

To: ULC Drafting Committee on Public Health Emergency Authorities

From: Diane Boyer-Vine, Chair
Heidi Tseu, Vice Chair
Rob Gatter, Reporter

Date: December 5, 2021

Re: Defining “Public Health Emergency”

During the November 16, 2021 meeting of the committee, the group began addressing how best to define “public health emergency” in a model law. Committee members and observers considered whether to limit the definition to infectious disease emergencies. Yet, there was a concern that such a limitation would fail to account for incidents that could suddenly threaten public health (e.g., toxic chemical spill). Additionally, committee members and observers sought to avoid a definition so broad as to treat as an emergency any threat to health.

As the committee reporter, I volunteered to provide the committee with a draft definition that would allow for productive discussion during the committee’s December 7, 2021 meeting. Rather than create a definition from whole cloth, I examined a variety of state definitions and found that many states have relied at least in part on the definition of “public health emergency” in the 2001 Model State Emergency Health Powers Act (MSEHPA).¹ So I offer the MSEHPA’s definition as a starting place for the committee’s ongoing discussion of the model law’s definition of public health emergency.

A “public health emergency” is an occurrence or imminent threat of an illness or health condition that:

(1) is believed to be caused by any of the following:

(i) bioterrorism;

(ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin;

(iii) [a natural disaster;]

(iv) [a chemical attack or accidental release; or]

(v) [a nuclear attack or accident]; and

(2) poses a high probability of any of the following harms:

(i) a large number of deaths in the affected population;

(ii) a large number of serious or long-term disabilities in the affected population; or

(iii) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

¹ See, for example, Conn. Gen. Stat. Ann. § 19a-131(8); Ga. Code Ann. § 31-12-1.1; Oreg. Rev. Stat. § 433.442); Utah Code Ann. § 53-2c-102; Wyo. Stat. Ann. § 35-4-115.