Executive Order 2020-143: Closing indoor service at bars (July 1, 2020)

EXECUTIVE ORDER

No. 2020-143

Closing indoor service at bars

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 EPA, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the EMA.

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 being challenged on appeal.

On June 18, 2020, I issued Executive Order 2020-127, 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 had 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 the 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.

To suppress the spread of COVID-19, to prevent the state's health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, to establish the public health infrastructure necessary to contain the spread of infection, and to avoid needless deaths, it was reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. In Executive Orders 2020-42, 2020-59, 2020-70, 2020-77, 2020-92, 2020-96, and 2020-110, I extended that initial order, modifying its scope as needed and appropriate to match the ever-changing circumstances presented by this pandemic.

The measures put in place by these executive orders have been effective. Although the virus remains aggressive and persistent—on June 30, 2020, Michigan reported 373 new confirmed cases—the strain on our health care system has relented, even as our testing capacity has increased. Where Michigan was once among the states most heavily hit, our per-capita case rate is now roughly equivalent to the national average.

Our progress in suppressing COVID-19, however, appears to have stalled out. Over the past week, every region in Michigan has seen an uptick in new cases, and daily case counts now exceed 20 cases per million in the Grand Rapids, Lansing, and Kalamazoo regions. A relatively large proportion of these new cases are occurring among young people: nearly one quarter of diagnoses in June were in people aged 20 to 29, up from roughly 16% in May. That shift aligns with national trends.

As bars have reopened for indoor service across the country, they have been linked to a growing number of large outbreaks—especially among young people. Here in Michigan, for example, health officials in Ingham County have linked 107 confirmed COVID-19 cases to an outbreak in a single bar in East Lansing. Similar super-spreader events have been documented in bars in Florida, Louisiana, Texas, and elsewhere.

Bars have many features that facilitate the spread of COVID-19: they are often crowded, indoors, and poorly ventilated. They encourage mingling among groups and facilitate close contact over an extended period of time. They are noisy, requiring raised voices and allowing for more projection of viral droplets. And they serve alcohol, which reduces inhibitions and decreases compliance with mask use and physical distancing rules. As Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, said yesterday in a hearing before the U.S. Senate, "Congregation at a bar, inside, is bad news."

To protect our state from a new wave of infections and to increase the likelihood that we can reopen schools in the fall, this order closes bars and nightclubs for indoor service in those regions that are in Phase 4 of the Michigan Safe Start Plan. Restaurants can remain open for indoor service, but alcohol can be served only to patrons who are seated at socially distanced tables. Common areas where people stand and congregate within restaurants must be closed. Restaurants and bars may remain open for outdoor seating, but only for seated customers at socially distanced tables.

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

1. Food service establishments, as defined in section 1107(t) of the Michigan Food Law, 2000 PA 92, as amended, MCL 289.1107(t), that hold on-premises retailer licenses to sell alcoholic beverages must close for indoor service if they earn more than 70% of their gross receipts from sales of alcoholic beverages.

2. Any food service establishment that serves alcoholic beverages for on-premises consumption must, both indoors and outdoors:

a. Require patrons to wear a face covering except when seated at their table or bar top (unless the patron is unable medically to tolerate a face covering);

b. Require patrons to remain seated at their tables or bar tops, except to enter or exit the premises, to order food, or to use the restroom;

c. Sell alcoholic beverages only via table service, not via orders at the bar except to patrons seated at the bar;

d. Prohibit access to common areas in which people can congregate, dance, or otherwise mingle; and

e. Follow all of the applicable workplace safeguards established in Executive Order 2020-114 and any order that may follow from it, including the provisions limiting capacity to 50% of normal seating and requiring six feet of separation between parties or groups at different tables or bar tops.

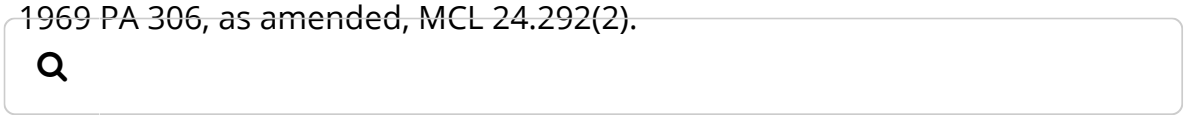
3. Food service establishments that are closed for indoor service under section 1 of this order but open for outdoor service must:

a. Prohibit patrons from entering the establishment, except to walk through in order to access the outdoor area, to leave the establishment, or to use the restroom; and

b. Require patrons to wear a face covering while inside, except for patrons who are unable medically to tolerate a face covering.

4. Dance and topless activity permits issued under subsections 2 or 3 of section 916 of the Michigan Liquor Control Code, 1998 PA 58, as amended, MCL 436.1916(2) and (3), are temporarily suspended. Combination dance–entertainment permits and topless activity–entertainment permits issued under subsection 4 of section 916 of the Michigan Liquor Control Code, MCL 436.1916(4), are suspended to the extent they allow dancing and topless activity, but remain valid to the extent they allow other entertainment.

5. In enforcing the Michigan Liquor Control Code, the Michigan Liquor Control Commission will consider whether the public health, safety or welfare requires summary, temporary suspension of a license under section 92 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.292(2).



6. For purposes of calculating its percentage of gross receipts from sales of alcoholic beverages under section 1, a food service establishment must use:

a. Gross receipts from 2019; or

b. If the establishment was not in operation in 2019, gross receipts from the date the establishment opened in 2020.

7. Nothing in this order should be taken to prevent food service establishments from selling alcoholic beverages for off-premises consumption to patrons who are not seated at a table, or to require such patrons to remain seated when ordering such beverages.

8. Nothing in this order should be taken to prevent the holder of a social district license under section 551 of the Michigan Liquor Control Code, 1998 PA 58, as amended by Enrolled House Bill 5781 (100th Legislature, Regular Session of 2020), to be codified at MCL 436.1551:

a. From selling alcoholic beverages for consumption in a commons area within a designated social district to patrons who are not seated at a table; or

b. To require such patrons to remain seated when ordering such beverages.

9. Nothing in this order should be taken to limit the authority of local health departments to adopt more stringent measures to curtail the spread of COVID-19 at food service establishments.

10. This order does not apply in Regions 6 and 8, as those regions are defined by section 1 of Executive Order 2020-110 or any order that follows from it.

11. This order takes effect at 11:00 pm on July 1, 2020.

12. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

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

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