

Model Public-Health Emergency Authority Act*

Drafted by the

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and by it

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Without Prefatory Note and Comments



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**The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.*

Model Public-Health Emergency Authority Act

Section 1. Title

This [act] may be cited as the Model Public-Health Emergency Authority Act.

Section 2. Definitions

In this [act]:

(1) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) “Person” means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(3) “Political subdivision” includes a city, [county,] district, and any other local or regional governmental authority.

(4) “Public-health emergency” means an imminent threat or actual appearance of an infectious, biologic, radiologic, or chemical agent or toxin, regardless of cause, that poses a high probability of:

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

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

(C) widespread exposure to the agent or toxin that poses a significant risk of substantial harm to a large number of individuals in the affected population; or

(D) a substantial adverse impact on the availability of medical, public health, or other emergency resources.

(5) “Public-health emergency order” means an order issued or renewed under this [act].

(6) “Record” means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

Legislative Note: A state that uses a different term for “county” should insert that term in the brackets in paragraph (3). If a state does not have a governmental unit corresponding to a county, it should delete the bracketed term.

Section 3. Relationship to Other State Law

(a) If a public-health emergency exists, this [act] creates the exclusive emergency authority for the Governor and any state or local official or agency to which the Governor has delegated authority to respond to the emergency.

(b) If an emergency exists other than a public-health emergency, the Governor may respond as authorized by other law of this state.

(c) If a public-health emergency and an emergency other than a public-health emergency arise out of the same circumstances:

(1) this [act] authorizes the Governor to respond to the part of the circumstances that is a public-health emergency; and

(2) other law of this state authorizes the Governor to respond to the part that is an emergency other than a public-health emergency.

(d) Except when acting pursuant to a delegation by the Governor of authority under this Act, and except as provided in Section 9, state and local agencies and officials retain during a

public-health emergency their authority under other law of this state.

Section 4. Declaration of Public-Health Emergency; Renewal

(a) The Governor may, by [executive order], issue a declaration of a public-health emergency, if immediate action is appropriate to eliminate, reduce, contain, or mitigate a risk of harm or an adverse effect posed by the public health emergency. An initial declaration of a public-health emergency may not have a term longer than [a range from 45 to 90] days.

(b) Before a declaration of a public-health emergency issued under subsection (a) or renewed under this subsection expires, and subject to subsection (c), the Governor may, by [executive order], renew a declaration of a public-health emergency. A renewed declaration of a public-health emergency may not have a new term longer than [a range from 45 to 90] days.

(c) The Governor may renew an initial or previously renewed declaration of a public-health emergency only if:

(1) the Governor provides notice in a record to the [Legislature] before the renewal; and

(2) the [Legislature] is or will be in session, or the [Legislature] will have an opportunity to be in session, not later than [five] days before commencement of the renewal.

(d) If the Governor determines that a public-health emergency continues to exist and subsection (c) is satisfied, there is no limit on the number of times the Governor may renew an initial or previously renewed declaration of a public-health emergency that has not expired.

(e) An initial or renewed declaration of a public-health emergency expires at the end of its term unless renewed or further renewed or unless the Governor, under Section 5, terminates the declaration of a public-health emergency before the term expires.

(f) The Governor under subsection (a) may issue a declaration of a public-health

emergency identical or substantially similar to an expired declaration of a public-health emergency if at least [15] days have elapsed since the expiration of the declaration.

(g) A declaration of a public-health emergency issued or renewed under this section must specify:

(1) the nature of the public-health emergency;

(2) the political subdivision or geographic area subject to the declaration, which may include the entire state;

(3) the duration of the declaration, which is [a range from 45 to 90] days if a shorter term is not specified; and

(4) why immediate action is appropriate under the circumstances.

(h) A declaration of a public-health emergency issued or renewed under this section and each specification required by subsection (g) must be rationally based on evidence then available to the Governor about the nature of the agent or toxin giving rise to the public-health emergency and the risk posed by the agent or toxin.

(i) Not later than [seven] days after issuing or renewing a declaration of a public-health emergency under this section, the Governor shall:

(1) prepare a report in a record describing the evidence on which the Governor based the initial or renewed declaration and each specification required by subsection (g); [and]

(2) make the report publicly available[; and

(3) submit the report to the [Legislature] at or before the time the report is made publicly available].

(j) The report under subsection (i) must include additional evidence the Governor considered after making or renewing the declaration. The Governor shall exclude from the report

information protected by law as confidential, privileged, or otherwise exempt from disclosure. The report must describe how the initial declaration or renewal and each specification required under subsection (g) is rationally based on the evidence.

(k) A declaration of a public-health emergency issued or renewed under this section is not subject to the rule-making procedures of [cite to state administrative procedure act].

Legislative Note: *In subsection (a), in a state that does not use executive orders, insert the appropriate term describing the mechanism used to issue an executive-branch directive.*

In subsections (c)(1) and (i)(3) in a state where the state-level legislative body is not called “Legislature”, a state should insert the appropriate word.

In subsection (c)(1), a state may want to insert the procedures, if any, for how a Governor will provide notice of renewal.

In subsection (i)(3), a state may also want to insert existing procedures, if any, for how a Governor will submit the report to the Legislature or alternatively, a state may decide to eliminate subsection (i)(3) because the Governor also is required to make the report publicly available.

Section 5. Termination of Declaration of Public-Health Emergency

(a) If the Governor determines that a public-health emergency no longer exists, the Governor may terminate a declaration of a public-health emergency before its term expires.

(b) If the Governor terminates a declaration of a public-health emergency under subsection (a), the Governor must do so by [executive order] in a record. The termination must be rationally based on evidence then available to the Governor about the nature of the agent or toxin giving rise to the public-health emergency and the risks posed by the agent or toxin.

(c) At the same time the Governor issues an [executive order] under subsection (b), the Governor shall:

(1) prepare a report in a record describing the evidence on which the Governor relied and the [Governor’s] rationale that a public-health emergency no longer exists; [and]

- (2) make the report publicly available[; and
- (3) submit the report to the [Legislature].

(d) The Governor shall exclude from the report under subsection (c) information protected by law as confidential, privileged, or otherwise exempt from disclosure.

Section 6. Public-Health Emergency Order

(a) During the term of a declaration of public-health emergency, the Governor may issue one or more public-health emergency orders under this section. An order may apply to all or part of a political subdivision or geographic area subject to the declaration.

(b) The Governor may issue an order in response to a public-health emergency addressing:

- (1) acquisition, stockpiling, hoarding, commandeering, management, distribution, or use of drugs, devices, equipment, or tests;

- (2) acquisition, allocation, distribution, management, or spending of authorized funds;

- (3) zoning, operation, commandeering, use, or management of buildings, shelters, facilities, parks, outdoor space, or other physical space, and the management of activities in those places;

- (4) testing, isolation, quarantine, movement, gathering, evacuation, or relocation of individuals;

- (5) testing, isolation, quarantine, culling, movement, evacuation, relocation, or management of plants or animals;

- (6) management of state executive-branch operations, offices, agencies, or programs;

(7) surveillance, monitoring, or assessment of the public-health emergency or any of its effects;

(8) suspension of a provision of any statute, order, rule, or regulation if strict compliance would hinder efforts to respond to the public-health emergency or pose undue hardship or risk for compliance;

(9) access to and security of electronic communication in support of activities, including commerce, employment, education, notifications, and warnings;

(10) assessment of and response to the nature, degree, and variation of harm related to the public-health emergency, including the need for food, clothing, housing, and other necessities of life;

(11) acquisition, allocation, distribution, or management of goods, services, equipment, materials, or personnel;

(12) coordination or cooperation between or among federal, state, tribal, or local governmental entities, officials, employees, or authorities;

(13) public-health emergency planning, implementation, coordination, or training;

(14) making or performance of executive branch agreements;

(15) development, function, operation, use, assessment, or management of warning or notification systems;

(16) assessment, operation, or management of, or access to, emergency services, including fire, police, and health-care services; and

(17) assessment, operation, or management of public transportation.

(c) The Governor also may issue any order to eliminate or reduce a risk of harm posed by the public-health emergency or to eliminate, reduce, contain, or mitigate an effect of the public-

health emergency, including an effect attributable to the response to the public-health emergency. The Governor's authority under this subsection shall not be limited by the Governor's authority to issue a public-health emergency order under subsection (b).

(d) A public-health emergency order must be designed rationally to eliminate, reduce, contain, or mitigate a risk posed by, or an effect of, the public-health emergency.

(e) When issuing an order under this section, the Governor, based on then available information, shall consider:

(1) the scope and degree of each risk of and effect from the public-health emergency that the order is designed to eliminate, reduce, contain, or mitigate;

(2) the likelihood that the order will result in the outcome it is designed to achieve;

(3) the proportion of the affected population that likely will benefit from the outcome the order is designed to achieve;

(4) the likelihood that the order will meet the needs of, or disproportionately burden, individuals in the affected population who are particularly vulnerable to the risks of or harm from the public-health emergency because of unique characteristics, including, age, gender, disability, income and other financial resources, education, employment, location, and race; and

(5) the burdens likely to result from issuing the order, including deaths, illnesses, injuries, financial losses, job losses, business closures, depletion of available financial resources, and other relevant health and economic burdens.

(f) A public-health emergency order is not subject to the rule-making procedures of [cite to state administrative procedure act].

(g) The Governor may renew an order issued under this section if the renewal complies

with Section 7.

(h) The Governor may delegate authority as authorized by other law of this state.

Section 7. Requirements for Public-Health Emergency Order

(a) A public-health emergency order is effective only if:

(1) a declaration of a public-health emergency is in effect at the time the Governor issues the order;

(2) the order is based on evidence then available to the Governor about the nature of and risk posed by the public-health emergency, and the order is rationally designed to:

(A) eliminate or reduce the risk of harm giving rise to the public-health emergency; or

(B) eliminate, reduce, contain, or mitigate the effect of the public-health emergency;

(3) the order is based on a consideration of all of the factors under Section 6(e);

(4) the order states the goal it is designed to achieve;

(5) the order identifies the date on which it will expire, unless renewed, and the date may not be later than the expiration of the declaration of public-health emergency; and

(6) the order states the governmental agency or official responsible for administering each provision of the order.

(b) Failure of a public-health emergency order to name an agency or official under subsection (a)(6) does not nullify an action taken by an unnamed agency or official under the order.

(c) Not later than [seven] days after issuing or renewing a public-health emergency order, the Governor shall:

(1) prepare a report in a record describing the evidence on which the Governor based the initial or renewed order; [and]

(2) make the report publicly available[; and

(3) submit the report to the [Legislature] at or before the time the report is made publicly available].

(d) The report under subsection (c) must include any additional evidence the Governor considered after issuing or renewing the order. The Governor shall exclude from the report information protected by law as confidential, privileged, or otherwise exempt from disclosure. The report must describe how the initial or renewed order meets each of the requirements under subsection (a)(2).

Section 8. Termination of Public-Health Emergency Order

A public-health emergency order terminates at the time the first of the following occurs:

(1) the Governor terminates the order;

(2) the order expires; or

(3) the Governor terminates the declaration of a public-health emergency under

Section 5.

Section 9. Conflict with Local Law

A public-health emergency order does not preempt an order, regulation, or ordinance of a political subdivision, except to the extent the order, regulation, or ordinance conflicts with the public-health emergency order.

Section 10. Judicial Review

(a) A declaration of public-health emergency or all or part of a public-health emergency order is subject to review as an [executive order] under other law of this state.

(b) The court shall review the governmental record or the parts designated by the parties. The governmental record supporting a public-health emergency declaration or order includes a report or record prepared in accordance with Section 4(i), 5(c), or 7(c). The court shall apply the harmless error rule.

(c) If a provision or application of a public-health emergency order is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.

Section 11. Injunctive Relief

The [Governor], or the governmental agency or official responsible for administering a public-health emergency order under Section 7, may seek injunctive relief to enforce a public-health emergency order.

Legislative Note: With respect to the use of “Governor”, insert appropriate state official authorized to bring an action for the state.

Section 12. Civil [Penalty][Fine]

(a) Subject to subsection (b), each governmental agency or official responsible under Section 7 to administer a public-health emergency order may impose a [penalty][fine] for a knowing violation of the order of not more than \$[250] per violation.

(b) A [penalty][fine] imposed under subsection (a) may not be imposed on a government or governmental subdivision, agency, or instrumentality or on a public official acting in an official capacity.

(c) This section does not affect a right or remedy available under other law.

Section 13. Private Right of Action

Sections 11 and 12 do not create a private right of action.

Section 14. Relation to Electronic Signatures in Global and National Commerce Act

This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

***Legislative Note:** It is the intent of this act to incorporate future amendments to the cited federal law. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase “, as amended”. A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law should omit the phrase.*

[Section 15. Severability

If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

***Legislative Note:** Include this section only if the state lacks a general severability statute or a decision by the highest court of the state adopting a general rule of severability.*

Section 16. Effective Date

This [act] takes effect . . .