

## SB195 – Emergency Response Amendments

- Passed on March 5, 2021, the final day of the legislative session
- Signed into law on Wednesday, March 24, 2021
- Goes into effect on May 5, 2021

According to a Press Release from the Utah State Senate issued on February 21, 2021, SB 195 was drafted in response to the unprecedented and prolonged use of the Emergency Management Act during the COVID-19 pandemic. Enacted 65 years ago, the Act was meant to address crises lasting no more than 30, 60, or 90-days, not to manage a pandemic that by now has lasted more than a year. Recognizing this mismatch, and to quote the press release, “[a]fter listening to Utahns’ concerns from all political affiliations and backgrounds, [SB 195 was drafted] to create checks on executive emergency powers during long-term emergencies without hindering rapid-emergency response.”

According to the Senate, SB 195 was not intended to disrupt state or local executives nor hinder state or local health departments’ ability to respond as necessary to “standard emergencies” including natural disasters, storms, or chemical spills. It was, however, intended to increase direct public input during times of crisis.

The bill is lengthy, and in many respects, repetitive. The devil will be in the details and time will tell whether the final version of SB 195 that Governor Cox signed into law accomplishes the Legislature’s aims.

According to our review, the bill:

- Establishes checks on restrictive emergency public health orders, rules, or regulations issued in response to a “declared public health emergency” —whether by the state or a local health department— (i.e., “orders of constraint”) that apply broadly to “all or substantially all” individuals, groups, or public places and that (1) establish, maintain or enforce isolation or quarantines, (2) exercise physical control over persons or property, (3) direct or requires certain behavior or action, including that person stay at home, (4) prohibit gatherings of people, and (5) close theaters, schools, or other public places.<sup>1</sup>
- Allows the Utah Legislature, by joint resolution, to terminate “at any time” an order of constraint or an “order of restriction” issued by the state or a local health department “in response to a declared public health emergency.”

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<sup>1</sup> SB 195 coins several new phrases, including “declared public health emergency”, “order of constraint” and “stay-at-home order”. The latter two terms are defined, and though used repeatedly throughout the bill, the term “declared public health emergency” is not.

- Allows a county governing body to terminate “at any time” by majority vote an order of constraint or an “order of restriction” issued by a local health department “in response to a declared public health emergency.”

- Prohibits a local health department from issuing an order of constraint without the county chief executive’s (here, the Mayor) approval, and with one exception, requires a local health department to provide notice to the chief executive officer at least 24 hours before declaring a public health emergency or issuing an order of constraint, unless the passage of time necessary to gain the executive’s approval substantially could increase loss of life due to an imminent threat. In such a case, the Mayor may terminate the declared public health emergency with 72 hours of it being issued.

- Prohibits the Utah Department of Health (UDOH) from issuing an order of constraint without first notifying legislative leadership —something the Governor is already required to do.

- For an emergency lasting longer than 30 days, allows the Legislature to identify and nullify by joint resolution emergency powers assigned to the Governor, the Division of Emergency Management, or the chief executive of a political subdivision.

- Prohibits the UDOH, Governor, or local chief executive from continuing a declared public health emergency after it expires, except in the presence of “exigent circumstances”, a term that will be defined below.

- Specifies that a declared state or local public health emergency expires the earliest of the following:

- When the person who issued the emergency determines the need has passed;
- When terminated by the Legislature, a local legislative body, or a local chief executive for an emergency or public health emergency at their respective levels of government; or
- 30 days after it is issued;

- And if extended, the date designated by the Legislature for a state/public health emergency, or a local legislative body for a local emergency.

- Allows UDOH, a local health department, the Governor, or a local chief executive to re-declare a public health emergency without governing body approval in the presence of "exigent circumstances."

- Exigent circumstances means “a significant change in circumstances” following the expiration/termination of a declared public health emergency that “(a) substantially increases the threat to public safety or health relative to the circumstances in existence” when the declared public health emergency was terminated or expired; “(b) poses an imminent threat to public health or safety” that (c) “was not known or foreseen and could not have been known” when the original declared public health emergency was terminated or expired.
- Requires UDOH and/or a local department of health to notify the Legislature or a local governing body respectively before unilaterally re-declaring an emergency.
- Implements specific criteria regarding the review of continuing emergencies:
  - If the governor or the state health department wish to extend an emergency, each must notify the President of the Senate and House Speaker at least 10 days before the expiration of the emergency.
  - The President/Speaker will survey the Legislature regarding whether to extend the emergency.
  - A newly created Legislative Emergency Response Committee may convene to review a first extension and must convene before a second or subsequent extension.
  - Should the Committee convene, it must receive public comment and expert testimony and recommend whether to extend the emergency order.
- Stipulates that if a local department of health wishes to extend an emergency, the department must notify the county governing body at least 10 days before the expiration of the emergency.
- Prohibits the Governor, UDOH, a local department of health, or a local chief executive from issuing an emergency order regarding religious gathering that is more restrictive than other public gatherings.
- Places limitations on penalties that may be assessed for violating an order of constraint or restraint issued in response to a declared public health emergency.
  - Reduces the maximum fine on businesses for violations of a public health order from \$10,000 to \$5,000.

- Creates a \$150 maximum fine for individuals and limits fines that can be levied against the same person to only once a week unless the individual acts in a willful or reckless manner and/or poses a serious threat to public health.
- Provides a review process for the Administrative Rules Review Committee to evaluate and present recommendations regarding administrative rules and other executive actions made using emergency procedures.