

IN THE COURT OF CLAIMS OF
THE STATE OF MICHIGAN

ASSOCIATED BUILDERS AND
CONTRACTORS OF MICHIGAN, and
DJ'S LAWN SERVICE, INC., d/b/a
DJ'S LANDSCAPE MANAGEMENT,

Plaintiffs,

Case No. _____

vs.

Hon.

GRETCHEN WHITMER, in her official
capacity as Governor of the State of Michigan,
DANA NESSEL, in her official capacity as
Attorney General of the State of Michigan,
ROBERT GORDON, in his official capacity
as Director of the Michigan Department of
Health and Human Services,

Defendants.

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**MAY 21, 2020 MOTION FOR IMMEDIATE DECLARATORY JUDGMENT ON
COUNT ONE**

***** Oral Argument Requested *****

Plaintiffs move for immediate declaratory judgment under MCR 2.605(A) and (D) on Count One of their Complaint. Count One requests a declaration that EO 2020-97 is invalid to the extent that it (1) authorizes, permits, or incorporates investigation and enforcement

mechanisms or penalties for violations of EO 2020-97 or EO 2020-96 beyond the provisions expressly set forth by the Legislature in the Emergency Powers of the Governor Act of 1945 (“EPGA”), MCL § 10.33, and the Emergency Management Act of 1976 (“EMA”), MCL § 30.405(3); and (2) requires agency investigation, inspection, enforcement or adjudication for an alleged violation of EO 2020-97 or EO 2020-96 under the administrative review process rather than in a court of law.

This motion is supported by the accompanying brief and exhibits. The Plaintiffs sought concurrence in the relief requested, but were not able to obtain concurrence from the Defendants’ counsel.

Time is of the essence on this issue, because the stakes are very high. *First*, EO 2020-97 provides that administrative agencies will enforce EO 2020-97 and contemplates that they will publicly post citations of those employers that fail to follow the rules adopted in the EO. As noted in the Plaintiffs’ verified complaint, an agency citation, such as a citation under the Michigan Occupational Safety and Health Act (“MIOSHA”), has long-term reputational ramifications for the Plaintiffs. For example, ABC’s members often are required to disclose MIOSHA citations when bidding on a project. It would be financially devastating for construction companies to lose opportunities for work now that they have finally been permitted to resume operations. Likewise, DJ’s Landscape’s institutional clients may discontinue use of DJ’s Landscape’s services if DJ’s Landscape receives a MIOSHA citation through an inadvertent violation of the list of safety requirements contained in EO 2020-97.

Second, EO 2020-97 purports to impose penalties that are exponentially higher than the statutory maximum penalty. Under the Emergency Management Act of 1976 (“EMA”) and the Emergency Powers of the Governor Act of 1945 (“EPGA”), a violation of an executive order that


is issued under their authority is punishable as a “misdemeanor,” which carries a maximum penalty of 90 days in jail and a \$500 fine. MCL § 10.33; MCL § 30.405(3). A business that violates MIOSHA, by contrast, may be guilty of a 3-year felony and may be fined up to \$70,000 per violation. *See* MCL § 408.1035(1)-(6).

Third, a business may be cited for a violation under MIOSHA even for a mistaken or inadvertent failure to comply with applicable rules and regulations, and the administrative agency’s determination may be upheld on judicial review even if it is not supported by a preponderance of the evidence. Even for well-intentioned businesses like the Plaintiffs who are taking all reasonable efforts to continue to provide safe workspaces for employees and customers and to follow all requirements and best practices, the prospect of potentially severe and damaging penalties under MIOSHA for even inadvertent failures to abide by EO 2020-97 has dramatically increased the stakes.

Due to the significant and immediate reputational harm that accompanies a MIOSHA citation, coupled with the Governor’s direction that MIOSHA penalties under EO 2020-97 be enforced against entities like the Plaintiffs, the Plaintiffs respectfully request immediate declaratory judgment under MCR 2.605(A) and (D) in favor of Count One of their complaint. Plaintiffs further requests oral argument on this motion, in light of the significance of the issues involved.

MILLER JOHNSON
Attorneys for Plaintiffs

Dated: May 21, 2020

By 

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**BRIEF IN SUPPORT OF PLAINTIFF'S MAY 21, 2020 MOTION FOR IMMEDIATE
DECLARATORY JUDGMENT ON COUNT ONE**

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Introduction

Governor Whitmer asserted her authority under the Emergency Management Act of 1976 (“EMA”) and the Emergency Powers of the Governor Act of 1945 (“EPGA”) in order to issue EO 2020-97, which outlines requirements with which all businesses in Michigan must comply if they wish to engage in in-person work for as long as the COVID-19 pandemic continues.¹ The EMA and the EPGA unambiguously provide that a violation of an executive order that is issued under their authority is punishable as a “misdemeanor,” which carries a maximum penalty of 90 days in jail and a \$500 fine. MCL § 10.33; MCL § 30.405(3) .

EO 2020-97, however, provides that any violation of EO 2020-97 is a per se violation of the Michigan Occupational Safety and Health Act (“MIOSHA”). Violations of MIOSHA are exponentially more severe than a 90-day misdemeanor. A business that violates MIOSHA may be guilty of a 3-year felony and may be fined up to \$70,000 per violation. *See* MCL § 408.1035(1)-(6). By providing that a violation of EO 2020-97 is a per se MIOSHA violation, EO 2020-97 has converted a violation of EO 2020-97 into an offense that is punishable by penalties that vastly exceed the maximum statutory penalty that is permitted for a violation of an executive order that is issued under the EMA and the EPGA.

EO 2020-97 also precludes businesses that are alleged to have violated the executive order from having the alleged violation adjudicated in a court of law. Instead, EO 2020-97 requires that adjudications of all alleged violations of EO 2020-97 must proceed through the administrative review process under the Michigan Administrative Procedures Act (“APA”). But

¹ Plaintiffs contend in their complaint that the Governor has exceeded her authority in continuing to issue executive orders under a declaration of emergency that has already been terminated but that the Governor asserts may continue indefinitely. That question is pending before this Court in a separate case and is preserved in separate counts in the Plaintiffs’ complaint. This motion for immediate declaratory relief, however, may be determined without reaching that threshold question, because EO 2020-97 is invalid regardless of whether the Governor’s extended declarations of emergency are appropriate under the EMA and the EPGA.

that is a substantively different process than the process that is contemplated by the EMA and the EPGA. If a business or individual is charged with a misdemeanor offense under the EMA and the EPGA, the government must prove its case beyond a reasonable doubt, and the defendant is entitled to the full panoply of constitutional protections. In the administrative review process, by contrast, the agency's decision must merely be supported by "substantial evidence," which is subject only to limited judicial review and may be upheld even if the agency's determination is not supported by the preponderance of the evidence. Moreover, an employer may be deemed to have committed a violation under the MIOSHA procedures even if the employer has only inadvertently or mistakenly failed to comply with EO 2020-97.

In short, EO 2020-97 attempts to convert a violation of an executive order into a per se violation of MIOSHA, thereby exposing businesses to exponentially more severe penalties and a wholly different adjudicative process and standards of liability than the EMA and the EPGA allow. That is improper. Governor Whitmer has invoked the EMA and the EPGA as the basis for her authority to issue EO 2020-97. If EO 2020-97 is violated, penalties may be assessed only as the EMA and the EPGA allow.

The stakes of this issue are extraordinarily high, because MIOSHA's penalties—if levied against businesses—are ruinous not only financially but reputationally. EO 2020-97 contemplates that administrative agencies will publicly post citations of those employers that fail to follow the rules adopted in EO 2020-97. The Plaintiffs fully recognize that their workplaces and customers should be kept safe, and they are working diligently toward that end, as recognized by the Governor's decision to permit them to continue operations for several weeks already. Nevertheless, subjecting the Plaintiffs to the potential of severe penalties for even inadvertent failures to comply with the new requirements imposed by EO 2020-97 has fundamentally altered

the playing field and injected an extraordinary amount of uncertainty into the Plaintiffs' continued ability to operate.

The Plaintiffs are entitled to immediate declaratory judgment under MCR 2.605(A) and (D), declaring that EO 2020-97 is invalid to the extent that it incorporates MIOSHA's penalty provisions and requires enforcement and adjudication to proceed under the administrative review process rather than in a court of law.

Factual Background

The following facts are taken from the Plaintiffs' verified complaint.

A. Governor Whitmer issues EO 2020-97, which purports to make any violation of the executive order a violation of MIOSHA.

EO 2020-97 was issued by Governor Whitmer on May 21, 2020 as part of her continued response to the COVID-19 pandemic. **(Exhibit 1)**. It went into effect immediately. Paired with EO 2020-96 **(Exhibit 2)**, EO 2020-97 imposes extensive and burdensome requirements upon "all businesses across the state" of Michigan, primarily requiring substantial modifications of workplace environments and protocols with the goal of minimizing the transmission of COVID-19 in the workplace. **(Exhibit 1)**.

EO 2020-97 specifically states that a violation of any of EO 2020-97's numerous requirements will be deemed a per se violation of MIOSHA. Specifically, § 12 of EO 2020-97 states provides,

Any business or operation that violates the rules in sections 1 through 10 has failed to provide a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to an employee, within the meaning of the Michigan Occupational Safety and Health Act, MCL 408.1011.

(Exhibit 1).

Section 11 of EO 2020-97 asserts that the rules unilaterally issued by Governor Whitmer in EO 2020-97 are enforceable as a regulation that has gone through the formal notice-and-comment procedure mandated by the Administrative Procedures Act. Section 11 also purports to prevent businesses who are alleged to have violated the executive order from having violations adjudicated in a court of law, forcing them to have any allegations adjudicated through the administrative review process instead:

The rules described in sections 1 through 10 have the force and effect of regulations adopted by the departments and agencies with responsibility for overseeing compliance with workplace health-and-safety standards and are fully enforceable by such agencies. Any challenge to penalties imposed by a department or agency for violating any of the rules described in sections 1 through 10 of this order will proceed through the same administrative review process as any challenge to a penalty imposed by the department or agency for a violation of its rules.

(Exhibit 1).

At the same time that Governor Whitmer issued EO 2020-91 (which was the first iteration of the rules announced in EO 2020-97), she issued Executive Directive 2020-06. **(Exhibit 3)**. In ED 2020-06, the Governor stated her intent that “businesses must do their part to guarantee that the resumption of activities does not contribute to the virus’s spread . . .” **(Exhibit 3)** (emphasis added). ED 2020-06 directs that “Each department and agency with responsibility for enforcing workplace health-and-safety standards will monitor workplaces for compliance with the rules adopted in Executive Order 2020-91 and, as necessary, bring enforcement actions to ensure compliance.” **(Exhibit 3, § 1)**. ED 2020-06 further directs that “Each department and agency with responsibility for enforcing workplace health-and-safety standards will publicly post citations of those employers that fail to follow the rules adopted in Executive Order 2020-91, and will consider establishing a process to remove those public postings for employers that have demonstrated to the department’s or agency’s satisfaction that they have cured past violations and come into

compliance.” (**Exhibit 3**, § 4). Because EO 2020-97 replaces EO 2020-91, the directives contained in ED 2020-06 appear to apply with equal force to EO 2020-97.

B. The penalties for violating MIOSHA are exponentially more severe than the maximum allowable penalty that is permissible under the EMA and the EPGA for violating an executive order.

EO 2020-97’s attempt to convert a violation of the EO into a violation of MIOSHA has enormous implications, because it vastly increases the severity of the offense.

EO 2020-97 is predicated upon the Governor’s exercise of emergency powers under the EMA and the EPGA. Both the EMA and the EPGA provide that a willful violation of an executive order issued under the Governor’s emergency powers is punishable only as a “misdemeanor.” MCL § 10.33; MCL § 30.405(3). Because neither the EMA nor the EPGA expressly provides for a specific punishment to be imposed for the misdemeanor offenses outlined in the statutes, the maximum penalty under either statute is 90 days’ imprisonment and a \$500 fine. MCL § 750.504.

The penalties available for a violation under MIOSHA, however, are exponentially more severe. An employer who violates MIOSHA may be fined up to \$7,000 per violation per day, and an employer who willfully violates MIOSHA may be fined up to \$70,000 per violation. *See* MCL § 408.1035(1)-(4), (6). If an employer willfully violates the act and causes the death of an employee, the employer may be guilty of a felony that is punishable by up to a year in prison and a \$10,000 fine—or, if it is the second conviction under the statute, by up to three years in prison, as well as a \$20,000 fine. *See* MCL § 408.1035(5). Further, penalties may be imposed under MIOSHA even if a violation is not willful; as long as the employer commits a “serious” violation of MIOSHA, fines of \$7,000 per violation may be imposed. *See* MCL § 408.1035(1).

The penalties under MIOSHA are ruinous for businesses. And—importantly—an employer may violate MIOSHA inadvertently or negligently. *See, e.g.*, MCL § 408.1006(a)

(defining a “serious violation” to include negligent conduct). EO 2020-97’s attempt to impose the penalties available under MIOSHA against everyone who violates EO 2020-97—including those who violate EO 2020-97 inadvertently or negligently—has dramatically altered the risks of non-compliance with the Governor’s executive orders.

C. EO 2020-97 imposes upon the Plaintiffs a host of MIOSHA-enforced requirements without which the Plaintiffs were previously able to operate safely.

The Plaintiffs in this case are directly impacted by EO 2020-97, which applies to all businesses in Michigan that conduct in-person operations and requires them to make various modifications to their work and employee protocols. If ABC’s members or DJ’s Landscape fails to comply with the requirements under EO 2020-97, they are potentially subject to the universe of penalties under MIOSHA, as well as the reputationally harmful publication of any citation that is issued by MIOSHA or another administrative agency.

To be clear: ABC’s members and DJ’s Landscape intend to make their best efforts to provide workplace environments and protocols that minimize the risk of COVID-19 transmission. Notably, both DJ’s Landscape and ABC’s members were deemed by Governor Whitmer to be able to safely engage in in-person work long before the new requirements of EO 2020-91 were issued on May 18, 2020.

Landscapers like DJ’s Landscape were permitted to resume operations on April 24, 2020, when EO 2020-59 was issued. (**Exhibit 4**). Under EO 2020-59, DJ’s Landscape was permitted to resume operations, as long as it implemented a relatively limited list of sanitation and social-distancing precautions. (**Exhibit 4**, § 11). DJ’s Landscape has been operating safely under these requirements for almost a month since the issuance of EO 2020-59.

Construction workers like ABC’s members were permitted to resume operations on May 7, 2020, after EO 2020-70 was issued. (**Exhibit 5**). Under EO 2020-70, construction workers

were permitted to resume operations, as long as they implemented sanitation and social-distancing precautions outlined in EO 2020-70. (**Exhibit 5**, § 11). ABC's members have been operating safely under these requirements for almost two weeks after they were permitted to resume operations under EO 2020-70.

EO 2020-97 adds numerous additional requirements upon ABC's members and landscapers like DJ's Landscape, including daily self-screening protocols for employees and enhanced workplace and notification requirements. (**Exhibit 1**, § 1). Plaintiffs want to take all reasonable steps to ensure the safety of their employees and customers, but the current state of affairs is a legal minefield for well-intentioned businesses. If the Governor is permitted to commandeer MIOSHA enforcement mechanisms, even an inadvertent violation of any one of the enhanced list of workplace requirements could result in hefty fines and lengthy terms of imprisonment. Under EO 2020-97, the Plaintiffs are subjected to the full universe of severe penalties that are available under MIOSHA, may have a citation published to the detriment of their reputation and business goodwill, and may only challenge a citation through the lengthy and deferential administrative review process. Due to the significant stakes, immediate declaratory relief is necessary under MCR 2.605(A) and (D).

Argument

EO 2020-97 cannot properly incorporate MIOSHA's penalties, because they exceed the maximum penalties that are available for a violation of an executive order under the EMA and the EPGA. Nor can EO 2020-97 incorporate the APA's adjudicative process, because doing so prohibits a defendant from accessing the courts and permits the government to prove a violation by less than a preponderance of the evidence instead of beyond a reasonable doubt, as is required for a conviction under the EMA and the EPGA.

I. The maximum statutory penalty for violation of an executive order issued under either the EMA or the EPGA is a 90-day misdemeanor and a \$500 fine.

EO 2020-97 was issued pursuant to the Governor's emergency powers derived from the EMA and the EPGA; therefore, the Governor is bound by the penalties set forth under those statutes. And the statutory text is unambiguous. The maximum statutory penalty for violating either the EMA or the EPGA is a 90-day misdemeanor and a \$500 fine.

Section 10.31 of the EPGA provides that "the governor may promulgate reasonable orders, rules, and regulations" during a valid declaration of emergency. MCL § 10.31(1). Section 10.33 of the EPGA provides that "[t]he violation of any such orders, rules and regulations made in conformity with this act shall be punishable as a misdemeanor, where such order, rule or regulation states that the violation thereof shall constitute a misdemeanor." MCL § 10.33. The EPGA does not set forth any other permissible penalty for a violation of executive orders that are issued under the EPGA.

The EMA operates in the same way. MCL § 30.405(1) permits the governor, among other things, to "suspend" regulatory statutes and rules, and to control movement between quarantined areas. *Id.* Like the EPGA, the EMA specifically states that, "[a] person who willfully disobeys or interferes with the implementation of a rule, order, or directive issued by the governor pursuant to this section is guilty of a misdemeanor." MCL § 30.405(3).

Because neither the EMA nor the EPGA expressly provides for a specific punishment to be imposed for the misdemeanor offenses outlined in the statutes, the maximum penalty under either statute is 90 days' imprisonment and a \$500 fine. MCL § 750.504.

II. EO 2020-97 cannot incorporate penalties and enforcement under MIOSHA or other regulatory statutes, because they are qualitatively different than the penalties and process required by the EMA and the EPGA.

A. MIOSHA penalties, including felony convictions and fines up to \$70,000, exceed the statutory maximum penalty that is available under the EMA and the EPGA.

EO 2020-97 purports to incorporate penalties under MIOSHA that significantly exceed the maximum statutory penalty that is available under the EMA and the EPGA. Section 12 of EO 2020-97 specifically states that a violation of EO 2020-97 is a per se violation of MCL § 408.1011(a), which requires that an employer must provide “a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to an employee.” *Id.* A violation of § 408.1011(a) can result in a 3-year felony conviction and a \$70,000 fine. *See* MCL § 408.1035(1)-(6). Thus, the penalties that may be imposed under MIOSHA are exponentially more severe than the statutory maximum punishment that is permissible under the EMA and the EPGA.

Michigan law has always prohibited the imposition of penalties that exceed the applicable statutory maximum. *See, e.g., Howard v People*, 3 Mich 207, 209–10 (1854). It is impermissible for EO 2020-97 to convert a violation of EO 2020-97 into a violation of MIOSHA, thereby exposing individuals and businesses to the potential for crippling fines and felony convictions that are exponentially greater than the statutory maximum that is allowed under the EMA and the EPGA.

Regardless of how it is packaged, a violation of EO 2020-97 is a violation of EO 2020-97, not a violation of MIOSHA. The EMA and the EPGA preclude Governor Whitmer from creating a new rule in EO 2020-97 and then proclaiming that violation of this new rule is also a per se violation of MIOSHA, which can be a felony offense. Instead, the maximum punishment that can be imposed for a violation of EO 2020-97 is a 90-day misdemeanor and a \$500 fine.

Any other interpretation of the statutory language would render MCL § 10.33 and MCL § 30.405(3) virtually meaningless. EO 2020-97 operates on the assumption that Governor Whitmer may declare that a violation of an executive order issued under the EMA and the EPGA is a per se criminal violation of some other statutory regime, thereby transforming a violation of the executive order into a felony or other penalty that vastly exceeds the statutory maximum penalty that the EMA and EPGA permits to be imposed. Neither the EMA nor the EPGA allows such a transparent end-run around the statutory maximum penalties that they contain. A violation of EO 2020-97 can be punished only as a misdemeanor, not as a felony or with a \$70,000 fine.

Nor does the Governor have any authority to unilaterally establish the penalties for violations of her executive orders either substantively different or in excess of the maximum provided by the EMA and the EPGA. “[T]he ultimate authority to provide for penalties for criminal offenses is constitutionally vested in the Legislature.” *People v Garza*, 469 Mich 431, 434; 670 NW2d 662 (2003) (citing Const. 1963, art. 4, § 45). There is no legitimate basis for EO 2020-97’s attempt to impose penalties that exceed the maximum penalties that are available for a violation of an executive order that is issued under the EMA and the EPGA. EO 2020-97 may not transform a violation of the executive order into a violation of MIOSHA, such that MIOSHA’s dramatically enhanced penalties are applied against employers who violate EO 2020-97.

B. EO 2020-97 cannot incorporate administrative enforcement procedures, because they are qualitatively different than ordinary criminal procedure.

Section 11 of EO 2020-97 further asserts that any challenge to a penalty that is imposed under EO 2020-97 must proceed “through the same administrative review process as any challenge to a penalty imposed by the department or agency for a violation of its rules.” (**Exhibit**

1). This is an improper attempt to prevent businesses who have been accused of violating EO 2020-97 from having alleged violations adjudicated through the judicial system.

EO 2020-97 was not promulgated under the Michigan Administrative Procedures Act (“APA”), MCL § 24.201, *et seq.* Instead, it was issued pursuant to the Governor’s emergency powers under the EMA and the EPGA. Those statutes establish that any violation is punishable as a misdemeanor. Misdemeanors are not adjudicated through administrative agencies; they are adjudicated through the courts. To prove that a defendant has committed a misdemeanor offense, the government must prove the defendant guilty beyond a reasonable doubt, and the defendant has the full panoply of constitutional rights available to it in order to aid its defense.

In administrative proceedings, by contrast, both the substantive offenses and the defendant’s procedural rights are qualitatively different than the ordinary criminal process. First, an employer may be deemed to have violated an administrative regulation inadvertently or mistakenly. Under MIOSHA, for example, an employer may violate a MIOSHA regulation inadvertently or negligently. *See, e.g.*, MCL § 408.1006(a). That is a markedly different standard than is provided in the EMA, for example, which requires proof that the defendant “willfully” violated a pertinent executive order. MCL § 30.405(3).

The government’s burden of proof is also substantially reduced in the context of an administrative adjudication. Under the APA, for example, the agency merely needs to prove a violation by a preponderance of the evidence, and judicial review is limited to determining whether “substantial evidence” supports the agency’s determination. *Barker Bros Const v Bureau of Safety & Regulation*, 212 Mich App 132, 141; 536 NW2d 845 (1995) (reviewing a MIOSHA adjudication). Under the “substantial evidence” standard, agency decisions do not even need to be supported by a preponderance of the evidence. *See Hanlon v Civil Serv Comm’n*, 253 Mich App

710, 728; 660 NW2d 74 (2002) (“This standard requires more than a scintilla, but not necessarily a preponderance, of evidence.”).

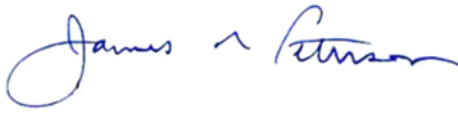
Despite the substantive differences of the offenses outlined in MIOSHA and the markedly reduced protections afforded to defendants under the APA as compared to the EMA and the EPGA, EO 2020-97 purports to require that violations of EO 2020-97 be adjudicated in administrative agencies rather than in a court. That is improper. The EMA and the EPGA provide that a violation of an executive order issued under an emergency declaration is a misdemeanor offense that must be proved in a court of law, not by an administrative agency. EO 2020-97 may not preclude businesses who are cited under EO 2020-97 from accessing the courts by shunting adjudications of their guilt into the administrative agency process. If a business or individual is charged with violating EO 2020-97, they have a right to challenge the allegations in court.

Conclusion

The Plaintiffs are entitled to immediate declaratory judgment under MCR 2.605(A) and (D). Specifically, this Court should enter an order declaring that EO 2020-97 is invalid to the extent that it (1) authorizes, permits, or incorporates investigation and enforcement mechanisms or penalties for violations of EO 2020-97 or EO 2020-96 beyond the provisions expressly set forth by the Legislature in the EPGA and the EMA, and (2) requires agency investigation, inspection, enforcement or adjudication for an alleged violation of EO 2020-97 or EO 2020-96 under the administrative review process rather than in a court of law.

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Dated: May 21, 2020

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EXHIBIT 1



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-97

Safeguards to protect Michigan's workers from COVID-19

Rescission of Executive Order 2020-91

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.

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.

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, 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 is 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, and 2020-92, 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 has started to drop. Although the virus remains aggressive and persistent—on May 20, 2020, Michigan reported 53,009 confirmed cases and 5,060 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. We have now begun the process of gradually resuming in-person work and activities that were temporarily suspended under my prior orders. In so doing, however, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone.

In particular, businesses must do their part to protect their employees, their patrons, and their communities. Many businesses have already done so by implementing robust safeguards to prevent viral transmission. But we can and must do more: no one should feel unsafe at work. With Executive Order 2020-91, I created an enforceable set of workplace standards that apply to all businesses across the state. I am now amending those standards to include new provisions governing outpatient health-care facilities.

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

1. All businesses or operations that are permitted to require their employees to leave the homes or residences for work under Executive Order 2020-92, and any order that follows it, must, at a minimum:
 - (a) Develop a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available [here](#). By June 1, 2020, or within two weeks of resuming in-person activities, whichever is later, a business's or operation's plan must be made readily available to employees, labor unions, and customers, whether via website, internal network, or by hard copy.
 - (b) Designate one or more worksite supervisors to implement, monitor, and report on the COVID-19 control strategies developed under subsection (a). The supervisor must remain on-site at all times when employees are present on site. An on-site employee may be designated to perform the supervisory role.
 - (c) Provide COVID-19 training to employees that covers, at a minimum:

- (1) Workplace infection-control practices.
 - (2) The proper use of personal protective equipment.
 - (3) Steps the employee must take to notify the business or operation of any symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19.
 - (4) How to report unsafe working conditions.
- (d) Conduct a daily entry self-screening protocol for all employees or contractors entering the workplace, including, at a minimum, a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19.
 - (e) Keep everyone on the worksite premises at least six feet from one another to the maximum extent possible, including through the use of ground markings, signs, and physical barriers, as appropriate to the worksite.
 - (f) Provide non-medical grade face coverings to their employees, with supplies of N95 masks and surgical masks reserved, for now, for health care professionals, first responders (e.g., police officers, fire fighters, paramedics), and other critical workers.
 - (g) Require face coverings to be worn when employees cannot consistently maintain six feet of separation from other individuals in the workplace, and consider face shields when employees cannot consistently maintain three feet of separation from other individuals in the workplace.
 - (h) Increase facility cleaning and disinfection to limit exposure to COVID-19, especially on high-touch surfaces (e.g., door handles), paying special attention to parts, products, and shared equipment (e.g., tools, machinery, vehicles).
 - (i) Adopt protocols to clean and disinfect the facility in the event of a positive COVID-19 case in the workplace.
 - (j) Make cleaning supplies available to employees upon entry and at the worksite and provide time for employees to wash hands frequently or to use hand sanitizer.
 - (k) When an employee is identified with a confirmed case of COVID-19, within 24 hours, notify both:
 - (1) The local public health department, and
 - (2) Any co-workers, contractors, or suppliers who may have come into contact with the person with a confirmed case of COVID-19.
 - (l) An employer will allow employees with a confirmed or suspected case of COVID-19 to return to the workplace only after they are no longer infectious according to

the latest guidelines from the Centers for Disease Control and Prevention (“CDC”).

- (m) Follow Executive Order 2020-36, and any executive orders that follow it, that prohibit discharging, disciplining, or otherwise retaliating against employees who stay home or who leave work when they are at particular risk of infecting others with COVID-19.
 - (n) Establish a response plan for dealing with a confirmed infection in the workplace, including protocols for sending employees home and for temporary closures of all or part of the worksite to allow for deep cleaning.
 - (o) Restrict business-related travel for employees to essential travel only.
 - (p) Encourage employees to use personal protective equipment and hand sanitizer on public transportation.
 - (q) Promote remote work to the fullest extent possible.
 - (r) Adopt any additional infection-control measures that are reasonable in light of the work performed at the worksite and the rate of infection in the surrounding community.
2. Businesses or operations whose work is primarily and traditionally performed outdoors must:
- (a) Prohibit gatherings of any size in which people cannot maintain six feet of distance from one another.
 - (b) Limit in-person interaction with clients and patrons to the maximum extent possible, and bar any such interaction in which people cannot maintain six feet of distance from one another.
 - (c) Provide and require the use of personal protective equipment such as gloves, goggles, face shields, and face coverings, as appropriate for the activity being performed.
 - (d) Adopt protocols to limit the sharing of tools and equipment to the maximum extent possible and to ensure frequent and thorough cleaning and disinfection of tools, equipment, and frequently touched surfaces.
3. Businesses or operations in the construction industry must:
- (a) Conduct a daily entry screening protocol for employees, contractors, suppliers, and any other individuals entering a worksite, including a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19, together with, if possible, a temperature screening.

- (b) Create dedicated entry point(s) at every worksite, if possible, for daily screening as provided in sub-provision (b) of this section, or in the alternative issue stickers or other indicators to employees to show that they received a screening before entering the worksite that day.
- (c) Provide instructions for the distribution of personal protective equipment and designate on-site locations for soiled face coverings.
- (d) Require the use of work gloves where appropriate to prevent skin contact with contaminated surfaces.
- (e) Identify choke points and high-risk areas where employees must stand near one another (such as hallways, hoists and elevators, break areas, water stations, and buses) and control their access and use (including through physical barriers) so that social distancing is maintained.
- (f) Ensure there are sufficient hand-washing or hand-sanitizing stations at the worksite to enable easy access by employees.
- (g) Notify contractors (if a subcontractor) or owners (if a contractor) of any confirmed COVID-19 cases among employees at the worksite.
- (h) Restrict unnecessary movement between project sites.
- (i) Create protocols for minimizing personal contact upon delivery of materials to the worksite.

4. Manufacturing facilities must:

- (a) Conduct a daily entry screening protocol for employees, contractors, suppliers, and any other individuals entering the facility, including a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19, together with temperature screening as soon as no-touch thermometers can be obtained.
- (b) Create dedicated entry point(s) at every facility for daily screening as provided in sub-provision (a) of this section, and ensure physical barriers are in place to prevent anyone from bypassing the screening.
- (c) Suspend all non-essential in-person visits, including tours.
- (d) Train employees on, at a minimum:
 - (1) Routes by which the virus causing COVID-19 is transmitted from person to person.
 - (2) Distance that the virus can travel in the air, as well as the time it remains viable in the air and on environmental surfaces.

- (3) The use of personal protective equipment, including the proper steps for putting it on and taking it off.
 - (e) Reduce congestion in common spaces wherever practicable by, for example, closing salad bars and buffets within cafeterias and kitchens, requiring individuals to sit at least six feet from one another, placing markings on the floor to allow social distancing while standing in line, offering boxed food via delivery or pick-up points, and reducing cash payments.
 - (f) Implement rotational shift schedules where possible (e.g., increasing the number of shifts, alternating days or weeks) to reduce the number of employees in the facility at the same time.
 - (g) Stagger meal and break times, as well as start times at each entrance, where possible.
 - (h) Install temporary physical barriers, where practicable, between work stations and cafeteria tables.
 - (i) Create protocols for minimizing personal contact upon delivery of materials to the facility.
 - (j) Adopt protocols to limit the sharing of tools and equipment to the maximum extent possible.
 - (k) Ensure there are sufficient hand-washing or hand-sanitizing stations at the worksite to enable easy access by employees, and discontinue use of hand dryers.
 - (l) Notify plant leaders and potentially exposed individuals upon identification of a positive case of COVID-19 in the facility, as well as maintain a central log for symptomatic employees or employees who received a positive test for COVID-19.
 - (m) Send potentially exposed individuals home upon identification of a positive case of COVID-19 in the facility.
 - (n) Require employees to self-report to plant leaders as soon as possible after developing symptoms of COVID-19.
 - (o) Shut areas of the manufacturing facility for cleaning and disinfection, as necessary, if an employee goes home because he or she is displaying symptoms of COVID-19.
5. Research laboratories, but not laboratories that perform diagnostic testing, must:
- (a) Assign dedicated entry point(s) and/or times into lab buildings.
 - (b) Conduct a daily entry screening protocol for employees, contractors, suppliers, and any other individuals entering a worksite, including a questionnaire

covering symptoms and suspected or confirmed exposure to people with possible COVID-19, together with, if possible, a temperature screening.

- (c) Create protocols and/or checklists as necessary to conform to the facility's COVID-19 preparedness and response plan under section 1(a).
 - (d) Suspend all non-essential in-person visitors (including visiting scholars and undergraduate students) until further notice.
 - (e) Establish and implement a plan for distributing face coverings.
 - (f) Limit the number of people per square feet of floor space permitted in a particular laboratory at one time.
 - (g) Close open workspaces, cafeterias, and conference rooms.
 - (h) As necessary, use tape on the floor to demarcate socially distanced workspaces and to create one-way traffic flow.
 - (i) Require all office and dry lab work to be conducted remotely.
 - (j) Minimize the use of shared lab equipment and shared lab tools and create protocols for disinfecting lab equipment and lab tools.
 - (k) Provide disinfecting supplies and require employees to wipe down their work stations at least twice daily.
 - (l) Implement an audit and compliance procedure to ensure that cleaning criteria are followed.
 - (m) Establish a clear reporting process for any symptomatic individual or any individual with a confirmed case of COVID-19, including the notification of lab leaders and the maintenance of a central log.
 - (n) Clean and disinfect the work site when an employee is sent home with symptoms or with a confirmed case of COVID-19.
 - (o) Send any potentially exposed co-workers home if there is a positive case in the facility.
 - (p) Restrict all non-essential work travel, including in-person conference events.
6. Retail stores that are open for in-store sales must:
- (a) Create communications material for customers (e.g., signs or pamphlets) to inform them of changes to store practices and to explain the precautions the store is taking to prevent infection.

- (b) Establish lines to regulate entry in accordance with subsection (c) of this section, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.
- (c) Adhere to the following restrictions:
 - (1) For stores of less than 50,000 square feet of customer floor space, must limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal. Stores of more than 50,000 square feet must:
 - (A) Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space.
 - (B) 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 women, and those with chronic conditions like heart disease, diabetes, and lung disease.
 - (2) The director of the Department of Health and Human Services is authorized to issue an emergency order varying the capacity limits described in this subsection as necessary to protect the public health.
- (d) Post signs at store entrance(s) instructing customers of their legal obligation to wear a face covering when inside the store.
- (e) Post signs at store entrance(s) informing customers not to enter if they are or have recently been sick.
- (f) Design spaces and store activities in a manner that encourages employees and customers to maintain six feet of distance from one another.
- (g) Install physical barriers at checkout or other service points that require interaction, including plexiglass barriers, tape markers, or tables, as appropriate.
- (h) Establish an enhanced cleaning and sanitizing protocol for high-touch areas like restrooms, credit-card machines, keypads, counters, shopping carts, and other surfaces.
- (i) Train employees on:
 - (1) Appropriate cleaning procedures, including training for cashiers on cleaning between customers.
 - (2) How to manage symptomatic customers upon entry or in the store.

(j) Notify employees if the employer learns that an individual (including a customer or supplier) with a confirmed case of COVID-19 has visited the store.

(k) Limit staffing to the minimum number necessary to operate.

7. Offices must:

(a) Assign dedicated entry point(s) for all employees to reduce congestion at the main entrance.

(b) Provide visual indicators of appropriate spacing for employees outside the building in case of congestion.

(c) Take steps to reduce entry congestion and to ensure the effectiveness of screening (e.g., by staggering start times, adopting a rotational schedule in only half of employees are in the office at a particular time).

(d) Require face coverings in shared spaces, including during in-person meetings and in restrooms and hallways.

(e) Increase distancing between employees by spreading out workspaces, staggering workspace usage, restricting non-essential common space (e.g., cafeterias), providing visual cues to guide movement and activity (e.g., restricting elevator capacity with markings, locking conference rooms).

(f) Turn off water fountains.

(g) Prohibit social gatherings and meetings that do not allow for social distancing or that create unnecessary movement through the office.

(h) Provide disinfecting supplies and require employees wipe down their work stations at least twice daily.

(i) Post signs about the importance of personal hygiene.

(j) Disinfect high-touch surfaces in offices (e.g., whiteboard markers, restrooms, handles) and minimize shared items when possible (e.g., pens, remotes, whiteboards).

(k) Institute cleaning and communications protocols when employees are sent home with symptoms.

(l) Notify employees if the employer learns that an individual (including a customer, supplier, or visitor) with a confirmed case of COVID-19 has visited the office.

(m) Suspend all nonessential visitors.

(n) Restrict all non-essential travel, including in-person conference events.

8. Restaurants and bars must:

- (a) Limit capacity to 50% of normal seating.
- (b) Require six feet of separation between parties or groups at different tables or bar tops (e.g., spread tables out, use every other table, remove or put up chairs or barstools that are not in use).
- (c) Create communications material for customers (e.g., signs, pamphlets) to inform them of changes to restaurant or bar practices and to explain the precautions that are being taken to prevent infection.
- (d) Close waiting areas and ask customers to wait in cars for a call when their table is ready.
- (e) Close self-serve food or drink options, such as buffets, salad bars, and drink stations.
- (f) Provide physical guides, such as tape on floors or sidewalks and signage on walls to ensure that customers remain at least six feet apart in any lines.
- (g) Post sign(s) at store entrance(s) informing customers not to enter if they are or have recently been sick.
- (h) Post sign(s) instructing customers to wear face coverings until they get to their table.
- (i) Require hosts and servers to wear face coverings in the dining area.
- (j) Require employees to wear face coverings and gloves in the kitchen area when handling food, consistent with guidelines from the Food and Drug Administration (“FDA”).
- (k) Limit shared items for customers (e.g., condiments, menus) and clean high-contact areas after each customer (e.g., tables, chairs, menus, payment tools, condiments).
- (l) Train employees on:
 - (1) Appropriate use of personal protective equipment in conjunction with food safety guidelines.
 - (2) Food safety health protocols (e.g., cleaning between customers, especially shared condiments).
 - (3) How to manage symptomatic customers upon entry or in the restaurant.

- (m) Notify employees if the employer learns that an individual (including an employee, customer, or supplier) with a confirmed case of COVID-19 has visited the store.
 - (n) Close restaurant immediately if an employee shows multiple symptoms of COVID-19 (fever, atypical shortness of breath, atypical cough) and perform a deep clean, consistent with guidance from the FDA and the CDC. Such cleaning may occur overnight.
 - (o) Install physical barriers, such as sneeze guards and partitions at cash registers, bars, host stands, and other areas where maintaining physical distance of six feet is difficult.
 - (p) To the maximum extent possible, limit the number of employees in shared spaces, including kitchens, break rooms, and offices, to maintain at least a six-foot distance between employees.
9. Outpatient health-care facilities, including clinics, primary care physician offices, or dental offices, and also including veterinary clinics, must:
- (a) Post signs at entrance(s) instructing patients to wear a face covering when inside.
 - (b) Limit waiting-area occupancy to the number of individuals who can be present while staying six feet away from one another and ask patients, if possible, to wait in cars for their appointment to be called.
 - (c) Mark waiting rooms to enable six feet of social distancing (e.g., by placing X's on the ground and/or removing seats in the waiting room).
 - (d) Enable contactless sign-in (e.g., sign in on phone app) as soon as practicable.
 - (e) Add special hours for highly vulnerable patients, including the elderly and those with chronic conditions.
 - (f) Conduct a common screening protocol for all patients, including a temperature check and questions about COVID-19 symptoms.
 - (g) Place hand sanitizer and face coverings at patient entrance(s).
 - (h) Require employees to make proper use of personal protective equipment in accordance with guidance from the CDC and the U.S. Occupational Health and Safety Administration.
 - (i) Require patients to wear a face covering when in the facility, except as necessary for identification or to facilitate an examination or procedure.

- (j) Install physical barriers at sign-in, temperature screening, or other service points that normally require personal interaction (e.g., plexiglass, cardboard, tables).
 - (k) Employ telehealth and telemedicine to the greatest extent possible.
 - (l) Limit the number of appointments to maintain social distancing and allow adequate time between appointments for cleaning.
 - (m) Employ specialized procedures for patients with high temperatures or respiratory symptoms (e.g., special entrances, having them wait in their car) to avoid exposing other patients in the waiting room.
 - (n) Deep clean examination rooms after patients with respiratory symptoms and clean rooms between all patients.
 - (o) Establish procedures for building disinfection in accordance with CDC guidance if it is suspected that an employee or patient has COVID-19 or if there is a confirmed case.
10. Employers must maintain a record of the requirements set forth in Sections 1(c), (d), and (k).
11. The rules described in sections 1 through 10 have the force and effect of regulations adopted by the departments and agencies with responsibility for overseeing compliance with workplace health-and-safety standards and are fully enforceable by such agencies. Any challenge to penalties imposed by a department or agency for violating any of the rules described in sections 1 through 10 of this order will proceed through the same administrative review process as any challenge to a penalty imposed by the department or agency for a violation of its rules.
12. Any business or operation that violates the rules in sections 1 through 10 has failed to provide a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to an employee, within the meaning of the Michigan Occupational Safety and Health Act, MCL 408.1011.
13. Nothing in this order shall be taken to limit or affect any rights or remedies otherwise available under law.

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



Date: May 21, 2020

Time: 9:49 am

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE

EXHIBIT 2



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-96

Temporary requirement to suspend certain activities that are not necessary to sustain or protect life

Rescission of Executive Orders 2020-17, 2020-34, and 2020-92

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.

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.

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, 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 is 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, and 2020-92, 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 has started to drop. Although the virus remains aggressive and persistent—on May 20, 2020, Michigan reported 53,009 confirmed cases and 5,060 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. We can now start the process of gradually resuming in-person work and activities that were temporarily suspended under my prior orders. In so doing, however, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone.

With this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-92, while also allowing gatherings of no more than ten people statewide, effective immediately, and permitting retailers and motor vehicle dealerships to see customers by appointment, beginning on May 26, 2020. In addition, because our health-care capacity has improved with respect to personal protective equipment, available beds, personnel, ventilators, and necessary supplies, I find it reasonable to rescind Executive Orders 2020-17 and 2020-34, which required health-care and veterinary facilities to implement plans to postpone some medical and dental procedures. Those rescissions will take effect on May 29.

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

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.
2. 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.
3. Subject to the exceptions in section 8 of this order, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.
 4. All individuals who leave their home or place of residence must adhere to 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.
 5. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life, to conduct minimum basic operations, or to perform a resumed activity within the meaning of this order.
 - (a) For purposes of this order, workers who are necessary to sustain or protect life are defined as “critical infrastructure workers,” as described in sections 9 and 10 of this order.
 - (b) For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in Executive Order 2020-97 and any orders that may follow from it.

- (c) Workers who perform resumed activities are defined in section 11 of this order.
6. Businesses and operations that employ critical infrastructure workers or workers who perform resumed activities may continue in-person operations, subject to the following conditions:
- (a) Consistent with sections 9, 10, and 11 of this order, businesses and operations must determine which of their workers are critical infrastructure workers or workers who perform resumed activities and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work. Businesses and operations need not designate:
 - (1) Workers in health care and public health.
 - (2) Workers who perform necessary government activities, as described in section 7 of this order.
 - (3) Workers and volunteers described in section 10(d) of this order.
 - (b) In-person activities that are not necessary to sustain or protect life or to perform a resumed activity must be suspended.
 - (c) Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in Executive Order 2020-97 and any orders that may follow from it.
 - (d) Any business or operation that employs workers who perform resumed activities under section 11(a) of this order, but that does not sell necessary supplies, may sell any goods through remote sales via delivery or at the curbside. Such a business or operation, however, must otherwise remain closed to the public.
7. All in-person government activities at whatever level (state, county, or local) are suspended unless:
- (a) They are performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders, as defined in sections 9 and 10 of this order.
 - (b) They are performed by workers who are permitted to resume work under section 11 of this order.

- (c) They are necessary to support the activities of workers described in sections 9, 10, and 11 of this order, or to enable transactions that support businesses or operations that employ such workers.
- (d) They involve public transit, trash pick-up and disposal (including recycling and composting), the management and oversight of elections, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.
- (e) For purposes of this order, necessary government activities include minimum basic operations, as described in 5(b) of this order. Workers performing such activities need not be designated.
- (f) Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in Executive Order 2020-97 and any orders that may follow from it.

8. Exceptions.

- (a) Individuals may leave their home or place of residence, and travel as necessary:
 - (1) To engage in outdoor recreational activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor recreational activity includes walking, hiking, running, cycling, boating, golfing, or other similar activity, as well as any comparable activity for those with limited mobility.
 - (2) To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 6(a) of this order may leave their home for work without being designated.)
 - (3) To conduct minimum basic operations, as described in section 5(b) of this order, after being designated to perform such work by their employers.
 - (4) To perform resumed activities, as described in section 11 of this order, after being designated to perform such work by their employers.
 - (5) To perform necessary government activities, as described in section 7 of this order.
 - (6) To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care for themselves or a household or family member.

- (7) To obtain necessary services or supplies for themselves, their family or household members, their pets, and their motor vehicles.
 - (A) Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, individuals may leave the home or place of residence to purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the safety, sanitation, and basic operation of their residences or motor vehicles.
 - (B) Individuals may also leave the home to pick up or return a motor vehicle as permitted under section 10(i) of this order, or to go to a motor vehicle dealership showroom by appointment, as permitted under section 11(p) of this order.
 - (C) Individuals may leave the home to have a bicycle repaired or maintained.
 - (D) Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.
- (8) To pick up non-necessary supplies at the curbside from a store that must otherwise remain closed to the public.
- (9) To care for a family member or a family member's pet in another household.
- (10) To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.
- (11) To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
- (12) To visit a child in out-of-home care, or to facilitate a visit between a parent and a child in out-of-home care, when there is agreement between the child placing agency, the parent, and the caregiver about a safe visitation plan, or when, failing such agreement, the individual secures an exception from the executive director of the Children's Services Agency.
- (13) To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
- (14) To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
- (15) To attend a funeral, provided that no more than 10 people are in attendance.

- (16) To attend a meeting of an addiction recovery mutual aid society, provided that no more than 10 people are in attendance.
 - (17) To view a real-estate listing by appointment, as permitted under section 11(g) of this order.
 - (18) To participate in training, credentialing, or licensing activities permitted under section 11(i) of this order.
 - (19) For individuals in Regions 6 or 8, to go to a restaurant or a retail store.
 - (20) To go to a retail store by appointment, as permitted under section 11(q) of this order.
 - (21) To attend a social gathering of no more than 10 people.
- (b) Individuals may also travel:
- (1) To return to a home or place of residence from outside this state.
 - (2) To leave this state for a home or residence elsewhere.
 - (3) Between two residences in this state, including moving to a new residence.
 - (4) As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.
- (c) All other travel is prohibited, including all travel to vacation rentals.
9. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available [here](#)). This order does *not* adopt any subsequent guidance document released by this same agency.

Consistent with the March 19, 2020 guidance document, critical infrastructure workers include some workers in each of the following sectors:

- (a) Health care and public health.
- (b) Law enforcement, public safety, and first responders.
- (c) Food and agriculture.
- (d) Energy.
- (e) Water and wastewater.
- (f) Transportation and logistics.

- (g) Public works.
- (h) Communications and information technology, including news media.
- (i) Other community-based government operations and essential functions.
- (j) Critical manufacturing.
- (k) Hazardous materials.
- (l) Financial services.
- (m) Chemical supply chains and safety.
- (n) Defense industrial base.

10. For purposes of this order, critical infrastructure workers also include:

- (a) Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of critical infrastructure workers, workers who conduct minimum basic operations, workers who perform necessary government activities, or workers who perform resumed activities. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.
- (b) Workers at suppliers, distribution centers, or service providers, as described below.
 - (1) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business's or operation's critical infrastructure work may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
 - (2) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in sub-provision (1) of this subsection may designate their workers as critical infrastructure workers provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
 - (3) Consistent with the scope of work permitted under sub-provision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person

presence is necessary to enable, support, or facilitate such work may be so designated.

- (4) Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.
 - (c) Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.
 - (d) Workers and volunteers for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
 - (e) Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.
 - (f) Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences or motor vehicles, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.
 - (g) Workers at laundromats, coin laundries, and dry cleaners.
 - (h) Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.
 - (i) Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic until May 26, 2020 at 12:01 am.
11. For purposes of this order, workers who perform resumed activities are defined as follows:
- (a) Workers who process or fulfill remote orders for goods for delivery or curbside pick-up.
 - (b) Workers who perform bicycle maintenance or repair.
 - (c) Workers for garden stores, nurseries, and lawn care, pest control, and landscaping operations.

- (d) Workers for moving or storage operations.
- (e) Workers who perform work that is traditionally and primarily performed outdoors, including but not limited to forestry workers, outdoor power equipment technicians, parking enforcement workers, and outdoor workers at places of outdoor recreation not otherwise closed under Executive Order 2020-69 or any order that may follow from it.
- (f) Workers in the construction industry, including workers in the building trades (plumbers, electricians, HVAC technicians, and similar workers).
- (g) Workers in the real-estate industry, including agents, appraisers, brokers, inspectors, surveyors, and registers of deeds, provided that:
 - (1) Any showings, inspections, appraisals, photography or videography, or final walk-throughs must be performed by appointment and must be limited to no more than four people on the premises at any one time. No in-person open houses are permitted.
 - (2) Private showings may only be arranged for owner-occupied homes, vacant homes, vacant land, commercial property, and industrial property.
- (h) Workers necessary to the manufacture of goods that support workplace modification to forestall the spread of COVID-19 infections.
- (i) Workers necessary to train, credential, and license first responders (e.g., police officers, fire fighters, paramedics) and health-care workers, including certified nursing assistants, provided that as much instruction as possible is provided remotely.
- (j) Workers necessary to perform manufacturing activities. Manufacturing work may not commence under this subsection until the facility at which the work will be performed has been prepared to follow the workplace safeguards described in section 4 of Executive Order 2020-97 and any orders that may follow from it.
- (k) Workers necessary to conduct research activities in a laboratory setting.
- (l) For Regions 6 and 8, beginning at 12:01 am on May 22, 2020, workers necessary to perform retail activities. For purposes of this order, retail activities are defined:
 - (1) As the selling of goods and the rendering of services incidental to the sale of the goods (e.g., any packaging and processing to allow for or facilitate the sale and delivery of the goods).
 - (2) To exclude those places of public accommodation that are closed under Executive Order 2020-69 and any orders that may follow from it.
- (m) For Regions 6 and 8, beginning at 12:01 am on May 22, 2020, workers who work

in an office setting, but only to the extent that such work is not capable of being performed remotely.

- (n) For Regions 6 and 8, beginning at 12:01 am on May 22, 2020, workers in restaurants or bars, subject to the capacity constraints and workplace standards described in Executive Order 2020-97. Nothing in this subsection should be taken to abridge or otherwise modify the existing power of a local government to impose further restrictions on restaurants or bars. For restaurants and bars subject to this subsection, this subsection supersedes the limitations placed on those restaurants and bars by Executive Order 2020-69 and any order that may follow from it.
 - (o) Workers necessary to prepare a workplace to follow the workplace standards described in Executive Order 2020-97 and to otherwise ready the workplace for reopening.
 - (p) Beginning at 12:01 am on May 26, 2020, workers at motor vehicle dealerships, provided that showrooms are open only by appointment.
 - (q) Beginning at 12:01 am on May 26, 2020, workers necessary to perform retail activities by appointment, provided that the store is limited to 10 customers at any one time. For purposes of this order, retail activities are defined:
 - (1) As the selling of goods and the rendering of services incidental to the sale of the goods (e.g., any packaging and processing to allow for or facilitate the sale and delivery of the goods).
 - (2) To exclude those places of public accommodation that are closed under Executive Order 2020-69 and any orders that may follow from it.
 - (r) Consistent with section 10(b) of this order, workers at suppliers, distribution centers, or service providers whose in-person presence is necessary to enable, support, or facilitate another business's or operation's resumed activities, including workers at suppliers, distribution centers, or service providers along the supply chain whose in-person presence is necessary to enable, support, or facilitate the necessary work of another supplier, distribution center, or service provider in enabling, supporting, or facilitating another business's or operation's resumed activities. Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.
12. Any store that is open for in-store sales under section 10(f), section 11(c), or section 11(q) of this executive order:
- (a) May continue to sell goods other than necessary supplies if the sale of such goods is in the ordinary course of business.
 - (b) Must consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.

13. No one shall rent a short-term vacation property except as necessary to assist in housing a health care professional aiding in the response to the COVID-19 pandemic or a volunteer who is aiding the same.
14. Michigan state parks remain open for day use, subject to any reductions in services and specific closures that, in the judgment of the director of the Department of Natural Resources, are necessary to minimize large gatherings and to prevent the spread of COVID-19.
15. Rules governing face coverings.
 - (a) Except as provided in subsection (b) of this section, any individual able to medically tolerate a face covering must wear a covering over his or her nose and mouth—such as a homemade mask, scarf, bandana, or handkerchief—when in any enclosed public space.
 - (b) An individual may be required to temporarily remove a face covering upon entering an enclosed public space for identification purposes. An individual may also remove a face covering while seated at a restaurant or bar.
 - (c) All businesses and operations whose workers perform in-person work must, at a minimum, provide non-medical grade face coverings to their workers.
 - (d) Supplies of N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders (e.g., police officers, fire fighters, paramedics), and other critical workers who interact with the public.
 - (e) The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to individuals who wear a face covering under this order.
16. Except as otherwise expressly stated in this order, nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior guidance, neither a place of religious worship nor its owner is subject to penalty under section 22 of this order for allowing religious worship at such place. No individual is subject to penalty under section 22 of this order for engaging in or traveling to engage in religious worship at a place of religious worship, or for violating section 15(a) of this order.
17. 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.
18. This order takes effect immediately, unless otherwise specified in this order, and

continues through May 28, 2020 at 11:59 pm.

19. Executive Order 2020-17, which imposed temporary requirements regarding the postponement of non-essential medical and dental procedures, is rescinded as of May 28, 2020 at 11:59 pm. Executive Order 2020-34, which imposed temporary requirements regarding the postponement of veterinary services, is rescinded as of May 28, 2020 at 11:59 pm. Outpatient health-care facilities, including veterinary offices, are subject to the workplace safety rules described in Executive Order 2020-97.
20. Executive Orders 2020-92 is rescinded. All references to that order in other executive orders, agency rules, letters of understanding, or other legal authorities shall be taken to refer to this order.
21. I will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, I will consider, among other things, (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.
22. 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: May 21 2020

Time: 9:49 am

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE

EXHIBIT 3



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE DIRECTIVE

No. 2020-6

To: State Department Directors and Autonomous Agency Heads
From: Governor Gretchen Whitmer
Date: May 18, 2020
Re: Creation of COVID-19 Office of Worker Safety and Instructions to Departments and Agencies on Worker Safeguards

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 23, 2020, I instructed residents to remain at home or in their places of residence to the maximum extent feasible. That approach has worked, and the number of new confirmed cases each day is dropping. Although the virus remains aggressive and persistent—on May 17, 2020, Michigan reported 51,142 confirmed cases and 4,891 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased.

We have now begun the process of gradually resuming in-person work and activities that were temporarily suspended under my prior orders. In so doing, however, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone.

In particular, businesses must do their part to guarantee that the resumption of activities does not contribute to the virus's spread. Many businesses have already implemented robust infection-control practices to protect their workers, their patrons, and their communities. But we can and must do more: no one should feel unsafe going to work.

Today, I released Executive Order 2020-91 identifying workplace rules for all businesses across the state. In conjunction with that order, and acting under sections 1 and 8 of article 5 of the Michigan Constitution of 1963, I direct the following:

1. Each department and agency with responsibility for enforcing workplace health-and-safety standards will monitor workplaces for compliance with the rules adopted in Executive Order 2020-91 and, as necessary, bring enforcement actions to ensure compliance.
2. As necessary, each department and agency with responsibility for enforcing workplace health-and-safety standards will issue guidance on the application of the rules adopted in Executive Order 2020-91, and in particular will provide detail on the additional infection-control standards, described under section 1(q) of Executive Order 2020-91, required across different types of workplaces.
3. The Director of the Department of Labor and Economic Opportunity (LEO) will appoint a Director of COVID-19 Workplace Safety to coordinate the state's efforts to monitor and enforce workplace safeguards. *See* E.R.O. 1996-1, §4(1) (effecting a Type II transfer of the power to establish and enforce workplace health standards to the director of the Department of Labor, now LEO); MCL 16.107 (authorizing the head of a department to “allocate and reallocate duties and functions to promote economic and efficient administration”).
4. Each department and agency with responsibility for enforcing workplace health-and-safety standards will publicly post citations of those employers that fail to follow the rules adopted in Executive Order 2020-91, and will consider establishing a process to remove those public postings for employers that have demonstrated to the department's or agency's satisfaction that they have cured past violations and come into compliance.

This directive is effective immediately and will remain in effect until further notice. I extend my sincere appreciation for your assistance in implementing this directive and for the continued hard work of state employees as we respond to this public health emergency.



Gretchen Whitmer
Governor

EXHIBIT 4



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-59

Temporary requirement to suspend activities that are not necessary to sustain or protect life

Rescission of Executive Order 2020-42

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, 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 is 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, and then extended that order through April 30, 2020, with Executive Order 2020-42. The orders limited gatherings and travel, and required all workers who are not necessary to sustain or protect life to stay home.

The measures put in place by Executive Orders 2020-21 and 2020-42 have been effective: the number of new confirmed cases each day has started to drop. Although the virus remains aggressive and persistent—on April 23, 2020, Michigan reported 35,291 confirmed cases and 2,977 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. We can now start the process of gradually resuming in-person work and activities that were temporarily suspended under my prior orders. But in doing so, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone. Accordingly, with this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-42, amend their scope, and extend their duration to May 15, 2020, unless modified earlier. With this order, Executive Order 2020-42 is rescinded.

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

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.
2. Subject to the exceptions in section 7 of this order, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.
3. All individuals who leave their home or place of residence must adhere to 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.
4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life, to conduct minimum basic operations, or to perform a resumed activity within the meaning of this order.
 - (a) For purposes of this order, workers who are necessary to sustain or protect life are defined as “critical infrastructure workers,” as described in sections 8 and 9 of this order.

- (b) For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in section 11 of this order.

- (c) Workers who perform resumed activities are defined in section 10 of this order.

5. Businesses and operations that employ critical infrastructure workers or workers who perform resumed activities may continue in-person operations, subject to the following conditions:

- (a) Consistent with sections 8, 9, and 10 of this order, businesses and operations must determine which of their workers are critical infrastructure workers or workers who perform resumed activities and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work. Businesses and operations need not designate:

- (1) Workers in health care and public health.
- (2) Workers who perform necessary government activities, as described in section 6 of this order.
- (3) Workers and volunteers described in section 9(d) of this order.

- (b) In-person activities that are not necessary to sustain or protect life or to perform a resumed activity must be suspended.

- (c) Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in section 11 of this order. Stores that are open for in-

person sales must also adhere to the rules described in section 12 of this order.

- (d) Any business or operation that employs workers who perform resumed activities under section 10(a) of this order, but that does not sell necessary supplies, may sell any goods through remote sales via delivery or at the curbside. Such a business or operation, however, must otherwise remain closed to the public.

6. All in-person government activities at whatever level (state, county, or local) that are not necessary to sustain or protect life, or to support those businesses and operations that are maintaining in-person activities under this order, are suspended.

- (a) For purposes of this order, necessary government activities include activities performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders.
- (b) Such activities also include, but are not limited to, public transit, trash pick-up and disposal (including recycling and composting), activities necessary to manage and oversee elections, operations necessary to enable transactions that support the work of a business's or operation's critical infrastructure workers, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.
- (c) For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b) of this order. Workers performing such activities need not be designated.
- (d) Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 11 of this order.

7. Exceptions.

- (a) Individuals may leave their home or place of residence, and travel as necessary:
 - (1) To engage in outdoor recreational activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor recreational activity includes walking, hiking, running, cycling, boating, golfing, or other similar activity, as well as any comparable activity for those with limited mobility.
 - (2) To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 5(a) of this order may leave their home for work without being designated.)

- (3) To conduct minimum basic operations, as described in section 4(b) of this order, after being designated to perform such work by their employers.
- (4) To perform resumed activities, as described in section 10 of this order, after being designated to perform such work by their employers.
- (5) To perform necessary government activities, as described in section 6 of this order.
- (6) To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a medical emergency or to preserve the health and safety of a household or family member (including in-person procedures or veterinary services that, in accordance with a duly implemented non-essential procedure or veterinary services postponement plan, have not been postponed).
- (7) To obtain necessary services or supplies for themselves, their family or household members, their pets, and their motor vehicles.
 - (A) Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, individuals may leave the home or place of residence to purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the safety, sanitation, and basic operation of their residences or motor vehicles.
 - (B) Individuals may also leave the home to pick up or return a motor vehicle as permitted under section 9(i) of this order, or to have a motor vehicle or bicycle repaired or maintained.
 - (C) Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.
- (8) To pick up non-necessary supplies at the curbside from a store that must otherwise remain closed to the public.
- (9) To care for a family member or a family member's pet in another household.
- (10) To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.

- (11) To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
 - (12) To visit a child in out-of-home care, or to facilitate a visit between a parent and a child in out-of-home care, when there is agreement between the child placing agency, the parent, and the caregiver about a safe visitation plan, or when, failing such agreement, the individual secures an exception from the executive director of the Children's Services Agency.
 - (13) To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
 - (14) To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
 - (15) To attend a funeral, provided that no more than 10 people are in attendance.
 - (16) To attend a meeting of an addiction recovery mutual aid society, provided that no more than 10 people are in attendance.
- (b) Individuals may also travel:
- (1) To return to a home or place of residence from outside this state.
 - (2) To leave this state for a home or residence elsewhere.
 - (3) Between two residences in this state, including moving to a new residence.
 - (4) As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.
- (c) All other travel is prohibited, including all travel to vacation rentals.
8. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available [here](#)). This order does *not* adopt any subsequent guidance document released by this same agency.

Consistent with the March 19, 2020 guidance document, critical infrastructure workers include some workers in each of the following sectors:

- (a) Health care and public health.
- (b) Law enforcement, public safety, and first responders.
- (c) Food and agriculture.
- (d) Energy.
- (e) Water and wastewater.
- (f) Transportation and logistics.
- (g) Public works.
- (h) Communications and information technology, including news media.
- (i) Other community-based government operations and essential functions.
- (j) Critical manufacturing.
- (k) Hazardous materials.
- (l) Financial services.
- (m) Chemical supply chains and safety.
- (n) Defense industrial base.

9. For purposes of this order, critical infrastructure workers also include:

- (a) Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of critical infrastructure workers, workers who conduct minimum basic operations, workers who perform necessary government activities, or workers who perform resumed activities. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.
- (b) Workers at suppliers, distribution centers, or service providers, as described below.
 - (1) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business's or operation's critical infrastructure work may designate their workers as critical infrastructure workers, provided

that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

- (2) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in subprovision (1) of this subsection may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
 - (3) Consistent with the scope of work permitted under subprovision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
 - (4) Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.
- (c) Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.
 - (d) Workers and volunteers for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
 - (e) Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.
 - (f) Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences or motor vehicles, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.
 - (g) Workers at laundromats, coin laundries, and dry cleaners.

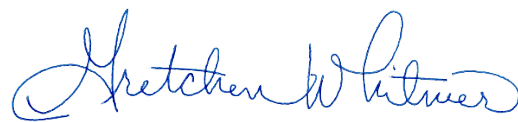
- (h) Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.
 - (i) Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.
10. For purposes of this order, workers who perform resumed activities are defined as follows:
- (a) Workers who process or fulfill remote orders for goods for delivery or curbside pick-up.
 - (b) Workers who perform bicycle maintenance or repair.
 - (c) Workers for garden stores, nurseries, and lawn care, pest control, and landscaping operations, subject to the enhanced social-distancing rules described in section 11(h) of this order.
 - (d) Maintenance workers and groundskeepers who are necessary to maintain the safety and sanitation of places of outdoor recreation not otherwise closed under Executive Order 2020-43 or any order that may follow from it, provided that the places and their workers do not provide goods, equipment, supplies, or services to individuals, and subject to the enhanced social-distancing rules described in section 11(h) of this order.
 - (e) Workers for moving or storage operations, subject to the enhanced social-distancing rules described in section 11(h) of this order.
11. Businesses, operations, and government agencies that remain open for in-person work must adhere to sound social distancing practices and measures, which include but are not limited to:
- (a) Developing a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available [here](#). Such plan must be available at company headquarters or the worksite.
 - (b) Restricting the number of workers present on premises to no more than is strictly necessary to perform the in-person work permitted under this order.
 - (c) Promoting remote work to the fullest extent possible.
 - (d) Keeping workers and patrons who are on premises at least six feet from one another to the maximum extent possible.

- (e) Increasing standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
 - (f) Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
 - (g) Any other social distancing practices and mitigation measures recommended by the CDC.
 - (h) For businesses and operations whose in-person work is permitted under sections 10(c) through 10(e) of this order, the following additional measures must also be taken:
 - (1) Barring gatherings of any size in which people cannot maintain six feet of distance from one another.
 - (2) Limiting in-person interaction with clients and patrons to the maximum extent possible, and barring any such interaction in which people cannot maintain six feet of distance from one another.
 - (3) Providing personal protective equipment such as gloves, goggles, face shields, and face masks as appropriate for the activity being performed.
 - (4) Adopting protocols to limit the sharing of tools and equipment to the maximum extent possible and to ensure frequent and thorough cleaning of tools, equipment, and frequently touched surfaces.
12. Any store that remains open for in-store sales under section 9(f) or section 10(c) of this order:
- (a) Must establish lines to regulate entry in accordance with subsection (b) of this section, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.
 - (b) Must adhere to the following restrictions:
 - (1) For stores of less than 50,000 square feet of customer floor space, must limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal.

- (2) For stores of more than 50,000 square feet, must:
 - (A) Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space.
 - (B) 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 women, and those with chronic conditions like heart disease, diabetes, and lung disease.
 - (3) The director of the Department of Health and Human Services is authorized to issue an emergency order varying the capacity limits described in this subsection as necessary to protect the public health.
 - (c) May continue to sell goods other than necessary supplies if the sale of such goods is in the ordinary course of business.
 - (d) Must consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.
13. No one shall rent a short-term vacation property except as necessary to assist in housing a health care professional aiding in the response to the COVID-19 pandemic or a volunteer who is aiding the same.
14. Michigan state parks remain open for day use, subject to any reductions in services and specific closures that, in the judgment of the director of the Department of Natural Resources, are necessary to minimize large gatherings and to prevent the spread of COVID-19.
15. Effective on April 26, 2020 at 11:59 pm:
- (a) Any individual able to medically tolerate a face covering must wear a covering over his or her nose and mouth—such as a homemade mask, scarf, bandana, or handkerchief—when in any enclosed public space.
 - (b) All businesses and operations whose workers perform in-person work must, at a minimum, provide non-medical grade face coverings to their workers.
 - (c) Supplies of N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders (e.g., police officers, fire fighters, paramedics), and other critical workers who interact with the public.
 - (d) The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to persons who wear a mask under this order.

16. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior guidance, neither a place of religious worship nor its owner is subject to penalty under section 20 of this order for allowing religious worship at such place. No individual is subject to penalty under section 20 of this order for violating section 15(a) of this order.
17. 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.
18. This order takes effect immediately, unless otherwise specified in this order, and continues through May 15, 2020 at 11:59 pm. Executive Order 2020-42 is rescinded. All references to that order in other executive orders, agency rules, letters of understanding, or other legal authorities shall be taken to refer to this order.
19. I will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, I will consider, among other things, (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.
20. 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: April 24, 2020

Time: 11:00 am

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE

EXHIBIT 5



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-70

Temporary requirement to suspend activities that are not necessary to sustain or protect life

Rescission of Executive Order 2020-59

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 weeks that followed, 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.

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, 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 is 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 and 2020-59, 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 Executive Orders 2020-21, 2020-42, and 2020-59 have been effective: the number of new confirmed cases each day has started to drop. Although the virus remains aggressive and persistent—on April 30, 2020, Michigan reported 41,379 confirmed cases and 3,789 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. We can now start the process of gradually resuming in-person work and activities that were temporarily suspended under my prior orders. In so doing, however, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone.

Accordingly, with this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-59 and amend their scope. With Executive Order 2020-59, I ordered that certain previously suspended work and activities could resume, based on an evaluation of public health metrics and an assessment of the statewide risks and benefits. That evaluation remains ongoing, and based upon it, I find that we will soon be positioned to allow another segment of previously suspended work to resume. This work is permitted to resume on May 7, 2020, and includes construction, real-estate activities, and work that is traditionally and primarily performed outdoors. This work, like the resumed activities allowed under Executive Order 2020-59, will be subject to stringent precautionary measures. This partial and incremental reopening will allow my public health team to evaluate the effects of allowing these activities to resume, to assess the capacity of the health care system to respond adequately to any increases in infections, and to prepare for any increase in patients presenting to a health-care facility or provider. With this order, Executive Order 2020-59 is rescinded. This order will remain in effect until May 15, 2020.

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

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.
2. Subject to the exceptions in section 7 of this order, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any

number of people occurring among persons not part of a single household are prohibited.

3. All individuals who leave their home or place of residence must adhere to 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.
4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life, to conduct minimum basic operations, or to perform a resumed activity within the meaning of this order.
 - (a) For purposes of this order, workers who are necessary to sustain or protect life are defined as “critical infrastructure workers,” as described in sections 8 and 9 of this order.
 - (b) For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in section 11 of this order.

- (c) Workers who perform resumed activities are defined in section 10 of this order.
5. Businesses and operations that employ critical infrastructure workers or workers who perform resumed activities may continue in-person operations, subject to the following conditions:
 - (a) Consistent with sections 8, 9, and 10 of this order, businesses and operations must determine which of their workers are critical infrastructure workers or workers who perform resumed activities and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave

the home or place of residence for work. Businesses and operations need not designate:

- (1) Workers in health care and public health.
 - (2) Workers who perform necessary government activities, as described in section 6 of this order.
 - (3) Workers and volunteers described in section 9(d) of this order.
- (b) In-person activities that are not necessary to sustain or protect life or to perform a resumed activity must be suspended.
 - (c) Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in section 11 of this order. Stores that are open for in-person sales must also adhere to the rules described in section 12 of this order.
 - (d) Any business or operation that employs workers who perform resumed activities under section 10(a) of this order, but that does not sell necessary supplies, may sell any goods through remote sales via delivery or at the curbside. Such a business or operation, however, must otherwise remain closed to the public.
6. All in-person government activities at whatever level (state, county, or local) are suspended unless:
- (a) They are performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders, as defined in sections 8 and 9 of this order.
 - (b) They are performed by workers who are permitted to resume work under section 10 of this order.
 - (c) They are necessary to support the activities of workers described in sections 8, 9, and 10 of this order, or to enable transactions that support businesses or operations that employ such workers.
 - (d) They involve public transit, trash pick-up and disposal (including recycling and composting), the management and oversight of elections, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.
 - (e) For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b) of this order. Workers performing such activities need not be designated.

- (f) Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 11 of this order.

7. Exceptions.

- (a) Individuals may leave their home or place of residence, and travel as necessary:
 - (1) To engage in outdoor recreational activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor recreational activity includes walking, hiking, running, cycling, boating, golfing, or other similar activity, as well as any comparable activity for those with limited mobility.
 - (2) To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 5(a) of this order may leave their home for work without being designated.)
 - (3) To conduct minimum basic operations, as described in section 4(b) of this order, after being designated to perform such work by their employers.
 - (4) To perform resumed activities, as described in section 10 of this order, after being designated to perform such work by their employers.
 - (5) To perform necessary government activities, as described in section 6 of this order.
 - (6) To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a medical emergency or to preserve the health and safety of a household or family member (including in-person procedures or veterinary services that, in accordance with a duly implemented non-essential procedure or veterinary services postponement plan, have not been postponed).
 - (7) To obtain necessary services or supplies for themselves, their family or household members, their pets, and their motor vehicles.
 - (A) Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, individuals may leave the home or place of residence to purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the

safety, sanitation, and basic operation of their residences or motor vehicles.

- (B) Individuals may also leave the home to pick up or return a motor vehicle as permitted under section 9(i) of this order, or to have a motor vehicle or bicycle repaired or maintained.
 - (C) Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.
- (8) To pick up non-necessary supplies at the curbside from a store that must otherwise remain closed to the public.
 - (9) To care for a family member or a family member's pet in another household.
 - (10) To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.
 - (11) To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
 - (12) To visit a child in out-of-home care, or to facilitate a visit between a parent and a child in out-of-home care, when there is agreement between the child placing agency, the parent, and the caregiver about a safe visitation plan, or when, failing such agreement, the individual secures an exception from the executive director of the Children's Services Agency.
 - (13) To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
 - (14) To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
 - (15) To attend a funeral, provided that no more than 10 people are in attendance.
 - (16) To attend a meeting of an addiction recovery mutual aid society, provided that no more than 10 people are in attendance.
 - (17) To view a real-estate listing by appointment, as permitted under section 10(h) of this order.

- (b) Individuals may also travel:
 - (1) To return to a home or place of residence from outside this state.
 - (2) To leave this state for a home or residence elsewhere.
 - (3) Between two residences in this state, including moving to a new residence.
 - (4) As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.
 - (c) All other travel is prohibited, including all travel to vacation rentals.
8. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available [here](#)). This order does *not* adopt any subsequent guidance document released by this same agency.

Consistent with the March 19, 2020 guidance document, critical infrastructure workers include some workers in each of the following sectors:

- (a) Health care and public health.
- (b) Law enforcement, public safety, and first responders.
- (c) Food and agriculture.
- (d) Energy.
- (e) Water and wastewater.
- (f) Transportation and logistics.
- (g) Public works.
- (h) Communications and information technology, including news media.
- (i) Other community-based government operations and essential functions.
- (j) Critical manufacturing.
- (k) Hazardous materials.
- (l) Financial services.
- (m) Chemical supply chains and safety.

(n) Defense industrial base.

9. For purposes of this order, critical infrastructure workers also include:

(a) Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of critical infrastructure workers, workers who conduct minimum basic operations, workers who perform necessary government activities, or workers who perform resumed activities. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.

(b) Workers at suppliers, distribution centers, or service providers, as described below.

(1) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business's or operation's critical infrastructure work may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

(2) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in subprovision (1) of this subsection may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

(3) Consistent with the scope of work permitted under subprovision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

(4) Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.

(c) Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.

(d) Workers and volunteers for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy

individuals, individuals who need assistance as a result of this emergency, and people with disabilities.

- (e) Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.
 - (f) Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences or motor vehicles, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.
 - (g) Workers at laundromats, coin laundries, and dry cleaners.
 - (h) Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.
 - (i) Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.
10. For purposes of this order, workers who perform resumed activities are defined as follows:
- (a) Workers who process or fulfill remote orders for goods for delivery or curbside pick-up.
 - (b) Workers who perform bicycle maintenance or repair.
 - (c) Workers for garden stores, nurseries, and lawn care, pest control, and landscaping operations, subject to the enhanced social-distancing rules described in section 11(h) of this order.
 - (d) Maintenance workers and groundskeepers who are necessary to maintain the safety and sanitation of places of outdoor recreation not otherwise closed under Executive Order 2020-69 or any order that may follow from it, provided that the places and their workers do not provide goods, equipment, supplies, or services to individuals, and subject to the enhanced social-distancing rules described in section 11(h) of this order.
 - (e) Workers for moving or storage operations, subject to the enhanced social-distancing rules described in section 11(h) of this order.
 - (f) Effective at 12:01 am on May 7, 2020, and subject to the enhanced social-distancing rules described in section 11(h) of this order, workers who perform

work that is traditionally and primarily performed outdoors, including but not limited to forestry workers, outdoor power equipment technicians, parking enforcement workers, and similar workers.

- (g) Effective at 12:01 am on May 7, 2020, workers in the construction industry, including workers in the building trades (plumbers, electricians, HVAC technicians, and similar workers), subject to the enhanced social-distancing rules described in section 11(i) of this order.
- (h) Effective at 12:01 am on May 7, 2020, workers in the real-estate industry, including agents, appraisers, brokers, inspectors, surveyors, and registers of deeds, provided that:
 - (1) Any showings, inspections, appraisals, photography or videography, or final walk-throughs must be performed by appointment and must be limited to no more than four people on the premises at any one time. No in-person open houses are permitted.
 - (2) Private showings may only be arranged for owner-occupied homes, vacant homes, vacant land, commercial property, and industrial property.
- (i) Effective at 12:01 am on May 7, 2020, workers necessary to the manufacture of goods that support workplace modification to forestall the spread of COVID-19 infections.

11. Businesses, operations, and government agencies that remain open for in-person work must, at a minimum:

- (a) Develop a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available [here](#). Such plan must be available at company headquarters or the worksite.
- (b) Restrict the number of workers present on premises to no more than is strictly necessary to perform the in-person work permitted under this order.
- (c) Promote remote work to the fullest extent possible.
- (d) Keep workers and patrons who are on premises at least six feet from one another to the maximum extent possible.
- (e) Increase standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.

- (f) Adopt policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
- (g) Adopt any other social distancing practices and mitigation measures recommended by the CDC.
- (h) Businesses or operations whose in-person work is permitted under sections 10(c) through 10(f) of this order must also:
 - (1) Prohibit gatherings of any size in which people cannot maintain six feet of distance from one another.
 - (2) Limit in-person interaction with clients and patrons to the maximum extent possible, and barring any such interaction in which people cannot maintain six feet of distance from one another.
 - (3) Provide personal protective equipment such as gloves, goggles, face shields, and face masks as appropriate for the activity being performed.
 - (4) Adopt protocols to limit the sharing of tools and equipment to the maximum extent possible and to ensure frequent and thorough cleaning of tools, equipment, and frequently touched surfaces.
- (i) Businesses or operations in the construction industry must also:
 - (1) Adhere to all of the provisions in subsection (h) of this section.
 - (2) Designate a site-specific supervisor to monitor and oversee the implementation of COVID-19 control strategies developed under subsection (a) of this section. The supervisor must remain on-site at all times during activities. An on-site worker may be designated to perform the supervisory role.
 - (3) Conduct a daily entry screening protocol for workers and visitors entering the worksite, including a questionnaire covering symptoms and exposure to people with possible COVID-19, together with, if possible, a temperature screening.
 - (4) Create dedicated entry point(s) at every worksite, if possible, for daily screening as provided in subprovision (3) of this subsection, or in the alternative issue stickers or other indicators to workers to show that they received a screening before entering the worksite that day.
 - (5) Require face shields or masks to be worn when workers cannot consistently maintain six feet of separation from other workers.

- (6) Provide instructions for the distribution of personal protective equipment and designate on-site locations for soiled masks.
- (7) Encourage or require the use of work gloves, as appropriate, to prevent skin contact with contaminated surfaces.
- (8) Identify choke points and high-risk areas where workers must stand near one another (such as hallways, hoists and elevators, break areas, water stations, and buses) and control their access and use (including through physical barriers) so that social distancing is maintained.
- (9) Ensure there are sufficient hand-washing or hand-sanitizing stations at the worksite to enable easy access by workers.
- (10) Notify contractors (if a subcontractor) or owners (if a contractor) of any confirmed COVID-19 cases among workers at the worksite.
- (11) Restrict unnecessary movement between project sites.
- (12) Create protocols for minimizing personal contact upon delivery of materials to the worksite.

12. Any store that remains open for in-store sales under section 9(f) or section 10(c) of this order:

- (a) Must establish lines to regulate entry in accordance with subsection (b) of this section, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.
- (b) Must adhere to the following restrictions:
 - (1) For stores of less than 50,000 square feet of customer floor space, must limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal.
 - (2) For stores of more than 50,000 square feet, must:
 - (A) Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space.
 - (B) 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 women, and those with chronic conditions like heart disease, diabetes, and lung disease.

- (3) The director of the Department of Health and Human Services is authorized to issue an emergency order varying the capacity limits described in this subsection as necessary to protect the public health.
 - (c) May continue to sell goods other than necessary supplies if the sale of such goods is in the ordinary course of business.
 - (d) Must consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.
13. No one shall rent a short-term vacation property except as necessary to assist in housing a health care professional aiding in the response to the COVID-19 pandemic or a volunteer who is aiding the same.
14. Michigan state parks remain open for day use, subject to any reductions in services and specific closures that, in the judgment of the director of the Department of Natural Resources, are necessary to minimize large gatherings and to prevent the spread of COVID-19.
15. Rules governing face coverings.
- (a) Any individual able to medically tolerate a face covering must wear a covering over his or her nose and mouth—such as a homemade mask, scarf, bandana, or handkerchief—when in any enclosed public space.
 - (b) All businesses and operations whose workers perform in-person work must, at a minimum, provide non-medical grade face coverings to their workers.
 - (c) Supplies of N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders (e.g., police officers, fire fighters, paramedics), and other critical workers who interact with the public.
 - (d) The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to individuals who wear a face covering under this order.
16. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior guidance, neither a place of religious worship nor its owner is subject to penalty under section 20 of this order for allowing religious worship at such place. No individual is subject to penalty under section 20 of this order for violating section 15(a) of this order.

17. 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.
18. This order takes effect immediately, unless otherwise specified in this order, and continues through May 15, 2020 at 11:59 pm. Executive Order 2020-59 is rescinded. All references to that order in other executive orders, agency rules, letters of understanding, or other legal authorities shall be taken to refer to this order.
19. I will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, I will consider, among other things, (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.
20. 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: May 1, 2020

Time: 2:49 pm



GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE