STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

SECRETARY OF SENATE
2020 JUL 30 AM 8:40

EXECUTIVE ORDER

No. 2020-160

Amended Safe Start Order

Rescission of Executive Orders 2020-110, 2020-115, 2020-120, 2020-133, and 2020-143

Where Michigan was once among the states most heavily hit by COVID-19, our per-capita rate of new daily cases is now roughly one-third of the national average. Our progress in suppressing the disease, however, appears to have stalled. Cases have risen over the past month—from a rolling seven-day average of 354 cases per day on June 30 to 692 cases on July 28, a two-fold increase.

The virus's resurgence is closely associated with super-spreading events at large social gatherings, often attended by young people. More than 50 cases have been linked to a single house party in Saline; an outbreak at a Lansing bar has resulted in 187 infections; and a sandbar party at Torch Lake over the July 4 weekend led to at least 43 confirmed cases.

We cannot afford to relax our vigilance if we hope to restart our economy, open our schools, and avoid a second wave. This executive order therefore prohibits any indoor social gatherings of more than 10 people statewide. At the same time, the order also closes bars across the state, including in the Traverse City region and the Upper Peninsula. For the time being, Michiganders must curtail their social gatherings for the good of the community.

As a matter of housekeeping, I am also rescinding a series of prior orders and incorporating them into this comprehensive order governing the activities in Michigan that remain restricted on account of the pandemic. I am taking the occasion, too, to allow for the reopening of the Detroit casinos, subject to a 15% capacity limit and strict workplace safeguards. Casinos have been operating safely across most of the country and in tribal areas in Michigan and should be able to do so in the Detroit region as well.

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 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 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 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.

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, 2020-110, and 2020-115, I extended that initial order, modifying its scope as needed and appropriate to match the ever-changing circumstances presented by this pandemic.

Acting under the Michigan Constitution of 1963 and Michigan law, I find it reasonable and necessary, for the reasons outlined above, to order:

1. **Remote work.** Any work that is capable of being performed remotely (i.e., without the worker leaving his or her home or place of residence) must be performed remotely.

2. **Workplace safety.** Any business or operation that requires its employees to leave their home or place of residence for work is subject to the rules on workplace safeguards in Executive Order 2020-161 or any order that may follow from it.

3. **Individual responsibility.** Any individual who leaves his or her home or place of residence must:

   (a) Follow social distancing measures recommended by the Centers for Disease Control and Prevention ("CDC"), including remaining at least six feet from people from outside the individual's household to the extent feasible under the circumstances; and

   (b) Follow the rules described in Executive Order 2020-153 or any order that may follow from it governing masks.

4. **Public accommodations restrictions.** Subject to the exceptions in sections 8 and 9, the following places are closed to entry, use, and occupancy by members of the public:

   (a) Indoor theaters, cinemas, and performance venues;

(b) Indoor gymnasiums, fitness centers, recreation centers, sports facilities, exercise facilities, exercise studios, and the like;

(c) Millionaire Parties licensed by the Michigan Gaming Control Board;

(d) Until August 5, 2020 at 10 a.m., casinos licensed by the Michigan Gaming Control Board and racetracks licensed by the Michigan Gaming Control Board. After such time, such establishments may operate, subject to the rules on workplace safeguards described in Executive Order 2020-161 or any order that may follow from it; and

(e) Indoor services or facilities, or outdoor services or facilities involving close contact of persons, for amusement or other recreational or entertainment purposes, such as amusement parks, arcades, bingo halls, bowling alleys, indoor climbing facilities, indoor dance areas, skating rinks, trampoline parks, carnival or amusement rides as defined by MCL 408.652(2), water parks, and other similar recreational or entertainment facilities.

5. **Bars.** Food service establishments, as defined in section 1107(t) of the Michigan Food Law, 2000 PA 92, as amended, MCL 289.1107(t), that hold on-premises retailer licenses to sell alcoholic beverages must close for indoor service if they earn more than 70% of their gross receipts from sales of alcoholic beverages.

(a) Food service establishments that are closed for indoor service but open for outdoor service must prohibit patrons from entering the establishment, except to walk through in order to access the outdoor area, to leave the establishment, or to use the restroom.

(b) For purposes of calculating its percentage of gross receipts from sales of alcoholic beverages under section 1, a food service establishment must use:

(1) Gross receipts from 2019; or

(2) If the establishment was not in operation in 2019, gross receipts from the date the establishment opened in 2020.

6. **Liquor license restrictions.** Dance and topless activity permits issued under subsections 2 or 3 of section 916 of the Michigan Liquor Control Code, 1998 PA 58, as amended, MCL 436.1916(2) and (3), are temporarily suspended. Combination dance–entertainment permits and topless activity–entertainment permits issued under subsection 4 of section 916 of the Michigan Liquor Control Code, MCL 436.1916(4), are suspended to the extent they allow dancing and topless activity, but remain valid to the extent they allow other entertainment.

(a) In enforcing the Michigan Liquor Control Code, the Michigan Liquor Control Commission will consider whether the public health, safety or welfare requires summary, temporary suspension of a license under section 92 of the

Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.292(2).

(b) Nothing in this order or in Executive Order 2020-161 prevents food service establishments from selling alcoholic beverages for off-premises consumption to patrons who are not seated at a table, or to require such patrons to remain seated when ordering such beverages.

(c) Nothing in this order or in Executive Order 2020-161 prevents the holder of a social district license under section 551 of the Michigan Liquor Control Code, 1998 PA 58, as amended, MCL 436.1551:

(1) From selling alcoholic beverages for consumption in a commons area within a designated social district to patrons who are not seated at a table; or

(2) To require such patrons to remain seated when ordering such beverages.

7. Rules on gatherings, events, and large venues.

(a) A social gathering or organized event among persons not part of the same household is permitted, but only to the extent that:

(1) The gathering or event is designed to ensure that persons not part of the same household maintain six feet of distance from one another;

(2) Persons not part of the same household maintain six feet of distance from one another;

(3) If it is indoors, the gathering or event does not exceed 10 people; and

(4) If it is outdoors, the gathering or event does not exceed 100 people.

(b) Subsection (a) does not apply to the incidental gathering of persons in a shared space, including an airport, bus station, factory floor, restaurant, shopping mall, public pool, or workplace.

(c) Notwithstanding the restrictions in subsection (a) or in subsections 8(c) or 8(d), professional sports leagues and teams, including professional athletes engaged in individual sports, may resume operations, provided that:

(1) 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;

(2) 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; and

(3) Participants maintain six feet of distance from one another to the extent compatible with the sporting activity.

(d) The restrictions described in subsection (a)(3) do not apply to polling places.

8. **Regions 6 and 8.**

(a) The restrictions described in section 4 of this order do not apply in Regions 6 and 8.

(b) Notwithstanding section 7(a)(4) of this order, an outdoor social gathering or outdoor organized event among persons not part of the same household is permitted in Regions 6 and 8, but only to the extent that the gathering or event does not exceed 250 people and complies with subsection 7(a)(1) and 7(a)(2) of this order.

(c) In Regions 6 and 8, and notwithstanding the restrictions in section 7(a), an indoor arcade, bowling alley, cinema, climbing facility, convention center, performance space, meeting hall, sports arena, theater, or similar indoor venue may be open to spectators or patrons, but only to the extent that it:

(1) Arranges the venue such that persons not part of the same household may maintain six feet of distance from one another at all times while in the venue; and

(2) Limits the number of people in the venue to 25% of its maximum capacity or to 250, whichever is smaller. For purposes of this order, each separate auditorium or screening room is a separate venue.

(d) In Regions 6 and 8, and notwithstanding the restrictions in section 8(b), an outdoor concert space, race track, sports arena, stadium, or similar outdoor venue may, be open to spectators or patrons, but only to the extent that it:

(1) Arranges the venue such that persons not part of the same household may maintain six feet of distance from one another at all times while in the venue; and

(2) Limits the number of people in the venue to 25% of its maximum capacity or to 500, whichever is smaller.

9. **Exceptions.** The restrictions imposed by sections 4 of this order do not apply to any of the following:

(a) If they are outdoors, fitness classes, athletic practices, training sessions, or games, provided that coaches, spectators, and participants not from the same household maintain six feet of distance from one another at all times during such activities, and that equipment and supplies are shared to the minimum extent possible and are subject to frequent and thorough disinfection and cleaning;

(b) Services necessary for medical treatment as determined by a licensed medical provider;

(c) Health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities;

(d) Crisis shelters or similar institutions;

(e) Food courts inside the secured zones of airports; and

(f) Employees, contractors, vendors, or suppliers who enter, use, or occupy the places described in section 4 of this order in their professional capacity.

10. **Parks.** Unless otherwise prohibited by local regulation, outdoor parks and recreational facilities may be open, provided that they make any reasonable modifications necessary to enable employees and patrons not part of the same household to maintain six feet of distance from one another, and provided that areas in which social distancing cannot be maintained be closed, subject to guidance issued by the Michigan Department of Health and Human Services.

11. **Pools.** Unless otherwise prohibited by local regulation, public swimming pools, as defined by MCL 333.12521(d), may be open, subject to guidance issued by the Department of Health and Human Services, provided that:

(a) If they are outdoors, they limit capacity to 50% of the bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code;

(b) If they are indoors and located in Regions 6 or 8, they limit capacity to 25% of the bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code;

(c) If they are indoors and located outside of Regions 6 or 8, they open only for infant and child drowning prevention classes and limit capacity to 25% of the bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code; and

(d) They limit capacity on the pool deck to ensure that persons not part of the same household maintain six feet of distance from one another.

12. **Region definitions.** For purposes of this order, Michigan comprises eight separate regions.

(a) Region 1 includes the following counties: Monroe, Washtenaw, Livingston, Genesee, Lapeer, Saint Clair, Oakland, Macomb, and Wayne.

(b) Region 2 includes the following counties: Mason, Lake, Osceola, Clare, Oceana, Newaygo, Mecosta, Isabella, Muskegon, Montcalm, Ottawa, Kent, and Ionia.

(c) Region 3 includes the following counties: Allegan, Barry, Van Buren, Kalamazoo, Calhoun, Berrien, Cass, Saint Joseph, and Branch.

(d) Region 4 includes the following counties: Oscoda, Alcona, Ogemaw, Iosco, Gladwin, Arenac, Midland, Bay, Saginaw, Tuscola, Sanilac, and Huron.

(e) Region 5 includes the following counties: Gratiot, Clinton, Shiawassee, Eaton, and Ingham.

(f) Region 6 includes the following counties: Manistee, Wexford, Missaukee, Roscommon, Benzie, Grand Traverse, Kalkaska, Crawford, Leelanau, Antrim, Otsego, Montmorency, Alpena, Charlevoix, Cheboygan, Presque Isle, and Emmet.

(g) Region 7 includes the following counties: Hillsdale, Lenawee, and Jackson.

(h) Region 8 includes the following counties: Gogebic, Ontonagon, Houghton, Keweenaw, Iron, Baraga, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac, and Chippewa.

13. **Separation of powers.** Nothing in this order should be taken to interfere with or infringe on the powers of the legislative and judicial branches to perform their constitutional duties or exercise their authority. Similarly, nothing in this order shall be taken to abridge protections guaranteed by the state or federal constitution under these emergency circumstances.

14. **Religious worship.** Consistent with prior guidance, neither a place of religious worship nor its owner is subject to penalty under section 17 of this order for allowing religious worship at such place. No individual is subject to penalty under section 17 of this order for engaging in religious worship at a place of religious worship.

15. **Effective date.** Except as otherwise specified, this order takes effect at 12:01 a.m. on July 31, 2020. At that time, Executive Orders 2020-110, 2020-115, 2020-120, 2020-133, and 2020-143 are rescinded. Except as otherwise specified, nothing in this order supersedes any other executive order.

16. **Future orders.** In determining whether to maintain, intensify, or relax the restrictions in this order, I will consider, among other factors, (1) data on COVID-19 infections and the disease's rate of spread; (2) whether sufficient medical personnel, hospital beds, and ventilators exist to meet anticipated medical need; (3) the availability of personal protective equipment for the health care workforce; (4) the state's capacity to test for COVID-19 cases and isolate infected people; and (5) economic conditions in the state.

17. **Penalty.** 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.

Date: July 29, 2020

Time: 5:31pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE