STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

SECRETARY OF SENATE
2020 MAY 26 AM9:22

EXECUTIVE ORDER

No. 2020-100

Amending certain previously issued executive orders to clarify their duration

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, MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

Acting under the state of emergency declared in Executive Order 2020-4, I issued several executive orders to make reasonable and necessary adjustments to various laws and procedures to help mitigate the effects of the COVID-19 pandemic. In particular, 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, I adopted Executive Orders 2020-9 on March 16, 2020, which closed places of public accommodation, and Executive Order 2020-21 on March 23, 2020, which directed residents to remain at home or in their place of residence to the maximum extent feasible.

Since then, the virus has 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 growing 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.

Following the declarations of emergency and disaster in Executive Order 2020-33, I issued and amended a number of executive orders that also made reasonable and necessary adjustments to various laws and procedures. In particular, in Executive Orders 2020-20 and 2020-43, I extended the order closing places of public accommodation. And in Executive Orders 2020-42 and 2020-59, I extended the order directing residents to stay home and stay safe.

On April 30, 2020, although the emergency and disaster caused by the COVID-19 pandemic was still ongoing, the Legislature refused to extend the states of emergency and disaster. For that reason, as required by statute, I issued Executive Order 2020-66, terminating the states of emergency and disaster. The same day, because the COVID-19 pandemic still presented a threat to human life and the public health, safety, and welfare of this state, I issued Executive Order 2020-67, which declared a state of emergency under the Emergency Powers of the Governor Act, and Executive Order 2020-68, which declared a state of emergency and a state of disaster under the Emergency Management Act.

The measures put in place by my executive orders have been effective: the number of new confirmed cases each day is slowly dropping. Although the virus remains aggressive and persistent—on May 21, 2020, Michigan reported 53,510 confirmed cases and 5,129 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. With Executive Orders 2020-70, 2020-77, 2020-92, and 2020-96, we have begun the process of gradually resuming in-person work and activities that were temporarily suspended under my prior orders. At the same time, with Executive Order 2020-69, I retained and extended the order closing places of public accommodation. We must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone.

Executive Orders 2020-67 and 2020-68 have been challenged, however, 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.

Today, 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 not granted an extension request, that order also constituted a state of emergency and state of disaster declaration under that act.

With this order, I find it reasonable and necessary to extend Executive Orders 2020-62, 2020-69, and 2020-96 for three weeks from the date of this order. I also find it reasonable and necessary to clarify and, as necessary, amend the duration of certain executive orders that followed Executive Order 2020-04 and Executive Order 2020-33 given that they have been superseded by later emergency and disaster declarations.

The Emergency Powers of the Governor Act provides a sufficient legal basis for issuing this

executive order. In relevant part, the EPGA 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.

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

1. The following executive orders remain in effect and do not terminate until the end of the states of emergency and disaster declared in Executive Order 2020-99 or the end of any subsequently declared states of disaster or emergency arising out of the COVID-19 pandemic, whichever comes later.

   (a) Executive Order 2020-26.

   (b) Executive Order 2020-28.

   (c) Executive Order 2020-36.

   (d) Executive Order 2020-39.

   (e) Executive Order 2020-58.

   (f) Executive Order 2020-61.

   (g) Executive Order 2020-64

   (h) Executive Order 2020-76.

2. The following executive orders are amended as follows:

   (a) Under Executive Order 2020-46, the Michigan Liquor Control Commission may take physical possession of any spirits held by any licensee to which the Commission holds legal title at any time later than 90 days after the end of the states of emergency and disaster declared in Executive Order 2020-99 or the end of any subsequently declared states of disaster or emergency arising out of the COVID-19 pandemic, whichever comes later.

(b) Under Executive Order 2020-52, any three-year certificates that were set to expire on December 31, 2019 and were deemed unexpired will not expire until 60 days after the end of the states of emergency and disaster declared in Executive Order 2020-99 or the end of any subsequently declared states of disaster or emergency arising out of the COVID-19 pandemic, whichever comes later.

(c) Under Executive Order 2020-55, the Michigan Coronavirus Task Force on Racial Disparities will continue its work until 90 days after the end of the states of emergency and disaster declared in Executive Order 2020-99 or the end of any subsequently declared states of disaster or emergency arising out of the COVID-19 pandemic, whichever comes later, or such other time as the governor identifies.

(d) Under Executive Order 2020-58, all deadlines applicable to the commencement of all civil and probate actions and proceedings, including but not limited to any deadline for the filing of an initial pleading and any statutory notice provision or other prerequisite related to the deadline for filing of such a pleading, remain suspended and shall be tolled until the end of the states of emergency and disaster declared in Executive Order 2020-99 or the end of any subsequently declared states of disaster or emergency arising out of the COVID-19 pandemic, whichever comes later.

3. Executive Orders 2020-62, 2020-69, and 2020-96 will remain in effect until 11:59 pm on June 12, 2020.

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

Date: May 22, 2020

Time: 4:52 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE