

## REPEAL EMERGENCY POWERS OF THE GOVERNOR ACT

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<http://www.house.mi.gov/hfa>

**Proposed Initiated Law**  
**Placed before the Legislature by Petition**  
**By Unlock Michigan**  
**Complete to 7-20-21**

Analysis available at  
<http://www.legislature.mi.gov>

### ***ISSUE BEFORE THE LEGISLATURE:***

On July 13, 2021, the Michigan Board of State Canvassers certified the initiative petition filed by the ballot question committee Unlock Michigan. The legislature received the initiative on July 14.

Under section 9 of Article II of the State Constitution of 1963, “Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature.” In the case of the Unlock Michigan petition, it appears the legislature has through August 22 to act. The Senate passed the initiative on July 15, 2021.<sup>1</sup>

If the legislature enacts the initiative, it will become law without requiring the governor’s approval. If the legislature rejects or does not act on the initiative, it will go before the voters on the November 2022 ballot. The legislature also has the option of proposing a different law on the same subject (an “alternative measure”), which, if approved by roll call vote, would appear on the ballot alongside the Unlock Michigan initiative. (In this circumstance, if both measures were approved by the voters, the one with the most votes would become law.)

An initiative submitted to and approved by the voters takes effect 10 days after the official declaration of the vote. It is not subject to veto by the governor, and it cannot be amended or repealed by the legislature without a three-fourths majority in each house.

### ***THE CONTENT OF THE PROPOSED INITIATED LAW:***

The initiative would repeal 1945 PA 302, commonly called the emergency powers of the governor act.

That act authorizes the governor to proclaim a state of emergency, and designate the area involved, during times of a public crisis, disaster, or emergency, either on his or her own or at the request of a mayor, a sheriff, or the director of the Department of State Police. After making such a declaration, the governor can promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation under control, except those that involve the taking of lawfully possessed firearms, ammunition, or other weapons. An order, rule, or regulation can specify its violation to be a misdemeanor. The

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<sup>1</sup> The Senate passed the initiative without providing for its immediate effect. A law enacted without immediate effect takes effect on the 91st day after the legislature adjourns sine die to end the legislative session. This typically means that the law takes effect in late March of the year after it was passed.

orders, rules, and regulations can be amended by the governor and end when the declared state of emergency ends.

On October 2, 2020, in a 4–3 opinion, the Michigan Supreme Court ruled that 1945 PA 302 is an unconstitutional delegation of legislative power.<sup>2</sup>

The initiative would repeal 1945 PA 302.

MCL 10.31 to 10.33 (repealed)

***FISCAL IMPACT:***

The initiative would have no fiscal impact on the state or local units of government.

***POSITIONS:***

The sponsor of the initiative is Unlock Michigan.

An opponent of the initiative is Keep Michigan Safe.

Legislative Analyst: Rick Yuille  
Fiscal Analyst: Ben Gielczyk

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

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<sup>2</sup> The governor’s declarations of a state of emergency in response to the COVID-19 pandemic, and the executive orders issued under them, were primarily based on two acts: 1945 PA 302 and the Emergency Management Act. Each act authorizes the governor to proclaim a state of emergency and issue orders responding to the emergency. 1945 PA 302 provides that these orders are effective until the state of emergency ends. Under the Emergency Management Act, a state of emergency must be terminated after 28 days unless the legislature approves an extension. The court ruled 1945 PA 302 to be an unconstitutional delegation of legislative power. Because the legislature had extended the state of emergency under the Emergency Management Act to April 30, 2020, but did not extend it past that time, the court also ruled that the governor had no authority to declare a state of emergency or issue emergency orders under that act after that date.