SECRETARY OF SENATE
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GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-46

Mitigating the economic harms of the COVID-19 pandemic through the creation of a spirits buyback program for restaurants and bars throughout the state

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.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the 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.

The Emergency Management Act 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). Similarly, the Emergency Powers of the Governor Act of 1945 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).

To suppress the spread of COVID-19, protect this state's critical health care resources from rapid depletion, and prevent needless deaths, it has been necessary for Michiganders to limit travel, gatherings, and in-person work and interactions as much as possible. This has required, among other things, establishments that serve the public to curtail their in-person operations significantly, to the substantial benefit of this state's public health but to their own financial detriment. These restrictions on places of public accommodation first took effect on March 16, 2020, and have remained necessary and in place since.

The limitations required by this pandemic, and the economic harms caused by it, have hit restaurants and bars particularly hard. They have found themselves burdened with an unexpected surplus of inventory—particularly of alcohol—and struggling to remain open to provide their communities with needed sustenance during this crisis. To mitigate the harms from this pandemic and to help ensure that these establishments can continue to serve their communities both during and after it, it is reasonable and necessary to provide them with immediate financial assistance through a buyback program for spirits in their inventory as of March 16, 2020.

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

1. The Michigan Liquor Control Commission ("Commission") is hereby authorized to offer to a licensee a cash buyback of any spirits a licensee ordered from the Commission and received and accepted from an Authorized Distribution Agent before March 16, 2020. When a licensee opts into this buyback program, the Commission must advance to the licensee 100% of the purchase price of those spirits that are in the licensee's inventory.

2. The Commission may accept buyback requests, by email or on its website, only from licensees that hold one of the following license types: Class C, B-Hotel, G-1, Club, Continuing Care Retirement Center, Aircraft, Watercraft, and Train License. The Commission must begin accepting requests on its website as soon as reasonably possible, and must accept all requests made by 5:00 pm on April 17, 2020.

3. Upon advancing cash to a licensee pursuant to this buyback program, the Commission will hold legal title to all spirits purchased by the licensee before March 16, 2020 that are in the licensee's inventory at the time the licensee opts into this buyback program. But, in recognition of the risks of COVID-19 infection and transmission associated with in-person contact, the Commission must not take physical possession of any such spirits except as provided in this order or any order that may follow from it. The licensee must take all reasonable care to account for and preserve the inventory of any such spirits.

4. A licensee that opts into this buyback program may, at any time until the Commission takes physical possession of spirits it owns, repay to the Commission the full amount advanced to the licensee. Upon repayment of the full buyback amount, the licensee will again hold title to the spirits in its possession.

5. The 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 declared states of emergency and disaster.

6. The Commission may issue orders and directives, and take other actions pursuant to law, to implement this order.

7. This order is effective immediately.

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

Date: April 13, 2020

Time: 8:19 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE