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GOVERNOR LAURA KELLY

EXECUTIVE ORDER NO. 20-68

Establishing a face coverings protocol

WHEREAS, securing the health, safety, and economic well-being of residents of the State of Kansas is this Administration's top priority;

WHEREAS, Kansas is facing a crisis—the pandemic and public health emergency of COVID-19—resulting in illness, death, quarantines, school closures, and temporary closure of businesses resulting in lost wages and financial hardship to Kansas citizens;

WHEREAS, the United States Departments of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 11,136,000 cases of the illness and more than 246,000 deaths as a result of the illness across the United States;

WHEREAS, the World Health Organization declared a pandemic on March 11, 2020;

WHEREAS, a State of Disaster Emergency was proclaimed for the State of Kansas on March 12, 2020;

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 50 1 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act");

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, et seq. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared a national emergency that the COVID-19 outbreak in the United States constitutes a national emergency beginning March 1, 2020;

WHEREAS, as of this date, in Kansas there have been 128,594 reported positive cases of COVID-19 spread among all 105 Kansas counties, including 1,326 deaths;

WHEREAS, in the late spring and early summer 2020, Kansas experienced a steady trend of decreasing COVID-19 cases, hospitalizations, and deaths, but by mid-summer that downward trend gave way to a worrying spike in COVID-19 cases, hospitalizations, and deaths in Kansas and across the nation;

WHEREAS, as a result of that worrying spike, on July 2, 2020, I issued Executive Order 20-52 ("Requiring masks or other face coverings in public"), but in spite of the deadly and urgent public

health threat presented by the spike in COVID-19 cases, many counties exercised their temporary authority under K.S.A. 48-925(h) to "opt out" of statewide public health executive orders to opt out of Executive Order 20-52;

WHEREAS, recent weeks have again seen a worrying spike in COVID-19 cases, hospitalizations, and deaths, except that this "spike" has seen the 7-day average of cases and hospitalizations first double and then triple, stretching the healthcare system's ability to handle the unprecedented influx of patients;

WHEREAS, if the healthcare system is overrun with COVID-19 patients, as it will be soon if current trends continue, communities will be forced to close schools and businesses, and non-COVID-19 healthcare services will be postponed due to lack of staffing, space, and supplies in hospitals and doctor's offices; at worst, Kansans battling COVID-19 or other serious illnesses could suffer and die from the lack of available healthcare services;

WHEREAS, wearing a face covering in public is the easiest and most effective way to protect each other, ease the burden on our overburdened healthcare system, and help keep our businesses open and our economy running;

WHEREAS, the Centers for Disease Control has determined that even "increasing universal masking by 15% could prevent the need" for restrictions on businesses and gatherings and could avoid severe economic losses;

WHEREAS, wearing a face covering in public is not only safe and easy, it is necessary to avoid more restrictive local measures that could involve closing businesses, schools, organized youth sports, and other important activities;

WHEREAS, the State of Kansas must remain flexible to account for the evolving nature and scope of the unprecedented public health emergency posed by COVID-19, while also simultaneously safely and strategically operating businesses and facilitating economic recovery and revitalization;

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of my responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of Kansas, increasing the wearing of face coverings is necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, in these challenging times, this Administration will do whatever it can to avoid immediate dangers to the health, safety, and welfare of Kansans.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, including the authority granted me by K.S.A 48-924 and K.S.A 48-925(b) and (c)(11), in order to ensure that Kansans can help keep each other safe, relieve unsustainable burdens on our healthcare system, and keep our businesses open as we restore our economy, I hereby direct and order the following:

1. The provisions of paragraphs 2 through 5 below do not apply in counties or municipalities that meet either of the following criteria:

    a. counties in which Executive Order 20-52 is in effect, meaning that the county commission has not exercised its authority under K.S.A. 48-925(h) to "opt out" of Executive Order 20-52; or

    b. counties or municipalities in which a local ordinance or order requires that face coverings be worn in public places and in businesses.

2. Effective at 12:01 a.m. on Wednesday, November 25, 2020, any person in Kansas shall wear a face covering when they are in the following situations:

    a. Inside, or in line to enter, any indoor public space;

    b. Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank;[1]

    c. Waiting for or riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle;

    d. While outdoors in public spaces and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity.

3. Also effective at 12:01 a.m. on Wednesday, November 25, 2020, all businesses or organizations in Kansas must require all employees, customers, visitors, members, or members of the public to wear a face covering when:

    a. Employees are working in any space visited by customers or members of the public, regardless of whether anyone from the public is present at the time;

    b. Employees are working in any space where food is prepared or packaged for sale or distribution to others;

    c. Customers, members, visitors, or members of the public are in a facility managed by the business or organization; or

    d. Employees are in any room or enclosed area where other people (except for individuals who reside together) are present and are unable to maintain a 6-foot distance except for infrequent or incidental moments of closer proximity.

4. The following are exempt from wearing face coverings pursuant to the provisions of this order:

[1] Unless directed otherwise by an employee or healthcare provider.

a. Persons age five years or under—children age two years and under in particular should not wear a face covering because of the risk of suffocation;

b. Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering—this includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;

c. Persons who are deaf or hard of hearing, or communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication;

d. Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines;

e. Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service;

f. Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided they maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity;

g. Athletes who are engaged in an organized sports activity that allows athletes to maintain a 6-foot distance from others with only infrequent or incidental moments of closer proximity;

h. Persons who are engaged in an activity that a professional or recreational association, regulatory entity, medical association, or other public-health-oriented entity has determined cannot be safely conducted while wearing a face covering;

i. Persons engaged in an activity or event held or managed by the Kansas Legislature;

j. Persons engaged in a court-related proceeding held or managed by the Kansas Judiciary; and

k. Persons engaged in any lawful activity during which wearing a face covering is prohibited by law.

5. Definitions:

a. "Face covering" means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A face covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. Ideally, a face covering has two or more layers. A face covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels.

b. "Public space" means any indoor or outdoor space or area that is open to the public; this does not include private residential property or private offices or workspaces that are not open to customers or public visitors.

6. Nothing in this order shall restrict, limit, or supersede the Secretary of Health and Environment's authority to make isolation, quarantine, or other orders restricting movement as necessary to respond to escalating or worsening conditions in any local jurisdiction.

7. Local governments retain authority to issue and enforce equally or more restrictive orders or provisions and retain any authority to issue or enforce isolation or quarantine orders or other orders as necessary to respond to escalating or worsening conditions in any local jurisdiction. Counties may also exercise authority granted by K.S.A. 48-925 as amended by 2020 Special Session House Bill 2016, Sec. 33.

8. As currently permitted pursuant to state law, the Attorney General, county attorneys, and district attorneys enforcing this order should use their discretion and consider the totality of the circumstances as they determine appropriate enforcement actions.

9. In order to more accurately track and assess statewide status of COVID-19 cases, private labs conducting testing for COVID-19 shall report both positive and negative tests to the Kansas Department of Health and Environment.

10. The Four Tribes of Kansas (Iowa Tribe, Kickapoo Nation, Prairie Band Potawatomi Nation, and Sac & Fox Nation) retain any authority to regulate through their respective tribal councils for the health and welfare of their population.

11. This order should be read in conjunction with other executive orders responding to the COVID-19 pandemic that are still in effect and supersedes any contrary provisions of previous orders; however, the provisions of Executive Order 20-59 continue to control COVID-19 mitigation procedures, including the wearing of masks or other face coverings, in K-12 public and private school buildings and facilities.

This document shall be filed with the Secretary of State as Executive Order No. 20-68. It shall become effective as of 12:01 a.m. on November 25, 2020, and remain in force until rescinded or until the statewide State of Disaster Emergency extended by House Bill 2016 enacted during the June 2020 special session relating to COVID-19—and later extended by the State Finance Council—expires, whichever is earlier. This order may be extended or modified as circumstances dictate.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR Laura Kelly

DATED 11.18.2020

Scott Schwab
Secretary of State

Assistant Secretary of State

FILED
NOV 18 2020
SCOTT SCHWAB
SECRETARY OF STATE