

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30005
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

May 4, 2020

Re: Executive Orders 2020-69 & 2020-70

Dear Colleagues:

I am writing to clarify that, regardless of what you may have heard, Executive Order 2020-69 (temporary restrictions on the use of places of public accommodation) and Executive Order 2020-70 (temporary requirement to suspend activities that are not necessary to sustain or protect life) are valid and enforceable.

As you are aware, on April 30, 2020, Governor Whitmer issued executive orders under the Emergency Management Act and the Emergency Powers of Governor Act regarding the declared states of disaster and emergency in Michigan. In Executive Order 2020-66, the Governor terminated the states of disaster and emergency that had been previously declared under the EMA, and then, in Executive Order 2020-68, reissued a declaration of states of disaster and emergency under the EMA. A third order, Executive Order 2020-67, reiterated that a state of emergency remains declared under the EPGA.

Subsequently, the Governor issued two orders that have been the subject of debate—Executive Order 2020-69 and Executive Order 2020-70. Executive Order 2020-69 rescinded Executive Order 2020-43, but again placed temporary restrictions on the use of places of public accommodation. Executive Order 2020-70 rescinded Executive Order 2020-59, but again temporarily suspended various activities that are not necessary to sustain or protect life.

After these most recent actions, numerous legislators, and other officials, began to publicly question the validity of the Governor's declarations under the EMA, and consequently, the enforceability of Executive Order 2020-69 and Executive Order 2020-70. Such commentary has created confusion among law enforcement officials tasked with enforcing the orders. In light of this confusion, as the chief law enforcement officer for the State of Michigan, I carefully reviewed the issue and offer the following guidance.

Executive Order 2020-69 and Executive Order 2020-70 were issued by the Governor under *both* the EPGA and the EMA.

The EPGA authorizes the Governor, following the declaration of an emergency, to:

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).]

The legislature has deemed this to be a “sufficiently broad power of action in the exercise of the police power of the state to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster.” MCL 10.32. In addition, the provisions of the EPGA are to “be broadly construed to effectuate this purpose.” *Id.*

Here, as mentioned, the Governor has declared a state of emergency under the EPGA, and Executive Order 2020-69 and Executive Order 2020-70 were issued following that declaration. Therefore, to be valid under the EPGA, the orders must be “reasonable orders” that the governor “considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1). In promulgating Executive Order 2020-69 and Executive Order 2020-70, the Governor specifically stated that she considered the restrictions imposed by those orders to be “reasonable and necessary” to mitigate the spread of COVID-19 and protect the public health across the State of Michigan. See Executive Order 2020-69, p 1-2; Executive Order 2020-70, p 1-2. I agree with that assessment.

COVID-19 has created a public health crisis of unprecedented gravity in our lifetime. Responding to, and stemming the spread of, the virus is paramount to all our well-being. To date, the most effective means to contain an infectious pandemic is to keep people away from each other. In promulgating Executive Order 2020-69 and Executive Order 2020-70, the Governor has done just that by placing restrictions on certain activities to limit social interactions. The absence of these restrictions would open gateways for the virus to reach every family and social network in every part of the State.

Consequently, the restrictions in Executive Order 2020-69 and Executive Order 2020-70 bear a real and substantial relationship to securing the public health, and they are reasonable. Further, although some restrictions on social interactions have been judiciously loosened by the Governor, the restrictions in Executive Order 2020-69 and Executive Order 2020-70 remain necessary to protect the lives of all Michiganders and bring the emergency created by COVID-19 in Michigan under control. As a result, Executive Order 2020-69 and Executive Order 2020-70 are valid and enforceable under the EPGA. Given that these orders are a valid exercise of the Governor’s authority pursuant to the EPGA, the speculation

Page 3
May 4, 2020

related to the EMA is of no moment and should not create any confusion as to the enforceability of these orders.

As always, we appreciate your continued assistance in the enforcement of Executive Orders 2020-69 and 2020-70.

Sincerely,

A handwritten signature in blue ink that reads "Dana Nessel". The signature is written in a cursive, flowing style.

Dana Nessel
Attorney General