

Model Public-Health-Emergency Authority Act

Informational meeting

We welcome you to this informational meeting to discuss the Model Public-Health-Emergency Authority Act. I will let the Vice Chair, Commissioner Tseu, and our reporter, Professor Gatter provide comments after I do so. But first, we will introduce the committee members. I will call on you as I see you on the screen. Please provide your name and the state you represent.

With the introductions behind us, I want to provide background on the establishment of this drafting committee. I will also highlight key policy issues.

In 2020, the world faced a pandemic caused by the COVID-19 virus. The Executive Committee of the Uniform Law Commission authorized three study committees related to the COVID-19 crisis. One such committee was the Study Committee on Public Health Emergency Authorities. That committee had a charge that was expansive and eclectic.

Ultimately, the study committee recommended that a drafting committee be formed to draft a model act limited to the authority between state executive branch officials and the Legislature. The study committee also thought that the drafting committee could review preemption between the state and local government. The purpose of the model act would be, among other things, to clarify what conditions warranted emergency measures, provide explicit authorization for community mitigation measures, and provide transparency in the process. Given the political division that followed government intervention during the pandemic, the study committee recommended a model rather than uniform act. The recommendation of the study committee was approved.

The drafting committee met several times by Zoom and also in person to discuss the parameters of a model act. The draft presented for this informational meeting is a model act intended for a first read on the floor at this summer's annual meeting. The draft is based on thoughtful input from our reporter, the committee members, our ABA advisors, and the many observers who attended the meetings. Those observers represent public health law experts, persons representing the National Governors' Association, NAACHO (which represents public health officers), the CDC, and small business.

We think we have struck a good balance between the need to empower executive branch officials with the authority to respond effectively to a variety of public health emergencies and the need for standards designed to hold executive branch officials accountable for declaring an emergency and for orders issued during an emergency. But there are issues that still need to be explored. In no particular order those issues are:

1. Did we create the best definition of "public health emergency"?
2. Have we adequately dealt with the authority of the Legislature recognizing constitutional issues that arise in that area such as unlawful legislative vetoes and also the myriad of ways in which a state legislature may be organized?
3. Did we strike the correct balance between state and local government? We have provided three options with different results. One of those options is to allow the local government officials to set a lower standard for the protection of public health than the state sets. Do we want that as the policy direction in this model act?
4. Did we satisfactorily address how this model act intersects with a state's existing general law on emergencies or public health?