

D R A F T
FOR DISCUSSION ONLY

Model Public-Health-Emergency Authority Act

Uniform Law Commission

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Model Public-Health-Emergency Authority Act

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Model Public-Health-Emergency Authority Act

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1 **Model Public-Health-Emergency Authority Act**

2 **Section 1. Title**

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

4 **Section 2. Definitions**

5 In this [act]:

6 (1) “ Business” means a person other than an individual, public corporation, or
7 government or governmental subdivision, agency, or instrumentality.

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

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

13 (4) “Public-health authority” means a state agency or agency of a political
14 subdivision authorized to protect or preserve public health and an individual authorized to act on
15 behalf the agency.

16 (5) “Public-health emergency” means an imminent threat or actual appearance of
17 an infectious, biologic, radiologic, or chemical agent or toxin, or the imminent threat or
18 occurrence of a natural disaster that:

19 (A) poses a high probability of:

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

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

(iii) 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

(iv) a substantial adverse impact on the availability of medical, public health, or other emergency resources; and

(B) requires action to eliminate, reduce, contain, or mitigate the probability.

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

(7) “Record” means information:

(A) inscribed on a tangible medium; or

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

(8) “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.

Legislative Note: Change “Governor” to the appropriate title if the individual heading the state is not the Governor.

Comments

1. The definition of “public-health emergency” is central to the operation of this Act. It identifies the circumstances under which a Governor may declare an emergency, which then triggers the authority of the Governor to issue orders designed to protect public health. The definition is designed to account for various agents, toxins and natural disasters that directly threaten or harm public health. These include infectious agents that are communicable among humans (e.g., COVID-19, measles, Ebola) infectious agents transmitted through insects or other vectors (e.g., malaria). It also includes toxins released into the environment (e.g., chemical spill or nuclear accident). Additionally, it includes the public health risks that can be associated with natural disasters (e.g., mold, vermin, bacteria following severe flooding). The definition also requires that the agent, toxin or natural disaster pose a high probability of one or more types of significant, population-level harm, meaning that a single case of an infectious disease that is well-controlled and thus does not pose a high probability of significant, population-level harm would not meet the definition. The definition shares some of the elements of the definition of “public-health emergency” in the 2001 Model State Emergency Health Powers Act, parts of which have been adopted by a majority of states. Yet, the definition here accounts for public health preparedness lessons learned since 2001. For example, the definition above recognizes that a public-health emergency can exist when an agent, toxin or natural disaster poses a high

1 probability of significantly straining medical, public health or other emergency resources.

2 3 **Section 3. Conflicting State Law**

4 Except as provided in Section 10, this [act] supersedes other law of this state to the extent
5 the law conflicts with this [act].

6 **Section 4. Declaration of Public-Health Emergency; Renewal**

7 (a) By [executive order] in a record, the [Governor] may declare a public-health
8 emergency or renew a declaration of a public-health emergency. The [Governor] may renew a
9 declaration of public-health emergency without limitation on the number of times it may be
10 renewed.

11 (b) An [executive order] under subsection (a) must specify:

12 (1) the nature and cause of the public-health emergency;

13 (2) the political subdivision or geographic area, which may include the entire
14 state, subject to the public-health emergency;

15 (3) the duration of the declaration of the public-health emergency if shorter than
16 the maximum duration permitted under this [act];

17 (4) each public-health authority responsible for responding to the public-health
18 emergency; and

19 (5) the identity of any person the [Governor] consulted in declaring, or renewing
20 the declaration of, a public-health emergency.

21 (c) An initial or renewed declaration of public-health emergency and each specification
22 required by subsection (b) must be rationally based on evidence then available to the [Governor]
23 about the nature of the agent, toxin, or natural disaster giving rise to the public-health emergency
24 and the risk posed by the agent, toxin, or natural disaster.

1 (d) An initial or renewed declaration of a public-health emergency may last not longer
2 than [60] days.

3 (e) Not later than [seven] days after declaring, or renewing the declaration of, a public-
4 health emergency, the [Governor] shall submit a report in a record describing the evidence on
5 which the [Governor] based the initial declaration or renewal and each specification required by
6 subsection (b). The report must include any additional evidence the [Governor] considered after
7 making or renewing the declaration. The report must describe how the initial declaration or
8 renewal and each specification is rationally based on the evidence. The [Governor] shall make
9 the report publicly available and shall submit the report to the [Legislature].

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

12 **Legislative Note:** Change “executive order” to the appropriate term describing the mechanism
13 the Governor uses to issue directives.

14
15 *The word “Legislature” is bracketed in subsection (e) because a state may need to specify how*
16 *the Governor will submit the report required in that subsection. Whether a state specifies a*
17 *procedure for the Governor to submit this report when its Legislature is out of session and, if so,*
18 *which procedure it specifies will be affected by state law for calling a special session for the*
19 *Legislature. Because subsection (e) requires the Governor to make the report publicly available,*
20 *a state might choose to eliminate the requirement that the Governor submit the report to the*
21 *Legislature.*

22 23 **Section 5. Termination of Declaration of Public-Health Emergency**

24 (a) The [Governor] may terminate a declaration of a public-health emergency by
25 [executive order] in a record if the [Governor] determines that the situation is no longer a public-
26 health emergency and the determination is rationally based on evidence then available to the
27 [Governor] about the nature of the agent, toxin, or natural disaster giving rise to the public-health
28 emergency and the risk posed by the agent, toxin, or natural disaster. The [Governor] shall
29 submit the record to the [Legislature] along with a description of the evidence relied upon and

1 the [Governor's] rationale that the situation is no longer a public-health emergency.

2 (b) A public-health emergency terminates when the term of the declaration set by the
3 [Governor] has elapsed or more than [60] days has elapsed since the [Governor] declared, or last
4 renewed the declaration of, the public-health emergency,

5 [(c) The [Legislature] may terminate the declaration of a public-health emergency.]

6 **Legislative Note:** Subsection (c) is bracketed because of the likelihood that some state
7 legislatures lack constitutional authority to terminate the Governor's declaration by any means
8 other than bicameral passage of a bill. Delete subsection (c) if the state constitution does not
9 authorize a legislative veto.

10
11 Under some states' constitutions, a concurrent resolution is binding only when it relates to the
12 internal functions of the Legislature. Because of the variation among state constitutions,
13 Subsection (c) acknowledges the already-existing authority of state legislatures and does not
14 create new authority.

15
16 **Section 6. [Governor's] Authority in Public-Health Emergency; Public-Health-**
17 **Emergency Order**

18 (a) After declaring a public-health emergency, the [Governor] may take action described
19 in this section relating to all of part of a political subdivision or geographic area subject to the
20 declaration.

21 (b) Subject to Section 4(b), the [Governor] may issue any order necessary to respond to a
22 public-health emergency and to eliminate or reduce the risk of harm giving rise to the public-
23 health emergency and to eliminate, reduce, contain, or mitigate the effect of the public-health
24 emergency, including an order addressing:

25 (1) the acquisition, stockpiling, distribution, or use of drugs, devices, equipment,
26 or tests;

27 (2) the acquisition, allocation, distribution, or spending of authorized funds;

28 (3) the operation or management of buildings, shelters, or other physical space;

1 (4) the movement or gathering of individuals;
2 (5) the management of state operations or programs; and
3 (6) the surveillance, monitoring, or assessment of the agent, toxin, or natural
4 disaster or any of its effects in the state.

5 (c) A public-health-emergency order must:

6 (1) be designed rationally to eliminate or reduce the risks posed to public health
7 by, or to mitigate some or all of the effects to public health from, the agent, toxin, or natural
8 disaster;

9 (2) minimize to the extent practicable the likely economic harm the order will
10 cause; and

11 (3) equitably distribute to the extent practicable the likely public-health benefits
12 and likely economic harms among the affected population.

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

15 (e) The [Governor] may renew an order issued under this section if the renewal complies
16 with Section 7.

17 (f) This [act] does not prohibit the [Governor] from delegating authority as authorized by
18 other law of this state.

19 **Section 7. Requirements for Public-Health-Emergency Order**

20 (a) A public-health-emergency order must meet all of the following requirements:

21 (1) The [Governor] declared a public-health emergency under Section 4(a), and
22 the declaration is in effect.

23 (2) The order is rationally based on the evidence then available to the [Governor]

1 about the nature of and risk posed by the public-health emergency and the order is necessary to:

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

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

6 (3) The order states the public-health goal it is designed to achieve.

7 (4) The order identifies the date on which it will expire, unless renewed, and the
8 date may not be later than the expiration of the declaration of public-health emergency.

9 (b) The [Governor], not later than [seven] days after issuing or renewing a public-health
10 emergency order, shall submit a report in a record describing the evidence on which the
11 [Governor] based the initial order or renewal and the determination that the initial order or
12 renewal is necessary under subsection (a)(2). The report must include any additional evidence
13 the [Governor] considered after issuing or renewing the order. The report must describe how the
14 initial order or renewal and the determination of its necessity are rationally based on the
15 evidence. The [Governor] shall make the report publicly available and shall submit the report to
16 the [Legislature].

17 **Section 8. Termination of Public-Health-Emergency Order**

18 A public-health-emergency order terminates when:

19 (1) the [Governor] terminates the order;

20 (2) the order expires; [or]

21 (3) the public-health-emergency declaration is terminated under Section 5[; or

22 (4) the Legislature terminates the order].

23 **Section 9. Executive Privilege; Open Records Act**

1 The [Governor] may exclude information from a record required under this [act] if the
2 information is subject to executive privilege or an exception to [cite to state open records act].

3 **Section 10. Preemption of Local Public Health Power**

4 **Alternative A**

5 (a) [Subject to subsection (c), a] [A] public-health-emergency order does not preempt an
6 order, regulation, or ordinance of a political subdivision, except to the extent the order,
7 regulation, or ordinance of the political subdivision conflicts with the order issued under this
8 [act].

9 **Alternative B**

10 (a) A public-health-emergency order does not preempt an order, regulation, or ordinance
11 of a political subdivision that is more protective of public health than the order issued under this
12 [act]. An order issued under this [act] preempts any other order, regulation, or ordinance of a
13 political subdivision, only to the extent the order, regulation, or ordinance of the political
14 subdivision conflicts with the order issued under this [act].

15 **Alternative C**

16 (a) A public-health-emergency order does not preempt an order, regulation, or ordinance
17 of a political subdivision whether or not the order, regulation, or ordinance of the political
18 subdivision is equally protective of public health as the order issued under this [act].

19 **End of Alternatives**

20 (b) [Subject to subsection (c), an] [A] public-health-emergency order does not preempt
21 the authority of a political subdivision to issue or enforce an order, promulgate or enforce a
22 regulation, or make and enforce an ordinance except to the extent the authority of the political
23 subdivision conflicts with the order issued under this [act].

1 [(c) A public-health-emergency order does not preempt an action by, or authority of, a
2 political subdivision if the order functions only to restrict the ability of the political subdivision
3 to exercise its authority.]

4 **Legislative Note:** *Alternatives B and C allow a political subdivision to opt out of what the*
5 *Governor otherwise intends to be a statewide order during a public-health emergency.*
6 *Alternative B allows for a political subdivision to choose to be more protective of public health*
7 *than the Governor thought was justified in the Governor's order. Determining which alternative*
8 *to adopt turns on the relative importance of preserving the power of the state to set statewide*
9 *standards during an emergency as compared to the importance of preserving the power of a*
10 *local government to set different standards during an emergency.*

11
12 *Subsection (c) reserves to the Legislature the power to amend the statutory authority of a*
13 *political subdivision to take action designed to protect public health. Subsection (c) prohibits the*
14 *Governor from using a public-health-emergency order to declare that a political subdivision is*
15 *stripped for the duration of a public-health emergency of some part of the authority delegated by*
16 *statute to the political subdivision.*

17 18 **Section 11. Injunctive Relief**

19 The [Governor] may seek injunctive relief to enforce a public-health-emergency order.

20 **Section 12. Civil [Penalty][Fine]**

21 (a) The [court] shall impose a [penalty][fine] for a knowing violation of a public-health-
22 emergency order of not more than:

23 (1) \$[250] per violation per day for a violation by an individual; or

24 (2) \$[1000] per violation per day by a business.

25 (b) This [act] does not affect a right or remedy available under other law.

26 **Legislative Note:** *Insert either the court or an administrative agency or both depending on the*
27 *statutory authority granted to administrative agencies to levy a penalty or fine.*

28 29 **Section 13. Relation to Electronic Signatures in Global and National Commerce Act**

30 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National
31 Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or
32 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 14. 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 15. Effective Date

This [act] takes effect . . .