



# STATE OF UTAH

GARY R. HERBERT  
GOVERNOR

OFFICE OF THE GOVERNOR  
SALT LAKE CITY, UTAH  
84114-2220

SPENCER J. COX  
LIEUTENANT GOVERNOR

April 23, 2020

Speaker Brad R. Wilson  
President Stuart Adams  
Legislative Management Committee  
210 House Building  
State Capitol Complex  
Salt Lake City, Utah 84114

Dear Speaker Wilson and President Adams,

I hereby submit to the Legislative Management Committee the enclosed report prepared by my office with the Department of Public Safety, regarding the suspension of enforcement of statutes under Utah Code § 53-2a-209(4) to address the ongoing state of emergency caused by novel coronavirus disease (Covid-19) and declared in Executive Order 2020-1, issued on March 6, 2020.

Sincerely,

Gary R. Herbert  
Governor

Enclosures

## REPORT

**To:** Legislative Management Committee  
**From:** Governor's Office; Department of Public Safety  
**Date:** April 23, 2020  
**Re:** Suspension of enforcement of statutes under Utah Code § 53-2a-209(4)

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### Introduction

On March 6, 2020, Governor Gary R. Herbert issued Executive Order 2020-1, declaring a state of emergency in response to the growing global outbreak of novel coronavirus disease 2019 (Covid-19). Covid-19 is an infectious disease caused by a virus that spreads easily between individuals, may result in serious illness or death, and therefore poses a significant risk to the health and wellbeing of Utah citizens.

Utah Code § 53-2a-209(4) vests in the governor the authority to suspend the enforcement of a statute of the Utah Code during a state of emergency if the governor determines that suspending the enforcement of the statute is directly related to and necessary to address the state of emergency, subject to certain conditions. To exercise this authority, the governor must, among other things, report a suspension of enforcement of a statute as "required by Section 53-2a-210." § 53-2a-209(4)(a)(vi). However, as discussed in Part II, section 53-2a-210 does not require a report of a suspension of enforcement under subsection 53-2a-209(4). Nevertheless, this report is provided in the spirit of goodwill and cooperation so that the Legislature may review each suspension of enforcement ordered during the Covid-19 state of emergency and make recommendations as intended by subsection 53-2a-210(3).

This report proceeds in two parts. Part I identifies each executive order and each statute whose enforcement has been suspended in order to facilitate the State's response to address the ongoing Covid-19 state of emergency, and to protect the public health, safety, and wellbeing of the citizens of Utah. Part II identifies issues in the statutory reporting requirements regarding the suspension of enforcement of statutes under subsection 53-2a-209(4) and recommends that the Legislature take action to address.

#### **I. Statutory Suspensions Relating to the Covid-19 State of Emergency Declared in Executive Order 2020-1**

In order to address the Covid-19 state of emergency declared in Executive Order 2020-1, the following executive orders were issued suspending the enforcement of statutes pursuant to Utah Code § 53-2a-209(4):

<b>Executive Order No.</b>	<b>Affected Utah Code Provisions</b>	<b>Effective Date</b>	<b>Termination Date</b>	<b>Description</b>
2020-1	§ 20A-9-407(3)(a) § 20A-9-408(3)(b)	03/12/2020	06/30/2020*	Permits a potential candidate for an elected office at a general election to file a declaration of candidacy by agent.
2020-5	§ 52-4-202(3)(a)(i)(A) § 52-4-207(2) § 52-4-207(3)(a)(ii) § 52-4-207(3)(c) § 52-4-207(3)(d) § 52-4-207(3)(e)	03/18/2020	06/30/2020*	Permits public hearings governed by the Open and Public Meetings Act, Utah Code § 52-4-101, <i>et seq.</i> , to be conducted electronically, subject to notice requirements.
2020-7	§ 26-60-102(8)(b)(ii) § 26-60-103(2)(a)	03/25/2020	06/30/2020*	Permits greater access to telehealth services by suspending certain security and privacy requirements. Requires telehealth providers to disclose non-compliance with certain federal acts, and to take reasonable care to ensure security and privacy.
2020-8	§ 20A-7-204(4)(b) § 20A-7-205(2) § 20A-9-408(9)(d)(i) § 20A-9-408(9)(d)(ii)	03/26/2020	06/30/2020*	Permits a potential candidate for a primary election to gather signatures by electronic means, by suspending certain signature packet binding and verification requirements.
2020-9	§ 49-11-1204(2) § 49-11-1204(4)(b) § 49-11-1206(1)(b) § 49-11-1206(3) § 49-11-1207(1)	03/30/2020	06/30/2020*	Permits certain retirees to become temporarily reemployed to ensure adequate staffing of critical government functions during the Covid-19 state of

				emergency.
2020-10	§ 63N-3-103(1)(b)	03/30/2020	06/30/2020*	Permits the Governor's Office of Economic Development to access up to 100% of available, unencumbered funds of the Industrial Assistance Account to support the Utah Leads Together Small Business Bridge Loan Program.
2020-11	Title 78B, Ch. 6, Pt. 8, Forcible Entry and Detainer	04/01/2020	04/02/2020	Temporarily suspends enforcement of evictions proceedings against certain individuals who suffered wage or job loss due to Covid-19. Rescinded and replaced by Executive Order 2020-13.
2020-12	§ 20A-7-603(1)(b) § 20A-7-603(2)(b) § 20A-7-603(3) § 20A-7-604(4)(b) § 20A-7-604(4)(c) § 20A-7-605(2) § 20A-7-606(2) § 20A-7-606(1)(a) § 20A-7-606(3)(c) § 20A-7-613(3) § 20A-7-613(4)	04/01/2020	04/03/2020	Permits a local referendum sponsor to distribute and gather referendum packets and physically signed signature sheets electronically, by suspending signature packet binding and verification requirements. Amended and superseded by Executive Order 2020-14.
2020-13	Title 78B, Ch. 6, Pt. 8, Forcible Entry and Detainer	04/01/2020	05/15/2020, 11:59 PM	Temporarily suspends enforcement of evictions proceedings against certain individuals who suffered wage or job loss due to Covid-19. Provides guidance on the scope of the order. Rescinds and

				replaces Executive Order 2020-11.
2020-14	§ 20A-7-603(1)(b) § 20A-7-603(2)(b) § 20A-7-603(3) § 20A-7-604(4)(b) § 20A-7-604(4)(c) § 20A-7-605(2) § 20A-7-606(2) § 20A-7-606(1)(a) § 20A-7-606(3)(c) § 20A-7-613(3) § 20A-7-613(4)	04/03/2020	06/30/2020*	Permits a local referendum sponsor to distribute and gather referendum packets and physically signed signature sheets electronically, by suspending signature packet binding and verification requirements. Clarifies requirements regarding content of electronically circulated referendum packets. Amends and supersedes Executive Order 2020-12.
* This order terminates upon the termination of Executive Order 2020-1. The effective date of Executive Order 2020-1 was extended until June 30, 2020, by H.J.R. Res. 24, 63rd Leg., Gen. Sess. (Utah 2020).				

## II. Issues Regarding the Statutory Requirement to Report to the Legislative Management Committee

As discussed above, the governor must comply with certain conditions in order to exercise this authority to suspend the enforcement of a statute under Utah Code § 53-2a-209(4). Among other things, the governor must report a suspension of enforcement of a statute as “required by Section 53-2a-210.” § 53-2a-209(4)(a)(vi). However, Utah Code § 53-2a-210 (“Section 210”) presents a number of issues that would benefit from legislative action.

First, Section 210 does not contemplate a report of a suspension of enforcement under subsection 53-2a-209(4). Rather, Section 210 requires the governor and the Department of Public Safety (DPS) to report “a suspension of the enforcement of a statute under Subsection 53-2a-209(3).” § 53-2a-210(1)(b) (emphasis added).<sup>1</sup> However, subsection 53-2a-209(3) authorizes the suspension of, not statutes, but state agency rules and regulations: “The governor may suspend the provisions of any order, rule, or regulation of any state agency, if the strict compliance with the provisions of the order, rule, or regulation would substantially prevent,

<sup>1</sup> Section 210 also requires the governor and DPS to report “a suspension or modification of a statute or rule under Subsection 53-2a-204(1)(j),” which relates to temporary housing and is not relevant at this time because no suspension has been ordered under subsection 53-2a-204(1)(j). See § 53-2a-210(1)(a).

hinder, or delay necessary action in coping with the emergency or disaster.” Consequently, because Section 210 specifically requires a report of the suspension of enforcement of a statute but does not identify subsection 53-2a-209(4), no duty to report arises out of a suspension ordered under either subsection 53-2a-209(3) or -209(4).

Second, Section 210 does not clearly contemplate if or when a report should be made in several circumstances. Subsection 53-2a-210(2) states that the governor and DPS shall report “on or before the sooner of: (a) the day on which the governor calls the legislature into session; or (b) seven days after the date the governor declares the state of emergency to which the suspension of modification relates.” Uncertainties regarding the duty to report arise in circumstances when a suspension of enforcement occurs after the first seven days after a state of emergency is declared and:

- (1) the governor does not call the legislature into session during the state of emergency;
- (2) the governor calls the legislature into session after the state of emergency has ended; or
- (3) the legislature calls itself into special session under Article VI, Section 2 of the Utah Constitution.

Third, it is unclear what role DPS plays in the reporting process. Section 210 provides that both “[t]he governor and the Department of Public Safety shall report” the suspension of enforcement of a statute. Utah Code § 53-2a-210(1). However, it is unclear whether Section 210 contemplates a joint report or separate reports, and if Section 210 contemplates separate reports, what distinguishes the contents of the separate reports.

### **Conclusion**

Although state law as currently written does not require Governor Hebert or DPS to report the suspension of enforcement of a statute under Utah Code § 53-2a-209(4) during a state of emergency, Part I of this report is provided in order to allow the Legislature to review the suspensions ordered during the Covid-19 state of emergency and to provide recommendations as intended by subsection 53-2a-210(3). Furthermore, the Governor recommends that the Legislature take action to amend and clarify the reporting requirements of section 53-2a-210 in order to address the issues identified in Part II.