an immediate and unprecedented strain on Michigan's food service industries, local health departments, and the Michigan Department of Agriculture and Rural Development (MDARD). Given the additional workload of local health departments and MDARD due to the COVID-19 pandemic, and given these agencies' statutorily defined role in the renewal of licenses for the food service industry, it is also necessary and reasonable to provide limited and temporary relief from certain licensing requirements and regulations.

Executive Order 2020-71 provided the protections and relief described above. This order extends and modifies those protections and relief in light of current conditions, as it remains necessary and reasonable to limit exposure to COVID-19 in food-selling establishments.

With this order, Executive Order 2020-71 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Any individual who enters a food-selling establishment or pharmacy who is able to medically tolerate a face covering must wear a covering over his or her nose and mouth, such as a homemade mask, scarf, bandana, or handkerchief.

2. Grocery stores and pharmacies must create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant people, and those with chronic conditions, including heart disease, diabetes, and lung disease.

3. Food-selling establishments and pharmacies must deploy strategies to reduce COVID-19 exposure for their customers and employees consistent with the strategies described in Executive Order 2020-97 or any order that follows from it, as well as the following:

   (a) Provide access to handwashing facilities, including those available in public restrooms;

   (b) Require checkout employees to wear coverings over their noses and mouths, such as homemade masks, scarves, bandanas, or handkerchiefs;

   (c) Allow employees sufficient break time to wash hands as needed;

   (d) Use best efforts to ensure checkout employees to disinfect their hands between orders to prevent cross-contamination;

   (e) Use best efforts to provide employees and customers access to an alcohol-based hand sanitizer that contains at least 60% alcohol, as recommended by the Centers for Disease Control and Prevention (CDC);

   (f) Use best efforts to provide disinfecting wipes at cash registers and entrance points for customers to disinfect carts and baskets, as well as at other appropriate locations;

   (g) Ensure that both employees and customers remain at least six feet apart to the maximum extent possible, including during employee breaks, for example by reviewing floor plans, creating temporary barriers, designating aisles as one-way only, and demarcating queueing distances;

   (h) Close self-serve prepared food stations such as salad bars;

   (i) Eliminate free samples and tasting stations;

   (j) Adopt procedures to meet the environmental cleaning guidelines set by the CDC, including by cleaning and disinfecting frequent touchpoints throughout

the day such as point of sale terminals at registers, shopping carts, and shopping baskets;

(k) Prohibit employees who are sick from reporting to work and send employees home if they display symptoms of COVID-19. Employees who test positive for COVID-19 or who display one or more of the principal symptoms of COVID-19 should follow the procedures of Executive Order 2020-36 or any order that follows from it;

(l) Accommodate employees who fall within a vulnerable population by providing lower-exposure work assignments or giving them the option to take an unpaid leave of absence with a return date coinciding with the end of the declared states of emergency and disaster, or May 21, 2020, whichever is later. Nothing in this executive order abrogates any right to disability benefits. Employees who take an unpaid leave of absence as described in this subsection are encouraged to apply for unemployment benefits;

(m) Close to the public for sufficient time each night to allow stores to be properly sanitized;

(n) Encourage cash transactions to be processed at self-checkout kiosks when possible; and

(o) Develop and implement a daily screening program, as described herein, for all staff upon or just prior to reporting to work sites.

(1) The screening procedures must include the following questions:

(A) Do you have any of the following symptoms?

(i) Fever of 100.4 degrees or higher (as measured by a touchless thermometer if available, but a verbal confirmation of lack of fever is sufficient if a touchless thermometer is not available);

(ii) Cough (excluding chronic cough due to a known medical reason other than COVID-19);

(iii) Shortness of breath or difficulty breathing; or

(iv) Sore throat.

(B) Have you travelled internationally or outside of Michigan in the last 14 days, excluding commuting from a home location outside of Michigan? For purposes of this order, commuting is defined as traveling between one's home and work on a regular basis.

(C) Have you had any close contact in the last 14 days with someone with a diagnosis of COVID-19?

(2) Any affirmative response to screening questions (1)(A) or (B) above requires the individual to be excluded:

(A) For at least 72 hours with no fever (three full days of no fever without use of medicine that reduces fever) and other symptoms have improved (for example, when cough and shortness of breath have improved) and at least seven days have passed since symptoms first appeared.

(B) Except for necessary workers engaged in travel related to supply chain and critical infrastructure, for 14 days following travel unless that travel was due to commuting from a home location outside of Michigan.

(3) An employee who provides an affirmative response to screening question (1)(C) may be allowed to continue work at the employer's discretion provided they remain asymptomatic and the employer implements the following additional precautions to protect the employee and the community:

(A) Employers should measure the employee's temperature and assess symptoms each day before they start work. Ideally, temperature checks should happen before the individual enters the facility. A touchless thermometer, or a dedicated thermometer for the employee if not touchless, should be used. Sharing of any thermometer other than a touchless thermometer is strictly prohibited.

(B) As long as the employee does not have a fever or other symptoms, they should self-monitor under the supervision of their employer's occupational health program or other programs in place to protect employee health and safety.

(C) If the employee begins to experience symptoms during the day, they should be sent home immediately.

(D) The employee should wear a face mask at all times while in the workplace for 14 days after last exposure. Employers can issue facemasks or can approve employees' supplied cloth face coverings in the event of shortages.

(E) The employee should maintain at least six feet of distance from other people as work duties permit.

(F) Beyond standard cleaning protocol, clean and disinfect all areas such as offices, bathrooms, common areas, and shared electronic equipment routinely known to be impacted by the exposed employee for 14 days after last exposure.

(4) Nothing in this section limits the operations of first responders, health care institutions, public health functions, pharmacies, and other entities that are involved in the mitigation of risk during this pandemic.

4. Vendors moving between food-selling establishments must frequently clean and disinfect frequent touch points.

5. If an employee at a food-selling establishment tests positive for COVID-19, the establishment must notify food vendors and other employees of the positive test result as soon as possible and in no case later than 12 hours after receiving the test result, without revealing the personal health-related information of any employee.

6. Strict compliance with sections 3119, 4109, 4113, and 4115 of the Food Law, 92 PA 2000, as amended, MCL 289.3119, MCL 289.4109, MCL 289.4113, and MCL 289.4115, is temporarily suspended to the extent necessary to extend the deadline for local health departments to submit fees under section 3119, and to extend the license and registration expiration dates under sections 4109 and 4115, until 60 days after the end of the declared states of emergency and disaster. Furthermore, late fees shall not be assessed under sections 4113 or 4115 during the 2020–2021 license year.

7. Strict compliance with subsection 6137 of the Food Law, MCL 289.6137, is suspended to the extent necessary to make a license holder eligible for a special transitory temporary food unit for the 2020–2021 licensing year, even if the license holder received only 1 evaluation during the 2019–2020 licensing year.

8. For the purposes of this order, "food-selling establishments" means grocery stores, convenience stores, restaurants that sell groceries or food available for takeout, and any other business that sells food.

9. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order, excepting section 1 of this order, is a misdemeanor.

10. This order is effective immediately and continues through June 12, 2020.

11. Executive Order 2020-71 is rescinded.

Given under my hand and the Great Seal of the State of Michigan.

Date: May 29, 2020

Time: 8:12 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE