

## Part 2 Disaster Response and Recovery Act

### **53-2a-201 Title.**

This part is known as the "Disaster Response and Recovery Act."

Renumbered and Amended by Chapter 295, 2013 General Session

### **53-2a-202 Legislative findings -- Purpose.**

- (1) The Legislature finds that existing and increasing threats of the occurrence of destructive disasters resulting from attack, internal disturbance, natural phenomenon or technological hazard could greatly affect the health, safety, and welfare of the people of this state, and it is therefore necessary to grant to the governor of this state and its political subdivisions special emergency disaster authority.
- (2) It is the purpose of this act to assist the governor of this state and its political subdivisions to effectively provide emergency disaster response and recovery assistance in order to protect the lives and property of the people.

Amended by Chapter 258, 2015 General Session

### **53-2a-203 Definitions.**

- (1) "Chief executive officer" means:
  - (a) for a municipality:
    - (i) the mayor for a municipality operating under all forms of municipal government except the council-manager form of government; or
    - (ii) the city manager for a municipality operating under the council-manager form of government;
  - (b) for a county:
    - (i) the chair of the county commission for a county operating under the county commission or expanded county commission form of government;
    - (ii) the county executive officer for a county operating under the county-executive council form of government; or
    - (iii) the county manager for a county operating under the council-manager form of government; or
  - (c) for a special service district:
    - (i) the chief executive officer of the county or municipality that created the special service district if authority has not been delegated to an administrative control board as provided in Section 17D-1-301;
    - (ii) the chair of the administrative control board to which authority has been delegated as provided in Section 17D-1-301; or
    - (iii) the general manager or other officer or employee to whom authority has been delegated by the governing body of the special service district as provided in Section 17D-1-301; or
  - (d) for a local district:
    - (i) the chair of the board of trustees selected as provided in Section 17B-1-309; or
    - (ii) the general manager or other officer or employee to whom authority has been delegated by the board of trustees.

- (2) "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.
- (3) "Political subdivision" means a municipality, county, special service district, or local district.

Renumbered and Amended by Chapter 295, 2013 General Session

**53-2a-204 Authority of governor -- Federal assistance -- Fraud or willful misstatement in application for financial assistance -- Penalty.**

- (1) In addition to any other authorities conferred upon the governor, if the governor issues an executive order declaring a state of emergency, the governor may:
  - (a) utilize all available resources of state government as reasonably necessary to cope with a state of emergency;
  - (b) employ measures and give direction to state and local officers and agencies that are reasonable and necessary for the purpose of securing compliance with the provisions of this part and with orders, rules, and regulations made pursuant to this part;
  - (c) recommend and advise the evacuation of all or part of the population from any stricken or threatened area within the state if necessary for the preservation of life;
  - (d) recommend routes, modes of transportation, and destination in connection with evacuation;
  - (e) in connection with evacuation, suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, not to include the lawful bearing of arms;
  - (f) control ingress and egress to and from a disaster area, the movement of persons within the area, and recommend the occupancy or evacuation of premises in a disaster area;
  - (g) clear or remove from publicly or privately owned land or water debris or wreckage that is an immediate threat to public health, public safety, or private property, including allowing an employee of a state department or agency designated by the governor to enter upon private land or waters and perform any tasks necessary for the removal or clearance operation if the political subdivision, corporation, organization, or individual that is affected by the removal of the debris or wreckage:
    - (i) presents an unconditional authorization for removal of the debris or wreckage from private property; and
    - (ii) agrees to indemnify the state against any claim arising from the removal of the debris or wreckage;
  - (h) enter into agreement with any agency of the United States:
    - (i) for temporary housing units to be occupied by victims of a state of emergency or persons who assist victims of a state of emergency; and
    - (ii) to make the housing units described in Subsection (1)(h)(i) available to a political subdivision of this state;
  - (i) assist any political subdivision of this state to acquire sites and utilities necessary for temporary housing units described in Subsection (1)(h)(i) by passing through any funds made available to the governor by an agency of the United States for this purpose;
  - (j) subject to Sections 53-2a-209 and 53-2a-214, temporarily suspend or modify by executive order, during the state of emergency, any public health, safety, zoning, transportation, or other requirement of a statute or administrative rule within this state if such action is essential to provide temporary housing described in Subsection (1)(h)(i);
  - (k) upon determination that a political subdivision of the state will suffer a substantial loss of tax and other revenues because of a state of emergency and the political subdivision so affected

has demonstrated a need for financial assistance to perform its governmental functions, in accordance with Utah Constitution, Article XIV, Sections 3 and 4, and Section 10-8-6:

- (i) apply to the federal government for a loan on behalf of the political subdivision if the amount of the loan that the governor applies for does not exceed 25% of the annual operating budget of the political subdivision for the fiscal year in which the state of emergency occurs; and
  - (ii) receive and disburse the amount of the loan to the political subdivision;
  - (l) accept funds from the federal government and make grants to any political subdivision for the purpose of removing debris or wreckage from publicly owned land or water;
  - (m) upon determination that financial assistance is essential to meet expenses related to a state of emergency of individuals or families adversely affected by the state of emergency that cannot be sufficiently met from other means of assistance, apply for, accept, and expend a grant by the federal government to fund the financial assistance, subject to the terms and conditions imposed upon the grant;
  - (n) recommend to the Legislature other actions the governor considers to be necessary to address a state of emergency; or
  - (o) authorize the use of all water sources as necessary for fire suppression.
- (2) A person who fraudulently or willfully makes a misstatement of fact in connection with an application for financial assistance under this section shall, upon conviction of each offense, be subject to a fine of not more than \$5,000 or imprisonment for not more than one year, or both.
- (3) The division shall conduct a feasibility study regarding the establishment of an agreement with the United States Postal Service regarding the use of employees, resources, and assets within the Postal Service Network to provide the following services:
- (a) identify residential or commercial structures that have been damaged;
  - (b) identify persons who reside in a damaged area and the emergent medical or physical needs of those persons;
  - (c) help assess the damage to neighborhoods or communities; and
  - (d) any other activity that the division determines to be necessary to assist in responding to a declared disaster.
- (4) The division shall provide a report to the Business and Labor Interim Committee and the Law Enforcement and Criminal Justice Interim Committee regarding the feasibility study conducted under Subsection (3) no later than November 30, 2016.

Amended by Chapter 329, 2016 General Session

**53-2a-205 Authority of chief executive officers of political subdivisions -- Ordering of evacuations.**

- (1)
  - (a) In order to protect life and property when a state of emergency or local emergency has been declared, the chief executive officer of each political subdivision of the state is authorized to:
    - (i) carry out, in the chief executive officer's jurisdiction, the measures as may be ordered by the governor under this part; and
    - (ii) take any additional measures the chief executive officer may consider necessary, subject to the limitations and provisions of this part.
  - (b) The chief executive officer may not take an action that is inconsistent with any order, rule, regulation, or action of the governor.
- (2) When a state of emergency or local emergency is declared, the authority of the chief executive officer includes:

- (a) utilizing all available resources of the political subdivision as reasonably necessary to manage a state of emergency or local emergency;
  - (b) employing measures and giving direction to local officers and agencies which are reasonable and necessary for the purpose of securing compliance with the provisions of this part and with orders, rules, and regulations made under this part;
  - (c) if necessary for the preservation of life, issuing an order for the evacuation of all or part of the population from any stricken or threatened area within the political subdivision;
  - (d) recommending routes, modes of transportation, and destinations in relation to an evacuation;
  - (e) suspending or limiting the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles in relation to an evacuation, except that the chief executive officer may not restrict the lawful bearing of arms;
  - (f) controlling ingress and egress to and from a disaster area, controlling the movement of persons within a disaster area, and ordering the occupancy or evacuation of premises in a disaster area;
  - (g) clearing or removing debris or wreckage that may threaten public health, public safety, or private property from publicly or privately owned land or waters, except that where there is no immediate threat to public health or safety, the chief executive officer shall not exercise this authority in relation to privately owned land or waters unless:
    - (i) the owner authorizes the employees of designated local agencies to enter upon the private land or waters to perform any tasks necessary for the removal or clearance; and
    - (ii) the owner provides an unconditional authorization for removal of the debris or wreckage and agrees to indemnify the local and state government against any claim arising from the removal; and
  - (h) invoking the provisions of any mutual aid agreement entered into by the political subdivision.
- (3)
- (a) If the chief executive is unavailable to issue an order for evacuation under Subsection (2)(c), the chief law enforcement officer having jurisdiction for the area may issue an urgent order for evacuation, for a period not to exceed 36 hours, if the order is necessary for the preservation of life.
  - (b) The chief executive officer may ratify, modify, or revoke the chief law enforcement officer's order.
- (4) Notice of an order or the ratification, modification, or revocation of an order issued under this section shall be:
- (a) given to the persons within the jurisdiction by the most effective and reasonable means available; and
  - (b) filed in accordance with Subsection 53-2a-209(1).

Renumbered and Amended by Chapter 295, 2013 General Session

**53-2a-206 State of emergency -- Declaration -- Termination -- Commander in chief of military forces.**

- (1) A state of emergency may be declared by executive order of the governor if the governor finds a disaster has occurred or the occurrence or threat of a disaster is imminent in any area of the state in which state government assistance is required to supplement the response and recovery efforts of the affected political subdivision or political subdivisions.
- (2) A state of emergency shall continue until the governor finds the threat or danger has passed or the disaster reduced to the extent that emergency conditions no longer exist.

- (3) A state of emergency may not continue for longer than 30 days unless extended by joint resolution of the Legislature, which may also terminate a state of emergency by joint resolution at any time.
- (4) The governor shall issue an executive order ending the state of emergency on receipt of the Legislature's resolution.
- (5) An executive order described in this section shall state:
  - (a) the nature of the state of emergency;
  - (b) the area or areas threatened; and
  - (c) the conditions creating such an emergency or those conditions allowing termination of the state of emergency.
- (6) During the continuance of any state of emergency the governor is commander in chief of the military forces of the state in accordance with Utah Constitution Article VII, Section 4, and Title 39, Chapter 1, State Militia.

Renumbered and Amended by Chapter 295, 2013 General Session

**53-2a-207 Expenditures authorized by "state of emergency" declaration.**

- (1)
  - (a) The director may use funds authorized under this part to provide:
    - (i) transportation to and from the disaster scene;
    - (ii) accommodations at the disaster scene for prolonged incidents; and
    - (iii) emergency purchase of response equipment and supplies in direct support of a disaster.
  - (b) The commissioner may authorize the use of funds accrued under Title 53, Chapter 2a, Part 10, Energy Emergency Powers of the Governor Act, only if the governor declares a state of emergency as provided under this part.
- (2) These funds may not be allocated to a political subdivision unless the political subdivision has demonstrated that it is beyond its capability to respond to the disaster and that no other resources are available in sufficient amount to meet the disaster.

Renumbered and Amended by Chapter 295, 2013 General Session

**53-2a-208 Local emergency -- Declarations.**

- (1)
  - (a) A local emergency may be declared by proclamation of the chief executive officer of a municipality or county.
  - (b) A local emergency shall not be continued or renewed for a period in excess of 30 days except by or with the consent of the governing body of the municipality or county.
  - (c) Any order or proclamation declaring, continuing, or terminating a local emergency shall be filed promptly with the office of the clerk of the affected municipality or county.
- (2) A declaration of a local emergency:
  - (a) constitutes an official recognition that a disaster situation exists within the affected municipality or county;
  - (b) provides a legal basis for requesting and obtaining mutual aid or disaster assistance from other political subdivisions or from the state or federal government;
  - (c) activates the response and recovery aspects of any and all applicable local disaster emergency plans; and
  - (d) authorizes the furnishing of aid and assistance in relation to the proclamation.
- (3) A local emergency proclamation issued under this section shall state:

- (a) the nature of the local emergency;
  - (b) the area or areas that are affected or threatened; and
  - (c) the conditions which caused the emergency.
- (4) The emergency declaration process within the state shall be as follows:
- (a) a city, town, or metro township shall declare to the county;
  - (b) a county shall declare to the state;
  - (c) the state shall declare to the federal government; and
  - (d) a tribe, as defined in Section 23-13-12.5, shall declare as determined under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. Sec. 5121 et seq.
- (5) Nothing in this part affects:
- (a) the governor's authority to declare a state of emergency under Section 53-2a-206; or
  - (b) the duties, requests, reimbursements, or other actions taken by a political subdivision participating in the state-wide mutual aid system pursuant to Title 53, Chapter 2a, Part 3, Statewide Mutual Aid Act.

Amended by Chapter 352, 2015 General Session

**53-2a-209 Orders, rules, and regulations having force of law -- Filing requirements -- Suspension of state agency rules -- Suspension of enforcement of certain statutes during a state of emergency.**

- (1) All orders, rules, and regulations promulgated by the governor, a municipality, a county, or other agency authorized by this part to make orders, rules, and regulations, not in conflict with existing laws except as specifically provided in this section, shall have the full force and effect of law during the state of emergency.
- (2) A copy of the order, rule, or regulation promulgated under Subsection (1) shall be filed as soon as practicable with:
- (a) the Office of Administrative Rules, if issued by the governor or a state agency; or
  - (b) the office of the clerk of the municipality or county, if issued by the chief executive officer of a municipality or county.
- (3) 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, hinder, or delay necessary action in coping with the emergency or disaster.
- (4)
- (a) Except as provided in Subsection (4)(b) and subject to Subsections (4)(c) and (d), the governor may by executive order suspend the enforcement of a statute if:
    - (i) the governor declares a state of emergency in accordance with Section 53-2a-206;
    - (ii) the governor determines that suspending the enforcement of the statute is:
      - (A) directly related to the state of emergency described in Subsection (4)(a)(i); and
      - (B) necessary to address the state of emergency described in Subsection (4)(a)(i);
    - (iii) the executive order:
      - (A) describes how the suspension of the enforcement of the statute is:
        - (I) directly related to the state of emergency described in Subsection (4)(a)(i); and
        - (II) necessary to address the state of emergency described in Subsection (4)(a)(i); and
      - (B) provides the citation of the statute that is the subject of suspended enforcement;
    - (iv) the governor acts in good faith;
    - (v) the governor provides notice of the suspension of the enforcement of the statute to the speaker of the House of Representatives and the president of the Senate no later than 24 hours after suspending the enforcement of the statute; and

- (vi) the governor makes the report required by Section 53-2a-210.
- (b)
  - (i) Except as provided in Subsection (4)(b)(ii), the governor may not suspend the enforcement of a criminal penalty created in statute.
  - (ii) The governor may suspend the enforcement of a misdemeanor or infraction if:
    - (A) the misdemeanor or infraction relates to food, health, or transportation; and
    - (B) the requirements of Subsection (4)(a) are met.
- (c) A suspension described in this Subsection (4) terminates no later than the date the governor terminates the state of emergency in accordance with Section 53-2a-206 to which the suspension relates.
- (d) The governor:
  - (i) shall provide the notice required by Subsection (4)(a)(v) using the best available method under the circumstances as determined by the governor;
  - (ii) may provide the notice required by Subsection (4)(a)(v) in electronic format; and
  - (iii) shall provide the notice in written form, if practicable.
- (e) If circumstances prevent the governor from providing notice to the speaker of the House of Representatives or the president of the Senate, notice shall be provided in the best available method to the presiding member of the respective body as is reasonable.

Amended by Chapter 193, 2016 General Session

**53-2a-210 Reporting on the suspension or modification of certain statutes or rules or the suspension of the enforcement of a statute.**

- (1) The governor and the Department of Public Safety shall report the following to the Legislative Management Committee:
  - (a) a suspension or modification of a statute or rule under Subsection 53-2a-204(1)(j); or
  - (b) a suspension of the enforcement of a statute under Subsection 53-2a-209(3).
- (2) The governor and the Department of Public Safety shall make the report required by this section 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 or modification relates.
- (3) The Legislative Management Committee shall review the suspension or modification of a statute or rule or the suspension of the enforcement of a statute described in Subsection (1) and may:
  - (a) recommend:
    - (i) that the governor continue the suspension or modification of the statute or rule or the suspension of the enforcement of the statute; and
    - (ii) the length of the suspension or modification of the statute or rule or the suspension of the enforcement of the statute;
  - (b) recommend that the governor terminate the suspension or modification of the statute or rule or the suspension of the enforcement of the statute; or
  - (c) recommend to the governor that the governor call a special session of the Legislature to review and approve or reject the suspension or modification of the statute or rule or the suspension of the enforcement of the statute.

Renumbered and Amended by Chapter 295, 2013 General Session

**53-2a-211 Acquisition of property for public use -- Compensation of owners.**

- (1)
  - (a) Upon proclamation of a state of emergency, the governor may purchase or lease public or private property for public use including:
    - (i) food and medical supplies;
    - (ii) clothing;
    - (iii) shelter;
    - (iv) means of transportation;
    - (v) fuels;
    - (vi) oils; or
    - (vii) buildings or lands.
  - (b) The governor may not purchase private home storage nor privately owned arms.
- (2)
  - (a) The governor may use property purchased under authority of this section for any purpose to meet the needs of an emergency, including its use to relieve want, distress, and disease.
  - (b) Any property used by the governor to meet the needs of an emergency is a public use.
- (3)
  - (a) The governor shall compensate the owner of property taken or used under authority of this section by complying with the procedures established in Title 78B, Chapter 6, Part 5, Eminent Domain.
  - (b) The governor shall pay for those purchases or leases from the funds available to the Division of Emergency Management under:
    - (i) this part; or
    - (ii) Title 53, Chapter 2a, Part 6, Disaster Recovery Funding Act, to the extent provided for in that part.
- (4) Nothing in this section applies to or authorizes compensation for the destruction or damage of standing timber or other property in order to provide a fire break or to the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood.

Renumbered and Amended by Chapter 295, 2013 General Session

**53-2a-212 Interstate agreements authorized -- Termination -- Mutual-aid compacts between subdivisions.**

- (1) The governor is authorized to execute an interstate agreement or compact on behalf of this state with any other state or states only consistent with the powers herein granted concerning matters relating to a disaster affecting or likely to affect this state.
- (2) The agreement or compact shall continue in force and remain binding on each party state until the Legislature or the governor of a party state takes action to withdraw. The action is not effective until 30 days after notice thereof has been sent by the governor of such party state desiring to withdraw to the governors of all other party states.
- (3) Political subdivisions are authorized to enter into mutual-aid compacts with other political subdivisions within the state of Utah concerning matters involving cooperative disaster response and recovery assistance support, consistent with this chapter.

Renumbered and Amended by Chapter 295, 2013 General Session

**53-2a-213 Authority additional to other emergency authority.**

The special disaster emergency authority vested in the governor and political subdivisions of the state pursuant to this part shall be in addition to, and not in lieu of, any other emergency authority otherwise constitutionally or statutorily vested in the governor and political subdivisions of the state.

Renumbered and Amended by Chapter 295, 2013 General Session

**53-2a-214 Prohibition of restrictions on and confiscation of a firearm or ammunition during an emergency.**

- (1) As used in this section:
  - (a)
    - (i) "Confiscate" means for an individual in Utah to intentionally deprive another of a privately owned firearm.
    - (ii) "Confiscate" does not include the taking of a firearm from an individual:
      - (A) in self-defense;
      - (B) possessing a firearm while the individual is committing a felony or misdemeanor; or
      - (C) who may not, under state or federal law, possess the firearm.
  - (b) "Firearm" has the same meaning as defined in Section 76-10-501.
- (2) During a declared state of emergency or local emergency under this part:
  - (a) neither the governor nor an agency of a governmental entity or political subdivision of the state may impose restrictions, which were not in force before the declared state of emergency, on the lawful possession, transfer, sale, transport, storage, display, or use of a firearm or ammunition; and
  - (b) an individual, while acting or purporting to act on behalf of the state or a political subdivision of the state, may not confiscate a privately owned firearm of another individual.
- (3) A law or regulation passed during a declared state of emergency that does not relate specifically to the lawful possession or use of a firearm and that has attached criminal penalties may not be used to justify the confiscation of a firearm from an individual acting in defense of self, property, or others when on:
  - (a) the individual's private property; or
  - (b) the private property of another as an invitee.
- (4)
  - (a) An individual who has a firearm confiscated in violation of Subsection (2) may bring a civil action in a court having the appropriate jurisdiction:
    - (i) for damages, in the maximum amount of \$10,000, against a person who violates Subsection (2);
    - (ii) for a civil penalty, in the amount of \$5,000 per violation, against a person who violates Subsection (2); and
    - (iii) for return of the confiscated firearm.
  - (b) As used in this Subsection (4), "person" means an individual, the governmental entity on whose behalf the individual is acting or purporting to act, or both the individual and the governmental entity.
- (5)
  - (a) A law enforcement officer is not subject to disciplinary action for refusing to confiscate a firearm under this section if:
    - (i) ordered or directed to do so by a superior officer; and
    - (ii) by obeying the order or direction, the law enforcement officer would be committing a violation of this section.
  - (b) For purposes of this Subsection (5), disciplinary action might include:

- (i) dismissal, suspension, or demotion;
  - (ii) loss of or decrease in benefits, pay, privileges or conditions of employment; and
  - (iii) any type of written or electronic indication, permanent or temporary, on the officer's personnel record of the officer's refusal to obey the unlawful order.
- (6)
- (a) If a law enforcement officer commits a violation of this section, the officer's liability in an action brought under Subsection (4)(a) is limited to 5% of the damages and civil penalty allowed under Subsection (4)(a) if the officer can show by clear and convincing evidence that the officer was obeying a direct and unlawful order from a superior officer or authority.
  - (b) The court shall assess the balance of the damages and civil penalty, the remaining 95%, against the superior officer or authority who ordered or directed the confiscation in violation of this section.

Renumbered and Amended by Chapter 295, 2013 General Session