

# State of Minnesota Executive Order Enforcement Tools

Below is an outline of the State of Minnesota's tools, including those of the Attorney General's office, when it comes to enforcing Executive Order 20-99 and related prior and successor orders. Attorney General Keith Ellison released the following statement:

"I'm asking all businesses affected by executive orders to comply with them voluntarily — which the vast majority of Minnesota businesses are already doing. I'm also asking businesses that are considering reopening in defiance of executive orders not to do it. You're putting people at risk. People will get sick and die because of you. Not only from COVID-19: if someone has a heart attack or a stroke or a car accident and dies because they can't get an ICU bed that's being used by someone who got COVID at your establishment, or got it from someone who got it at your establishment, that death is also on you.

"I know COVID-19 is an economic crisis as well as a health crisis. I'm glad the Legislature passed a relief package for businesses and workers that Governor Walz is signing today. Congress is finally close to approving a relief package as well. And hopefully vaccines will be widely available soon. But right now, Minnesota's ICU and non-ICU hospital beds are 90 percent full. Right now, bars and restaurants reopening for on-premises indoor service is the wrong way to solve the economic crisis: it's dangerous and puts neighbors, loved ones, and whole communities at risk.

"My office and our partners at the Departments of Health, Labor and Industry, and Public Safety are working together to keep Minnesotans safe and help businesses and workers weather this crisis. The vast majority of businesses that we have worked with are complying with executive orders because they understand their responsibility to keep people safe and care about their customers, employees, and communities. Using our enforcement tools to force compliance on the few that are not complying or are threatening not to comply is a last resort, but we will use them when we need to."

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## State of Minnesota enforcement authority and penalties for violations of Executive Orders

### Attorney General's Office

#### Enforcement authority

- Executive Order 20-99 grants the following enforcement authority to the Attorney General: "... the Attorney General, as well as city and county attorneys, may investigate and seek any civil relief available pursuant to Minnesota Statutes 2020, section 8.31, for violations or threatened violations of this Executive Order,

including but not limited to injunctive relief, civil penalties in an amount to be determined by the court, up to \$25,000 per occurrence, costs of investigation and reasonable attorney's fees and costs, and other equitable relief as determined by the court in accordance with section 8.31."

- Under Minnesota Statutes section 8.31, the Attorney General "... shall investigate violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade" (subd. 1). It provides that "[o]n becoming satisfied that any of those laws has been or is being violated, or is about to be violated, the attorney general shall be entitled, on behalf of the state; (a) to sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation without abridging the penalties provided by law; and (b) to sue for and recover for the state, from any person who is found to have violated any of the laws referred to in subdivision 1, a civil penalty, in an amount to be determined by the court, not in excess of \$25,000" (subd. 3). It also provides that the Attorney General can obtain equitable relief, which includes restitution and/or disgorgement and its costs and reasonable attorney's fees for violations (subd. 3a).

## Enforcement actions under 20-99

The Attorney General's office has directly brought two enforcement actions under Executive Order 20-99.

- Boardwalk Bar and Grill. On Dec. 11, the Attorney General's office filed a lawsuit against this East Grand Forks, Minn., establishment for operating on-premises dining in violation of Executive Order 20-99. The office won a temporary restraining order the same day.

The Attorney General's office was prepared earlier this week to file a motion for contempt of court for Boardwalk's remaining open for on-premises dining even after it was served with the temporary restraining order. After Boardwalk retained counsel, it represented to the office that it would comply with the temporary restraining order. The office is actively monitoring Boardwalk's compliance with the temporary restraining order: if it disobeys its requirements, the office will promptly seek appropriate remedies from the court.

- Plainview Wellness Center. On November 25, the Attorney General's office filed a lawsuit against this Plainview, Minn., establishment for remaining open to customers in violation of Executive Order 20-99. The office won a temporary injunction on Dec. 2.
- In addition to the direct enforcement actions brought above under Executive Order 20-99, the Attorney General's office also represents the Minnesota Department of Health in its Dec. 11 lawsuit against Havens Garden in Lynd, Minn., for continuing to operate on-premises dining and entertainment in violation of the order. MDH won a temporary restraining order against the establishment on Dec. 12.

## Attorney General's approach: Winning voluntary compliance

- Of the more than 850 establishments and events that the Attorney General's office and its partners in the Departments of Health, Labor and Industry, and Public Safety — as well as local partners like regional health agencies, city and county attorneys, and local law enforcement agencies — have worked with in the past

several months, they have succeeded in winning voluntary compliance with the executive orders in all but five instances: the three lawsuits mentioned above and two others from earlier in 2020.

## Already tested in court

- Fourteen cases have been filed in state or federal court challenging one or more executive orders, and three proposed petitions to recall Governor Walz were submitted. To date, the Attorney General's office has successfully opposed every motion for emergency injunctive relief, won every motion to dismiss, and obtained the dismissal of all three proposed recall petitions. This work has ensured that the Governor's emergency executive orders remain valid and enforceable.

## Minnesota Department of Health

### Enforcement authority

The Minnesota Department of Health's Environmental Health Division is responsible for regulating restaurants among other facilities. The division uses the following tools, escalating through the list depending on each situation.

- Documenting inspection findings and writing orders for correction on inspection reports. This tool was used as the starting point for businesses violating previous EO requirements such as requiring the use of face coverings by employees or lack of a COVID plan but will not be used for EO 20-99 violations.
- 10-day letter – Functions as a notice of violation that outlines the alleged violations and warns of the risk of fines up to \$10,000 and licensure action.
- Cease and Desist – An order for an establishment to close for up to 72 hours to gain compliance with an imminent public health threat. For businesses that continue to violate or indicate to us an intention to violate after the C&D is lifted, MDH can seek an injunction or temporary restraining order to extend the duration of the closure order.
- Administrative Penalty Order, monetary penalties and license suspension – Businesses that continue to violate EO requirements may be assessed a monetary penalty to a maximum of \$10,000 and the license to operate may be suspended for an indeterminate amount of time.
- License revocation – Continued failure to comply may result in escalating the license suspension to a revocation.

### Enforcement actions under 20-99

- Haven's Garden. On Dec. 11, MDH filed a lawsuit against Havens Garden in Lynd, Minn., for continuing to operate on-premises dining and entertainment in violation of a cease and desist order. MDH won a temporary restraining order against the establishment on Dec. 12.
- MDH has issued two additional cease and desist orders for violations of EO 20-99.

# Minnesota Department of Public Safety

## Enforcement authority

The Minnesota Department of Public Safety's Alcohol and Gambling Enforcement Division is responsible for regulating licensed liquor establishments to ensure compliance with the state liquor laws and rules. The division uses the following tools, escalating through the list depending on each situation.

- Any liquor licensee found to be in violation of EO-99 may be issued a misdemeanor citation for the violation.
- A second violation shall result in a 60-day liquor license suspension.
- A third or subsequent violation shall result in a five-year revocation of the liquor license and the subsequent revocation of the establishment's retail identification card (buyer's card).

## Enforcement actions under 20-99

The Minnesota Department of Public Safety Alcohol and Gambling Enforcement division has issued a notice of liquor license suspension to the Boardwalk Bar & Grill LLC in East Grand Forks, Minn., for continuing to violate Executive Order 20-99.

# Minnesota Department of Labor and Industry

## Enforcement authority

- Minnesota OSHA (MNOSHA) has the authority to enforce MNOSHA Standards and MDH and CDC Guidelines that assure safe and healthful working conditions for Minnesota workers through on-site inspections and issuing citations for noncompliance.
- MNOSHA may issue citations, civil penalties, or closure orders to places of employment with unsafe or unhealthy conditions, and MNOSHA may penalize businesses that retaliate against employees who raise safety and health concerns.

## Enforcement actions

For the time period starting in March through November 2020, MNOSHA has issued 131 citations for violations observed during COVID-19 related inspections.

## Criminal penalty authority

- Executive Order 20-99 provides that "[a]n individual who willfully violates this Executive Order is guilty of a misdemeanor and upon conviction must be punished by a fine not to exceed \$1,000 or by imprisonment for not more than 90 days."

- Executive Order 20-99 also provides that “[a]ny business owner, manager, or supervisor who requires or encourages any of their employees, contractors, vendors, volunteers, or interns to violate this Executive Order is guilty of a gross misdemeanor and upon conviction must be punished by a fine not to exceed \$3,000 or by imprisonment for not more than a year.”
- Authority to charge and prosecute criminal violations of the order lies with law enforcement and city or county attorneys.