Executive Order 2020-133: Restarting professional sports

EXECUTIVE ORDER

No. 2020-133

Restarting professional sports

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 being challenged on appeal.

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 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: the number of new confirmed cases each day continues to drop. Although the virus remains aggressive and persistent—on June 24, 2020, Michigan reported 61,953 confirmed cases and 5,868 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. We are in the process of gradually resuming in-person work and activities.

Fortunately, we are now in a position to allow professional sports to resume, subject to COVID-19 safety plans that are consistent with guidance from the Centers for Disease Control and Prevention and the Michigan Department of Health and Human Services. Those sports must be played, however, without live audiences for the time being.

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

1. Notwithstanding the gathering, event, and capacity restrictions outlined in sections 5 and 6 of Executive Order 2020-110 and section 7 of Executive Order 2020-115, professional sports leagues and teams may resume operations, provided that:
    a. No live audiences are allowed, except for staff of the facility at which a sporting event is held and media personnel reporting on, filming, or otherwise documenting the sporting event.
    b. The activities are conducted pursuant to a COVID-19 safety plan that is consistent with any guidance from the Centers for Disease Control and Prevention and the Michigan Department of Health and Human Services.
    c. Participants maintain six feet of distance from one another to the extent compatible with the sporting activity.
2. 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.

GRETCHEN WHITMER
GOVERNOR

Date: June 25, 2020

Time: 4:01 pm

RELATED CONTENT

Executive Order 2020-193: Protect Michigan Commission

Executive Order 2020-192: Moving Region 8 to Phase 4 of the MI Safe Start Plan - RESCINDED

Executive Order 2020-186: Declaration of state of emergency and state of disaster related to the COVID-19 pandemic - RESCINDED

Executive Order 2020-187: Encouraging the use of electronic signatures and remote notarization, witnessing, and visitation during the COVID-19 pandemic - RESCINDED

Executive Order 2020-188: Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities - RESCINDED

Executive Order 2020-189: Temporary COVID-19 protocols for entry into Michigan Department of Corrections facilities and transfers to and from Department custody; temporary recommended COVID-19 protocols ...

Executive Order 2020-190: Temporary safety measures for food-selling establishments and pharmacies and temporary relief from requirements applicable to the renewal of licenses for the food-service ...

Executive Order 2020-183: Safe Start - RESCINDED

Executive Order 2020-184: Safeguards to protect Michigan's workers from COVID-19 - RESCINDED

Executive Order 2020-185: Amendment to the Provision of PreK-12 education for the 2020-2021 school year order - RESCINDED

Executive Order 2020-182: Council on Climate Solutions

Executive Order 2020-181: Amendment to the Safe Start order - RESCINDED

Executive Order 2020-180: Amendment to the Safe Start order - RESCINDED

Executive Order 2020-177: Declaration of state of emergency and state of disaster related to the COVID-19 pandemic - RESCINDED

Executive Order 2020-178: Temporary safety measures for food-selling establishments and pharmacies and temporary relief from requirements applicable to the renewal of licenses for the food-service ...

Executive Order 2020-179: Enhanced protections for residents and staff of long-term care facilities during the COVID-19 pandemic - RESCINDED

Executive Order 2020-175: Safeguards to protect Michigan's workers from COVID-19 - RESCINDED

Executive Order 2020-176: Safe Start - RESCINDED

Executive Order 2020-173: Encouraging the use of electronic signatures and remote notarization, witnessing, and visitation during the COVID-19 pandemic - RESCINDED

Executive Order 2020-174: Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities - RESCINDED

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