Executive Order 2020-132: Enhanced authorization of remote means for carrying out state administrative procedures

EXECUTIVE ORDER

No. 2020-132

Enhanced authorization of remote means for carrying out state administrative procedures

Rescission of Executive Order 2020-113

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 EPGA, 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 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 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 mitigate the spread of COVID-19, protect the public health, limit the number of people interacting at public gatherings, encourage social distancing, and provide essential protections to vulnerable Michiganders, it is reasonable and necessary to temporarily suspend rules and procedures relating to service of process and provision of notice as to certain administrative proceedings and the use of electronic signatures. State administrative entities must be able to continue to conduct public business during this emergency, including actions to respond to the COVID-19 pandemic, without unduly compromising public health, safety, and welfare.

Executive Order 2020-23 provided this limited and temporary relief from certain rules and procedures. Executive Orders 2020-45, 2020-80, and 2020-113 extended the duration of that relief. This order extends that duration further, because it remains reasonable and necessary to suppress the spread of COVID-19 and protect the public health and safety of this state and its residents. With this order, Executive Order 2020-113 is rescinded.

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

1. Hearing officers or arbitrators may conduct Michigan Employment Relations Commission (MERC) hearings by electronic means, including video conferencing. To the extent necessary, strict compliance with the procedural requirements of 1939 PA 176, as amended, MCL 423.1 et seq. (employment relations commission), 1947 PA 336, as amended, MCL 423.201 et seq. (public employment relations), and 1969 PA 312, as amended, MCL 423.231 et seq. (compulsory arbitration of labor disputes in police and fire departments), is temporarily suspended.
2. Notice to MERC, as well as personal service of notice, service of process, or written notice of a dispute relating to an impending strike or an impending lockout, may be provided by mail or by electronic means, including email. To the extent necessary, strict compliance with rules and procedures under sections 9, 9a, 9d(3), 11, 23(2), and 27 of 1939 PA 176, as amended, MCL 423.9, 423.9a, 423.9d(3), 423.11, 423.23(2), and 423.27, and any other procedural statutes governing MERC, is temporarily suspended.
3. The Unemployment Insurance Agency (UIA) may permit hearings to be held by telephone or electronic means, including video conferencing. To the extent necessary, strict compliance with rules and procedures under the Michigan Employment Security Act, 1936 (Ex Sess) PA 1, as amended, MCL 421.1 et seq., is temporarily suspended.
4. Notice to the UIA and written notice by the UIA may be provided by mail or by electronic means, including email. To the extent necessary, strict compliance with rules and procedures under the Michigan Employment Security Act, 1936 (Ex Sess) PA 1, as amended, MCL 421.1 et seq., is temporarily suspended.
5. Hearings held under the Administrative Procedures Act of 1969 (APA), 1969 PA 306, as amended, MCL 24.201 et seq., as well as under the MAHS Administrative Hearing Rules, R 792.10101 et seq., and any informal hearings required by statute, rule, or regulation, may proceed by telephone or by electronic means, including video conferencing. To the extent necessary, strict compliance with the rules and procedures of the APA and the MAHS Administrative Hearing Rules is temporarily suspended. This does not apply to hearings by the Joint Committee on Administrative Rules.
6. Notice and service of process required by the APA and the MAHS Administrative Hearing Rules may be provided by mail or by electronic means, including email. To the extent necessary, strict compliance with rules and procedures under the APA and the MAHS Administrative Hearing Rules is temporarily suspended.
7. Administrative rules or emergency rules may be filed with the secretary of state electronically, including by email. To the extent necessary, strict compliance with rules and

procedures under the APA is temporarily suspended.

8. Pursuant to section 18 of the Uniform Electronic Transactions Act, 2000 PA 305, as amended, MCL 450.848, the Department of Technology, Management and Budget (DTMB) is directed to authorize the acceptance, use, and reliance upon electronic signatures for a signature required by sections 11(b)(4), 32b(3), and 54f of the Michigan Employment Security Act, 1936 (Ex Sess) PA 1, as amended, MCL 421.11(b)(4), 421.32b(3), and 421.54f. Pursuant to section 7 of the Uniform Electronic Transactions Act, 2000 PA 305, as amended, MCL 450.837, a signature must not be denied legal effect or enforceability solely because it is in electronic form, and if a law requires a signature, an electronic signature satisfies the law.
9. Pursuant to section 18 of the Uniform Electronic Transactions Act, 2000 PA 305, as amended, MCL 450.848, the DTMB is directed to authorize the acceptance, use, and reliance upon electronic signatures for a signature required under the APA, including any requirement of a signature for filing administrative rules or emergency rules with the secretary of state. Pursuant to section 7 of the Uniform Electronic Transactions Act, 2000 PA 305, as amended, MCL 450.837, a signature must not be denied legal effect or enforceability solely because it is in electronic form, and if a law requires a signature, an electronic signature satisfies the law.
10. This order is effective immediately and remains in effect through July 31, 2020 at 11:59 pm.
11. Executive Order 2020-113 is rescinded.

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

GRETCHEN WHITMER
GOVERNOR

Date: June 25, 2020

Time: 3:53 pm

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