

# Legislative Analysis



## COVID-19 TESTING SERVICES

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**House Bill 6293 (H-2) as reported**  
**Sponsor: Rep. Graham Filler**  
**Committee: Government Operations**  
**Complete to 10-13-20**

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

## SUMMARY:

House Bill 6293 would amend the Public Health Code to allow certain qualified licensees and other individuals to perform COVID-19 testing services. The bill would sunset (repeal itself) on June 30, 2021.

Under the bill, notwithstanding any other provision of the code, a *qualified licensee* could administer **COVID-19 testing services** as described below.

*Qualified licensee* would mean any of the following licensed under the appropriate provisions of Article 15 (Occupations) of the code:

- A pharmacist.
- An advanced practice registered nurse.
- A registered professional nurse.
- A licensed practical nurse.
- A physician's assistant.

**COVID-19 testing services** would mean the collection of specimens from individuals to be tested for **COVID-19** by a laboratory or entity meeting the requirements described in the bill.

**COVID-19** would mean coronavirus disease 2019 (COVID-19).

A qualified licensee could order a laboratory test classified by the US Food and Drug Administration (FDA) as moderate or high complexity to administer COVID-19 testing services. Provisions of Article 15 that relate to scope of practice, supervision, and delegation would not apply to a qualified licensee to the extent necessary to allow him or her to administer COVID-19 testing services.

A qualified licensee administering COVID-19 testing services under the bill would have to do all of the following:

- Ensure that an individual volunteering or working at the location where COVID-19 testing services are administered, including the qualified licensee, receives the necessary training and uses personal protective equipment when collecting specimens to be tested for COVID-19.
- Ensure that a collected specimen is tested by a laboratory or entity in accordance with federal law, that any test classified by the FDA as high complexity is tested at a laboratory that is certified under 42 CFR part 493, and that any test classified by the

FDA as waived is tested at a laboratory that holds a certificate of waiver under 42 CFR part 493.

- Comply with any reporting requirements of the Department of Health and Human Services (DHHS).
- Ensure that a collected specimen is securely stored pending retrieval by a laboratory or entity described above.
- Refer an individual receiving a test for COVID-19 under the bill to an appropriate health professional licensee or registrant for follow-up care.

An individual not licensed, registered, or otherwise authorized to engage in a health profession under Article 15 could perform a task or function associated with COVID-19 testing services if he or she was trained to perform the task or function and was supervised by a qualified licensee or a representative of a local health department who was trained to perform that supervision. These tasks or functions could include:

- Screening an individual receiving a test for COVID-19 under the bill.
- Observing self-collection of a saliva sample or self-swabbing by an individual receiving a test for COVID-19 under the bill.
- Temporarily storing a specimen pending its transmittal to a laboratory or entity described below.
- Reporting a COVID-19 test result to DHHS.
- Referring an individual receiving a test for COVID-19 under the bill to an appropriate licensee or registrant for follow-up care.

The bill would provide that a qualified licensee or other individual who performed a task or function associated with COVID-19 testing services in accordance with the above provisions has the same rights and immunities and must be treated in the same manner as personnel of a disaster relief force under section 11(1)(c) of the Emergency Management Act. That section provides for immunity from civil liability for personal injury or property damage caused by an person's act or omission in providing disaster relief services, except for an act or omission that is willful or gross negligence.

Proposed MCL 333.16113

## **BACKGROUND:**

On October 2, 2020, in a 4–3 opinion, the Michigan Supreme Court ruled that the governor did not have the authority to declare a state of emergency or issue emergency orders after April 30, 2020.<sup>1</sup>

The governor's declarations of a state of emergency, and the executive orders issued under them, were primarily based on two acts: 1945 PA 302 (commonly known as the emergency powers of the governor act) and the Emergency Management Act (1976 PA 390).

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

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<sup>1</sup> <https://courts.michigan.gov/Courts/MichiganSupremeCourt/Clerks/Documents/2020-2021/161492/In%20re%20Certified%20Questions-OP.pdf>

emergency ends. Under the Emergency Management Act, a state of emergency or disaster must be terminated after 28 days unless the legislature approves an extension.

In its opinion, the Supreme 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 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.

Although some COVID-19-related orders can be effective under other authority (the Public Health Code, for example), the governor's orders issued after April 30 have no continuing legal effect. In a court filing, the governor said that over 30 executive orders in effect on October 2 were based on authority granted under 1945 PA 302.

This bill would largely put into law the provisions of one of them, EO 2020-104.<sup>2</sup>

#### **FISCAL IMPACT:**

The bill would not have a significant fiscal impact on the state or local units of government.

#### **POSITIONS:**

The Michigan Health and Hospital Association indicated support for the bill. (10-13-20)

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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> Executive Order 2020-104, issued May 26, 2020 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-104.pdf>).