

FREQUENTLY ASKED QUESTIONS: MONTANA STATUTES AND COVID-19

Answers prepared by Montana's Legislative Services Division

WHAT DOES THE GOVERNOR'S EXECUTIVE ORDER NO. 2-2020 MEAN IN TERMS OF EXECUTIVE AUTHORITY?

An emergency is defined as "the imminent threat of disaster", which includes "an outbreak of disease" that causes "immediate peril to life or property that timely action can avert or minimize". ([10-3-103\(4\) and \(8\), MCA](#)) The Legislative Services Division has compiled a summary of the executive's authority as provided in the order. It can be viewed [here](#).

The law authorizes the Governor to:

- suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;
- direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if the governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery; and
- control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.

Once an emergency is declared, the Governor is authorized to incur liabilities and expenses from the general fund. A declaration of emergency also allows the Governor to access the general fund through a statutory appropriation of up to \$16 million in a biennium. In the event the federal government offers to the state certain services and materials, the governor also may accept the offer and those funds are statutorily appropriated. ([10-3-311\(1\), MCA](#); [10-3-312, MCA](#); [17-7-502, MCA](#))

The Department of Public Health and Human Services also has broad duties to address an emergency involving an outbreak of disease. ([50-1-202, MCA](#)) These include the duty to:

- disseminate information and make recommendations for control of diseases and other conditions of public health importance;

- at the request of the Governor, accept funds for and administer any federal health program for which responsibilities are delegated to states;
- identify, assess, prevent, and mitigate conditions of public health importance through
 - screening and testing programs;
 - isolation and quarantine measures;
 - treatment;
 - collecting and maintaining health information; or
 - other public health measures as allowed by law.

The Department also consults with school and local public health personnel, the Superintendent of Public Instruction on conditions of public health importance for schools, and local boards of health. ([50-1-202, MCA](#))

WHEN DOES AN EMERGENCY DECLARATION OR ORDER EXPIRE?

In summary, a state of emergency may not continue for longer than 30 days, unless continuing conditions of the state emergency exist, which must be determined by a declaration of an emergency by the president of the United States or by a declaration of the Legislature by joint resolution of continuing conditions of the state of emergency ([10-3-302\(3\), MCA](#)). A state of disaster may be declared by the governor, but section [10-3-303\(3\), MCA](#), provides a state of disaster may not continue for longer than 45 days unless continuing conditions of the state of disaster exist.

An outbreak of disease is defined as a disaster under [10-3-103\(4\), MCA](#). Emergency means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

The Legislature may terminate or extend a state of emergency or disaster by joint resolution. After termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.

The key for both the emergency and disaster declarations to be extended is if there are U.S. presidential declarations in place. On March 13, 2020, President Trump issued a proclamation declaring a national emergency. It states, "the COVID-19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020."

DOES THE GOVERNOR HAVE THE AUTHORITY TO ADJUST THE UNEMPLOYMENT INSURANCE (UI) PROGRAM TO COMPENSATE FOR THE RECENT OUTBREAK OF THE COVID-19 VIRUS?

Montana law grants the Governor and the Department of Labor and Industry with broad authority to adjust benefits and eligibility for UI in the event of a disaster. This authority is outlined in state laws pertaining to emergencies for the UI program, statutes pertaining to the Governor's authority during an emergency, emergency rulemaking provisions contemplated under the Montana Administrative Procedure Act, and authority vested by federal statutes. ([39-51-301\(5\), MCA](#); [10-3-104, MCA](#); [2-4-303, MCA](#)) Adjustment of UI eligibility, administration, and payments appears to be within the emergency authority vested in the Governor and Department.

UNDER WHAT AUTHORITY DOES A COUNTY HAVE TO CLOSE BARS AND RESTAURANTS TO TAKE-OUT ONLY? DOES THE GOVERNOR HAVE THE SAME AUTHORITY?

The Governor, the Department of Public Health and Human Services, Local Boards of Health, and Principal Executive Officers have broad and specific statutory authority related to isolation and quarantine measures to potentially close bars and restaurants to take-out only. (Governor and Local Health: [10-3-104, MCA](#); [50-1-101, MCA](#); [50-1-202, MCA](#); [50-1-204, MCA](#); [50-2-116, MCA](#); [50-2-118, MCA](#)) and (Local Government Principal Executive Officer: [10-3-103, MCA](#); [10-3-402, 403, 406, MCA](#))

WHAT POWERS OR AUTHORITY DO ELECTION OFFICIALS AND/OR THE GOVERNOR HAVE TO POSTPONE OR ALTER THE WAY ELECTIONS ARE CONDUCTED DURING AN EMERGENCY OR DISASTER?

Election dates are set by state statute and, with the exception of special elections that may crop up from time to time, are typically set according to a long-standing schedule. Election officials spend months planning an election, including what would happen if there were to be an emergency on Election Day. Montana law provides some guidance on the subject.

Under Montana law, an election administrator can change the location of a polling place if an emergency occurs 10 days before an election. ([13-3-105, MCA](#)) In addition, the Secretary of State is authorized to exempt a polling place from certain accessibility requirements if an emergency occurs within 10 days before an election; for this purpose, an emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster. ([13-3-211, MCA](#))

State law also allows a school election to be rescheduled if the governor declares a state of emergency or disaster. ([20-20-108, MCA](#))

An elector with a health emergency may apply for an absentee ballot after the regular deadline and until the close of polls on election day. An absentee ballot requested because of a health emergency also may be delivered to the ill elector at their “place of confinement, hospitalization, or residence within the county”. ([13-13-212](#) and [212](#), MCA)

USING EMERGENCY POWERS, DOES THE GOVERNOR HAVE THE AUTHORITY TO SUSPEND REGULATORY STATUTES PRESCRIBING THE CONDUCT OF CERTAIN STATE BUSINESS?

In accordance with [10-3-104, MCA](#), after issuing an executive order and declaring an emergency, the governor can suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster.