



Executive Order #72 and the Public Health Emergency Related to COVID-19

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On March 12, 2020, Governor Tony Evers signed [Executive Order #72](#) in response to the COVID-19 coronavirus pandemic, declaring a state of emergency relating to public health and designating the Department of Health Services (DHS) as the lead agency to respond to this emergency. This issue brief describes the Governor's statutory authority to declare a public health emergency, the provisions of Executive Order #72, and the legal authority used to issue subsequent emergency orders.

STATUTORY AUTHORITY TO DECLARE A PUBLIC HEALTH EMERGENCY

If the Governor determines that a public health emergency exists, he or she may issue an executive order declaring a state of emergency relating to public health for the State of Wisconsin or any portion of the state and may designate DHS as the lead state agency to respond to that emergency. A state of emergency declared by the Governor may not exceed 60 days, except that it may be extended by joint resolution of the Legislature. The executive order may also be revoked at any time by the Governor by executive order or by the Legislature by joint resolution. [[s. 323.10, Stats.](#)]

EXECUTIVE ORDER #72

In Executive Order #72, Governor Tony Evers declared that a state of emergency relating to public health exists in the State of Wisconsin resulting from the spread of a novel coronavirus, COVID-19.¹ Specifically, the executive order does all of the following:

- Proclaims that a public health emergency, as defined in [s. 323.02 \(16\), Stats.](#), exists for the State of Wisconsin.
- Designates DHS as the lead agency to respond to the public health emergency.
- Directs DHS to take all necessary and appropriate measures to prevent and respond to incidents of COVID-19 in the State.
- Suspends the provisions of any administrative rule, if the DHS Secretary determines that compliance with that rule would prevent, hinder, or delay necessary actions to respond to the emergency and increase the health threat.
- Authorizes the Adjutant General to activate the Wisconsin National Guard as necessary and appropriate to assist in the State's response to the public health emergency.
- Directs all state agencies to assist as appropriate in the State's ongoing response to the public health emergency.
- Proclaims that a period of abnormal economic disruption, as defined in [s. 100.305 \(1\) \(d\), Stats.](#), exists in the State of Wisconsin.
- Directs the Department of Agriculture, Trade, and Consumer Protection to enforce prohibitions against price gauging during an emergency, as authorized under [s. 100.305, Stats.](#), and [ch. ATCP 106, Wis. Adm. Code.](#)

EMERGENCY ORDERS ADDRESSING COVID-19 PANDEMIC

The Evers administration has taken numerous actions in response to the COVID-19 pandemic. Some of these actions have been in the form of emergency orders issued since the Governor declared a state of emergency relating to public health in Executive Order #72. Among other actions, these orders have closed schools statewide, suspended numerous administrative rules, and required that all persons stay at home and nonessential businesses cease operations, with certain exceptions.

In taking certain actions, the Governor has cited legal authority that only applies during a state of emergency. For example, the Governor's actions in Emergency Orders [2](#), [3](#), [7](#), [9](#), [10](#), [11](#), [13](#), [17](#), and [18](#) are contingent on his authority to suspend administrative rules during a state of emergency. [See [s. 323.12 \(4\) \(d\), Stats.](#)] In Executive Order #72, the Governor cited a statute that permits him to authorize the Adjutant General to activate the Wisconsin National Guard as necessary and appropriate during a state of emergency relating to public health. [See [s. 321.39, Stats.](#)] However, it could be argued that the Wisconsin Constitution grants him this authority, independent from any authority granted by statute, as commander in chief of the state's military and naval forces. [See [Wis. Const. art. V. s. 4.](#)]

Other types of action taken by the Evers administration are not dependent on an existing declaration of a state of emergency. For example, Emergency Orders [1](#), [4](#), [5](#), [6](#), and [8](#) were issued under DHS's authority to "close schools and forbid public gatherings in schools, churches, and other places to control outbreaks and epidemics."² [[s. 252.02 \(3\), Stats.](#)] Emergency Order [12](#)³, the "Safer at Home Order," was issued under that same authority and DHS's authority to "authorize and implement all emergency measures necessary to control communicable diseases." [[s. 252.03 \(6\), Stats.](#)] Similarly, in Executive Order #72, the Governor's certification that a period of abnormal economic disruption exists in the state is not contingent on the existence of a public health emergency. [See [s. 100.305, Stats.](#)]

Finally, other orders have been issued jointly by the Governor and DHS. For example, Emergency Orders [14](#), [15](#), and [16](#), relating, respectively, to extending certain transportation permits, a temporary ban on evictions and foreclosures, and health care provider credentialing, cite both the Governor's statutory authority under a declaration of emergency and DHS' authority to control communicable diseases. Additionally, Emergency Orders 14 and 16 also cite as authority the Governor's powers and duties under Article V, Section 4 of the Wisconsin Constitution.⁴

¹ The public health emergency declared by Governor Evers in Executive Order #72 will expire on May 11, 2020, if the Legislature does not approve an extension.

² A copy of each emergency order may be located in the [Administrative Register](#) published for the week in which the order was issued or at <https://evers.wi.gov/Pages/Newsroom/Executive-Orders.aspx>.

³ For more information regarding Emergency Order #12, see Legislative Council Information Memorandum IM-2020-02, *Constitutional Considerations Relating to Emergency Order #12, "Safer at Home,"* available at <http://lc.legis.wisconsin.gov/>.

⁴ For more information regarding state and local officials' authority in a public health emergency, see Legislative Council Information Memorandum IM-2020-01, *Authority of Public Health Officials During a Public Health Emergency*, available at <http://lc.legis.wisconsin.gov/>.