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Initiated Legislation (as enacted)

PUBLIC ACT 77 of 2021

Date Completed: 9-1-21

CONTENT

Public Act 77 of 2021, initiated by petition and adopted by the Legislature, repeals Public Act (PA) 302 of 1945, which authorizes the Governor to proclaim a state of emergency and prescribes the governor's powers and duties under the Act.

Specifically, PA 302 allows the Governor to proclaim a state of emergency and designate the area involved during times of great public crisis, disaster, rioting, catastrophe, or similar public emergency and to promulgate reasonable orders, rules, and regulations as the Governor considers necessary to protect life or property or to bring the emergency situation under control. The Act specifies that the orders, rules, and regulations may include providing for the control of traffic and for the control of places of amusement and assembly and of persons on public streets and thoroughfares, among other things. The Act also specifies that a violation of an order, rule, and regulation is punishable as a misdemeanor if the order, rule, or regulation states that the violation constitutes such.

The initiated law repeals PA 302 of 1945.

The initiated law will take effect on the 91st day after the Legislature adjourns sine die.

MCL 10.31-10.33 (repeal)

BACKGROUND

Constitutionality of Public Act 302

On March 10, 2020, in response to the coronavirus disease 2019 (COVID-19) pandemic, Governor Gretchen Whitmer issued Executive Order 2020-4 to declare a state of emergency. Governor Whitmer cited the Emergency Management Act (EMA) and PA 302 of 1945 as authority for the issuance of this initial executive order and subsequent executive orders to implement various measures in response to COVID-19 in Michigan.

On May 12, 2020, four medical providers filed a suit in the United States District Court for the Western District of Michigan against Governor Whitmer and other defendants challenging the executive orders, specifically Executive Order 2020-17, which prohibited healthcare providers from performing nonessential services. The plaintiffs argued that the Governor did not have the authority to issue the executive orders under Public Act 302 and the EMA. On May 28, 2020, the District Court filed a notice of hearing regarding certification of two issues to the Michigan Supreme Court: 1) whether the Governor had the authority to issue or renew executive orders under PA 302 or the EMA after April 30, 2020, and 2) whether Public Act 302 and/or the EMA violated the Separation of Powers and/or the Nondelegation Clauses of the Michigan Constitution. Following a hearing on the issue of certification, the court ordered the certification of the two questions and stayed the case until the Michigan Supreme Court resolved the State law questions.¹

¹ *Midwest Institute of Health, PLLC v. Whitmer*, No. 1:20-cv-414 (W.D. Mich. June 16, 2020).

On October 2, 2020, the Michigan Supreme Court issued its ruling on the certified questions.² Concerning PA 302, the Court held that the Governor did not have the authority to exercise emergency powers under PA 302 because that Act delegated legislative power to the executive branch in violation of the Michigan Constitution.

Initiation of Legislation

Under Article II, Section 9 of the State Constitution, the people of the State have the power to propose laws through the initiative. Invoking the initiative requires petitions signed by at least 8% of the total vote cast for all candidates for Governor at the previous gubernatorial election. If sufficient signatures are obtained, the Legislature must enact or reject the proposed law without change within 40 session days after receiving the petition. If the Legislature does not enact the proposed law within that time period, the law must be submitted to the people for approval or rejection at the next general election. An initiated law is not subject to the Governor's veto power.

In July 2020, a group called Unlock Michigan submitted to the Secretary of State an initiative petition form to repeal PA 302, and the Board of State Canvassers approved the form. In October 2020, signed petitions were submitted to the Bureau of Elections, in the Department of State. In April 2021, the four-member Board of State Canvassers voted two-to-two on whether to certify the petition because of a dispute regarding the collection of signatures. The deadlock precluded certification, and Unlock Michigan filed a lawsuit against the Board. On June 11, 2021, the Michigan Supreme Court held that the Board had a duty to certify the petition and directed the Board to do so. A group called Keep Michigan Safe filed a motion for reconsideration following the Court's ruling, but on July 9, 2021, the Court reaffirmed its initial ruling. On July 13, 2021, the Board voted three-to-zero (with one member absent) to certify the petition.

The Michigan House of Representatives and Michigan Senate received the petition from the Secretary of State on July 14. The Senate adopted it on July 15 and the House of Representatives adopted it on July 21. The petition then was filed with the Secretary of State; however, because immediate effect was not approved, the initiated law will not take effect until the 91st day after the Legislature adjourns sine die.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The initiated law will have no fiscal impact on State or local government. Expenditures made in response to a declared state emergency of course depend upon the existence of a declared emergency, and were permitted not only under the PA 302 of 1945, but under Emergency Management Act and under permissive language in certain budget bills, such as under Article 12, Section 704 of PA 166 of 2020, the fiscal year 2020-21 appropriations for the Department of State Police.

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² *In re* Certified Question from the US District Court, Western District of Michigan (*Midwest Institute of Health, PLLC v. Governor*), Docket No. 161492.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.