

# Utah State and Local Emergency Powers

In Response to COVID-19 | March 9, 2020

## Background

Coronavirus disease 2019 (COVID-19) is a respiratory illness that can spread between people who are in close contact with one another.<sup>1</sup> The virus that causes COVID-19 is a novel coronavirus that was first identified in December 2019 in Wuhan, China. COVID-19 has since spread to 90 locations internationally, including the United States.

On March 6, 2020, in preparation for the arrival of COVID-19 in Utah, the governor declared a state of emergency<sup>ii</sup> and the Salt Lake County mayor declared a local emergency.

## Declaring a State or Local Emergency

An epidemic like COVID-19 triggers authority for the governor and local chief executive to call a state of emergency or local emergency, respectively. Declaring an emergency increases the governor's and local chief executive's powers, including by enabling them to order agencies to respond.

### Governor – State of Emergency<sup>iii</sup>

The governor may declare a state of emergency by executive order “if the governor finds a disaster has occurred or the occurrence or threat of a disaster is imminent in any area of the state.” Under the Emergency Management Act, “disaster” includes “natural phenomena,” which is defined to include an epidemic.

### Local Government – Local Emergency<sup>iv</sup>

A local government's chief executive may declare a local emergency by proclamation, which “constitutes an official recognition that a disaster situation exists within the affected municipality or county.”

### State of Emergency Time Period<sup>v</sup>

A state of emergency or a local emergency can be in effect for only 30 days. A state of emergency may be extended or terminated by the Legislature by joint

“**State of emergency**” means a condition in any part of this state that requires state government emergency assistance to supplement the local efforts of the affected political subdivision to save lives and to protect property, public health, welfare, or safety in the event of a disaster, or to avoid or reduce the threat of a disaster.

“**Local emergency**” means a condition in any municipality or county of the state which requires that emergency assistance be provided by the affected municipality or county or another political subdivision to save lives and protect property within its jurisdiction in response to a disaster, or to avoid or reduce the threat of a disaster.

Utah Code § 53-2a-102 and § 53-2a-208.

resolution; a local emergency may be terminated with the consent of a local governing body.

## State & Local Executive Power

### Shared Authority<sup>vi</sup>

When a state of emergency or local emergency is declared, the governor or the chief executive officer may:

- **Use Resources** – use resources as reasonably necessary to cope with a state of emergency.
- **Promulgate Orders and Rules** – employ measures and give direction to state and local officers and agencies, including promulgating orders, rules, and regulations.
- **Evacuate** – recommend and advise evacuations and routes, modes of transportation, and destinations in connection with evacuations. A person who refuses to comply with an order to evacuate or any other order issued in a state of an emergency or a local emergency is guilty of a class B misdemeanor.<sup>vii</sup>
- **Disaster Management** – control ingress and egress to and from a disaster area; recommend the occupancy or evacuation of premises in a disaster area.
- **Suspend Items for Evacuation** – suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles during an evacuation, except that restricting the lawful bearing of arms is prohibited.

## Governor's Authority

The following powers are unique to the governor in a state of emergency. The governor may:

- **Recommendations** – recommend to the Legislature other actions the governor considers necessary.
- **Commander-in-chief** – act as the commander in chief of the state's military forces in accordance with the Utah Constitution and statute.<sup>viii</sup>
- **Suspend orders, rules, or regulations** – suspend the provisions of any order, rule, or regulation of any state agency if compliance would prevent or delay necessary action required to cope with the emergency.<sup>ix</sup>
- **Time and Place of Legislative Session and Seat of Government**
  - If the governor declares a state of emergency and determines that the prescribed place of session is unsafe, the governor may change the place of session. The governor may declare an emergency temporary location for the seat of government until the Legislature establishes a new location by law or until the governor ends the emergency.<sup>x</sup>
  - The President of the Senate and Speaker of the House of Representatives shall convene the Legislature into session if, by poll, two-thirds of the members are in favor of convening because an emergency in the affairs of the State necessitates it.<sup>xi</sup>
- **Suspend statute** – by executive order and subject to reporting requirements, suspend the enforcement of a statute if:
  - suspending the enforcement is directly related and necessary to address the state of emergency; and
  - the governor acts in good faith and provides notice to the Speaker and President no later than 24 hours after suspending enforcement of the statute.<sup>xii</sup>
- **Federal Loan and Grant Application and Expenditure without Legislative Review** –
  - within limitations, apply to the federal government for a loan on behalf of a local government, and receive and disburse the amount of the loan.
  - apply for, accept, and expend a grant by the federal government to fund financial assistance that is necessary to meet expenses related to those adversely affected by the emergency.
- **Housing** –
  - enter into an agreement with any U.S. agency to occupy temporary housing units and make the units available to local governments;
  - help a local government acquire sites and utilities for temporary housing by passing through federal funds; and
  - by executive order, temporarily suspend or modify any public health, safety, zoning, transportation, or other requirement of a statute or administrative rule if doing so is essential to provide temporary housing.
- **Acquire Property** – purchase or lease public or private property for public use to meet the needs of an emergency.<sup>xiii</sup>
- **Interstate Compact or Agreements** – execute an interstate agreement or compact concerning matters relating to a disaster.<sup>xiv</sup>
- **Allotments to Agencies** – make one-time allotments to an agency within limits set by the Legislature for “unforeseeable emergencies.”<sup>xv</sup>
- **Agency Assistance** – The Highway Patrol and the Bureau of Criminal Identification shall assist the governor in a time of emergency.<sup>xvi</sup>

## Local Government Authority

The following powers are unique to the chief executive of a local government in a state or local emergency:

- Carry out measures ordered by the governor and, subject to limitations, take any additional measures deemed necessary.
- Enter into mutual-aid compacts with other local governments concerning matters involving cooperative disaster response and recovery assistance support.
- A chief executive may not take an action that is inconsistent with any order, rule, regulation, or action of the governor.<sup>xvii</sup>

## Public Health Response

### Public Health Emergency

If the Department of Health (Department) determines that a public health emergency exists, the department may—with the concurrence of the governor and the executive director or director's designee—issue a public health emergency order and mandate reporting under this section for a period of time as necessary to respond to the public health emergency. The public health emergency may not extend beyond 90 days without the governor's concurrence.<sup>xviii</sup>

When investigating diseases, the Department shall:

- **Identify** all individuals thought to have been exposed to the reported illness or condition;
- **Request information** from a healthcare provider concerning the case;
- **Close, evacuate, or decontaminate** any facility when the Department reasonably believes that the facility may endanger the public health due to the reported condition or illness; and
- **Destroy personal health information** about an individual collected by the department as a result of a report after the investigation has concluded or 180 days.<sup>xix</sup>

### Authority Related to Communicable Diseases<sup>xx</sup>

The Department is authorized to:

- **Cause of Epidemic** – investigate and control the causes of epidemic infections and communicable diseases.<sup>xxi</sup>
- **Detection of Infections** – provide for the detection, reporting, prevention, and control of communicable diseases and epidemic infections that may affect public health.
- **Quarantine** – require involuntary examination, treatment, quarantine, or isolation for potentially affected individuals.
- **Rulemaking** – make rules for local health departments.<sup>xxii</sup>

A healthcare provider is required to report to the Department within 24 hours any confirmed or

“**Public health emergency**” means an occurrence or imminent credible threat of an illness or health condition, caused by bioterrorism, **epidemic or pandemic disease**, or novel and highly fatal infectious agent or biological toxin, that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. Such illness or health condition includes an illness or health condition resulting from a natural disaster.

Utah Code § 26-23b-102.

suspected case of an illness or health condition caused by an epidemic or pandemic disease.<sup>xxiii</sup>

### Involuntary Examination, Treatment, Isolation, or Quarantine – Order of Restriction<sup>xxiv</sup>

The Department or a local health department (Department) can issue an **order of restriction**, which requires an individual infected or suspected to be infected with a communicable disease that poses a threat to the public health to submit to an examination, treatment, isolation, or quarantine.

An order of restriction should be for the shortest reasonable period of time necessary to protect the public health and use the least intrusive method of restriction that is reasonable. The order shall be in writing, through a verbal order may be issued temporarily under certain conditions.

If an individual refuses to consent to the Department's order of restriction, the Department may petition for judicial review. An individual is entitled to certain rights, including the right to notice, to be heard, and to be represented by counsel.

Pending issuance of a written order of restriction or judicial review of an order of restriction by the district court, an individual may be required to submit to involuntary examination, quarantine, isolation, or treatment in the individual's home, a hospital, or any other suitable facility.

## Local Health Departments<sup>xxv</sup>

- County local health departments enforce Department and local health department rules, regulations, and standards.
- A local health department has the authority to issue orders for involuntary examination, treatment, isolation, and quarantine as the local health department finds necessary.
- A local health department may create standards to prevent outbreaks and the spread of diseases. The standards may not conflict with federal law, state law, or Department rules, except that they may be more stringent under certain conditions.
- A local health department may, according to the statutes pertaining to and rules established by the Department:
  - establish, maintain, and enforce isolation and quarantine, and exercise physical control over property and over individuals as the local health department finds necessary for the protection of the public health;
  - close theaters, schools, and other public places and prohibit gatherings of people when necessary to protect the public health; and
  - investigate and expand local response to disease outbreaks.

## State of Emergency Powers Executed by Other Individuals and Entities

### Division of Emergency Management

The Division of Emergency Response Management plans for, responds to, and coordinates emergency efforts for the state.<sup>xxvi</sup> The director of the division is authorized to use funds to provide:

- transportation to and from a disaster;
- accommodations at a disaster scene; and
- emergency purchases of response equipment and supplies.

The director may not disburse funds to a local government unless the local government demonstrates that it is beyond its capability to respond and no other resources are available.<sup>xxvii</sup>

## Other Emergency Response Powers

- **Emergency Rulemaking** – An agency is excepted from normal rulemaking procedures if the procedures would cause an imminent peril to the public health, safety, or welfare.<sup>xxviii</sup>
- **Voting Accommodations** – The lieutenant governor may designate a method, time, or location for voting that is different than the method, time, or location described in this title. The lieutenant governor must notify the public of the change.<sup>xxix</sup>
- **Suspend the Sale of Alcohol** – After consultation with the governor, the DABC director shall determine whether an alcoholic product should not be sold, offered for sale, or otherwise furnished in a state-of-emergency area.<sup>xxx</sup>
- **Emergency Grants** – An agency need not seek legislative review or approval of grants if the governor has declared an emergency and the grant is donated to the agency to assist victims of the state of emergency.<sup>xxxi</sup>
- **Relocate Capital Improvement Funds** – If an emergency arises that creates an unforeseen and critical need for a capital improvement project, the State Building Board may reallocate capital improvement funds to address the project.<sup>xxxii</sup>
- **Department of Corrections** – The department may limit access to correctional facilities when the department or governor declares an emergency or when there is a riot or other disturbance.<sup>xxxiii</sup>
- **Higher Education Action on Non-routine Matters** – For the Institute of Higher Education Board of Trustees and Technical Colleges Board of Trustees, an executive committee may act on nonroutine matters only under extraordinary and emergency circumstances.<sup>xxxiv</sup>
- **Excessive Prices** – A person may not charge a consumer an excessive price for goods or services sold or provided during the time period for which a state of emergency declared by the governor or President of the United States exists within the emergency territory unless the cost of supplying the good or service is above average.<sup>xxxv</sup> The Division of Consumer Protection shall enforce this.

## Endnotes

<sup>i</sup> “What you need to know about COVID-19 Coronavirus Disease,” <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>. Centers for Disease Control, accessed March 8, 2020.

<sup>ii</sup> <https://governor.utah.gov/2020/03/06/gov-herbert-declares-state-of-emergency/>.

<sup>iii</sup> Utah Code § 53-2a-206.

<sup>iv</sup> Utah Code § 53-2a-208.

<sup>v</sup> Utah Code § 53-2a-206 and § 53-2a-208.

<sup>vi</sup> Utah Code § 53-2a-204 and § 53-2a-205.

<sup>vii</sup> Utah Code § 76-8-317.

<sup>viii</sup> Utah Code § 53-2a-206.

<sup>ix</sup> Utah Code § 53-2a-209.

<sup>x</sup> Utah Const. Art. VI, § 2(2); Utah Code § 53-2a-806 and Utah Code § 53-2a-812.

<sup>xi</sup> Utah Const. Art. VI, § 2(3)(a).

<sup>xii</sup> Utah Code § 53-2a-209.

<sup>xiii</sup> Utah Code § 53-2a-211.

<sup>xiv</sup> Utah Code § 53-2a-212.

<sup>xv</sup> Utah Code § 63A-3-104.

<sup>xvi</sup> Utah Code § 53-8-105.

<sup>xvii</sup> Utah Code § 53-2a-205.

<sup>xviii</sup> Utah Code § 26-23b-104.

<sup>xix</sup> Utah Code § 26-23b-108.

<sup>xx</sup> Utah Code § 26-6-3.

<sup>xxi</sup> Utah Code § 26-6-2. “**Epidemic** means the occurrence or outbreak in a community or region of cases of an illness clearly in excess of normal expectancy and derived from a common or propagated source. . . .”

<sup>xxii</sup> Utah Code § 26-1-5 and § 26-1-23.

<sup>xxiii</sup> Utah Code § 26-23b-103.

<sup>xxiv</sup> Utah Code §§ 26-6b-3 to -5.

<sup>xxv</sup> Utah Code §§ 26A-1-101 to -128.

<sup>xxvi</sup> Utah Code § 53-2a-104.

<sup>xxvii</sup> Utah Code § 53-2a-207.

<sup>xxviii</sup> Utah Code § 63G-3-304.

<sup>xxix</sup> Utah Code § 20A-1-308 and § 67-1a-2.

<sup>xxx</sup> Utah Code § 53-10-304.

<sup>xxxi</sup> Utah Code § 63J-7-102.

<sup>xxxii</sup> Utah Code § 63A-5-104.

<sup>xxxiii</sup> Utah Code § 64-13-17.

<sup>xxxiv</sup> Utah Code § 53B-2-104 and § 53B-2a-109.

<sup>xxxv</sup> Utah Code § 13-41-201 and § 13-41-202.