STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

SECRETARY OF SENATE
2020 AUG 11 AM10:06

EXECUTIVE ORDER

No. 2020-168

Temporary safety measures for food-selling establishments and pharmacies and temporary relief from requirements applicable to the renewal of licenses for the food-service industry

Rescission of Executive Order 2020-149

Beginning in May 2020, I put in place special protocols to minimize the risk of COVID-19 transmission in food-selling establishments and pharmacies. Because buying food and medicine remains an unavoidable source of infection risk for many Michiganders, and the COVID-19 pandemic remains a serious and deadly threat, it is reasonable and necessary to again extend these policies.

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 August 7, 2020, I issued Executive Order 2020-165, 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.

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

1. Grocery stores and pharmacies must create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant people, and those with chronic conditions, including heart disease, diabetes, and lung disease.

2. Food-selling establishments and pharmacies must deploy strategies to reduce COVID-19 exposure for their customers and employees consistent with the strategies described in Executive Order 2020-153 and 2020-161 or any order that follows from either order, as well as the following:

   (a) Provide access to handwashing facilities, including those available in public restrooms;

(b) Allow employees sufficient break time to wash hands as needed;

(c) Use best efforts to ensure checkout employees disinfect their hands between orders to prevent cross-contamination;

(d) Use best efforts to provide employees and customers access to an alcohol-based hand sanitizer that contains at least 60% alcohol, as recommended by the Centers for Disease Control and Prevention (CDC);

(e) Use best efforts to provide disinfecting wipes at cash registers and entrance points for customers to disinfect carts and baskets, as well as at other appropriate locations;

(f) Ensure that both employees and customers remain at least six feet apart to the maximum extent possible, including during employee breaks, for example by reviewing floor plans, creating temporary barriers, designating aisles as one-way only, and demarcating queueing distances;

(g) Close self-serve prepared food stations such as salad bars;

(h) Eliminate free samples and tasting stations;

(i) Adopt procedures to meet the environmental cleaning guidelines set by the CDC, including by cleaning and disinfecting frequent touchpoints throughout the day such as point of sale terminals at registers, shopping carts, and shopping baskets;

(j) Prohibit employees who are sick from reporting to work and send employees home if they display symptoms of COVID-19. Employees who test positive for COVID-19 or who display one or more of the principal symptoms of COVID-19 should follow the procedures of Executive Order 2020-166 or any order that follows from it;

(k) Accommodate employees who fall within a vulnerable population by providing lower-exposure work assignments or giving them the option to take an unpaid leave of absence with a return date of September 7, 2020 or later. Nothing in this executive order abrogates any right to disability benefits. Employees who take an unpaid leave of absence as described in this subsection are encouraged to apply for unemployment benefits;

(l) Close to the public for sufficient time each night to allow stores to be properly sanitized;

(m) Encourage cash transactions to be processed at self-checkout kiosks when possible; and

(n) Adhere to all applicable safeguards, including but not limited to conducting a daily self-screening protocol for all employees and contractors, that are required under Executive Order 2020-161 or any order that follows from it.

3. Vendors moving between food-selling establishments must frequently clean and disinfect frequent touch points.

4. If an employee at a food-selling establishment tests positive for COVID-19, the establishment must notify food vendors and other employees of the positive test result as soon as possible and in no case later than 12 hours after receiving the test result, without revealing the personal health-related information of any employee.

5. Strict compliance with sections 3119, 4109, 4113, and 4115 of the Food Law, 92 PA 2000, as amended, MCL 289.3119, MCL 289.4109, MCL 289.4113, and MCL 289.4115, is temporarily suspended to the extent necessary to extend the deadline for local health departments to submit fees under section 3119, and to extend the license and registration expiration dates under sections 4109 and 4115, until 60 days after the end of the states of emergency and disaster declared in Executive Order 2020-165 or the end of any subsequently declared states of disaster or emergency arising out of the COVID-19 pandemic, whichever comes later. Furthermore, late fees shall not be assessed under sections 4113 or 4115 during the 2020–2021 license year.

6. Strict compliance with subsection 6137 of the Food Law, MCL 289.6137, is suspended to the extent necessary to make a license holder eligible for a special transitory temporary food unit for the 2020–2021 licensing year, even if the license holder received only 1 evaluation during the 2019–2020 licensing year.

7. For the purposes of this order, "food-selling establishments" means grocery stores, convenience stores, restaurants that sell groceries or food available for takeout, and any other business that sells food.

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

9. This order is effective immediately and continues through September 7, 2020.

10. Executive Order 2020-149 is rescinded.

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

Date: August 10, 2020

Time: 6:00 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE